

# Part 14-16-6 Administration and Enforcement

## 6-1 PROCEDURES SUMMARY TABLE

Table 6-1-1 lists the types of development applications authorized by this IDO. For each type of application, the table indicates what type of notice is required, whether pre-application meetings with Planning staff or Neighborhood Associations are required, which City bodies review and make a decision on the application, and in which cases a public meeting is held or a public hearing is required. At a public meeting, the reviewing body may or may not allow public comment at its discretion; at a public hearing, public testimony is allowed, and a record of the proceeding is created.

<b>Table 6-1-1: Summary of Development Review Procedures</b>															
X = Required R = Review and/or Recommend D = Review and Decide AR = Appeal Review and Recommend AD = Appeal Review and Decision [ ] = Public Meeting < > = Public Hearing															
Section	Public Notice					Mtgs.		Review and Decision-making Bodies						Specific Procedures	
	6-4(K)					6-4(B)	6-4(C)	6-2							
Application Type	Published	Mailed	Posted Sign	Electronic Mail	Web Posting	Pre-application	Neighborhood	City Staff <sup>[1]</sup>	ZHE	DRB	LC	EPC	LUHO	City Council <sup>[2]</sup>	
<b>Administrative Decisions</b>															
Archaeological Certificate								D					<AR>	<AD>	6-5(A)
Declaratory Ruling								D					<AR>	<AD>	6-5(B)
Grading, Drainage, or Paving Approval								D <sup>[3]</sup>							6-5(C)
Historic Certificate of Appropriateness – Minor			X	X				D			<AD>		<AR>	<AD>	6-5(D)
Impact Fee Assessment								D				<AD>	<AR>	<AD>	6-5(E)
<b>Sign Permit</b>															
<i>Permit</i>				X	X			D					<AR>	<AD>	6-5(F)
<i>Alternative Signage Plan</i>			X	X	X			D					<AR>	<AD>	6-5(F)
Site Plan – Administrative			X	X				D					<AR>	<AD>	6-5(G)
Surface Disturbance Permit								D <sup>[3]</sup>							6-5(H)
Temporary Use Permit								D					<AR>	<AD>	6-5(I)
Wall or Fence Permit – Minor				X	X			D					<AR>	<AD>	6-5(J)
Wireless Telecommunications Facility Approval		X						D					<AR>	<AD>	6-5(K)
<b>Decisions Requiring a Public Meeting or Hearing</b>															
Conditional Use Approval	X	X	X	X	X	X	X	R	<D>				<AR>	<AD>	6-6(A)
Demolition Outside of an HPO	X	X	X	X	X	X	X	R			<D>		<AR>	<AD>	6-6(B)
Expansion of Nonconforming Use or Structure		X	X	X	X	X	X	R	<D>				<AR>	<AD>	6-6(C)
Historic Certificate of Appropriateness – Major	X	X	X	X	X	X		R			<D>		<AR>	<AD>	6-6(D)
Historic Design Standards and Guidelines	X	X	X	X	X	X		R			<D>		<AR>	<AD>	6-6(E)

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Section	Public Notice					Mtgs.		Review and Decision-making Bodies						Specific Procedures		
	6-4(K)					6-4(B)	6-4(C)	6-2								
Application Type	Published	Mailed	Posted Sign	Electronic Mail	Web Posting	Pre-application	Neighborhood	City Staff <sup>[1]</sup>	ZHE	DRB	LC	EPC	LUHO	City Council <sup>[2]</sup>		
Master Development Plan	X	X	X	X	X	X	X	R				<D>	<AR>	<AD>	6-6(F)	
Site Plan – DRB	X	X	X	X	X	X	X	R		[D]			<AR>	<AD>	6-6(G)	
Site Plan – EPC	X	X	X	X	X	X	X	R				<D>	<AR>	<AD>	6-6(H)	
Subdivision of Land – Minor				X	X			R		[D]			<AR>	<AD>	6-6(I)	
Subdivision of Land – Major																
<i>Preliminary Plat</i>	X	X	X	X	X	X		R					<AR>	<AD>	6-6(J)	
<i>Final Plat</i>	X				X			R		[D]			<AR>	<AD>	6-6(J)	
Vacation of Easement or Right-of-way																
<i>Vacation of Easement or Right-of-way – City Council</i>	X	X	X	X	X		X	R		<R>				<D>	6-6(K)	
<i>Vacation of Easement or Right-of-way – DRB</i>	X <sup>[4]</sup>	X	X <sup>[4]</sup>	X	X		X	R		<D>			<AR>	<AD>	6-6(K)	
Variance																
<i>Variance – DRB</i>				X	X		X	R		<D>			<AR>	<AD>	6-6(L)	
<i>Variance – EPC</i>	X	X	X	X	X	X	X	R				<D>	<AR>	<AD>	6-6(M)	
<i>Variance – ZHE</i>	X	X	X	X	X		X	R	<D>				<AR>	<AD>	6-6(N)	
Wireless Telecommunications Facility Waiver	X	X	X	X	X			R				<D>	<AR>	<AD>	6-6(O)	
<b>Policy Decisions</b>																
Adoption or Amendment of Comprehensive Plan	X	X			X	X		R					<R>		<D>	6-7(A)
Adoption or Amendment of Facility Plan	X	X		X	X	X		R					<R>		<D>	6-7(B)
Adoption or Amendment of Historic Designation	X	X	X	X	X	X	X	R			<R>				<D>	6-7(C)
Amendment to IDO Text	X	X			X	X		R					<R>		<D>	6-7(D)
Annexation of Land	X	X	X	X	X	X		R					<R>		<D>	6-7(E)
Zoning Map Amendment – EPC	X	X	X	X	X	X	X	R					<D>	<AR>	<AD>	6-7(F)
Zoning Map Amendment – Council <sup>[5]</sup>	X	X	X	X	X	X	X	R					<R>		<D>	6-7(G)

[1] May include City Planning Department staff, Design Review Team, Historic Preservation Planner, Impact Fee Administrator, Floodplain Administrator, City Engineer, Parks and Recreation Department, or others, depending on the type of application involved and delegation of responsibilities granted.  
 [2] When a LUHO decision on an appeal is reviewed by City Council, Council will only hold a hearing if it does not uphold the LUHO decision.  
 [3] See DPM for more details. Appeals go to the DPM Technical Standards Committee.  
 [4] Vacations of easements do not require published or posted sign notice.  
 [5] Includes creation or amendment of text or map for APO, CPO, or VPO Zones.

## 6-2 REVIEW AND DECISION-MAKING BODIES

### 6-2(A) CITY COUNCIL

The City Council is the zoning authority for the City of Albuquerque and has authority to make decisions on those types of applications shown as City Council responsibilities in Table 6-1-1. The City Council has delegated some of its broad planning and zoning authority to the EPC and ZHE as authorized by law, and the effect of those delegations is shown in this IDO. As the ultimate land use authority for the City, appeals of decisions by any lower authority listed in this Section are referred to the Land Use Hearing Officer (LUHO) for a hearing and recommendation, and then reviewed or heard by the City Council for a final determination.

### 6-2(B) CITY STAFF

#### 6-2(B)(1) City Planning Department

The City Planning Department staff is responsible for day-to-day administration of this IDO, unless this IDO states that another individual, department, or body has a specific responsibility.

##### 6-2(B)(1)(a) City Archaeologist

1. The City Archaeologist is an employee or consultant of the City Planning Department and has authority to approve or deny applications for a Certificate of No Effect or for a Certificate of Approval of a proposed treatment plan per Subsection 14-16-6-5(A) (Archaeological Certificate).
2. The City Archaeologist shall be a qualified archaeologist.
3. The City Archaeologist shall have the following responsibilities:
  - a. Consult the New Mexico Cultural Resources Information System and other information sources to compile and maintain a digital database of surveyed areas, site locations, site types, cultural time periods, and site conditions that is compatible with the Albuquerque Geographic Information System.
  - b. Determine whether an archaeological resource is of historic or pre-historic significance.
  - c. Inspect ground-disturbing activities and/or archaeological resources, as needed.
  - d. Coordinate with other departments and divisions as necessary to ensure compliance with treatment plans.
  - e. Such other activities that will promote the public's understanding and appreciation for the City of Albuquerque's archeology.

##### 6-2(B)(1)(b) Planning Director

The Planning Director has overall responsibility for the decisions of City Planning Department staff and may delegate authority as necessary to any staff member.

**6-2(B)(1)(c) Zoning Enforcement Officer**

1. The Zoning Enforcement Officer (ZEO) is a member of the City Planning Department staff and has authority to interpret this IDO pursuant to Subsection 14-16-6-4(A) (Interpretation).
2. The ZEO has responsibility for making formal determinations as to how this IDO applies to specific situations, proposed development projects, and parcels of land.
3. The ZEO is the formal issuing authority for those permits, approvals, licenses, or certificates that may be issued by the City Planning Department without review or approval by a higher authority.
4. The ZEO has the authority determine whether violations of this IDO have occurred and to determine which of the enforcement tools in Section 14-16-6-9 (Violations, Enforcement, and Penalties) will be used to enforce this IDO, and in what order those tools will be used.

**6-2(B)(1)(d) Other City Planning Department Staff**

The City Planning Department staff makes recommendations and decisions as indicated in Table 6-1-1. Relevant City Planning Department staff members include the City Engineer and his/her designee for hydrology and transportation, Historic Preservation Planner, Impact Fee Administrator, Floodplain Administrator, and others, depending on the type of application involved and delegation of responsibilities granted.

**6-2(B)(2) Other City Department Staff**

Other relevant City staff may include those from the Parks and Recreation Department, Environmental Health Department, Department of Municipal Development, or others, depending on the type of application involved and delegation of responsibilities granted.

**6-2(C) DEVELOPMENT PROCESS MANUAL EXECUTIVE COMMITTEE**

The Development Process Manual (DPM) Executive Committee is a group of 11 individuals appointed by the City to review and approve changes to the DPM.

**6-2(C)(1) Membership**

The DPM Executive Committee membership includes:

- 6-2(C)(1)(a) City Planning Department Director (Co-chair).
- 6-2(C)(1)(b) City Department of Municipal Development Director or designated representative (Co-chair).
- 6-2(C)(1)(c) Manager or designated representative of Urban Design and Development Division of the City Planning Department.
- 6-2(C)(1)(d) City Engineer.
- 6-2(C)(1)(e) City Attorney or designated representative.
- 6-2(C)(1)(f) ABCWUA representative.

6-2(C)(1)(g) Five (5) members from the private sector who are actively involved in land development either as developers, consultants, planners, or representatives of organizations that are actively involved in land development activities.

**6-2(C)(2) Responsibilities**

The DPM Executive Committee is authorized to adopt changes to the DPM pursuant to those procedures set forth in the DPM.

**6-2(D) DEVELOPMENT REVIEW BOARD**

The Development Review Board (DRB) is a board made up of staff members from City Departments and Agencies relevant to reviewing private development to ensure technical standards have been met pertaining to land use, zoning, infrastructure, and transportation.

**6-2(D)(1) Membership**

The DRB membership includes:

- 6-2(D)(1)(a) City Planning Department Director (Chair).
- 6-2(D)(1)(b) City Engineer designee for hydrology (who may also function as a designee for AMAFCA).
- 6-2(D)(1)(c) City Engineer designee for transportation.
- 6-2(D)(1)(d) Zoning Enforcement Officer.
- 6-2(D)(1)(e) Parks and Recreation Department representative.
- 6-2(D)(1)(f) ABCWUA representative.

**6-2(D)(2) Responsibilities**

The DRB has the responsibility to make decisions on those types of applications shown as DRB responsibilities in Table 6-1-1.

**6-2(E) ENVIRONMENTAL PLANNING COMMISSION**

The Environmental Planning Commission (EPC) is a 9-member board nominated by City Council (Council) members and appointed by the Mayor with the advice and consent of the Council. The EPC is the "City Planning Commission" or the "Planning Commission" for the purposes of any other law or policy that refers to such body.

**6-2(E)(1) Membership and Qualifications**

The EPC shall include a resident of each Council District, with experience in community planning, architecture, landscape architecture, urban design, real estate development, transportation, civil engineering, and/or real estate finance, and shall be subject to additional provisions, including terms of office, in Article 2-6 of ROA 1994 (Public Boards and Commissions).

**6-2(E)(2) Appointments**

- 6-2(E)(2)(a) If an EPC member's term of office is ending, that member is eligible for reappointment to the EPC, and the Councilor in whose District that member resides desires to reappoint the member, the Councilor shall so notify the Council and the member shall be reappointed subject to the advice and consent of the Council.
- 6-2(E)(2)(b) When a vacancy on the EPC occurs:

1. The Mayor shall notify a Councilor in writing that his/her District member's term of office has expired or the position is otherwise vacant, and that the Councilor shall have 60 consecutive days to submit 2 recommended appointments to fill that position. If the Councilor fails to submit 2 names within 60 consecutive days of notification, the Mayor shall have the right to make the appointment subject to the advice and consent of the Council.
2. The Mayor shall then recommend 1 of the 2 individuals recommended by the Councilor for appointment with the advice and consent of the Council.
3. The Mayor shall deliver to the Council the Mayor's recommendation from the 2 names submitted within 30 consecutive days of delivery of the 2 names to the Mayor. If the Mayor fails to timely make a recommendation from the 2 names submitted, the Councilor who submitted the names may appoint one of the 2 recommended members, subject to the advice and consent of the Council.

### **6-2(E)(3) Responsibilities**

The EPC has the responsibility to:

- 6-2(E)(3)(a) Make recommendations or decisions on those application types shown as EPC responsibilities in Table 6-1-1.
- 6-2(E)(3)(b) Study urban and regional planning and means of protecting and improving the environment and promote the understanding of planning and environmental matters among public officials and residents of the city.
- 6-2(E)(3)(c) Advise the Mayor, Council, and City staff concerning the development and revision of community goals, Community Planning Area assessments, plans for urban development and protection of the environment, policies on development and protection of the environment, ordinances appropriate for affecting such plans and policies, and annexations to the city.
- 6-2(E)(3)(d) Make recommendations for programming of capital improvements for the city pursuant to Article 2-12 of ROA 1994 (Capital Improvements) and the resolution establishing priorities for each biannual capital improvement plan, designation of land desirable and needed for public purposes, adoption of air and water quality standards, and other appropriate matters.
- 6-2(E)(3)(e) Review any recommendations, concerns, or comments provided by commenting agencies, departments, stakeholders, and the public prior to final decisions.
- 6-2(E)(3)(f) Perform those duties and responsibilities and exercise those powers that may be delegated to it by the Council through this IDO or independently of this IDO.

6-2(E)(3)(g) Form standing committees or task forces from EPC members in order to carry out the assigned duties, responsibilities, and powers of the EPC.

### **6-2(F) FLOODPLAIN ADMINISTRATOR**

The Floodplain Administrator is the public official(s) designated by the City to coordinate the community's participation in the National Flood Insurance Program. The Floodplain Administrator is responsible for administering and enforcing the provisions of Article 14-5 of ROA 1994 (Flood Hazard and Drainage Control), which may affect the processing of applications under this IDO for lands in areas designated as flood hazard areas in Article 14-5 of ROA 1994.

### **6-2(G) IMPACT FEE ADMINISTRATOR**

The Impact Fee Administrator has authority to interpret and enforce all provisions of Article 14-19 of ROA 1994 (Impact Fee Ordinance) and related rules and regulations in order to carry out the general administration of all impact fees. The Impact Fee Administrator shall have the responsibility to:

- 6-2(G)(1) Establish a fee applicable to the most nearly equivalent land use on the fee schedule when no equivalent type of land use is present in either the impact fee schedule or in this IDO, or when a land use has been previously determined to be a miscellaneous land use.
- 6-2(G)(2) Establish the impact fee applicable to a particular development using the procedures described in Article 14-19 of ROA 1994 (Impact Fees) and related rules and regulations.
- 6-2(G)(3) With respect to an independent fee determination described in more detail in the DPM, the Impact Fee Administrator shall do all of the following:
  - 6-2(G)(3)(a) Conduct a pre-application meeting with the applicant and representatives of appropriate departments of the City.
  - 6-2(G)(3)(b) In accordance with the requirements of the Impact Fee Ordinance, review the independent fee determination study for sufficiency, methodology, technical accuracy, and findings.
  - 6-2(G)(3)(c) In accordance with the requirements of the Impact Fee Ordinance, establish the amount of the impact fee as a result of the independent study based on the procedures described in the applicable Impact Fee Ordinance and any associated administrative rules.
- 6-2(G)(4) Determine exemptions from the requirement to pay an impact fee or reduction in the amount of the fee, based on this IDO, the Impact Fee Ordinance, and the DPM.
- 6-2(G)(5) Determine the availability and the amount of any refund of an impact fee.
- 6-2(G)(6) Calculate the additional impact fee due in the event of a change of use, redevelopment, or modifications of an existing use.
- 6-2(G)(7) Calculate and grant credits for contributions, dedications, or improvements that may be used to offset any impact fee otherwise due.

- 6-2(G)(8) Maintain separate interest-bearing accounts clearly identifying the payer and category of capital improvements within the service area in which the fee was collected.
- 6-2(G)(9) Ensure that a notice of impact fee assessment is included on the final plat.

## **6-2(H) LANDMARKS COMMISSION**

The Landmarks Commission (LC) is a 7-member board appointed by the Mayor to promote the preservation of Albuquerque's historic and architectural character and to administer the development requirements for designated City historic districts and landmarks pursuant to Section 14-16-3-5 (Historic Protection Overlay Zones) and Subsection 14-16-6-7(C) (Adoption or Amendment of Historic Designation).

### **6-2(H)(1) Membership**

The LC membership includes all of the following:

- 6-2(H)(1)(a) Two (2) members who own property in an HPO zone.
- 6-2(H)(1)(b) One (1) professional architect.
- 6-2(H)(1)(c) One (1) licensed real estate agent.
- 6-2(H)(1)(d) One (1) person knowledgeable in the area of historic preservation.
- 6-2(H)(1)(e) Two (2) additional members with demonstrated expertise in at least 1 of the following areas: architecture, law, graphic arts, planning, real estate, history, construction, or archeology.

### **6-2(H)(2) Qualifications, Terms, and Conduct**

#### **6-2(H)(2)(a) Qualifications**

All of the members shall have demonstrated, through previous experience or training, an ability and interest relating to preservation of the historic and architectural character of Albuquerque. Members may reside outside of the boundaries of the City if they have special expertise.

#### **6-2(H)(2)(b) Terms of Office**

The term of office for each member shall be 3 years, staggered so that approximately one-third of the members' terms of office expire each year.

#### **6-2(H)(2)(c) Public Boards and Commissions**

Except as provided in this Section 14-16-6-2(H), the qualifications, appointment, and conduct of the members of the LC and its organizational structure shall be governed by Article 2-6-1 of ROA 1994 (Public Boards and Commissions).

### **6-2(H)(3) Responsibilities**

The LC shall have the following powers:

- 6-2(H)(3)(a) Conduct studies and programs designed to identify and evaluate structures and areas worthy of historic conservation and to review the status of structures and zones already designated.

- 6-2(H)(3)(b) Recommend to the Mayor and City Council landmarks to be designated by the Council in accordance with the procedures established in this article.
- 6-2(H)(3)(c) Conduct public hearings on applications for Historic Protection Overlay (HPO) zones or landmark structures or sites and make recommendations on those applications to City Council.
- 6-2(H)(3)(d) Prepare and adopt specific development guidelines for any designated landmark or HPO zone.
- 6-2(H)(3)(e) Make decisions on applications for Certificates of Appropriateness – Major for alteration, new construction, or demolition in HPO zones, in accordance with the procedures established in this IDO. The LC delegates authority to make decisions on Certificates of Appropriateness – Minor to City Planning Department staff (Historic Preservation Planner).
- 6-2(H)(3)(f) Disseminate information to the public concerning historic preservation and seek input from groups and individuals about these matters.
- 6-2(H)(3)(g) Consider methods for encouraging and achieving historic preservation and make recommendations to the Mayor and City Council.
- 6-2(H)(3)(h) Advise the Mayor and City Council on any proposed public improvements that impact the exterior appearance of historic landmarks or significant structures in HPO zones.
- 6-2(H)(3)(i) Review applications sent to the LC by the City Planning Department staff (Historic Preservation Planner) for demolition of buildings 50 years or older in areas specified in Subsection 14-16-6-6(B) (Demolition Outside of an HPO) that are outside of HPO zones to determine whether there is a feasible alternative to demolition.

**6-2(I) LAND USE HEARING OFFICER**

The Land Use Hearing Officer (LUHO) is an attorney designated by the City Council to review and conduct hearings on land use appeals and to recommend findings and determinations to the City Council on those matters shown as LUHO responsibilities in Table 6-1-1.

**6-2(J) ZONING HEARING EXAMINER**

The Zoning Hearing Examiner (ZHE) conducts hearings and makes findings and final decisions on those types of applications shown as ZHE decision responsibilities in Table 6-1-1.

## 6-3 THE PLANNING SYSTEM

The City of Albuquerque prepares and adopts Ranked City Plans to guide the development and management of public facilities, as well as private development within municipal boundaries. The City also analyzes development patterns and makes recommendations through Community Planning Area Assessments to align future private and public investments, policies, and regulations.

### 6-3(A) RANK 1 COMPREHENSIVE PLAN

The Albuquerque/Bernalillo County Comprehensive Plan (ABC Comp Plan) establishes a community vision for future development in the City of Albuquerque and unincorporated areas of Bernalillo County to take place primarily in Centers and Corridors and identifies long-range goals and policies for community identity, land use, transportation, urban design, economic development, housing, parks and open space, heritage conservation, infrastructure, community facilities, services, and resilience and sustainability, to realize that vision.

### 6-3(B) RANK 2 FACILITY PLANS

Facility Plans provide policy guidance on a particular topic citywide to relevant implementing departments. They normally cover only one type of natural resource (such as Major Public Open Space) or one type of public facility or utility (such as electricity transmission). These plans are required to be consistent with the ABC Comp Plan, as amended, and to identify how they relate to its vision, goals, and policies. In case of conflict, policies in the ABC Comp Plan, as amended, shall apply.

### 6-3(C) RANK 3 PLANS

Rank 3 Plans provide policy guidance for a particular geographic area to relevant implementing departments. Rank 3 Plans include Metropolitan Redevelopment Plans, Master Plans, and Resource Management Plans. Rank 3 Metropolitan Redevelopment Area plans, adopted per Subsection 14-8-4-3(B) of ROA 1994 (Metropolitan Redevelopment Ordinance), contain strategies for catalytic public investment and economic development. Rank 3 Master Plans or Resource Management Plans developed and adopted by relevant implementing departments may specify development standards, management policies, or multi-year programs of capital improvements for particular public facilities or City-owned or managed resources. Rank 3 Plans are not subject to the review and decision processes in the IDO, but relevant implementing City departments may choose to have Rank 3 Plans reviewed by the EPC and/or accepted by the City Council when additional input is desired.

### 6-3(D) ANNUAL UPDATES TO THE IDO

The Planning Department shall prepare amendments to the text of this IDO to be submitted once every calendar year for an EPC hearing in September. These amendments shall be reviewed and decided pursuant to Subsection 14-16-6-7(D) (Amendment to IDO Text).

- 6-3(D)(1) Anyone may submit recommended changes to the Planning Department throughout the year, particularly during the CPA assessment process, as set out in Subsection 14-16-6-3(E) (Community Planning Area Assessments).
- 6-3(D)(2) The Planning Department shall compile these recommendations, perform analyses, revise recommendations as necessary, and submit proposed amendments that further applicable goals and policies of the ABC Comp Plan, as amended, as well as other City plans, and that protect the public health, safety, and welfare.

6-3: The Planning System

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- 6-3(D)(3) Changes recommended by a Community Planning Area (CPA) assessment that has been accepted by Council, pursuant to Subsection 14-16-6-3(E)(7) (Community Planning Area Assessments), shall be submitted for consideration at this time.
- 6-3(D)(4) Notwithstanding the schedule for annual updates to the IDO in this Subsection 14-16-6-3(D), the Planning Director may determine that an interim amendment to the text of this IDO shall be submitted for review and decision to prevent a significant threat to public health or safety.

**6-3(E) COMMUNITY PLANNING AREA ASSESSMENTS**

The City conducts analysis and long-range planning within each Community Planning Area (CPA) established by the ABC Comp Plan. CPA assessments shall inform updates and amendments to planning policies, zoning regulations, technical standards for infrastructure, and capital improvement priorities. These assessments are intended to recommend changes to Ranked City Plans on an ongoing basis. Assessments are not part of the system of Ranked City Plans but recommend changes to those plans on an ongoing basis.

- 6-3(E)(1) The Planning Director shall create a regular, rotating schedule to research, study, and analyze each CPA at least once every 5 years.
- 6-3(E)(2) The assessments shall analyze each CPA based on performance measures established by the ABC Comp Plan, as amended, to reflect evolving conditions, trends, and desired outcomes to reflect the unique status of each CPA while also allowing comparison of objective data across the city.
- 6-3(E)(3) The City Office of Neighborhood Coordination (ONC) shall be involved in each assessment to ensure adequate notification, representation, and participation of Neighborhood Associations.
- 6-3(E)(4) Each assessment shall include visits and interactions with residents, property owners, businesses, neighborhood associations, business associations, and other stakeholders in each CPA.
- 6-3(E)(5) Each assessment shall reflect the history, special places, character, and capital needs of each CPA.
- 6-3(E)(6) At least every 5 years, based on the data, analyses, and findings of the assessments, the Planning Director shall recommend updates and amendments as relevant and necessary to the Rank 1 ABC Comp Plan, as amended; Rank 2 Facility Plans; Rank 3 Plans; the IDO; or the DPM. See also Subsection 14-16-6-4(E)(4) for the annual IDO update process.
- 6-3(E)(7) The Planning Director shall report the findings and recommendations from each assessment to the EPC for review and recommendation to the City Council. Assessments shall be forwarded to the City Council for review and acceptance. Staff shall prepare resolutions and/or ordinances to accompany the assessment that will implement the findings and recommendations of the assessment for the consideration of the City Council. City Council shall review for adoption any associated resolutions and/or ordinances.

**6-3(F) NEIGHBORHOOD ASSOCIATIONS**

**6-3(F)(1) Recognized and Non-recognized Neighborhood Associations**

Neighborhood Associations may register with the City as Recognized or Non-recognized Neighborhood Associations pursuant to Part 14-8-2 of ROA 1994 (Neighborhood Association Recognition).

**6-3(F)(2) Responsibilities of the City**

The City shall provide the following services:

- 6-3(F)(2)(a) Provide an initial response within 7 business days of receipt of any correspondence received from any Neighborhood Association that requests an answer, definition, or status of any City project within their boundaries.
- 6-3(F)(2)(b) Provide Neighborhood Associations with information about appropriate City officials or agencies to contact for more information about development projects, applications, public hearings, or review and processing steps for applications of interest to any Neighborhood Association.
- 6-3(F)(2)(c) Consult with Neighborhood Associations about current and emerging trends or concerns in the neighborhoods, and about any changes to the ABC Comp Plan, as amended, or this IDO desired by the Neighborhood Association, as part of the City's CPA assessment process.
- 6-3(F)(2)(d) Provide a Citizens Academy on at least an annual basis to inform Neighborhood Association members and officials about the City's planning, zoning, subdivision, and development approval processes.
- 6-3(F)(2)(e) Adopt rules and guidelines as necessary to implement this Subsection 14-16-6-3(F) (Neighborhood Associations).

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**6-4 GENERAL PROCEDURES****6-4(A) INTERPRETATION**

The ZEO has authority to interpret this IDO, including the authority to determine its applicability to specific properties or situations and the authority to interpret the boundaries of zone districts and Overlay zones on the Official Zoning Map.

**6-4(B) PRE-APPLICATION MEETING**

- 6-4(B)(1) The purpose of a pre-application meeting is to provide an opportunity for an applicant and City staff to discuss applicable submittal requirements and procedures; the scope, features, and potential impacts of the proposed development on surrounding neighborhoods and infrastructure systems; the consistency or inconsistency of the proposed application with the ABC Comp Plan, as amended; applicable requirements and standards in this IDO; and applicable requirements and standards in the DPM and to identify primary contacts for the applicant and staff.
- 6-4(B)(2) A pre-application meeting with City staff is required for those types of applications indicated in Table 6-1-1, and those types of applications will not be accepted until a pre-application meeting is held.
- 6-4(B)(3) In addition, the Planning Director may require a meeting before City acceptance of any other type of application listed in Table 6-1-1 if the Director determines that the application is of unusual size or complexity or has the potential to create significant impacts on surrounding areas.

**6-4(C) NEIGHBORHOOD MEETING**

- 6-4(C)(1) For those types of applications where Table 6-1-1 requires a meeting with a neighborhood, the applicant shall offer at least 1 meeting to all Neighborhood Associations whose boundaries include or are adjacent to the subject project site before filing the application. In such cases, project applications will not be accepted until a neighborhood meeting has been held, or the requirements for a reasonable attempt in Subsection (3) below have been met.
- 6-4(C)(2) If the project is not located within or adjacent to the boundaries of any Neighborhood Association, the applicant shall have at least 1 meeting with a Neighborhood Association whose boundaries include land within 1,320 feet of the project site. If no Neighborhood Association has land within that distance of the project site, no neighborhood meeting shall be required.
- 6-4(C)(3) A meeting request shall be sent to the 2 representatives on file at the Office of Neighborhood Coordination (ONC) for all applicable Neighborhood Associations via certified letter, return receipt requested, or via email with timestamp, read receipt requested. Either method constitutes a reasonable attempt to notify a Neighborhood Association of a meeting request. The requirements of Subsection 14-16-6-4(K)(7) (Documentation of Good Faith Effort Required) also apply.
- 6-4(C)(4) If the Neighborhood Association chooses to meet, the Neighborhood Association must respond within 15 consecutive days of the certified letter or email being sent. The meeting must be scheduled for a date within 30

- consecutive days of the meeting request being accepted by the Neighborhood Association. If the Neighborhood Association declines the meeting, the applicant may proceed pursuant to Subsection 14-16-6-4(C)(7).
- 6-4(C)(5) At the neighborhood meeting, the applicant shall provide information about the proposed project, including but not limited to the scope of uses, approximate square footages for different uses, general site layout, design guidelines, architectural style, conceptual elevations, and conceptual landscaping plans.
- 6-4(C)(6) Where Table 6-1-1 requires that a neighborhood meeting be held, and a meeting was held, the applicant shall provide, as part of the project application, proof that the meeting occurred, including a sign-in sheet of attendance; meeting location, date, and time; summary of discussion, including concerns raised, areas of agreement and disagreement, and next steps identified, if any; and identification of any design accommodations that may have been made as a result of the meeting. If the concerns raised at the meeting have not been accommodated, the applicant must identify the site or project constraints that limit the ability to address those concerns.
- 6-4(C)(7) Where Table 6-1-1 requires that a neighborhood meeting be held, and a meeting was not held, the requirement for a neighborhood meeting shall be waived if the applicant can demonstrate that reasonable attempts were made to notify a Neighborhood Association as required by Subsections (1) through (7) above, and either no response was received within 15 consecutive days of the notice being sent, or the notified Neighborhood Association declined the meeting.

#### **6-4(D) FACILITATED MEETINGS**

- 6-4(D)(1) For any applications listed in Table 6-1-1, anyone may request and the City may require the applicant to attend a City-sponsored facilitated meeting with the Neighborhood Associations whose boundaries include or are adjacent to the proposed project, based on the complexity and potential impacts of a proposed project.
- 6-4(D)(2) If a facilitated meeting is required by the City, the City shall assign a facilitator, who shall attempt to schedule the facilitated meeting within 15 consecutive days. The meeting shall occur within a period of 7 consecutive days prior to the next scheduled hearing or meeting of the decision-making body. If reasonable attempts have been made to accommodate the schedules of both the applicant and the Neighborhood Associations, and no meeting has occurred, the application may move forward in the relevant review/decision process.
- 6-4(D)(3) If the meeting occurs, the facilitator shall provide a facilitated meeting report, including but not limited to meeting location, date, and time; attendees; and a summary of the discussion. If no meeting occurs, the facilitator shall provide documentation of the attempt to schedule the meeting and that no meeting was scheduled within the time allotted.

#### **6-4(E) WHO CAN FILE AN APPLICATION**

- 6-4(E)(1) Unless specified otherwise in this IDO, an application under this IDO related to a specific property or multiple properties may be submitted by:

- 6-4(E)(1)(a) The owner of that property or an agent of the property owner with the written consent of the property owner.  
Where a property has more than one owner, all owners must consent in writing to the filing of the application to the maximum extent practicable. In the case that not all of the property owners have consented in writing to the application, or when the ownership status of some parties is unclear (as shown on a title abstract or title insurance commitment), the owner shall attest in writing that all of the property owners shown on a title abstract or title insurance commitment have been notified of the application in writing at their last known address as shown on the property tax records of Bernalillo County.
- 6-4(E)(1)(b) The City.  
When the City initiates action, it does so without predetermining the approval or denial of the application.
- 6-4(E)(1)(c) An entity with the authority to exercise the power of eminent domain, provided that the approval of the application shall not be effective until the entity has acquired an interest in the real property that is the subject of the application.
- 6-4(E)(1)(d) The property owners in a proposed CPO zone.  
Applications to create or amend a CPO zone shall only be accepted if they provide proof in writing that at least 51 percent of the property owners in the proposed CPO area agree.
- 6-4(E)(1)(e) The property owners in a proposed HPO zone.
- 6-4(E)(2) An application to adopt or amend the ABC Comp Plan may be filed by the City or by any resident or property owner in the City.
- 6-4(E)(3) An application to amend the text of this IDO may be filed by any resident or property owner in the City.
- 6-4(E)(4) The Planning Department shall submit amendments to the text of this IDO pursuant to Subsection 14-16-6-3(D) (Annual Updates to the IDO).
- 6-4(E)(5) Annexation to the City may be accomplished by petition from 1 or more property owners.
- 6-4(E)(5)(a) A petition to annex land into the City must be signed by the owners of a majority of the number of acres proposed to be annexed.
- 6-4(E)(5)(b) If the land is located in the Middle Rio Grande Conservancy District, the application must be signed by a majority of the owners of all lands that are included in the territory to be annexed.
- 6-4(E)(5)(c) Annexation may also be accomplished in any other manner provided by New Mexico state law. If the provisions of this Subsection (5) conflict with state law, the provisions of state law shall prevail.

**6-4(F) APPLICATION MATERIALS**

- 6-4(F)(1) Each application shall include all forms and related information required by the City for that type of application, as set forth in the DPM, applicable Facility Plan, or on the City’s website.
- 6-4(F)(2) The applicant bears the burden of providing a sound justification for the requested decision, based on substantial evidence.
- 6-4(F)(3) Unless specified otherwise in this IDO, all applications shall be filed with the City Planning Department.

**6-4(G) APPLICATION FEES**

Each applicant shall pay any required application fee(s) established by the City for the type of application(s) being submitted.

- 6-4(G)(1) The City Council establishes application fees for applications listed in Table 6-4-1.
- 6-4(G)(2) The Planning Director may establish application fees for applications not listed in Table 6-4-1, as well as additional fees for research, investigation, analysis, public notice, facilitated meetings, inspection, enforcement, and issuance of official documents.
- 6-4(G)(3) All fees shall be based on the estimated City time required to review and process the application, as well as any other relevant costs, including but not limited to required public notice.
- 6-4(G)(4) No fee shall be required for an application filed by the City.

<b>Table 6-4-1: IDO Fee Schedule</b>	
<b>Application Type</b>	<b>Application Fee</b>
<b>Administrative Decisions</b>	
Historic Certificate of Appropriateness – Minor	\$35
Impact Fee Assessment	Pursuant to Part 14-19-13 of ROA 1994
Sign Permit	\$.70 / sq. ft. or \$70, whichever is more
<i>Sign Erected without a Permit</i>	\$1.45/ sq. ft. or \$145, whichever is more
<i>Annual Electronic Sign Fee</i>	Same as sign permit, but annual
<i>Central Avenue Neon Sign</i>	Waived
<i>Alternative Signage Plan</i>	\$45
Site Plan – Administrative	\$25 for buildings ≤4,000 sq. ft. \$45 for buildings >4,000 sq. ft.
Wall or Fence Permit – Minor	\$25
<i>Wall or Fence Erected without an Approval</i>	\$80
Wireless Telecommunications Facility Approval	
<i>Collocation</i>	\$2,000
<i>New Facility</i>	\$3,000
<b>Decisions Requiring a Public Meeting or Hearing</b>	
Conditional Use Approval	\$100
Demolition Outside of an HPO	\$35
Expansion of Nonconforming Use or Structure	\$100
Historic Certificate of Appropriateness – Major	\$35
Historic Design Standards and Guidelines	\$35
Master Development Plan	\$385

<b>Application Type</b>	<b>Application Fee</b>
Site Plan – DRB	\$385
Site Plan – EPC	\$385
Variance	
<i>Variance – EPC</i>	\$100
<i>Variance – ZHE</i>	\$100
Wireless Telecommunications Facility Waiver	\$385
Deferral by applicant request for any of the above decisions	\$110
<b>Policy Decisions</b>	
Adoption or Amendment of Comprehensive Plan	\$425
Adoption or Amendment of Facility Plan	\$425
Adoption or Amendment of Historic Designation	\$565
Amendment to IDO Text	\$565
Annexation of Land	\$685 + \$10/acre
Zoning Map Amendment – EPC	\$240 for ≤1 acre
Zoning Map Amendment – Council	\$240 + \$55/acre for >1 acre
Deferral by applicant request for any of the above decisions	\$110

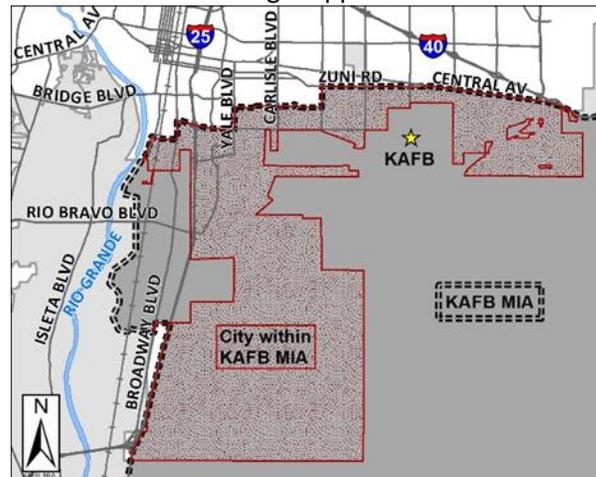
**6-4(H) APPLICATION COMPLETENESS**

- 6-4(H)(1) On receiving a development application, the Planning Director shall determine whether the application is complete. A complete application is one that contains all information and application materials required by this IDO, the DPM, and any administrative checklist for that type of development, in sufficient detail and readability to evaluate the application for compliance with applicable review standards in this IDO.
- 6-4(H)(2) Incomplete applications shall be rejected.
- 6-4(H)(3) If the Planning Director determines that an application is incomplete, the Planning Director shall notify the applicant in writing of the missing, incomplete, or unreadable materials within 5 business days after receiving the application. The applicant may correct the deficiencies and resubmit the application for a determination of completeness until the Planning Director determines the application is complete. If the applicant fails to resubmit an application with any additional or corrected materials necessary to make the application complete within 60 consecutive days after being notified of submittal deficiencies, the application shall be considered abandoned, and any application fees that have been paid and have not been expended during initial review shall be refunded.
- 6-4(H)(4) No development application shall be reviewed for compliance with this IDO or scheduled for a public hearing by any review or advisory body until it is determined to be complete.
- 6-4(H)(5) On determining that the application is complete, the Planning Director shall accept the application for review in accordance with the procedures and standards of this IDO.

**6-4(I) REFERRALS TO COMMENTING AGENCIES**

Following a determination that the application is complete, the Planning Director, ZEO, or any City staff designated to review applications in Table 6-1-1 shall refer applications for comment to the following departments or agencies, as noted below. Any comments received within 15 consecutive days after such a referral shall be considered with the application materials in any further review and decision-making procedures.

- 6-4(I)(1) City departments or agencies or other governmental or quasi-governmental agencies whose services, properties, facilities, interests, or operations may be affected.
- 6-4(I)(2) Albuquerque Public Schools (APS) for applications that include residential development. The City shall not approve any Subdivision application that contains any residential component without providing APS an opportunity to review and comment.
- 6-4(I)(3) Kirtland Air Force Base and City Aviation Department staff for applications that include development in the Kirtland Air Force Base Military Influence Area shown in the following mapped area.



- 6-4(I)(4) City Aviation Department for applications that include development in the Airport Protection Overlay Zone.

**6-4(J) TRAFFIC IMPACT STUDY REQUIREMENTS**

- 6-4(J)(1) A Traffic Impact Study may be required per standards in the DPM. The extent of the study or report will depend on the location of the project, the amount of traffic generated from the development, and the existing conditions in the project area.
- 6-4(J)(2) A scoping meeting with the City Engineer may be scheduled to determine whether a traffic impact is required.
- 6-4(J)(3) If a Traffic Impact Study is required, it shall be submitted as part of the application materials and is subject to the application completeness requirements of Section 14-16-6-4(H).

**6-4(K) PUBLIC NOTICE**

Notice that is published, mailed, electronically mailed, posted by sign, or posted on the City's website shall be required as shown in Table 6-1-1 for different types of applications under this IDO, and shall comply with the standards below. Notice shall also be provided pursuant to Office of Neighborhood Coordination administrative instructions and the requirements of Part 14-8-2 of ROA 1994 (Neighborhood Association Recognition Ordinance).

**6-4(K)(1) Published**

Where Table 6-1-1 requires published notice, the City shall publish a notice in a newspaper of general circulation within the city at least 15 consecutive days before the hearing. If initial notice of a public hearing has been provided, additional notice shall not be required if the public hearing is begun and then continued to a specific date, or for an appeal of the decision.

**6-4(K)(2) Mailed**

6-4(K)(2)(a) Where Table 6-1-1 requires mailed notice, the applicant shall mail a notice to the 2 contact addresses submitted by a Neighborhood Association to the Office of Neighborhood Coordination as follows:

1. For applications related to a WTF: any Neighborhood Association within 1,320 feet of the subject property.
2. For applications related to a citywide Policy Decision: all Neighborhood Associations.
3. For all other applications: any Neighborhood Association whose boundaries include or are adjacent to the proposed project or facility.

6-4(K)(2)(b) For Administrative Decisions, Decisions Requiring a Public Meeting or Hearing, Amendments to Zoning Map, Adoption or Amendment of Historic Designation, or Annexation of Land as shown in Table 6-1-1, the applicant shall mail a notice to all of the following:

1. The owner of the property listed in the application.
2. All owners, as listed in the records of the County Assessor, of property located partially or completely within 100 feet (excluding public rights-of-way) of the property listed in the application.

6-4(K)(2)(c) For the purposes of providing mailed notice, First Class Mail shall constitute reasonable attempt to notify, with the following exceptions:

1. In the case of applications for subject sites less than 10 acres to request an Annexation of Land or Zoning Map Amendment, the letters to property owners within 100 feet of the site must be sent by Certified Mail.
2. In the case of applications for subject sites 10 acres or more to request an Annexation of Land or Zoning Map Amendment, if the notice by First Class Mail to a property owner is returned undelivered, the City shall attempt to discover that owner's

most recent address, and the applicant shall remit the notice by Certified Mail, return receipt requested, to that address.

- 6-4(K)(2)(d) Mailed notice shall be provided at the applicant's expense.
- 6-4(K)(2)(e) The applicant shall be required to provide evidence that required notices have been mailed at least 3 consecutive days before a weekly public meeting or hearing or at least 15 consecutive days before a monthly public meeting or hearing.
- 6-4(K)(2)(f) Mailed notice is not required for appeals of those decisions where Table 6-1-1 requires mailed notice of the initial public hearing.
- 6-4(K)(2)(g) For changes of use or rezoning of manufactured home communities that will result in expiration or termination of resident occupancy, see Subsection 14-16-2-3(C)(3) (R-MC Zone District Standards).

#### **6-4(K)(3) Posted Sign**

Where Table 6-1-1 requires posted notice, the applicant shall post at least 1 notice on each public right-of-way abutting the property that is the subject of the application, at a point clearly visible from that public right-of-way, for at least 15 consecutive days before the public meeting or hearing, as applicable, or for at least 15 consecutive days after an application for Sign – Admin is accepted as complete. Signs for such posted notices shall be furnished by the City. Posted notice is not required for appeals of those decisions where Table 6-1-1 requires posted notice of the initial public hearing.

#### **6-4(K)(4) Electronic Mail**

Where Table 6-1-1 requires electronic mail notice, the applicant shall send an electronic notice to the e-mail addresses on file for each Neighborhood Association whose boundaries include or are adjacent to the property listed in the application. Electronic notice is not required for appeals of those decisions where Table 6-1-1 requires electronic notice of the initial public hearing.

#### **6-4(K)(5) Web Posting**

Where Table 6-1-1 requires web notice, the City shall post a notice on the City's website. The notice shall generally be in the form of a meeting or hearing agenda or a Notice of Decision.

#### **6-4(K)(6) Content of the Notice**

Each notice required by this Section 14-16-6-4(K) shall include the address of the property listed in the application; the name of the property owner; the name of the applicant; a short summary of the approval being requested (e.g. Conditional Use Approval to allow a particular use, amendment to the Official Zoning Map from an existing zone district to a specified district, the maximum height of proposed structures, the maximum number of proposed dwelling units, and the approximate gross square footage of any proposed non-residential uses, etc.); whether a public hearing will be required, and if so the date, time, and place of the public hearing; and an address, telephone number, or website where additional information about the application can be obtained.

**6-4(K)(7) Documentation of Good Faith Effort Required**

- 6-4(K)(7)(a) In any case where an applicant is required to provide mailed, posted, or electronic notice, the applicant shall be required to submit evidence that timely notice has been made, including the dates on which notice was provided, a copy of the text of the notice provided, and a list of those addresses and e-mail addresses to which mailed and electronic notice has been sent.
- 6-4(K)(7)(b) In any case where mailed notice is returned to sender or email is returned as undeliverable, the applicant shall request updated information from the City and re-send any required notice to the updated address, if different.
- 6-4(K)(7)(c) Failure to provide evidence of timely mailing or electronic notice of required notices to Neighborhood Associations shall result in postponement of the public hearing unless the City receives written notice from each Neighborhood Association required to receive mailed notice that it has received notice and has no objection to the hearing proceeding as scheduled, or unless Subsection (d) below applies.
- 6-4(K)(7)(d) Failure to provide evidence of required mailed notice to any individual other than a Neighborhood Association representative may result in the postponement of further review of the application unless the City determines that those parties required to receive mailed notice have received notice of the public hearing or unless Subsection (e) below applies.
- 6-4(K)(7)(e) If the applicant provides evidence that the required notices were timely provided, then failure of a property owner or Neighborhood Association to receive actual notice due to changes of address since the latest update to the City or County real estate records, or due to changes of e-mail addresses since those were last provided to the City, or due to errors in postal delivery or newspaper publishing, or for other reasons beyond the control of applicant or City, shall not be grounds for a delay of application review or public hearings, or for appeal of the resulting decision.

**6-4(L) PUBLIC MEETINGS**

A public meeting is less formal than a public hearing. Where Table 6-1-1 indicates that a public meeting is required, the review or decision-making body shall discuss the application in a public meeting, but it shall be up to the discretion of the reviewing body whether public questions, statements, or discussion on the application shall be allowed.

**6-4(M) PUBLIC HEARINGS****6-4(M)(1) Requirement**

The ZHE, DRB, LC, EPC, LUHO, and City Council shall conduct public hearings as necessary on those types of applications where Table 6-1-1 indicates that a public hearing will be held.

**6-4(M)(2) Procedures Governed by Administrative Rules**

Each entity listed in Section 14-16-6-2 (Review and Decision-making Bodies) is authorized to create rules, procedures, or practices governing its conduct of public hearings, but each public hearing (other than appeal hearings) shall include an opportunity for all parties to the hearing to be heard regarding the application. A record shall be kept of each person asking questions or offering testimony about the application.

**6-4(M)(3) Quasi-judicial Hearings**

For decisions that would result in changes to property rights or entitlements on a particular property or affecting a small area, or are otherwise not considered legislative decisions involving policy or regulatory changes that would apply citywide or to a large area, the decision-making body shall conduct a quasi-judicial hearing to make a discretionary decision. Quasi-judicial hearings shall be subject to the additional provisions in this Subsection 14-16-6-4(M)(3).

**6-4(M)(3)(a) Appearance of Record**

An appearance of record in a hearing is made through a written statement of the person's name and address, signed by the person or by his/her agent, and filed with or otherwise received by the relevant decision-making body prior to the termination of public comment on the case.

**6-4(M)(3)(b) Conduct**

1. A party to the hearing shall be afforded an opportunity to present evidence and argument and to question witnesses on all relevant issues, but the decision-making body may impose reasonable limitations on the number of witnesses heard, and on the nature and length of their testimony and questioning.
2. The decision-making body may call witnesses and introduce papers of its own volition during the public hearing.
3. All testimony at the hearing shall be under oath or affirmation.
4. Nothing in this IDO shall prohibit interested members of the public from testifying at public hearings other than appeal hearings before the decision-making body.
5. A full record of the hearing will be made by sound recording or transcription; any person shall have the opportunity to listen to, copy, or transcribe the recording during regular business hours.
6. A summary of actions taken shall be kept of all ZHE hearings, and they shall be kept available for public inspection.

**6-4(M)(3)(c) Ex Parte Communications**

Prior to making a decision at a quasi-judicial public hearing and until the expiration of any applicable appeal period, the decision-making body shall not do any of the following:

1. Communicate, directly or indirectly, with any party or party representative in connection with the merits of any issue

involved, except upon advanced prior notice and opportunity for all parties to participate.

2. Use nor rely upon any communication, reports, staff memoranda, or other materials prepared in connection with the particular case unless made a part of the record.
3. Inspect the site with any party or his/her representative unless all parties are given opportunity to be present.

#### **6-4(M)(4) Decisions**

6-4(M)(4)(a) The decision-making body, other than the City Council or the LUHO, shall take any 1 of the following actions:

1. Approve or recommend approval of the application as presented.
2. Approve or recommend approval of the application with conditions.
3. Deny or recommend denial of the application.
4. Defer the matter to a date no more than 60 consecutive days following its first appearance on the agenda, unless a longer deferral is accepted by the applicant.
5. Continue the matter to a date no more than 60 consecutive days following the opening of the public hearing, unless a longer continuance is requested by the applicant.

6-4(M)(4)(b) The City Council or LUHO shall affirm the decision on appeal, reverse the lower decision-making body, or remand the application for additional review by an entity (see Subsection 14-16-6-4(U) for additional information on LUHO actions on appeals).

#### **6-4(M)(5) Written Decisions**

6-4(M)(5)(a) For decisions to continue or defer a hearing, written findings in support of the decision are not required.

6-4(M)(5)(b) For final decisions, the decision-making body identified in Table 6-1-1 shall provide a written decision with findings based on the review criteria for that type of application that shall be made part of the record.

6-4(M)(5)(c) Each finding shall be supported by substantial evidence.

6-4(M)(5)(d) The ZHE and the LUHO shall make a decision and present findings and recommendations about each application within 15 consecutive days after the close of the public hearing.

6-4(M)(5)(e) The DRB, LC, and EPC shall make a decision at the public hearing and shall issue a written decision with findings necessary to the decision within 15 consecutive days after the close of the public hearing.

6-4(M)(5)(f) The City Council shall make a decision about each application at a public hearing and shall adopt findings no later than its next scheduled meeting.

**6-4(M)(6) Public Notice of Decision**

6-4(M)(6)(a) For Decisions Requiring a Public Meeting or Hearing and Policy Decisions (per Table 6-1-1), a Notice of Decision, including a list of any conditions attached to any permit or approval, shall be sent to each party to the matter and to any other person who has entered an appearance and requested a copy of the decision. The Notice of Decision shall be posted on the City website as soon as practicable and not more than 3 business days after the final action on the matter by any decision making officer or body other than the City Council. Notices of decision by the City Council must be posted within 10 days of the final action.

6-4(M)(6)(b) For decisions to continue or defer a hearing, the time and place shall be announced at the hearing without the need for the applicant or the City to provide additional notice.

**6-4(N) GENERAL CRITERIA FOR REVIEW AND DECISION**

6-4(N)(1) For all applications, the decision-making body identified in Table 6-1-1 shall review the applicant's justification for the request and only approve the request if it finds that the justification is sound based on substantial evidence.

6-4(N)(2) Where Sections 14-16-6-5 (Administrative Decisions), 14-16-6-6 (Decisions Requiring a Public Meeting or Hearing), or 14-16-6-7 (Policy Decisions) list specific criteria for the approval of an application, the decision-making body identified in Table 6-1-1 shall only approve the application if it finds that those criteria have been met.

6-4(N)(3) Where this IDO does not list additional or more specific criteria for the review and decision on applications, the application shall be recommended for approval (or approval with conditions) or shall be approved (or approved with conditions) if the review or decision-making body determines that the application complies with all applicable standards in this IDO, other adopted City regulations or policies that may be applicable, and any conditions specifically applied to development of the property in a prior permit or approval affecting the property.

6-4(N)(4) Any application identified in Table 6-1-1 may be denied to an applicant who meets any of the following criteria:

6-4(N)(4)(a) Has not complied with all applicable statutes of the State of New Mexico, provisions of the Charter of the City of Albuquerque, or City ordinance.

6-4(N)(4)(b) Is in default or has defaulted on a written agreement with the City.

6-4(N)(4)(c) Has failed to pay fees, charges, taxes, special assessments, and other debts or obligations that are due from the applicant and payable to the City regarding any matter.

**6-4(O) DEVIATIONS**

When an application for a Site Plan is filed, the applicant may request a Deviation to development standards in the IDO, up to the limits listed in Table 6-4-2.

<b>Table 6-4-2: Allowable Deviations</b>		
<b>Standard</b>	<b>Maximum Allowable Deviation (Cumulative of Earlier Approved Deviations)</b>	
	<b>General</b>	<b>Lot ≤10,000 sq. ft. in any Mixed-use or Non-residential zone district in an Area of Change</b>
Lot area, minimum	10%	
Lot width, minimum	10%	
Front setback, minimum	15%	
Side setback, minimum	15%	50%
Rear setback, minimum	10%	50%
Building height, maximum	10%	
Off-street vehicle parking spaces, minimum	5%	15%
Wall and fence height	6 in.	
Any other numerical standard	10%	
Any standard cited in an application for “reasonable accommodation” or “reasonable modification” under the federal Fair Housing Act Amendments of 1998 (or as amended)	The minimum deviation necessary to comply with the federal Fair Housing Act	

- 6-4(O)(1) Requests for exceptions beyond these thresholds require a Variance to be reviewed and decided pursuant to the following:
  - 6-4(O)(1)(a) Subsection 14-16-6-6(L) (Variance – DRB) for exceptions to standards in Section 14-16-5-3 (Access and Connectivity), Section 14-16-5-4 (Subdivision of Land), Section 14-16-5-5 (Parking and Loading), or the DPM.
  - 6-4(O)(1)(b) Subsection 14-16-6-6(M) (Variance – EPC) for exceptions to all other IDO standards associated with a Site Plan – EPC.
  - 6-4(O)(1)(c) Subsection 14-16-6-6(N) (Variance – ZHE) for exceptions to all other IDO standards associated with a Site Plan – Administrative or Site Plan – DRB.
  
- 6-4(O)(2) The relevant decision-making body identified in Table 6-1-1 may approve a requested Deviation that is within the limits listed in Table 6-4-2 if that decision-making body determines that all of the following requirements are met:
  - 6-4(O)(2)(a) The applicant’s site is subject to site constraints not generally shared by surrounding properties or the site was platted or developed in an unusual pattern when compared to abutting properties (e.g. the property was developed with orientation or access facing a different street than abutting lots) that would prevent the development of a permissive land use in a type of structure generally found on sites of a similar size in the surrounding area.
  - 6-4(O)(2)(b) The site constraints were not created by the actions of the property owner or another interested party.
  - 6-4(O)(2)(c) The request is for a single site and is not part of a pattern of similar requests for adjacent properties or for nearby sites by the same property owner or within the same subdivision, Framework Plan area, or Master Development Plan area.

- 6-4(O)(2)(d) The approval of the requested deviations will not cause material adverse impacts on surrounding properties.
- 6-4(O)(2)(e) The requested deviation is not for an Overlay zone standard, and the approval of any requested deviation will not result in a violation of any Overlay zone standard.
- 6-4(O)(3) In the case of a request for “reasonable accommodation” or “reasonable modification” under the federal Fair Housing Act Amendments of 1998 (or as amended), the criteria in Subsections (a), (b), (c), (d), and (e) above do not need to be met, and the relevant decision-making body shall approve any Deviation necessary to comply with the requirements of the federal Fair Housing Act Amendments.
- 6-4(O)(4) Any Deviations granted associated with a Site Plan shall be noted on the approved Site Plan.

#### **6-4(P) CONDITIONS ON APPROVALS**

- 6-4(P)(1) If Table 6-1-1 authorizes the City staff to make a decision on an application, the City staff may impose conditions necessary to bring the application into compliance with the requirements of this IDO or other adopted City regulations.
- 6-4(P)(2) If Table 6-1-1 authorizes the ZHE, EPC, DRB, LC, or City Council to make a decision on an application, the decision-making body may impose conditions on the approval necessary to bring the application into compliance with the requirements of this IDO, other adopted City regulations, or the specific review criteria for that type of application, provided that the following criteria are met:
- 6-4(P)(2)(a) All conditions are reasonably related to the purposes of this IDO or mitigating the negative impacts of the proposed development or land use as determined by the reviewing entity.
- 6-4(P)(2)(b) Where mitigation of the impacts of a proposed plan or development requires an applicant to dedicate land or pay money to a public entity in an amount that is not calculated according to a formula applicable to a broad class of applicants, any conditions imposed are roughly proportional both in nature and extent to the anticipated impacts of the proposed development, as shown through an individualized determination of impacts.
- 6-4(P)(3) Any conditions shall be listed in or attached to the permit or approval document, and violation of any condition on a permit or approval shall be a violation of this IDO.

#### **6-4(Q) REQUIRED IMPROVEMENTS AND FINANCIAL ASSURANCE**

- 6-4(Q)(1) Unless specified otherwise in this IDO, the DPM, or an IIA approved by the City, or otherwise approved by the City, all applicants for permits and approvals under this IDO are required to pay for and install all public and private improvements necessary to address the impacts of their proposed development or land use on surrounding neighborhoods and on the City’s infrastructure, transportation, drainage, or other systems and services, as provided in the DPM.

- 6-4(Q)(2) Notwithstanding Subsection A above, the City shall not require an applicant to pay for or install that portion (if any) of a public or private improvement that is being funded through the City's development impact fee and for which the applicant has or will be required to pay a development impact fee.
- 6-4(Q)(3) Unless specified otherwise in this IDO or the DPM, if the applicant has not completed the installation of those public and private improvements required by this IDO, the DPM, or any City-approved IIA or Development Agreement by the time the first certificate of occupancy for the property is issued, or by the time the first use of the property for a new approved land use begins, the applicant may be required to provide financial security to the City to ensure that the City will have adequate funds on hand to complete the required public or private improvements prior to initial occupancy or use of the property pursuant to an approval under this IDO. Financial security will only be used by the City to complete required public and private improvements if the applicant fails to provide those improvements in a timely manner as required by this IDO, the DPM, or any City-approved IIA or Development Agreement.
- 6-4(Q)(4) The DPM contains specific requirements for the types of public and private improvements required for different types of development applications; the timing and phasing of those improvements; documents required to be submitted for approval of those improvements; inspection of improvements; financial security for completion of the improvements; required warranties on the performance of the improvements; dedication and City acceptance of improvements; provisions for release of financial security or performance warranties; and other matters related to required public and private improvements.

**6-4(R) IMPACT FEES**

Each applicant shall comply with Article 14-19 of ROA 1994, the DPM, Subsection 6-5(E), and any other relevant provision of this IDO regarding the payment of impact fees for the proposed development or land use.

**6-4(S) TIMING OF APPROVALS**

- 6-4(S)(1) The City shall review and make decisions on applications under this IDO as promptly as reasonably possible while complying with the requirements of this IDO, any other requirements that may be provided by law, and as set forth in more detail in the DPM.
- 6-4(S)(2) In the case of an application for a permit or approval or an amendment to a permit or approval for any land use involving rights protected by the First Amendment to the U.S. Constitution or similar provisions in the New Mexico Constitution, the City will make a final decision on a complete application (and if the decision is subject to an appeal to the City Council, will make a decision on the appeal) within any specific timeframes established in this IDO or as necessary to avoid a chilling effect on the exercise of those constitutional rights, as interpreted by applicable federal or state court decisions.
- 6-4(S)(3) In the case of an application for a permit or approval or an amendment to a permit or approval for a Wireless Telecommunications Facility, the City shall

make a decision on a complete application (and if the decision is subject to appeal to the City Council, will make a decision on the appeal) in accordance with timing established by federal regulations.

- 6-4(S)(4) In the case of an application for demolition of a City landmark, the City shall make a decision within the timeframe established in Subsection 14-16-6-6(D) (Historic Certificate of Appropriateness – Major).

#### **6-4(T) FINALITY OF DECISIONS**

- 6-4(T)(1) A decision on any application type other than Preliminary Plat by any decision-making body shown in Table 6-1-1 is final unless appealed, in which case it is not final until the appeal has been decided by the last appeal body. As a preliminary approval, a Preliminary Plat is not considered a final decision that can be appealed.
- 6-4(T)(2) A recommendation, deferral, continuance, or remand by any entity shown in Table 6-1-1 is not a final decision and cannot be appealed.
- 6-4(T)(3) City Council decisions on quasi-judicial matters are final decisions not subject to veto by the Mayor and are appealable only to a court of competent jurisdiction as provided by law.
- 6-4(T)(4) Any actions taken by an applicant or property owner after a final decision has been made by the relevant decision-making body in Table 6-1-1, but before the time for appeal of that decision has expired or before any appeal has been decided by the last appeal body, are at the risk of the applicant or property owner, and the City shall not be liable for any damages incurred for actions taken during those times.

#### **6-4(U) APPEALS**

##### **6-4(U)(1) Appeal Bodies**

- 6-4(U)(1)(a) Any decision by the City Planning Department staff (Historic Preservation Planner) on a Historic Certificate of Appropriateness – Minor may be appealed to the LC.
- 6-4(U)(1)(b) Any decision by the City Planning Department staff on an Impact Fee Assessment may be appealed to the EPC.
- 6-4(U)(1)(c) All decisions for which the City Council has final decision-making authority for appeals pursuant to Table 6-1-1, including the LC's decision on an appeal of a Historic Certificate of Appropriateness – Minor and the EPC's decision on an appeal of an Impact Fee Assessment, pursuant to Subsections (a) and (b) above, may be appealed to the City Council through the LUHO.
- 6-4(U)(1)(d) The LUHO shall do 1 of the following:
1. Recommend a proposed disposition of the appeal to the City Council with supporting analysis and findings. The LUHO may recommend that an appeal be affirmed in whole or in part, reversed in whole or in part, and/or remanded in whole or in part.

2. Directly remand an appeal for reconsideration or further review by the lower decision-making body if a remand is necessary to clarify or supplement the record or if remand would more expeditiously dispose of the matter.

## **6-4(U)(2) Who May Appeal**

### **6-4(U)(2)(a) Standing**

Standing to appeal a final decision may be granted to any of the following parties.

1. The owner of the property listed in the application.
2. A representative of any City department, City agency, or other governmental or quasi-governmental agency whose services, properties, facilities, interest, or operations may be affected by the application.
3. Any party appealing the following decisions:
  - a. Declaratory Ruling
  - b. Adoption or Amendment of Albuquerque/Bernalillo County Comprehensive Plan
4. Any other person or organization that can demonstrate that his/her/its property rights or other legal rights have been specially and adversely affected by the decision.
  - a. Such showing must be presented by the appellant as part of the appeal, and the LUHO or City Council shall enter a finding or findings as to whether this requirement has been met.
  - b. If it is found that the appellant cannot satisfy this standard, the appeal shall be denied.
5. Property owners (other than the applicant) and Neighborhood Associations on the basis of proximity for decisions as specified in Table 6-4-3.
  - a. Distances noted in feet in Table 6-4-3 are measured from the nearest lot line of the subject property. Where public right-of-way is greater than the specified distance, standing shall be granted to property owners adjacent to the subject property.
  - b. Distances for Neighborhood Associations are based on the boundary on file with the ONC at the time the application for decision related to the subject property was accepted as complete.
  - c. Where proximity is noted as "Includes or Is Adjacent," the Neighborhood Association boundary includes or is adjacent to the subject property.
  - d. For application types with no distance specified, the final decision may be appealed pursuant to the Subsection indicated in Table 6-4-3.

<b>Table 6-4-3: Standing for Appeals Based on Proximity to Subject Property</b>		
<b>Application Type</b>	<b>Property Owners within Distance Specified</b>	<b>Neighborhood Associations within Distance Specified</b>
<b>Administrative Decisions</b>		
Archaeological Certificate	100 ft.	Includes or Is Adjacent
Declaratory Ruling	14-16-6-4(U)(2)(a)3	
Grading, Drainage, or Paving Approval	100 ft.	Includes or Is Adjacent
Historic Certificate of Appropriateness – Minor	100 ft.	Includes or Is Adjacent
Impact Fee Assessment	14-16-6-4(U)(2)(a)4	
<b>Sign Permit</b>		
<i>Permit</i>	100 ft.	Includes or Is Adjacent
<i>Alternative Signage Plan</i>	330 ft.	660 ft.
Site Plan – Administrative	100 ft.	Includes or Is Adjacent
Surface Disturbance Permit	100 ft.	Includes or Is Adjacent
Temporary Use Permit	100 ft.	Includes or Is Adjacent
Wall or Fence Permit – Minor	100 ft.	Includes or Is Adjacent
Wireless Telecommunications Facility Approval	330 ft.	660 ft.
<b>Decisions Requiring a Public Meeting or Hearing</b>		
Conditional Use Approval	330 ft.	660 ft.
Demolition Outside of an HPO	330 ft.	660 ft.
Expansion of Nonconforming Use or Structure	100 ft.	Includes or Is Adjacent
Historic Certificate of Appropriateness – Major	330 ft.	660 ft.
Historic Design Standards and Guidelines	330 ft.	660 ft.
Master Development Plan	330 ft.	660 ft.
Site Plan – DRB	330 ft.	660 ft.
Site Plan – EPC	330 ft.	660 ft.
Subdivision of Land – Minor	100 ft.	Includes or Is Adjacent
<b>Subdivision of Land – Major</b>		
<i>Preliminary Plat</i>	N/A <sup>[1]</sup>	N/A <sup>[1]</sup>
<i>Final Plat</i>	330 ft.	660 ft.
<b>Vacation of Easement or Right-of-way</b>		
<i>Vacation of Easement or Right-of-way – City Council</i>	330 ft.	660 ft.
<i>Vacation of Easement or Right-of-way – DRB</i>	100 ft.	Includes or Is Adjacent
<b>Variance</b>		
<i>Variance – DRB</i>	100 ft.	Includes or Is Adjacent
<i>Variance – EPC</i>	330 ft.	660 ft.
<i>Variance – ZHE</i>	100 ft.	Includes or Is Adjacent
Wireless Telecommunications Facility Waiver	330 ft.	660 ft.
<b>Policy Decisions</b>		
Adoption or Amendment of Comprehensive Plan	14-16-6-4(U)(2)(a)3	
Adoption or Amendment of Facility Plan	14-16-6-4(U)(2)(a)4	

<b>Table 6-4-3: Standing for Appeals Based on Proximity to Subject Property</b>		
<b>Application Type</b>	<b>Property Owners within Distance Specified</b>	<b>Neighborhood Associations within Distance Specified</b>
Adoption or Amendment of Historic Designation	330 ft.	660 ft.
Amendment to IDO Text	14-16-6-4(U)(2)(a)4	
Annexation of Land	330 ft.	660 ft.
Zoning Map Amendment – EPC	330 ft.	660 ft.
Zoning Map Amendment – Council	330 ft.	660 ft.
[1] This decision is not appealable because it is not a final decision.		

**6-4(U)(2)(b) Appearance of Record Required**

1. For Decisions Requiring a Public Meeting or Hearing and Policy Decisions (per Table 6-1-1), the appellant must have made an appearance of record to have standing to appeal, except in cases where an appellant is alleging improper notice.
2. An appearance of record can be made through any of the following:
  - a. The initial submittal of an application for a decision listed in Table 6-1-1.
  - b. The submittal of written comments that include the eventual appellant’s name and contact information about the subject case submitted to the relevant decision-making body during the review process within the deadline for written comments prior to the decision.
  - c. Verbal comments made by the eventual appellant or appellant’s agent provided at a public meeting or hearing about the subject case during the review process before the relevant decision-making body.

**6-4(U)(3) Procedure**

**6-4(U)(3)(a) Filing an Appeal**

1. An appeal must be filed with the Planning Director within 15 consecutive days, excluding holidays listed in Part 3-1-12 of ROA 1994 (Legal Holidays), after the decision.
  - a. The date that the decision was made is not included in the 15-day period for filing an appeal.
  - b. The Planning Director shall not accept appeals filed after the 15-day deadline in Subsection a above has passed.
2. For Declaratory Rulings, there is no deadline for appealing the decision.
3. The appeal shall specifically state the section of this IDO, City regulation, or condition attached to a decision that has not been interpreted or applied correctly.

**6-4(U)(3)(b) Landmarks Commission – Appeal of Historic Certificate of Appropriateness – Minor**

1. Once an appeal has been accepted by the Planning Director, the City Planning Department staff (Historic Preservation planner) shall prepare and transmit a record of the appeal together with all appeal material received from the appellant the property owner and appellant(s) and to the LC. The LC shall schedule a hearing on the matter within 45 consecutive days of receipt. The Historic Preservation Planner shall notify the parties. Appellants and parties to the appeal may submit written arguments to the LC so long as the written argument is received by LC staff at least 10 consecutive days prior to the hearing.
2. The LC may accept new evidence into the record if it appears that such additional evidence is necessary for the proper disposition of the matter and could not have been placed into the record during the previous decision-making process. New evidence that clarifies evidence already in the record, that is offered to contradict evidence in the record, or that is offered on a key factual issue, may be allowed or may justify remand.
3. The LC may impose reasonable limitations on the number of witnesses heard and on the nature and length of their testimony and cross-examination.
4. The LC shall make findings exclusively on the record of the decision appealed, supplemented by any evidence allowed at the hearing.
5. The LC may affirm, reverse, or otherwise modify the lower decision to bring it into compliance with the standards and criteria of this IDO, applicable City regulations, and any prior approvals related to the property.
6. If the LC determines that the matter should be remanded, the LC shall set forth the reason(s) for the remand and the matters to be reconsidered and may order such remand. The matter must be heard and decided by the original decision-making body prior to any further appeal of the matter.

**6-4(U)(3)(c) Environmental Planning Commission – Appeal of Impact Fee Assessment**

1. Once an appeal has been accepted by the Planning Director, the City Planning Department staff shall prepare and transmit a record of the appeal together with all appeal material received from the appellant to the property owner and appellant(s) and to the EPC. The EPC shall schedule a hearing on the matter within 45 consecutive days of receipt. City Planning Department staff shall notify the parties. Appellants and parties to the appeal may submit written arguments to

the EPC so long as the written argument is received by EPC staff at least 10 consecutive days prior to the hearing.

2. The EPC may accept new evidence into the record if it appears that such additional evidence is necessary for the proper disposition of the matter and could not have been placed into the record during the previous decision-making process. New evidence that clarifies evidence already in the record, that is offered to contradict evidence in the record, or that is offered on a key factual issue, may be allowed or may justify remand.
3. The EPC may impose reasonable limitations on the number of witnesses heard and on the nature and length of their testimony and cross-examination.
4. The EPC shall make findings exclusively on the record of the decision appealed, supplemented by any evidence allowed at the hearing.
5. The EPC may affirm, reverse, or otherwise modify the lower decision to bring it into compliance with the standards and criteria of this IDO, applicable City regulations, and any prior approvals related to the property.
6. If the EPC determines that the matter should be remanded, the EPC shall set forth the reason(s) for the remand and the matters to be reconsidered and may order such remand. The matter must be heard and decided by the original decision-making body prior to any further appeal of the matter.

**6-4(U)(3)(d) Land Use Hearing Officer (LUHO)**

1. Once an appeal has been accepted by the Planning Director, the Planning Director shall prepare and transmit a record of the appeal together with all appeal material received from the appellant to impacted parties and to the LUHO through the Clerk of the City Council. The LUHO shall schedule a hearing on the matter within 30 consecutive days of receipt and notify the parties. Appellants and parties to the appeal may submit written arguments to the LUHO through the Clerk of the City Council so long as the written argument is received by the Clerk of the City Council at least 10 consecutive days prior to the hearing.
2. The LUHO may accept new evidence into the record if it appears that such additional evidence is necessary for the proper disposition of the matter and could not have been placed into the record during the previous decision-making process. New evidence that clarifies evidence already in the record, that is offered to contradict evidence in the record, or that is offered on a key factual issue, may be allowed or may justify remand.

3. The LUHO may impose reasonable limitations on the number of witnesses heard and on the nature and length of their testimony and cross-examination.
4. The LUHO shall make findings exclusively on the record of the decision appealed, supplemented by any evidence allowed at the hearing.
5. The LUHO may recommend that the City Council affirm, reverse, or otherwise modify the lower decision to bring it into compliance with the standards and criteria of this IDO, applicable City regulations, and any prior approvals related to the property.
6. If the LUHO determines that the matter should be remanded, the LUHO shall set forth the reason(s) for the remand and the matters to be reconsidered and may order such remand without approval by the City Council.

**6-4(U)(3)(e) City Council**

1. If the appeal is not directly remanded, the LUHO shall forward the recommendation and findings and a transcription of the LUHO's public hearing to City Council within 15 consecutive days after the close of the hearing.
2. The City Council shall place the matter on the agenda of the next regular Council meeting at which land use, planning, and zoning matters are heard following its receipt of the LUHO's recommendation, provided that there is a period of at least 10 consecutive days between the receipt of the recommendation and the City Council meeting. The parties may submit written comments to the Council regarding the LUHO's recommendation and findings provided such comments are received by the Clerk of the City Council and all other parties of record no later than 4 consecutive days prior to the City Council meeting.
3. At that meeting, the Council shall vote whether to accept or reject LUHO's recommendation and findings. A motion to accept or reject the LUHO's recommendation and findings must be approved by a majority vote of the entire membership of the City Council.
4. The Council may accept a portion of the LUHO's recommendation and findings and reject the remainder. If the LUHO's recommendation is rejected in whole or in part, or if the Council fails to either accept or reject the recommendation, the City Council may take 1 of the following actions:
  - a. Remand the matter for reconsideration or further review by a lower decision-making body if necessary to clarify or supplement the record, or if remand would more expeditiously dispose of the matter.

- b. Make a final determination on the appeal and adopt findings in support of its determination based only on the record without any additional hearings.
  - c. If the Council determines that it cannot properly dispose of the appeal without additional hearings on the matter, schedule a full hearing on the matter no earlier than the next regular meeting at which land use matters are heard.
5. If the matter is scheduled for a hearing before the Council, the Clerk of the Council shall notify the parties to the appeal. The parties may present oral argument at the hearing pursuant to hearing procedures as established by rule of the Council. However, the City Council shall not accept new evidence and shall make its final decision based solely on the evidence in the record at the close of the LUHO's hearing and the oral arguments of the parties.
  6. If the City Council holds a public hearing on the appeal, the City Council shall adopt written findings at the conclusion of that hearing or at the next scheduled meeting of the City Council; however, a Councilor who did not participate in the action taken on the appeal may not participate in the action to adopt the findings at a subsequent meeting.

**6-4(U)(4) Criteria for Decision**

The criteria for review of an appeal shall be whether the decision-making body or the prior appeal body made 1 of the following mistakes:

- 6-4(U)(4)(a) The decision-making body or the prior appeal body acted fraudulently, arbitrarily, or capriciously.
- 6-4(U)(4)(b) The decision being appealed is not supported by substantial evidence.
- 6-4(U)(4)(c) The decision-making body or the prior appeal body erred in applying the requirements of this IDO (or a plan, policy, or regulation referenced in the review and decision-making criteria for the type of decision being appealed).

**6-4(V) JUDICIAL REVIEW**

A decision of the City Council is final but is subject to judicial review pursuant to New Mexico law.

**6-4(W) EXPIRATION OF APPROVALS****6-4(W)(1) Permits and Approvals Run With the Land**

Unless specified otherwise on the permit or approval document for a specific type of development approval, permits and approvals run with the land and are not affected by changes in ownership or the form of ownership of the property.

**6-4(W)(2) Period of Validity**

Unless specified otherwise in this IDO, the DPM, an IIA, a Development Agreement approved by the City, or the terms attached to a permit or approval, each permit or approval shall be valid for the period of time shown in Table 6-4-

4 and shall be of no force or effect after that time has passed, unless any of the following applies:

6-4(W)(2)(a) The applicant, property owner, or an agent of the applicant or property owner has begun construction, use, or occupancy of the property within the time shown in Table 6-4-4 for the relevant type of permit or approval. For the purposes of this Subsection 14-16-6-4(W)(2), construction does not include site grading, but does include the installation of required infrastructure. For additional provisions specific to Site Plans and Master Development Plans, see Subsection 14-16-6-4(W)(3)(b).

6-4(W)(2)(b) The period of validity is extended pursuant to Subsection 14-16-6-4(W)(4) (Extensions of Period of Validity) or another provision of this IDO or the DPM.

<b>Table 6-4-4: Permit and Approval Expirations</b>	
<b>Type of Approval</b>	<b>Period of Validity</b>
<b>Administrative Decisions</b>	
Archaeological Certificate	Expires with associated development approval
Building Permit	1 year
Declaratory Ruling	Does not expire, unless the section(s) of the IDO to which the ruling relates is amended.
Development Agreement	As stated in Development Agreement
Grading, Drainage, or Paving Permit	1 year
Historic Certificate of Appropriateness – Minor	1 year
Impact Fee Assessment	4 years
Sign Permit / <i>Alternative Signage Plan</i>	1 year
Site Plan – Administrative	5 years, unless at least 50% of the site area or 50% of the approved gross square footage has been developed.
Surface Disturbance Permit	1 year
Temporary Use Permit	As stated in the Temporary Use Permit
Wall or Fence Permit – Minor	1 year
Wireless Telecommunications Facility Approval	5 years
<b>Decisions Requiring a Public Meeting or Hearing</b>	
Conditional Use Approval	1 year after issuance if use is not begun, or 1 year after use is discontinued or fails to operate
Demolition Outside of an HPO	N/A
Expansion of Nonconforming Use or Structure	1 year
Historic Certificate of Appropriateness – Major	1 year
Historic Design Standards and Guidelines	Does not expire
Master Development Plan	7 years
Site Plan – DRB	5 years
Site Plan – EPC	7 years
Subdivision of Land – Minor	Does not expire once timely recorded
Subdivision of Land – Major	
<i>Preliminary Plat</i>	1 year
<i>Infrastructure Improvements Agreement</i>	4 years after the execution of the agreement
<i>Final Plat</i>	Does not expire once timely recorded
Vacation of Easement or Right-of-way	1 year, if not platted
Variance – DRB	1 year, if not platted / Expires with associated Site Plan

<b>Table 6-4-4: Permit and Approval Expirations</b>	
<b>Type of Approval</b>	<b>Period of Validity</b>
Variance – EPC	Expires with associated Site Plan
Variance – ZHE	1 year
Wireless Telecommunications Facility Waiver	Does not expire
<b>Policy Decisions</b>	
Adoption or Amendment of Comprehensive Plan	Does not expire
Adoption or Amendment of Facility Plan	Does not expire
Adoption or Amendment of Historic Designation	Does not expire
Amendment to IDO Text	Does not expire
Annexation of Land	Does not expire
Zoning Map Amendment – EPC	Does not expire
Zoning Map Amendment – Council	Does not expire

**6-4(W)(3) Exceptions to Period of Validity**

- 6-4(W)(3)(a) Any permit or approval of a type listed in Table 6-4-4 that was approved by the City before the effective date of this IDO, shall expire on 1 of the following dates, whichever occurs sooner:
1. The date listed in that permit or approval or in any regulation of the City establishing an expiration of the permit or approval that was applicable before the effective date of this IDO.
  2. The date on which that type of permit or approval would expire if it were approved by the City on the effective date of this IDO.

- 6-4(W)(3)(b) For a Site Plan – DRB, Site Plan – EPC, or Master Development Plan, any of the following may apply for determining its period of validity:
1. If the Site Plan or Master Development Plan was approved for land on which on-site infrastructure did not exist at the time of approval, then at least 75 percent of the required on-site drainage infrastructure for the property, or if the Plan defines more than one phase of development, then for the first defined phase, has been installed.
  2. If the Site Plan or Master Development Plan was approved for land on which at least 75 percent of required on-site drainage infrastructure was in place at the time of approval, then at least 25 percent of the approved gross floor area for primary buildings on the property, or if the Plan defines more than one phase of development, then for the first defined phase, has been constructed.

**6-4(W)(4) Extensions of Period of Validity**

**6-4(W)(4)(a) General Provisions**

1. For each permit or approval for which Table 6-4-4 shows an expiration period, except an Impact Fee Assessment or a Site Plan, the original decision-making body may approve 1

extension of validity for a time not to exceed the original period of validity for that permit or approval for good cause shown, provided that all of the following requirements are met:

- a. The applicant or property owner files a written request for the time extension before the expiration of the original permit or approval with the Planning Director.
  - b. The extension is considered and a decision made via the same procedure required for the initial approval, except that no public hearing shall be required.
2. If an application to extend the validity of a permit or approval listed in Table 6-4-4 is received before the permit or approval expires, but the body authorized to grant an extension does not meet between the date of the application and the date on which the permit or approval expires, the period of validity shall automatically be extended until the next meeting date of the body authorized to grant an extension.
  3. Impact Fee Assessments and Sign Permits for electronic signs may not be extended.

**6-4(W)(4)(b) Additional Provisions for Extensions of Approved Site Plans**

1. The decision-making body that originally approved the Site Plan may grant 1 extension of validity for a time not to exceed the original period of validity if it determines that at least 1 of the following provisions applies:
  - a. The Site Plan is still consistent with current or desired conditions on the property and surrounding areas and the owner intends to fully develop the site according to the Site Plan.
  - b. There is little flexibility in how the site can be developed.
  - c. There is a strong architectural or landscaping character on the site that should be preserved and that development according to the Site Plan will preserve that architectural or landscaping character.
2. An extension of an approved Site Plan – DRB or Site Plan – EPC for phased development of the site may be approved if the decision-making body determines that all of the following provisions apply:
  - a. At last 50 percent of the first phase has been developed.
  - b. The extension of the Site Plan is for later phases of the Site Plan.
  - c. The Site Plan as previously approved is likely to be built in the future.
3. Any extension of a Site Plan – DRB or Site Plan – EPC shall require a new meeting with the DRB or EPC, as relevant, and may require an update of any Traffic Impact Study (TIS)

prepared for that Site Plan if the prior TIS is more than 5 years old and the City Engineer determines that background or anticipated traffic volumes or patterns in the surrounding area have changed since the TIS was prepared.

## **6-4(X) AMENDMENTS OF APPROVALS**

After the City issues an approval under this IDO, the approval may be amended as described in this Section 14-16-6-4(X).

### **6-4(X)(1) Applicability**

6-4(X)(1)(a) This Section 14-16-6-4(X) addresses applications for amendments to permits, approvals, or plans that comply with all Use-specific Standards in Section 14-16-4-3, all Development Standards in Part 14-16-5 (Development Standards), and all DPM standards applicable to the development. If the applicant is requesting an amendment that would require a Variance from any of these standards, a separate Variance must be requested per the relevant procedure, as follows:

1. Section 14-16-6-6(L) (Variance – DRB) for exceptions to any standards in Section 14-16-5-4 (Subdivision of Land), Section 14-16-5-3 (Access and Connectivity), Section 14-16-5-5 (Parking and Loading), or any DPM standard.
2. Section 14-16-6-6(M) (Variance – EPC) for exceptions to any IDO standard other than those listed in Subsection 1 above for approvals associated with a Site Plan – EPC.
3. Section 14-16-6-6(N) (Variance – ZHE) for exceptions to any IDO standard other than those listed in Subsection 1 above for any approval other than a Site Plan – EPC.

6-4(X)(1)(b) Amendments to Policy Decisions (as listed in Table 6-1-1) shall be reviewed pursuant to the relevant requirements in Section 14-16-6-7.

6-4(X)(1)(c) Approvals granted prior to this IDO may be amended by the procedures in Subsection 14-16-6-4(Y).

### **6-4(X)(2) Minor Amendments**

6-4(X)(2)(a) A minor amendment must meet all of the following criteria:

1. The amendment is necessary because of site conditions or user requirements that were not known, and could not reasonably have been known, at the time the City approved the approval that is proposed to be amended, and that were not created by the actions of the owner of the property.
2. The amendment does not increase or decrease the dimension of any standard beyond the thresholds allowed as minor amendments pursuant to Table 6-4-5 (cumulative of any earlier deviations or amendments).

3. The amendment does not decrease the total amount of open space in the development and does not reduce the size of any open space abutting a lot containing a residential use.
4. The amendment does not reduce any building setback adjacent to development containing residential uses by any amount.
5. The amendment does not increase the maximum number of residential dwelling units in the development from that shown in the existing permit, approval, or plan. If the property is located in a DT-UC-MS-PT area, the amendment does not decrease the required number of residential dwelling units in the development from that shown in the existing permit, approval, or plan.
6. The amendment does not adjust a building design standard unless doing so improves the perception of building quality, variety, durability, and articulation when viewed from adjacent streets and abutting properties.
7. The amendment does not reduce the amount of total landscaping installed on the property or the amount of screening or buffering required on portions of the site abutting any property containing residential dwelling units and does not waive or weaken any other landscaping or buffering requirement unless the ZEO determines that alternative building design elements included in the amendment improve the visual quality and screening and buffering effect of landscaping as viewed from adjacent streets and public areas.
8. The amendment does not increase the traffic accessing the property from local streets and does not increase or decrease the number of through streets, sidewalks, trails, or trail connections passing through the property or connecting to or designed to connect to abutting properties.
9. Other than those allowed within the threshold of a minor amendment pursuant to Table 6-4-4, the amendment does not affect a standard in Section 14-16-5-3 (Access and Connectivity), Section 14-16-5-4 (Subdivision of Land), Section 14-16-5-5 (Parking and Loading), or the DPM, in which case DRB review is required through a Site Plan – DRB pursuant to Subsection 14-16-6-6(G).
10. The amendment does not change a specific condition attached by a decision-making body listed in Table 6-1-1 to a prior development permit, approval, or plan for or including the property. For example, a specific condition attached to a prior approval requiring additional buffering to mitigate development impacts shall not be removed through a minor amendment process.

11. The amendment does not affect a property in an Overlay zone as regulated per Part 14-16-3, in which case amendments may be granted per the original approval process for the Site Plan governing the site.
12. The amendment does not approve any land use that was not authorized by the permit or approval or that is not allowed by right on the property.
13. The amendment does not expand a nonconformity as regulated per Section 14-16-6-8 (Nonconformities).

6-4(X)(2)(b) Requests to amend approvals shall be reviewed according to 1 of the following procedures:

1. Applications to amend an Administrative Decision (as listed in Table 6-1-1) may be approved by the same administrative body that made the decision being modified, provided that the administrative body determines that all of the criteria in Subsection 14-16-6-4(X)(2)(a) have been met.
2. Applications to amend a Decision Requiring a Public Meeting or Hearing (as listed in Table 6-1-1) may be approved by the ZEO provided that the ZEO determines that all of the criteria in Subsection 14-16-6-4(X)(2)(a) have been met.

**Table 6-4-5: Allowable Minor Amendments**

Standard	Maximum Threshold (Cumulative of Earlier Approved Deviations and/or Amendments)	
	General	Lot ≤10,000 sq. ft. in any Mixed-use or Non-residential zone district in an Area of Change
Building gross square footage	10%	
Front setback, minimum	15%	
Side setback, minimum	15%	50%
Rear setback, minimum	10%	50%
Building height, maximum	General: 10%	
Wall and fence height	6 in.	
Any other numerical standard	10%	
Any standard cited in an application for “reasonable accommodation” or “reasonable modification” under the federal Fair Housing Act Amendments of 1998 (or as amended)	The minimum deviation necessary to comply with the federal Fair Housing Act Amendments	

**6-4(X)(3) Major Amendments**

All amendments to permits or approvals that do not qualify as Minor Amendments under Subsection (2) above may only be approved by the decision-making body that issued the permit or approval being amended, following the same procedure (including the payment of a new application fee, new process of staff referral, and any required public notice or public meeting or hearing) used to issue the original permit or approval.

**6-4(Y) AMENDMENTS OF PRIOR APPROVALS**

Approvals granted prior to the effective date of this IDO may be amended as described in this Subsection 14-16-6-4(Y).

**6-4(Y)(1) Site Development Plans**

This Subsection 14-16-6-4(Y) addresses applications for amendments to site development plans approved prior to the effective date of this IDO.

**6-4(Y)(1)(a) Minor Amendments**

Minor amendments may be granted by the ZEO that meet the following requirements:

1. The existing site development plan specifies the requirements in place at the time of approval, and the requested change still meets the original requirement.
2. The requested change is within the thresholds for Administrative Amendments established in Table 6-4-5, cumulative of prior deviations or administrative amendments.

**6-4(Y)(1)(b) Major Amendments**

All requested amendments that do not qualify as Minor Amendments pursuant to Subsection (a) above shall be subject to relevant IDO standards, unless a different procedure described below applies.

1. Except as noted in Subsection 2 below, Major Amendments shall be reviewed and decided by the decision-making body that issued the permit or approval being amended, following the procedures for the most closely equivalent decision in Part 14-16-6 (Administration and Enforcement), including any required application fee, public notice, referral to commenting agencies, and public meeting or hearing.
2. For Major Amendments that involve any of the following, the relevant IDO procedures shall be followed, including any required application fee, public notice, referral to commenting agencies, and public meeting or hearing.
  - a. Any standard in the Site Development Plan that is covered by an IDO standard in Section 14-16-5-3 (Access and Connectivity), Section 14-16-5-4 (Subdivision of Land), Section 14-16-5-5 (Parking and Loading), or any DPM standard.
  - b. Any change affecting an easement.
  - c. Any expansion of a nonconforming use or structure.

**6-4(Y)(2) Facility Plans**

Facility Plans may be amended per the procedure described in Subsection 14-16-6-7(B) (Adoption or Amendment of Facility Plan).

**6-4(Y)(3) Master Plans or Resource Management Plans**

6-4(Y)(3)(a) Master Plans or Resource Management Plans for City facilities may be amended per the procedures specified in the relevant plan or

by the relevant implementing City department. The implementing departments may request review by the EPC and/or Council where more input is desired.

- 6-4(Y)(3)(b) Master Plans for private property shall be amended as site development plans pursuant to Subsection 14-16-6-4(Y)(1) above.

**6-5 ADMINISTRATIVE DECISIONS**

**6-5(A) ARCHAEOLOGICAL CERTIFICATE**

All applicable provisions of Section 14-16-6-4 (General Procedures) apply unless specifically modified by the provisions of this Subsection 14-16-6-5(A).

**6-5(A)(1) Applicability**

This Subsection 14-16-6-5(A) shall require an Archaeological Certificate of No Effect or Certificate of Approval to be duly approved prior to approval of any preliminary plat, Site Plan, or Master Development Plan for projects over 5 acres.



**6-5(A)(2) Procedure**

- 6-5(A)(2)(a) An application for an Archaeological Certificate shall be reviewed by the City Archaeologist to determine whether the proposed development will have an adverse impact on any significant archaeological site.
- 6-5(A)(2)(b) The City Archaeologist shall issue a Certificate of No Effect if there is no adverse impact.
- 6-5(A)(2)(c) If the application does not qualify for a Certificate of No Effect, an application for a Certificate of Approval shall be required. The applicant must submit a treatment plan prepared by a qualified archaeologist that adequately mitigates any archaeological impacts of the development.
- 6-5(A)(2)(d) The City Archaeologist shall review the treatment plan and shall approve or deny the proposed plan within 15 consecutive days of its submission. If the plan is approved, a Certificate of Approval shall be issued by the City Archaeologist. If the plan is not approved as submitted, the City Archaeologist shall advise the applicant of the changes needed in the plan for its approval.
- 6-5(A)(2)(e) The Planning Department shall maintain records of project areas that received a Certificate of No Effect or Certificate of Approval.
- 6-5(A)(2)(f) The Planning Director shall require that the treatment plan is included on the applicable infrastructure lists of Preliminary Plats and Site Plans.
- 6-5(A)(2)(g) The Planning Director shall require that any necessary treatment plan is referenced on the first sheet of the Site Plan or Master Development Plan. Implementation of the necessary treatment plan shall be made a condition of approval.

**6-5(A)(3) Review and Decision Criteria**

**6-5(A)(3)(a) Certificate of No Effect**

An application for a Certificate of No Effect shall be approved if it meets any of the following criteria:

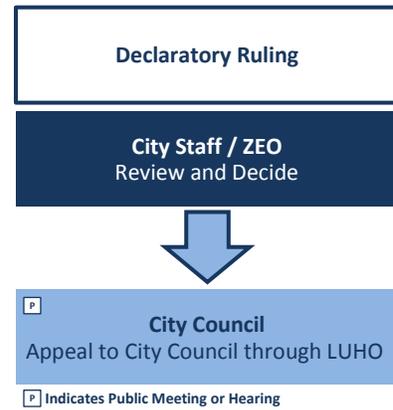
1. An archaeological investigation has been conducted on the property, and based on a report prepared by a qualified archaeologist, it has been determined that no significant archaeological site exists on the property. The factual basis necessary to support this determination shall be met through the presentation of an archaeological investigation report prepared in compliance with federal or New Mexico state historic preservation laws and regulations that used a comparable definition for a significant archaeological site. Documentation indicating that the report was accepted by the relevant agency shall accompany the report.
2. The property has been disturbed through previous land use or development to such an extent that there is a substantial reduction in the probability of the continuing existence of any significant archaeological site. It shall be adequate evidence that the property was previously disturbed to such an extent so as to meet this requirement if the property has been graded, demolition has occurred on the property, or the project involves redevelopment or rehabilitation of existing improvements.
3. The informational value of any significant archaeological sites located on the property has been satisfactorily documented through previous archaeological investigation.

**6-5(A)(3)(b) Certificate of Approval**

1. A Certificate of Approval shall be issued if the proposed site-specific treatment plan accomplishes all of the following:
  - a. Details strategies for the management of the affected archaeological sites.
  - b. Includes standards for further testing, sampling, documentation, data recovery, preservation and protection, analysis, and report preparation.
  - c. Outlines an effective preservation plan or data recovery and documentation plan for those resources that the City Archaeologist has determined to have significant research or other value.
  - d. Provides a schedule for the implementation of the treatment plan.
  - e. Provides a cost estimate for mitigation strategies, including testing, data recovery, curation, and report preparation.
2. In making a decision on the plan, the City Archaeologist shall consider methods to avoid, reduce, or mitigate effects on archaeological resources, including the use of conservation easements, while taking into consideration the needs of the property owner.

**6-5(B) DECLARATORY RULING**

Upon request, the ZEO shall issue a written declaratory ruling as to the applicability of the IDO to a proposed development or activity. In determining whether a use not specifically allowed by this IDO can be considered as allowable in a particular zone, the similarity to and compatibility with other allowable uses in that zone shall be determining factors.



**6-5(C) GRADING, DRAINAGE, OR PAVING APPROVAL**

All applicable provisions of Section 14-16-6-4 (General Procedures) apply unless specifically modified by the provisions of this Subsection 14-16-6-5(C), the DPM, or Article 14-5 of ROA 1994 (Flood Hazard and Drainage Control). In case of a conflict with any standards in this IDO, the standards and procedures of the DPM or the Flood Hazard and Drainage Control Ordinance shall prevail.

**6-5(C)(1) Applicability**

This Subsection 14-16-6-5(C) applies to all development that will involve site grading or paving, in order to address potential soil erosion, storm drainage, and air quality impacts that may occur from those activities. Standards and criteria for approval of these activities depend on the size, extent, and location of the activities.



**6-5(C)(2) Procedure**

- 6-5(C)(2)(a) Grading or paving activities that meet the thresholds for applicability of Environmental Protection Agency (EPA) regulations (generally one acre or larger) are reviewed under applicable standards from EPA regulations and the DPM and Flood Hazard and Drainage Control Ordinance regulations and are issued an erosion and sediment control permit.
- 6-5(C)(2)(b) Grading activities that are smaller or have less impact than the EPA thresholds, but do not qualify under Subsection c below, are reviewed pursuant to DPM and Flood Hazard and Drainage Control Ordinance regulations and receive a letter of approval from the City.
- 6-5(C)(2)(c) Grading activities that involve disturbance of less than one acre of land and relocation of less than 500 cubic yards and are not located adjacent to a watercourse or within a flood hazard zone do not require a letter of approval, but may be reviewed by the City Engineer.

- 6-5(C)(2)(d) Paving of 2,000 square feet or more require issuance of a Paving Permit by the City Engineer.
- 6-5(C)(2)(e) Paving of less than 2,000 square feet or more do not require issuance of a Paving Permit, but may be reviewed by the City Engineer.
- 6-5(C)(2)(f) Resurfacing of previously paved areas that does not involve land disturbance does not require a Paving Permit or review.
- 6-5(C)(2)(g) Regardless of the size of the project, grading, paving, or staging activities within a FEMA mapped floodplain require approval of a Floodplain Development Permit issued by the City Engineer.

**6-5(C)(3) Review and Decision Criteria**

See applicable provisions in the DPM and in Article 14-5 of ROA 1994 (Flood Hazard and Drainage Control).

**6-5(D) HISTORIC CERTIFICATE OF APPROPRIATENESS – MINOR**

All applicable provisions of Section 14-16-6-4 (General Procedures) apply unless specifically modified by the provisions of this Subsection 14-16-6-5(D).

**6-5(D)(1) Applicability**

6-5(D)(1)(a) This Subsection 14-16-6-5(D) shall require a Historic Certificate of Appropriateness – Minor to be duly approved prior to any of the following activities within an HPO zone or a City landmark site:

1. All alterations to the exterior appearance of any structure, including any wall.
2. All alterations to any character-defining interior feature within a City landmark.
3. All construction of new accessory structures, including walls.
4. All demolition of existing non-contributing accessory structures, including walls.
5. Any alteration, construction, or demolition of a sign.

6-5(D)(1)(b) A Historic Certificate of Appropriateness – Minor shall not be required for any of the following activities:

1. Ordinary maintenance and repair where the purpose of the work is to correct deterioration to the structure and restore it to its condition prior to deterioration.
2. Any construction, alteration, or demolition that only affects the interior of the structure unless the interior features which will be affected were listed as worthy of preservation in the landmark's general preservation guidelines or specific development guidelines.
3. Any construction, alteration, or demolition that is exempted from this requirement by approved specific development guidelines.
4. Any alteration or demolition that is necessary to correct or abate a condition which has been declared unsafe or requiring an emergency measure by the appropriate City official after notification of the LC and consultation with the LC Chairperson.

6-5(D)(1)(c) Any application deemed minor by the City Planning Department staff (Historic Preservation Planner) shall be reviewed and decided per this Subsection 14-16-6-5(D). Those applications that include



major changes that warrant additional review at a public hearing by the LC shall be required to be reviewed and decided per Subsection 14-16-6-6(D) (Historic Certificate of Appropriateness – Major).

**6-5(D)(2) Procedure**

The Historic Preservation Planner shall review the application and make a decision on the Historic Certificate of Appropriateness – Minor.

**6-5(D)(3) Review and Decision Criteria**

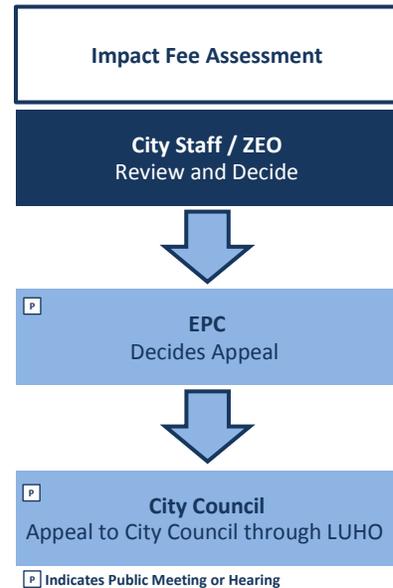
An application for a Historic Certificate of Appropriateness – Minor shall be approved if it complies with all of the following criteria:

- 6-5(D)(3)(a) The change is consistent with the designation ordinance and specific development guidelines for the landmark or HPO zone.
- 6-5(D)(3)(b) The architectural character, historical value, or archaeological value of the structure or site itself or of any HPO zone in which it is located will not be significantly impaired or diminished.
- 6-5(D)(3)(c) The change qualifies as a "certified rehabilitation" pursuant to the Tax Reform Act of 1976, if applicable.
- 6-5(D)(3)(d) The structure or site's distinguished original qualities or character will not be altered, where "original" means both those included at the time of initial construction and those developed over the history of the structure.
- 6-5(D)(3)(e) Deteriorated architectural features shall be repaired rather than replaced, to the maximum extent practicable. If replacement is necessary, the new material shall match the original as closely as possible in like material and design.

**6-5(E) IMPACT FEE ASSESSMENT**

All applicable provisions of Section 14-16-6-4 (General Procedures) apply unless specifically modified by the provisions of this Subsection 14-16-6-5(E) or the DPM.

- 6-5(E)(1) Many types of development must pay an impact fee prior to construction or development.
- 6-5(E)(2) Standards and procedures for calculating and paying impact fees are generally governed by Article 14-19 of ROA 1994 (Impact Fees) and the DPM.



**6-5(F) SIGN PERMIT**

All applicable provisions of Section 14-16-6-4 (General Procedures) apply unless specifically modified by the provisions of this Subsection 14-16-6-5(F).

- 6-5(F)(1) **Applicability**  
This Subsection 14-16-6-5(F) applies to any sign that requires a Sign Permit per Subsection 14-16-5-12(D)(1). In addition, a sign may be approved for compliance with standards in the IDO as part of an application for a Master Development Plan or Site Plan.

- 6-5(F)(2) **Procedure**  
6-5(F)(2)(a) **General**

1. The ZEO shall review the application and make a decision on the Sign Permit.
2. All applications on properties in an HPO zone shall first be reviewed by the Historic Preservation Planner pursuant to Subsection 14-16-6-5(D) (Historic Certificate of Appropriateness – Minor), and a recommendation sent to the ZEO.
3. All applications in an area with a City-approved architectural or design review body shall first be reviewed by that body and a recommendation sent to the ZEO.
4. Where owners of abutting premises create a Joint Sign Premises to apply for a sign that would not otherwise be



allowed, the owners' signed agreement shall be included in the application for the Sign Permit.

**6-5(F)(2)(b) Electronic Signs**

In addition to the general requirements in this Subsection 14-16-6-5(F), all of the following requirements must be met for electronic signs:

1. A Sign Permit for an electronic sign is required annually. A permit for a new electronic sign or the annual renewal of a permit for an existing electronic sign shall expire 12 consecutive months after the date of issuance.
2. In an application to renew the permit for an electronic sign, the applicant shall state whether or not there have been changes to the sign in the preceding year and shall specify any changes.
3. The ZEO shall review and make a decision on each annual application for a Sign Permit for an electronic sign.

**6-5(F)(3) Review and Approval Criteria**

An application for a Sign Permit shall be approved if it complies with all applicable standards in this IDO, in particular Section 14-16-5-12 (Signs); the DPM; other adopted City regulations; and any terms and conditions specifically applied to development of the property in a prior permit or approval affecting the property.

**6-5(F)(4) Alternative Signage Plan**

**6-5(F)(4)(a) Applicability**

This Subsection 14-16-6-5(F)(4) applies to an application for an Alternative Signage Plan pursuant to the provisions in Subsection 14-16-5-12(F)(5) (Alternative Signage Plan).

**6-5(F)(4)(b) Procedure**

1. The ZEO shall review the application and make a decision on the Alternative Signage Plan.
2. If approved, the Alternative Signage Plan shall be binding on the property for which the plan is approved until the Alternative Signage Plan is amended or rescinded.
3. An approved Alternative Signage Plan may be amended or rescinded through the same procedure used to approve the plan.

**6-5(F)(4)(c) Review and Decision Criteria**

An application for an Alternative Sign Plan shall be approved if it meets all of the requirements in Subsection 14-16-5-12(F)(5) (Alternative Signage Plan) and all of the following criteria:

1. It reflects a distribution of available sign area on the site that will promote equal or greater public safety both on-site and when viewed from any adjacent public rights-of-way, when

compared to the location and distribution of signs and sign area allowed under Section 14-16-5-12 (Signs).

2. It does not create levels of glare or adverse impacts on surrounding properties greater than those that would occur from the location and distribution of signs and sign area allowed under Section 14-16-5-12 (Signs).

**6-5(G) SITE PLAN – ADMINISTRATIVE**

All applicable provisions of Section 14-16-6-4 (General Procedures) apply unless specifically modified by the provisions of this Subsection 14-16-6-5(G).

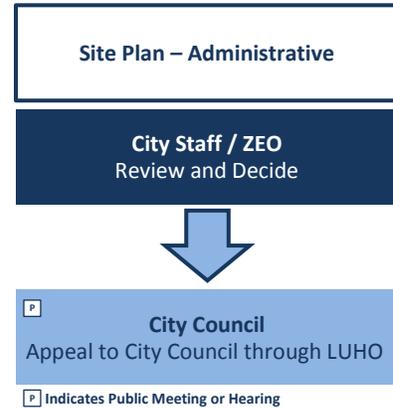
**6-5(G)(1) Applicability**

6-5(G)(1)(a) A Site Plan – Administrative may only be approved for development on legally platted or nonconforming lots and may not be approved for unsubdivided property.

6-5(G)(1)(b) A Site Plan – Administrative may only be approved for development that does not require new major public infrastructure.

6-5(G)(1)(c) This Subsection 14-16-6-5(G) applies to:

1. A single lot or parcel that is less than 5 acres or abutting lots or parcels that total less than 5 acres for any of the following types of development:
  - a. All new low-density residential development.
  - b. All new multi-family residential development containing no more than 50 dwelling units.
  - c. All conversions of existing non-residential development to a residential use containing no more than 100 dwelling units.
  - d. All new non-residential development with no more than 50,000 square feet of gross floor area, with the exception of grocery stores, which may be approved administratively with no more than 70,000 square feet of gross floor area.
  - e. All new mixed-use development that contains no more than 75 dwelling units and no more than 50,000 square feet of non-residential gross floor area.
  - f. All expansions that increase the number of dwelling units by no more than 25 percent of the total originally approved number of units, or that expand non-residential gross floor area by no more than 25 percent of the originally approved gross floor area.
2. Any of the following:



- a. All development in the MX-FB zone district that is already mapped.
- b. More than 5 mobile food trucks on 1 lot, pursuant to Subsection 14-16-4-3(F)(11)(d) (Mobile Food Truck).
- c. A Temporary Use Permit when a Site Plan is required pursuant to a Use-specific Standard in Section 14-16-4-3.
- d. All electric utility facilities with administrative approval, according to the approved Facility Plan.
- e. All major utility facilities with administrative approval according to an approved Facility Plan.
- f. All new, redeveloped, or renovated City-owned or managed parks less than 10 acres where the all of the following apply:
  - i. Only allowable uses as specified in Table 4-2-1, except for any co-located City facility, are proposed.
  - ii. The project does not include lighting over 45 feet, illuminated signs, amplified outdoor sound, or over 150 parking spaces.
- g. Any City-owned or managed Major Public Open Space facility that is not designated as an Extraordinary Facility per the Major Public Open Space Facility Plan or that is a renovation of a facility previously approved as an Extraordinary Facility.
- h. All City BioPark facilities, which are regulated by the BioPark Master Plan and managed by City Cultural Services.

6-5(G)(1)(d) Development on a lot in an NR-SU or PD zone district requires a Site Plan – EPC pursuant to Subsection 14-16-6-6(H).

### **6-5(G)(2) Procedure**

- 6-5(G)(2)(a) The ZEO shall review the application and make a decision on the Site Plan – Administrative. An initial review with comments shall be completed within 10 business days of the receipt of a complete application.
- 6-5(G)(2)(b) For properties in the NR-PO zone district, the ZEO shall coordinate the review with Parks and Recreation and/or Cultural Services staff, as relevant.
- 6-5(G)(2)(c) The ZEO may also grant Deviations to IDO standards as part of this approval within the thresholds established per Section 14-16-6-4(O) (Deviations). Beyond these thresholds, a Variance to IDO standards (other than to standards in Sections 14-16-5-3, 14-16-5-4, or 14-16-5-5) requires review and approval by the ZHE per Subsection 14-16-6-6(N) (Variance – ZHE).

- 6-5(G)(2)(d) A Site Plan – Administrative may not be approved until after any necessary Conditional Use Approvals are obtained pursuant to Subsection 14-16-6-6(A).
- 6-5(G)(2)(e) Any request for a Variance to IDO standards in Sections 14-16-5-3 (Access and Connectivity), 14-16-5-4 (Subdivision of Land), or 14-16-5-5 (Parking and Loading) or to DPM standards requires review and approval by the DRB per Subsection 14-16-6-6(L) (Variance – DRB).
- 6-5(G)(2)(f) Site Plans shall be reviewed administratively for compliance with conditions of approval and zoning standards prior to the issuance of a building permit.

**6-5(G)(3) Review and Decision Criteria**

An application for Site Plan – Administrative shall be approved if it complies with all applicable standards in this IDO, the DPM, other adopted City regulations, and any conditions specifically applied to development of the property in a prior permit or approval affecting the property.

**6-5(H) SURFACE DISTURBANCE PERMIT**

All applicable provisions of Section 14-16-6-4 (General Procedures) apply unless specifically modified by the provisions of this Subsection 14-16-6-5(H) or the DPM. However, standards and procedures for obtaining a Surface Disturbance Permit are generally governed by the City Environmental Health Department, whose applicable standards and procedures would prevail over the IDO or DPM. In case of a conflict between the provisions of this Subsection 14-16-6-5(H) and the standards and procedures of the DPM, the DPM shall prevail.

**6-5(H)(1) Applicability**

This Subsection 14-16-6-5(H) requires the issuance of a Surface Disturbance Permit before surface disturbance of an area equal to or greater than ¾ of an acre.

**6-5(H)(2) Procedure**

- 6-5(H)(2)(a) Discuss the project with a representative of the City Environmental Health Department, Air Quality Program, to determine need for the Surface Disturbance Permit and appropriate site-specific dust control measures.
- 6-5(H)(2)(b) Obtain required signatures from the permittee, owner, operator, and/or responsible person as indicated on the application form. For surface disturbance equal to or less than 25 acres, allow up to 10 business days for application review. For surface disturbance greater than 25 acres, allow up to 20 business days for application review.



**6-5(H)(3) Review and Decision Criteria**

An application for a Surface Disturbance Permit shall be approved by the Environmental Health Department if it complies with the standards and

requirements of the Air Quality Regulations adopted by the Albuquerque-Bernalillo County Air Quality Control Board and found in Title 20, Chapter 11, Part 20 NMAC as amended.

**6-5(l) TEMPORARY USE PERMIT**

All applicable provisions of Section 14-16-6-4 (General Procedures) apply unless specifically modified by the provisions of this Subsection 14-16-6-5(l).

**6-5(l)(1) Applicability**

This Subsection 14-16-6-5(l) applies to uses that require a Temporary Use Permit per Table 4-2-1 and associated Use-specific Standards in Subsection 14-16-4-3(G) (Temporary Uses).



**6-5(l)(2) Procedure**

The applicant shall have the following responsibilities.



Indicates Public Meeting or Hearing

- 6-5(l)(2)(a) Discuss the temporary use with the ZEO to determine the location, duration, and potential impacts of the temporary use. A sketch plan or Site Plan may be required for the purpose of understanding access, location of temporary lavatories or other temporary provisions, and the location of any structures or signage.
- 6-5(l)(2)(b) Obtain required signatures from abutting property owners specifying that they have been notified of the use and allowed duration.
- 6-5(l)(2)(c) Keep documentation of the Temporary Use Permit available on-site for the duration of the temporary use.

**6-5(l)(3) Review and Decision Criteria**

An application for a Temporary Use Permit shall be approved for a specified duration if it complies with all applicable Use-specific Standards in Subsection 14-16-4-3(G) (Temporary Uses) and adequately mitigates negative impacts on surrounding properties for the duration of the use.

**6-5(J) WALL OR FENCE PERMIT – MINOR**

All applicable provisions of Section 14-16-6-4 (General Procedures) apply unless specifically modified by the provisions of this Subsection 14-16-6-5(J).

**6-5(J)(1) Applicability**

This Subsection 14-16-6-5(J) applies to all applications to build a wall or fence that meets the standards in Section 14-16-5-7 (Walls and Fences), except for walls that require a Variance – ZHE pursuant to Subsection 14-16-5-7(D)(3)(d) (Exceptions to Maximum Wall Height).



**6-5(J)(2) Procedure**

6-5(J)(2)(a) All applications in an HPO zone or on properties or in districts listed on the State Register of Cultural Properties or the National Register of Historic Places shall first be reviewed by the Historic Preservation Planner pursuant to Subsection 14-16-6-5(D) (Historic Certificate of Appropriateness – Minor), and a recommendation sent to the ZEO.

6-5(J)(2)(b) The ZEO shall review the application and make a decision on the Wall or Fence Permit – Minor.

**6-5(J)(3) Review and Approval Criteria**

An application for a Wall or Fence Permit shall be approved if it complies with all applicable standards in this IDO, the DPM, other adopted City regulations, and any conditions specifically applied to development of the property in a prior permit or approval affecting the property.

6-5(J)(3)(a) The ZEO may approve a wall or fence that is taller than allowed by Subsection 14-16-5-7(D) if necessary for security reasons due to specific site conditions or the nature of the land use or related materials and facilities on the site.

6-5(J)(3)(b) Other requests for a taller wall or fence require the approval of a Variance, pursuant to Subsection 14-16-6-6(M) (Variance – EPC) for walls or fences associated with a Site Plan – EPC or Subsection 14-16-6-6(N) (Variance – ZHE) for walls or fences associated with any other request.

6-5(J)(3)(c) A wall or fence shall not be approved unless the City Engineer finds that the wall or fence would not be a hazard to traffic visibility.

6-5(J)(3)(d) A wall or fence shall not be approved unless the City Engineer finds that the wall or fence does not block drainage and/or adversely affect adjoining, upstream or downstream properties.

**6-5(K) WIRELESS TELECOMMUNICATIONS FACILITY APPROVAL**

All applicable provisions of Section 14-16-6-4 (General Procedures) apply unless specifically modified by the provisions of this Subsection 14-16-6-5(K) or the DPM.

**6-5(K)(1) Applicability**

A Wireless Telecommunications Facility Approval must be obtained for all new WTFs located within the City limits, whether on private or public lands and whether it is a primary or accessory use.



6-5(K)(1)(a) This Subsection 14-16-6-5(K) applies to any of the following:

1. All new WTFs.
2. All co-locations on public utilities.
3. All co-locations on concealed WTFs.
4. All antenna co-locations on unconcealed WTFs, which became nonconforming upon adoption of the concealment requirement in 2008 (Council Bill No. O-06-40).
5. Like-for-like antenna swap outs, back-up generators, and other minor site modifications to existing WTFs.
6. Upgrades to existing WTFs that would not result in a substantial change (a term defined by federal law) to an existing Wireless Telecommunications Facility.

**6-5(K)(1)(b)** Any unconcealed WTF erected prior to January 15, 1999 (Council Bill O- 54; Enactment O-9-1999) provided a building permit was issued for that antenna or tower, co-locations of antennas on existing unconcealed towers and public utility co-location are exempted from the concealment provisions of Subsection 14-16-4-3(E)(10)(a) (Wireless Telecommunications Facility).

**6-5(K)(2) Procedure**

6-5(K)(2)(a) The Planning Director shall review the application and make a decision on the Wireless Telecommunications Facility Approval. An administrative review shall be completed within 60 consecutive days of the receipt of a complete application. An incomplete application shall be deemed withdrawn if the deficiencies are not corrected within 60 consecutive days of notice of the deficiencies.

6-5(K)(2)(b) Variances to the standards in Section 14-16-4-3(E)(10) (Wireless Telecommunications Facility) are not allowed. Any facility that cannot comply with these standards requires review and approval of a Waiver by the EPC under Subsection 14-16-6-6(O) (Wireless Telecommunications Facility Waiver) before a WTF Approval may be granted.

6-5(K)(2)(c) Applications for upgrades to an existing WTF that that would result in a substantial change (a term defined by federal law) to an

existing WTF requires review and approval of a Waiver by the EPC under Subsection 14-16-6-6(O) (Wireless Telecommunications Facility Waiver), before a WTF approval may be granted.

**6-5(K)(3) Review and Decision Criteria**

An application for a WTF Approval shall be approved if it meets the standards of Subsection 14-16-4-3(E)(10) (Wireless Telecommunications Facility) and all applicable standards in this IDO, the DPM, and federal law and regulations.

## 6-6 DECISIONS REQUIRING A PUBLIC MEETING OR HEARING

### 6-6(A) CONDITIONAL USE APPROVAL

All applicable provisions of Section 14-16-6-4 (General Procedures) apply unless specifically modified by the provisions of this Subsection 14-16-6-6(A) or the DPM.

#### 6-6(A)(1) Applicability

6-6(A)(1)(a) This Subsection 14-16-6-6(A) applies to all applications for a use listed as conditional (i.e. Conditional Primary, Conditional Accessory, or Conditional Vacant if the application is filed after the primary building on the property has been vacant for 5 years or more) in Table 4-2-1. Conditional uses are only allowed if approved pursuant to this Subsection 14-16-6-6(A).

6-6(A)(1)(b) A Conditional Use Approval is only valid for the location stated in the application and cannot be transferred to a new location.

6-6(A)(1)(c) If an approved conditional use is discontinued for a period of 12 consecutive months, it may not be reestablished without a new Conditional Use Approval.

#### 6-6(A)(2) Procedure

6-6(A)(2)(a) The City Planning Department staff shall review the application and forward a recommendation to the ZHE pursuant to all applicable provisions of Section 14-16-6-4 (General Procedures).

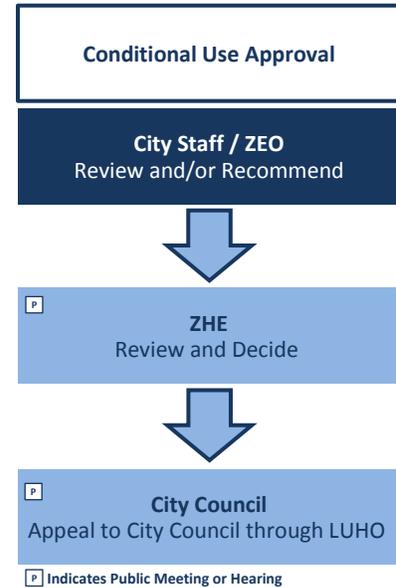
6-6(A)(2)(b) The ZHE shall conduct a public hearing on the application and make a written decision on the application pursuant to all applicable provisions of Section 14-16-6-4 (General Procedures).

#### 6-6(A)(3) Review and Decision Criteria

An application for a Conditional Use Approval shall be approved if it meets all of the following criteria:

6-6(A)(3)(a) It is consistent with the adopted ABC Comp Plan, as amended.

6-6(A)(3)(b) It complies with all applicable provisions of this IDO, including but not limited to any Use-specific Standards applicable to the use in Section 14-16-4-3; the DPM; other adopted City regulations; and any conditions specifically applied to development of the property in a prior permit or approval affecting the property.



- 6-6(A)(3)(c) It will not create significant adverse impacts on adjacent properties, the surrounding neighborhood, or the larger community.
- 6-6(A)(3)(d) It will not create material adverse impacts on other land in the surrounding area through increases in traffic congestion, parking congestion, noise, or vibration without sufficient mitigation or civic or environmental benefits that outweigh the expected impacts.
- 6-6(A)(3)(e) It will not increase non-residential activity within 300 feet of a lot in any Residential zone district between the hours of 8:00 P.M. and 6:00 A.M.
- 6-6(A)(3)(f) It will not negatively impact pedestrian or transit connectivity without appropriate mitigation.

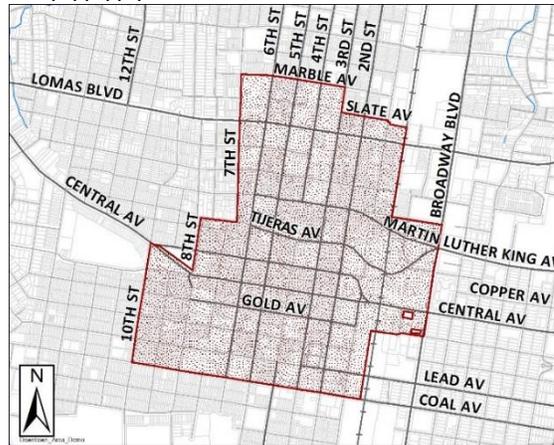
**6-6(B) DEMOLITION OUTSIDE OF AN HPO**

All applicable provisions of Section 14-16-6-4 (General Procedures) apply unless specifically modified by the provisions of this Subsection 14-16-6-6(B) or the DPM.

**6-6(B)(1) Applicability**

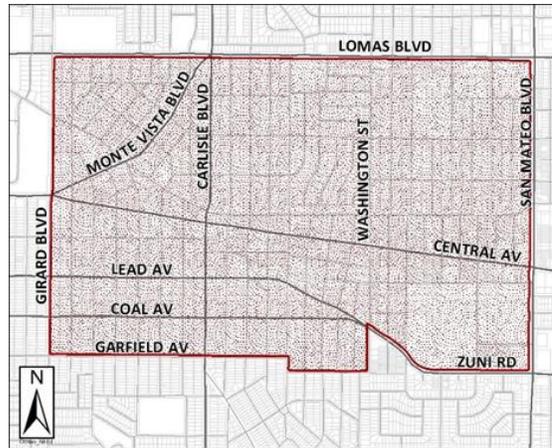
This Subsection 14-16-6-6(B) applies to demolition of structures that are at least 50 years old located within the following mapped areas, regardless of whether they are registered on a state or national historic register or are eligible for listing. If a structure is of unknown age, it shall be presumed that it is over 50 years old for the purposes of this Subsection 14-16-6-6(B).

6-6(B)(1)(a) Downtown Area



- 6-6(B)(1)(b) Downtown Neighborhood Area – CPO-3
- 6-6(B)(1)(c) East Downtown – CPO-4
- 6-6(B)(1)(d) Nob Hill/Highland Area





**6-6(B)(2) Procedure**

- 6-6(B)(2)(a) City staff (Historic Preservation Planner) shall review the demolition permit application within 15 days after receipt of the application in order to determine whether to approve the demolition administratively or to recommend review and decision by the Landmarks Commission (LC).
- 6-6(B)(2)(b) If the Historic Preservation Planner recommends demolition review by the LC, the LC shall notify the applicant and the Chief Building Official in writing within 15 days and hold a public hearing within 60 days of receipt of the application to decide whether a 120-day review period shall be invoked.
- 6-6(B)(2)(c) No demolition permit may be issued prior to an LC hearing following a staff determination that the structure is subject to demolition review. If the Historic Preservation Planner does not notify the Chief Building Official within 15 consecutive days of receipt of the application that the structure is subject to demolition review, the City may proceed to issue the demolition permit.
- 6-6(B)(2)(d) The purpose of the public hearing is for the LC to decide whether a 120-day demolition review period shall be invoked. In order to foster discussion and possible resolution of issues between the City and the applicant, the LC may postpone the issuance of its decision if agreed to in writing by the applicant.
1. Upon a determination by the LC that the 120-day review period is to be invoked, the LC shall notify the Chief Building Official and applicant in writing. No permit for demolition, new construction, or alterations on the premises shall be issued during the review period. If the LC does not notify the Chief Building Official in writing within 21 consecutive days of the public hearing that the review period is to be invoked, the Chief Building Official may issue the demolition permit.
  2. A "Determination of No Feasible Alternative" may be issued during the public hearing if the LC finds that, as to a structure

that otherwise meets the requirements for the 120-day demolition review period, there is no feasible alternative to demolition.

3. If the Commission determines that the 120-day review period is not to be invoked, the LC shall so notify the Chief Building Official and applicant in writing. The Chief Building Official may then issue the demolition permit.

6-6(B)(2)(e) The Chief Building Official may issue a demolition permit or a building permit upon expiration of the 120-day review period if a City landmark designation has not been initiated or some other means of preserving the structure intact has not been agreed to in writing by the LC and the applicant; however, no permit for demolition of a structure subject to the 120-day review period shall be granted, even after expiration of the review period, until all plans for future use and development of the site have been filed with the Chief Building Official and have been found to comply with all laws pertaining to the issuance of a building permit, or, if for a parking lot, a certificate of occupancy for that site. All approvals necessary for the issuance of such building permit or certificate of occupancy, including but not limited to any necessary Variances or special permits must be granted and all appeals from the granting of such approvals must be concluded, prior to the issuance of a demolition permit under this Subsection.

6-6(B)(2)(f) During the demolition review period, the City may take any action that it deems necessary and consistent with this Subsection to preserve the structure. During the review period, the LC shall provide for the documentation of the structure.

6-6(B)(2)(g) If after an inspection, the Chief Building Official finds that a structure subject to the 120-day review period poses an immediate threat to public health or safety due to its deteriorated condition and that there is no reasonable alternative to the immediate demolition of the structure, then the Chief Building Official may issue an emergency demolition permit to the owner of the structure. The Chief Building Official shall then prepare a report explaining the condition of the structure and the basis for his decision, which shall be forwarded to the LC.

### **6-6(B)(3) Review and Decision Criteria**

- 6-6(B)(3)(a) The Historic Preservation Planner shall review the demolition permit application based on the following criteria:
1. The structure's historic, architectural, engineering, or cultural significance.
  2. The structure's potential to contribute to the city's economic development or tourism industry.
  3. The structure's potential to enhance the city's heritage and historical identity.

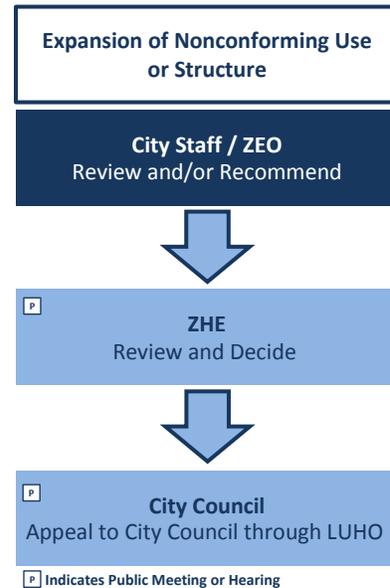
4. Whether the structure is unique or one of the last remaining examples of its kind in the neighborhood, the city, or the region.
  5. The structure's condition.
- 6-6(B)(3)(b) To invoke the 120-day review period, the LC must find that, in considering the public interest, it is preferable that the structure be preserved or rehabilitated rather than demolished and use the criteria in Subsection (a) above and Subsection 14-16-6-7(C) (Adoption or Amendment of Historic Designation) in its evaluation.
- 6-6(B)(3)(c) In determining whether the structure should be designated as a landmark, the LC shall apply the criteria Subsection 14-16-6-7(C) (Adoption or Amendment of Historic Designation).

**6-6(C) EXPANSION OF NONCONFORMING USE OR STRUCTURE**

All applicable provisions of Section 14-16-6-4 (General Procedures) apply unless specifically modified by the provisions of this Subsection 14-16-6-6(C) or the DPM.

**6-6(C)(1) Applicability**

This Subsection 14-16-6-6(C) applies to all applications to expand a nonconforming use or structure, as defined in Sections 14-16-6-8 (Nonconformities) and 14-16-7-1 (Definitions). Nonconforming site features may not be expanded. No nonconforming use or structure may be expanded unless an approval under this Subsection 14-16-6-6(C) is obtained by the property owner or applicant.



**6-6(C)(2) Procedure**

- 6-6(C)(2)(a) The City Planning Department staff shall review the application and forward a recommendation to the ZHE pursuant to all applicable provisions of Section 14-16-6-4 (General Procedures).
- 6-6(C)(2)(b) The ZHE shall conduct a public hearing on the application and shall make a decision on the application pursuant to all applicable provisions of Section 14-16-6-4 (General Procedures).

**6-6(C)(3) Review and Decision Criteria**

An application for an Expansion of Nonconforming Use or Structure shall be approved if it meets all of the following criteria, as applicable:

- 6-6(C)(3)(a) The expansion will not create material negative impacts on other land in the surrounding area through increases in traffic congestion, parking congestion, noise, or vibration without sufficient mitigation or civic or environmental benefits that outweigh the expected impacts.
- 6-6(C)(3)(b) The expansion will not increase non-residential activity within 300 feet of a lot in any Residential zone district between the hours of 8:00 P.M. and 6:00 A.M.
- 6-6(C)(3)(c) The expansion will not negatively impact pedestrian or transit connectivity without appropriate mitigation.
- 6-6(C)(3)(d) The expansion will not exceed 25 percent of the gross floor area of the structure occupied by the nonconforming use, or 25 percent of the area occupied by the nonconforming use at the time it became nonconforming.
- 6-6(C)(3)(e) The expansion will not expand the gross floor area of a nonconforming structure by more than 25 percent of the gross

floor area existing at the time the structure became nonconforming.

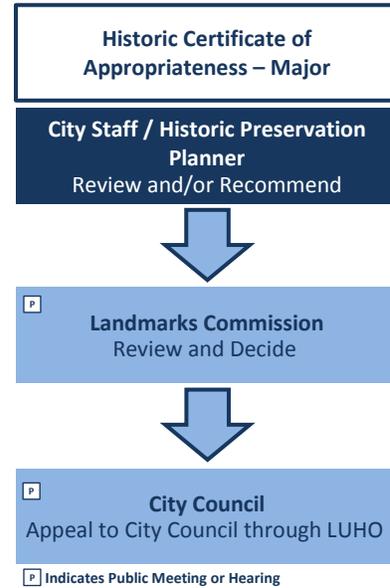
- 6-6(C)(3)(f) The expansion will not increase an existing nonconformity or create a new nonconformity.

**6-6(D) HISTORIC CERTIFICATE OF APPROPRIATENESS – MAJOR**

All applicable provisions of Section 14-16-6-4 (General Procedures) apply unless specifically modified by the provisions of this Section 14-16-6-6(D) or DPM.

**6-6(D)(1) Applicability**

This Subsection 14-16-6-6(D) applies to all development and modification of structures in any HPO zone and to all development or modification of a landmark site that does not meet the applicability standards for a Historic Certificate of Appropriateness – Minor in Subsection 14-16-6-5(D).



**6-6(D)(2) Procedure**

- 6-6(D)(2)(a) Applicants shall review their proposed projects with the City Planning Department staff (Historic Preservation Planner) before preparing final plans and submitting an application. The purpose of this discussion is to determine the approval procedure and create a project drawing checklist for the specific request.
- 6-6(D)(2)(b) The Historic Preservation Planner shall review the application and forward a recommendation to the LC pursuant to all applicable provisions of Section 14-16-6-4 (General Procedures).
- 6-6(D)(2)(c) The LC shall conduct a public hearing on the application and shall make a decision on the application pursuant to all applicable provisions of Section 14-16-6-4 (General Procedures).
- 6-6(D)(2)(d) If the LC denies an application for a Historic Certificate of Appropriateness – Major for demolition, there shall be a moratorium on demolition for 12 consecutive months, during which time the City shall make every effort to find a means of preserving the structure. By the end of the 12-month moratorium, if the City Council determines that the property is incapable of producing a reasonable economic return as presently controlled and that no means of preserving the structure has been found, pursuant to the criteria in Subsection 14-16-6-6(D)(3)(g), the City Council shall issue a demolition permit.

**6-6(D)(3) Review and Decision Criteria**

An application for a Historic Certificate of Appropriateness – Major shall be approved if it complies with all of the following criteria:

- 6-6(D)(3)(a) The change is consistent with Section 14-16-3-5 (Historic Protection Overlay Zones), the ordinance designating the specific HPO zone where the property is located, and any specific development guidelines for the landmark or the specific HPO zone where the property is located.
- 6-6(D)(3)(b) The architectural character, historical value, or archaeological value of the structure or site itself or of any HPO zone in which it is located will not be significantly impaired or diminished.
- 6-6(D)(3)(c) The change qualifies as a "certified rehabilitation" pursuant to the Tax Reform Act of 1976, if applicable.
- 6-6(D)(3)(d) The structure or site's distinguished original qualities or character will not be altered. For the purposes of Section 14-16-3-5 (Historic Protection Overlay Zones) and this Subsection 14-16-6-6(D), "original" shall mean as it was at the time of initial construction or as it has developed over the course of the history of the structure.
- 6-6(D)(3)(e) Deteriorated architectural features shall be repaired rather than replaced, if possible. If replacement is necessary, the new material shall match the original as closely as possible in material and design.
- 6-6(D)(3)(f) Additions to existing structures and new construction may be of contemporary design if such design is compatible with its landmark status (if any) or the HPO zone in which it is to be located.
- 6-6(D)(3)(g) If the application is for a Historic Certificate of Appropriateness – Major for demolition of a landmark or a contributing structure in an HPO zone, demolition shall only be allowed if it is determined that the property is incapable of producing a reasonable economic return as presently controlled and that no means of preserving the structure has been found. In making a determination regarding reasonable economic return, the LC or City Council may consider the estimated market value of the building, land, and any proposed replacement structures; financial details of the property, including but not limited to income and expense statements, current mortgage balances, and appraisals; the length of time that the property has been on the market for sale or lease; potential return based on projected future market conditions; the building's structural condition; and other items determined to be relevant to the application.

**6-6(E) HISTORIC DESIGN STANDARDS AND GUIDELINES**

All applicable provisions of Section 14-16-6-4 (General Procedures) apply unless specifically modified by the provisions of this Subsection 14-16-6-6(E).

**6-6(E)(1) Applicability**

This Subsection 14-16-6-6(E) applies to all applications to adopt or amend Design Standards and Guidelines for an HPO zone or a City landmark.

6-6(E)(1)(a) Applications to establish an HPO zone or to designate a City landmark shall be processed pursuant to Subsection 14-16-6-7(C) (Adoption or Amendment of Historic Designation).

6-6(E)(1)(b) Applications for alterations, construction, or demolition involving historic designations or structures shall be processed pursuant to Subsection 14-16-6-5(D) (Historic Certificate of Appropriateness – Minor), 14-16-6-6(B) (Demolition Outside of an HPO), or 14-16-6-6(D) (Historic Certificate of Appropriateness – Major).



**6-6(E)(2) Procedure**

6-6(E)(2)(a) The City Planning Department staff (Historic Preservation Planner) shall review the application to adopt or amend Historic Design Standards and Guidelines and make a recommendation to the LC.

6-6(E)(2)(b) The LC shall conduct a public hearing and make a decision on the application pursuant to all applicable provisions of Section 14-16-6-4 (General Procedures).

**6-6(E)(3) Review and Decision Criteria**

An application to adopt or amend Design Standards and Guidelines shall be approved if it complies with all of the following criteria:

6-6(E)(3)(a) The Design Standards and Guidelines are consistent with the criteria and findings for establishment of the HPO zone or designation of the City landmark.

6-6(E)(3)(b) The Design Standards and Guidelines are consistent with the U.S. Secretary of the Interior’s Standards for the Treatment of Historic Properties.

6-6(E)(3)(c) The Design Standards and Guidelines are consistent with the relevant criteria for registration on the New Mexico Register of Cultural Properties or the National Register of Historic Places, as applicable.

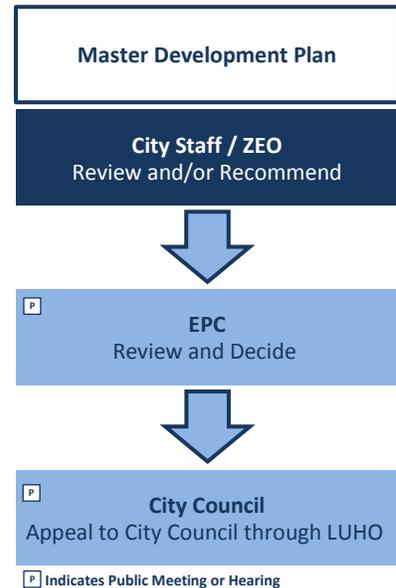
- 6-6(E)(3)(d) The Design Standards and Guidelines help distinguish and establish the historic qualities, architectural character, or archaeological value to be protected.
- 6-6(E)(3)(e) The Design Standards and Guidelines will provide adequate and appropriate guidance and protections to assess applications for alterations, construction, and demolitions for the HPO zone or City landmark.

**6-6(F) MASTER DEVELOPMENT PLAN**

All applicable provisions of Section 14-16-6-4 (General Procedures) apply unless specifically modified by the provisions of this Subsection 14-16-6-6(F) or the DPM.

**6-6(F)(1) Applicability**

- 6-6(F)(1)(a) A Master Development Plan may only be approved for a site 20 acres or greater in the NR-BP zone district.
- 6-6(F)(1)(b) An application for a Master Development Plan may be for legally platted lots, nonconforming lots, or unsubdivided land.



**6-6(F)(2) Procedure**

- 6-6(F)(2)(a) The City Planning Department staff shall review the application and forward a recommendation to the EPC pursuant to all applicable provisions of Section 14-16-6-4 (General Procedures).
- 6-6(F)(2)(b) The EPC shall conduct a public hearing on the application and shall make a decision on the application pursuant to all applicable provisions of Section 14-16-6-4 (General Procedures).
- 6-6(F)(2)(c) The EPC may delegate authority to the DRB to determine technical review of compliance with conditions of approval and DPM standards.
- 6-6(F)(2)(d) The EPC may grant a Variance to IDO standards as part of this approval pursuant to Subsection 14-16-6-6(M) (Variance – EPC).
- 6-6(F)(2)(e) If the Master Development Plan is associated with a zone change to NR-BP, approval of the Master Development Plan is contingent on approval of the zone change pursuant to Subsection 14-16-6-7(G) (Zoning Map Amendment – Council).
- 6-6(F)(2)(f) The DRB shall review any application for Subdivision of Land within a Master Development Plan area for compliance with the approved Master Development Plan.

6-6(F)(2)(g) Site Plans for development within a Master Development Plan area shall be reviewed for compliance with the approved Master Development Plan.

**6-6(F)(3) Review and Decision Criteria**

An application for a Master Development Plan shall be approved if it meets all of the following criteria:

- 6-6(F)(3)(a) The Master Development Plan is consistent with the ABC Comp Plan, as amended.
- 6-6(F)(3)(b) The Master Development Plan complies with all applicable provisions of the IDO, in particular those of the NR-BP zone district; the DPM; and other adopted City regulations.
- 6-6(F)(3)(c) The City's existing infrastructure and public improvements, including but not limited to its street, trail, drainage, and sidewalk systems, have adequate capacity to serve the proposed development, and any burdens on those systems have been mitigated to the extent practicable.
- 6-6(F)(3)(d) The Master Development Plan mitigates any significant adverse impacts on the surrounding area to the maximum extent practicable.

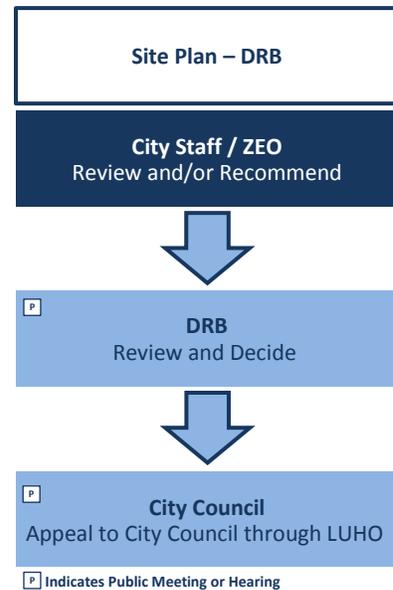
**6-6(G) SITE PLAN – DRB**

All applicable provisions of Section 14-16-6-4 (General Procedures) apply unless specifically modified by the provisions of this Subsection 14-16-6-6(G) or the DPM.

**6-6(G)(1) Applicability**

A Site Plan – DRB may only be approved for legally platted or nonconforming lots, and may not be approved for unsubdivided property. This Subsection 14-16-6-6(G) applies to:

- 6-6(G)(1)(a) Any application that does not qualify for consideration as a Site Plan – Administrative under Subsection 14-16-6-5(G) and is not located in the NR-SU or PD zone districts, which require review of a Site Plan – EPC pursuant to Subsection 14-16-6-6(H).
- 6-6(G)(1)(b) Any application for a site 5 acres or greater that is not adjacent to Major Public Open Space, which requires review of a Site Plan – EPC under Section 14-16-6-6(H).
- 6-6(G)(1)(c) Any application for an electric utility within any zone district where approval by the DRB is required by the Facility Plan for Electric Transmission.



6-6(G)(1)(d) Any application for a major utility within any zone district where approval by the DRB is required by an adopted Facility Plan.

**6-6(G)(2) Procedure**

6-6(G)(2)(a) The City Planning Department staff shall review the application and forward a recommendation to the DRB pursuant to all applicable provisions of Section 14-16-6-4 (General Procedures).

6-6(G)(2)(b) The DRB shall conduct a public meeting on the application and shall make a decision on the application pursuant to all applicable provisions of Section 14-16-6-4 (General Procedures).

6-6(G)(2)(c) A Site Plan – DRB may not be approved until after any necessary Conditional Use Approvals are obtained pursuant to Subsection 14-16-6-6(A).

6-6(G)(2)(d) The DRB may grant Deviations to IDO standards as part of this approval within the thresholds established per Section 14-16-6-4(O) (Deviations).

6-6(G)(2)(e) The DRB may grant a Variance to standards in Sections 14-16-5-3 (Access and Connectivity), 14-16-5-4 (Subdivision of Land), or 14-16-5-5 (Parking and Loading), or the DPM as part of this approval per Subsection 14-16-6-6(L) (Variance – DRB).

6-6(G)(2)(f) Site Plans shall be reviewed administratively for compliance with conditions of approval and zoning standards prior to the issuance of a building permit.

**6-6(G)(3) Review and Decision Criteria**

An application for a Site Plan – DRB shall be approved if it meets all of the following criteria:

6-6(G)(3)(a) The Site Plan complies with all applicable provisions of this IDO, the DPM, other adopted City regulations, and any conditions specifically applied to development of the property in a prior permit or approval affecting the property.

6-6(G)(3)(b) The City's existing infrastructure and public improvements, including but not limited to its street, trail, drainage, and sidewalk systems, have adequate capacity to serve the proposed development, and any burdens on those systems have been mitigated to the extent practicable.

6-6(G)(3)(c) The Site Plan mitigates any significant adverse impacts on the surrounding area to the maximum extent practicable.

**6-6(H) SITE PLAN – EPC**

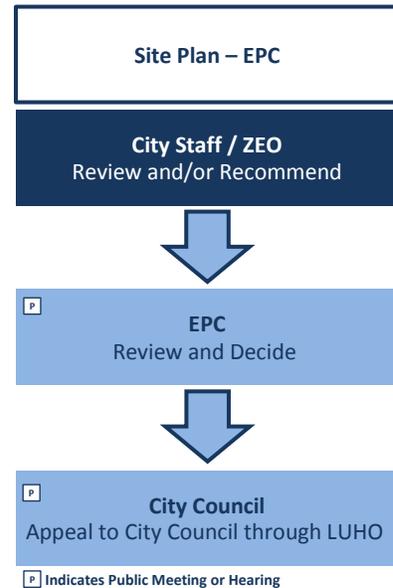
All applicable provisions of Section 14-16-6-4 (General Procedures) apply unless specifically modified by the provisions of this Subsection 14-16-6-6(H) or the DPM.

**6-6(H)(1) Applicability**

6-6(H)(1)(a) A Site Plan – EPC may only be approved for legally platted or nonconforming lots, and may not be approved on unsubdivided property, except for development in the PD or NR-SU zone districts and any development on a site 5 acres or greater adjacent to Major Public Open Space, in which case a Site Plan approval is required prior to any platting action.

6-6(H)(1)(b) This Subsection 14-16-6-6(H) applies to the following:

1. Any application within the MX-FB or NR-PO zone districts that does not qualify for consideration as a Site Plan – Administrative under Subsection 14-16-6-5(G).
2. Any application for development associated with a Zoning Map Amendment application in a zone district that requires a Site Plan – EPC to be reviewed and decided simultaneously, including but not limited to MX-FB, NR-SU, and PD.
3. Any application for development on a site 5 acres or greater adjacent to Major Public Open Space.
4. Any application for development for which the applicant requests EPC review, provided the Planning Director concurs with that request.
5. Any application for an electric utility within any zone district where EPC approval is required by the Facility Plan for Electric Transmission.
6. Any application involving a major utility as a primary use of the site, unless specified otherwise in an adopted Facility Plan.



**6-6(H)(2) Procedure**

6-6(H)(2)(a) For Extraordinary Facilities in the NR-PO-B sub-zone, the Open Space Advisory Board shall review the application and make a recommendation to the EPC.

6-6(H)(2)(b) The City Planning Department staff shall review the application and forward a recommendation to the EPC pursuant to all applicable provisions of Section 14-16-6-4 (General Procedures).

- 6-6(H)(2)(c) The EPC shall conduct a public hearing on the application and shall make a decision on the application pursuant to all applicable provisions of Section 14-16-6-4 (General Procedures).
- 6-6(H)(2)(d) The EPC may delegate authority to the DRB to determine technical review of compliance with conditions of approval and DPM standards.
- 6-6(H)(2)(e) A Site Plan – EPC may not be approved until after any necessary Conditional Use Approvals are obtained pursuant to Subsection 14-16-6-6(A).
- 6-6(H)(2)(f) The EPC may grant a Variance to IDO standards as part of this approval per Section 14-16-6-6(M) (Variance – EPC).
- 6-6(H)(2)(g) Site Plans shall be reviewed administratively for compliance with conditions of approval and zoning standards prior to the issuance of a building permit.

**6-6(H)(3) Review and Decision Criteria**

Any application for a Site Plan – EPC shall be approved if it meets all of the following criteria:

- 6-6(H)(3)(a) The Site Plan is consistent with the ABC Comp Plan, as amended.
- 6-6(H)(3)(b) The Site Plan is consistent with any applicable terms and conditions in any previously approved NR-SU or PD zoning covering the property and any related development agreements and/or regulations.
- 6-6(H)(3)(c) The Site Plan complies with all applicable provisions of this IDO, the DPM, other adopted City regulations, and any terms and conditions specifically applied to development of the property in a prior permit or approval affecting the property.
- 6-6(H)(3)(d) The City's existing infrastructure and public improvements, including but not limited to its street, trail, drainage, and sidewalk systems, have adequate capacity to serve the proposed development, and any burdens on those systems have been mitigated to the extent practicable.
- 6-6(H)(3)(e) The application mitigates any significant adverse impacts on the surrounding area to the maximum extent practicable.

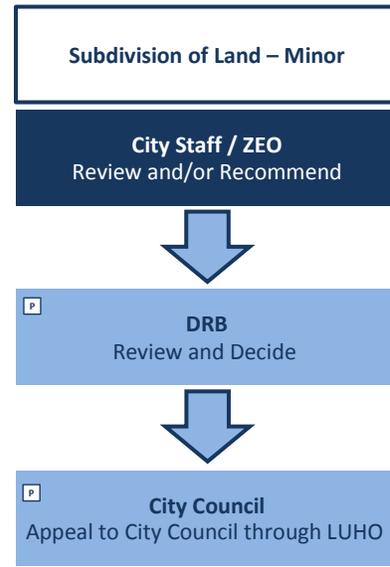
**6-6(I) SUBDIVISION OF LAND – MINOR**

All applicable provisions of Section 14-16-6-4 (General Procedures) apply unless specifically modified by the provisions of this Subsection 14-16-6-6(I) or the DPM.

**6-6(I)(1) Applicability**

This Subsection 14-16-6-6(I) applies to the review of an application for any of the following:

- 6-6(I)(1)(a) Approval of a subdivision of land within the City that:
  1. Creates 10 or fewer lots on any single lot that has been recorded as a single lot for at least 3 years previously.
  2. Does not require any new streets.
  3. Does not require major public infrastructure.
  4. Does not create any lots that do not front on a public or private street previously approved by the City.
  5. Does not require installation of any infrastructure, other than service connections between permitted structures on the lot and existing infrastructure and other systems located on or in an adjacent street or parcel of land.
  6. Does not require the installation of any off-site infrastructure of a size, type, or location that may create significant adverse impacts on adjacent or nearby property owners.
  7. Is on land 5 acres or greater adjacent to Major Public Open Space with a Site Plan – EPC.
  8. Is on land zoned NR-SU or PD with a Site Plan – EPC.
  9. Is on land zoned NR-BP with a Master Development Plan.
  10. Is on land zoned PC with a Framework Plan.
- 6-6(I)(1)(b) Approval of a combination of previously platted subdivision lots and termination of some or all of the related easements, where all benefitted and burdened parties agree to the lot combination and easement termination.



P Indicates Public Meeting or Hearing

**6-6(I)(2) Procedure**

- 6-6(I)(2)(a) The DRB shall review the application and shall conduct a public meeting and make a decision on the application pursuant to all applicable provisions of Section 14-16-6-4 (General Procedures).
- 6-6(I)(2)(b) The DRB may grant a Variance to a DPM standard as part of this approval per Subsection 14-16-6-6(L) (Variance – DRB).

- 6-6(I)(2)(c) The DRB may grant a Deviation to a development standard in the IDO as part of this approval per the thresholds in Section 14-16-6-4(O) (Deviations).
- 6-6(I)(2)(d) Final Plats shall include a list of any Variances and Deviations granted as an exhibit or note.
- 6-6(I)(2)(e) When all conditions of approval are satisfied, the final plat is approved; approval shall be recorded on the original drawing of the final plat and shall be dated and verified by the signatures of members of the DRB.
- 6-6(I)(2)(f) The applicant shall record the plat with the Bernalillo County Clerk within 5 business days after DRB signatures. A plat that is not recorded in a timely manner is not valid, may not be used as the basis for legal transfer of property where a subdivision is required, and is subject to withdrawal of the DRB approval through the same process used to approve the Subdivision of Land – Minor.

**6-6(I)(3) Review and Decision Criteria**

An application for a Subdivision of Land – Minor shall be approved if it meets all of the following criteria:

- 6-6(I)(3)(a) All applicable provisions of this IDO, the DPM, other adopted City regulations, and any conditions specifically applied to development of the property in a prior permit or approval affecting the property.
- 6-6(I)(3)(b) Any Variances granted to development standards applicable to the subdivision in Section 14-16-5-3 (Access and Connectivity) or Section 14-16-5-4 (Subdivision of Land) and any deviations to other IDO standards granted within the thresholds established by Section 14-16-6-4(O) (Deviations) are documented in the application.

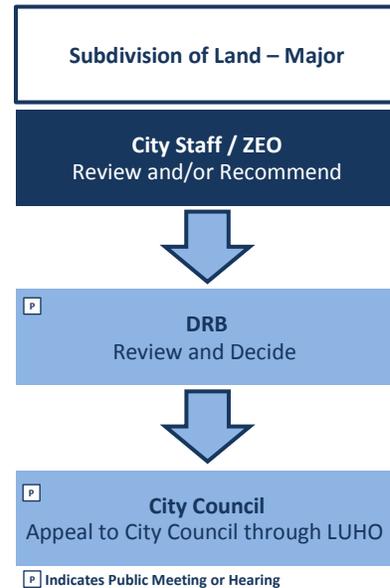
**6-6(J) SUBDIVISION OF LAND – MAJOR**

All applicable provisions of Section 14-16-6-4 (General Procedures) apply unless specifically modified by the provisions of this Subsection 14-16-6-6(J) or the DPM.

**6-6(J)(1) Applicability**

This Section 14-16-6-6(J) applies to any application for a subdivision of land or combination of previously subdivided lots that is not eligible to be processed as a Subdivision of Land – Minor pursuant to Subsection 14-16-6-6(I), with the following exceptions:

- 6-6(J)(1)(a) Approval of a subdivision of land 5 acres or greater adjacent to Major Public Open Space that does not have a Site Plan – EPC.
- 6-6(J)(1)(b) Approval of a subdivision of land that is zoned NR-SU or PD that does not have a Site Plan – EPC.
- 6-6(J)(1)(c) Approval of a subdivision of land that is zoned NR-BP that does not have a Master Development Plan.
- 6-6(J)(1)(d) Approval of a subdivision of land that is zoned PC that does not have a Framework Plan.



**6-6(J)(2) Procedure**

**6-6(J)(2)(a) Deviations and Variances**

1. The DRB may grant a Deviation to a development standard in the IDO as part of this approval per the thresholds in Section 14-16-6-4(O) (Deviations).
2. The DRB may grant a Variance to standards in Section 14-16-5-3 (Access and Connectivity), Section 14-16-5-4 (Subdivision of Land), Section 14-16-6-5 (Parking and Loading), or the DPM per Subsection 14-16-6-6(L) (Variance – DRB).

**6-6(J)(2)(b) Pre-Application Meeting**

In addition to those provisions in Section 14-16-6-4(B) (Pre-application Meeting), the following provisions apply to Subdivisions of Land – Major:

1. The applicant shall file a sketch plat that indicates the basic layout of the proposed subdivision, including general layouts of streets, drainage areas, open spaces, and buildable lots within the subdivision, and other technical standards specified in the DPM.
2. The DRB shall review the sketch plat, conduct a public meeting, and provide a Letter of Advice outlining the

requirements and recommendations of the meeting, which will address the suitability of the proposal for development and for infrastructure improvements based on the intent of this IDO and the DPM.

3. The approved sketch plat shall not be recorded but shall be retained by the City Planning Department, and the Preliminary and Final Plat are required to be generally consistent with the Sketch Plat Letter of Advice.

**6-6(J)(2)(c) Preliminary Plat**

1. Within one year after DRB issuance of a Letter of Advice on a Sketch Plat, the applicant shall file a Preliminary Plat that meets all standards and requirements of this IDO and the DPM.
2. Any request for a Variance from the development standards applicable to the subdivision in Section 14-16-5-3 (Access and Connectivity), Section 14-16-5-4 (Subdivision of Land), Section 14-16-5-5 (Parking and Loading), or the DPM shall be reviewed and decided per Subsection 14-16-6-6(L) (Variance – DRB), shown on the Preliminary Plat, and considered simultaneously with the review and approval of the Preliminary Plat.
3. The City Planning Department staff shall review the application and forward a recommendation to the DRB pursuant to all applicable provisions of Section 14-16-6-4 (General Procedures).
4. The DRB shall conduct a public hearing and make a decision on the application pursuant to all applicable provisions of Section 14-16-6-4 (General Procedures).

**6-6(J)(2)(d) Construction Plans**

After approval of the Preliminary Plat, the applicant shall present construction plans and specifications for all improvements (which shall conform to the approved Preliminary Plat) to the City Engineer for approval, together with a proposed infrastructure improvements agreement between the subdivider and the City specifying all infrastructure proposed for construction. Construction plans and specifications shall meet all applicable requirements of the DPM or other technical standards adopted by the City.

**6-6(J)(2)(e) Infrastructure Improvements Agreement**

After approval of the Preliminary Plat, the applicant shall provide to the City an Infrastructure Improvements Agreement (IIA) that complies with the following standards and all applicable standards in the DPM.

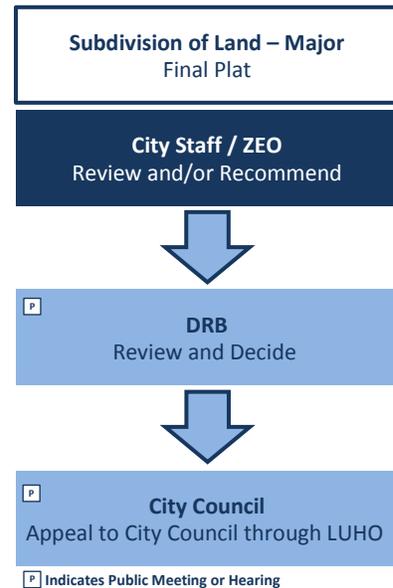
1. The IIA shall specify the time period within which the improvements necessary to provide required access, public services, and public amenities required of the applicant are to

be completed, which time period will end not later than 2 years after execution of the IIA.

2. An IIA for sidewalks that have received an adjustment for temporary deferral of installation shall have a time period that will end 4 years after execution of the IIA, unless extended by the DRB for good cause, as described in the DPM.
3. The DRB may extend the time periods listed in Subsections 1 and 2 above for a period of less than 12 months for good cause shown.
4. If a Preliminary Plat approval should expire under the terms of this IDO without a Final Plat having been approved, the IIA automatically lapses, and no further improvements are required or approved.
5. After execution of an IIA approved by the City, the applicant may proceed with the construction of all required improvements.

**6-6(J)(2)(f) Final Plat**

1. Within one year after DRB approval, or approval with conditions, of a Preliminary Plat, the applicant shall file a Final Plat that meets all standards and requirements in the DPM.
2. The City Planning Department staff shall review the application and forward a recommendation to the DRB pursuant to all applicable provisions of Section 14-16-6-4 (General Procedures).
3. The DRB shall conduct a public meeting and make a decision on the application pursuant to all applicable provisions of Section 14-16-6-4 (General Procedures).
4. When all conditions of approval are satisfied, the DRB shall accept the revised Final Plat and record it with the Bernalillo County Clerk as soon as possible, but in no case more than 5 business days from date of DRB signature.



**6-6(J)(2)(g) Dedications**

1. Dedication of public areas, as required by Subsection 14-16-5-4(K), or by other City policy requirements shall be free and clear of any liens or encumbrances and be in fee simple unless one of the following applies:

- a. The applicant demonstrates that fee simple dedication is legally infeasible.
  - b. The DRB and the City Attorney find that a different type of dedication better accomplishes City policy or is provided for by specific ordinance.
2. If dedication in other than fee simple is approved, the nature of the property interest dedicated shall be clearly indicated on the plat.
  3. When parks are dedicated, a deed to the land shall be delivered to the governmental body with jurisdiction over that type of park, as determined by the City.

**6-6(J)(3) Review and Decision Criteria**

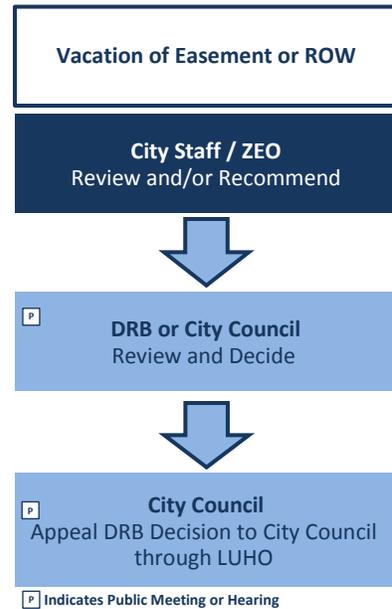
- 6-6(J)(3)(a) An application for a Preliminary Plat shall be approved if it meets all of the following criteria:
1. Is consistent with the ABC Comp Plan, as amended.
  2. Complies with all applicable provisions of this IDO, the DPM, other adopted City regulations, and any conditions specifically applied to development of the property in a prior permit or approval affecting the property.
- 6-6(J)(3)(b) An application for a Final Plat shall be approved if it includes all changes, conditions, and requirements contained in the Preliminary Plat approval.

**6-6(K) VACATION OF EASEMENT OR RIGHT-OF-WAY**

All applicable provisions of Section 14-16-6-4 (General Procedures) apply unless specifically modified by the provisions of this Subsection 14-16-6-6(K) or the DPM.

**6-6(K)(1) Applicability**

This Subsection 14-16-6-6(K) applies to all applications to vacate a public right-of-way or easement, including but not limited to streets, alleys, and easements that are owned by or under the control of the City, as well as applications to vacate a private way or easements shown on a recorded plat.



**6-6(K)(2) Procedure**

- 6-6(K)(2)(a) Notwithstanding the provisions of Table 6-1-1, published and posted sign notice are not required when the application is for vacation of a public easement that does not involve a public right-of-way, provided that the Planning Director is satisfied that all benefitted and burdened parties are clearly and completely defined and agree to the vacation.
- 6-6(K)(2)(b) The City Planning Department staff shall review the application and forward a recommendation to the DRB pursuant to all applicable provisions of Section 14-16-6-4 (General Procedures).
- 6-6(K)(2)(c) The DRB shall conduct a public hearing on the application pursuant to all applicable provisions of Section 14-16-6-4 (General Procedures).
- 6-6(K)(2)(d) The DRB shall make a decision on any application, unless it meets the criteria in Subsection (e) below.
- 6-6(K)(2)(e) The DRB shall make a recommendation and forward the application to City Council for inclusion on the consent agenda for approval without first going to any Council committee if the proposed vacation involves any of the following:
  - 1. More than 500 square feet or the entire width of a platted alley.
  - 2. More than 5,000 square feet or the entire width of a street, including any or all of the public right-of-way.
- 6-6(K)(2)(f) If a street, alley, drainageway, or other public right-of-way is vacated, the abutting zone districts are extended automatically to the former centerline of the vacated public right-of-way.

**6-6(K)(3) Review and Decision Criteria**

An application for a Vacation of Easement or Right-of-way shall be approved if it meets any of the following criteria:

- 6-6(K)(3)(a) The public welfare does not require that the public right-of-way or easement be retained.
- 6-6(K)(3)(b) There is a net benefit to the public welfare because the development made possible by the vacation is clearly more beneficial to the public welfare than the minor detriment resulting from the vacation, and there is no convincing evidence that any substantial property right is being abridged against the will of the owner of the right.

**6-6(L) VARIANCE – DRB**

All applicable provisions of Section 14-16-6-4 (General Procedures) apply unless specifically modified by the provisions of this Subsection 14-16-6-6(L).

**6-6(L)(1) Applicability**

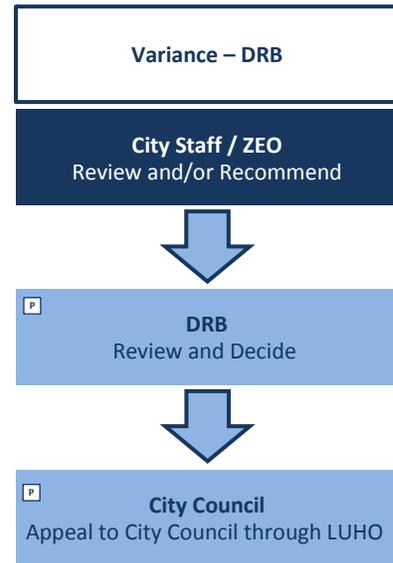
This Subsection 14-16-6-6(L) applies to

- 6-6(L)(1)(a) Any application for a Variance to standards in Sections 14-16-5-3 (Access and Connectivity), 14-16-5-4 (Subdivision of Land), or 14-16-5-5 (Parking and Loading), or the DPM.

**6-6(L)(2) Procedure**

**6-6(L)(2)(a) General**

1. Where a Variance is requested for a carport in a required front or side setback in an HPO zone or on a property or in a district listed on the State Register of Cultural Properties or the National Register of Historic Places, the application shall first be reviewed by the Historic Preservation Planner pursuant to Subsection 14-16-6-5(D) (Historic Certificate of Appropriateness – Minor), and a recommendation sent to the DRB.
2. The City Planning Department staff shall review the application and forward a recommendation to the DRB pursuant to all applicable provisions of Section 14-16-6-4 (General Procedures).
3. The DRB shall conduct a public hearing and make a decision on the application pursuant to all applicable provisions of Section 14-16-6-4 (General Procedures).
4. A Variance – DRB may not be granted until after any necessary Conditional Use Approvals are obtained pursuant to Subsection 14-16-6-6(A).
5. A notice of any Variances or Deviations granted associated with a subdivision shall be placed on the final plat and on a



separately recorded document, and any Variances or Deviations granted associated with a Site Plan shall be noted on the approved Site Plan.

**6-6(L)(2)(b) Bulk Land Subdivision**

Where a Variance is requested based on a bulk land subdivision, all of the following procedures shall be followed in addition to the procedures in Subsection (a) above:

1. The use of the land for development and/or building purposes shall require review during the Subdivision or Site Plan approval process. Approval of a Variance for a bulk land transfer does not indicate that land within that transfer complies with applicable Subdivision or Site Plan standards.
2. The plat shall reflect the applicant's agreement that building permits shall not be issued for any area where the Variances apply before further subdivision and that recording of a final subdivision plat for the subject area has been completed.

**6-6(L)(3) Review and Decision Criteria**

This Subsection 14-16-6-6(L)(3) includes criteria for all applications that require a Variance – DRB. Variances associated with certain requests have additional or different criteria. Variances to sidewalk or front yard parking requirements have specific criteria in addition to the general criteria, listed in Subsections (b) and (c) below, respectively. Variances for carports in a required front or side setback have specific criteria in Subsection (d) below and do not have to meet the general criteria in Subsection (a) below.

**6-6(L)(3)(a) General**

Except as indicated in (d) below, an application for a Variance – DRB shall be approved if it complies with the following criteria, as applicable:

1. Any of the following applies:
  - a. There are special circumstances applicable to the subject property that are not self-imposed and that do not apply generally to other property in the same zone district and vicinity, including but not limited to size, shape, topography, location, surroundings, and physical characteristics, and such special circumstances were created either by natural forces or by government eminent domain actions for which no compensation was paid. Such special circumstances of the property either create an extraordinary hardship in the form of a substantial and unjustified limitation on the reasonable use or return on the property, or practical difficulties result from strict compliance with the minimum standards.
  - b. There are pre-existing obstructions that cannot be easily or economically relocated or should not be altered, such

- as grades, fills, water courses, natural topographic features, man-made obstructions, or utility lines.
- c. The area or site has been recognized as having historical, archeological, and/or architectural significance by the City, state, or federal government, and a Variance is needed and appropriate to maintain such historical, archeological, and/or architectural significance.
  - d. The established neighborhood character or landscaping on the site would be damaged to a degree that outweighs the public interest in the City's normal technical standards in that location.
  - e. Varying from the normal requirements and standards will encourage flexibility, economy, effective use of open space, or ingenuity in design of a subdivision, in accordance with accepted principles of site planning.
2. The Variance will not be materially contrary to the public safety, health, or welfare.
  3. The Variance does not cause significant material adverse impacts on surrounding properties.
  4. The Variance will not hinder future planning, public right-of-way acquisition, or the financing or building of public infrastructure improvements.
  5. The Variance will not conflict significantly with the goals and provisions of any city, county, or AMAFCA adopted plan or policy, this IDO, or any other City code or ordinance.
  6. The Variance will not allow, encourage, or make possible undesired development in the 100-year Floodplain.
  7. The Variance will not materially undermine the intent and purpose of this IDO or the applicable zone district.
  8. The Variance does not allow a lot or type of development that does not meet the applicable size, area, and development standards applicable in the zone district where the lot is located, unless a Deviation to such standards is within the thresholds established by Subsection 14-16-6-4(O) (Deviations) and is granted by the DRB as part of this approval.
  9. The Variance approved is the minimum necessary to avoid extraordinary hardship or practical difficulties.
  10. The Variance for Sidewalk Requirements meets the criteria in (b) below.
  11. The Variance for Front Yard Parking meets the criteria in (c) below.

**6-6(L)(3)(b) Variance to Sidewalk Requirements**

A request for a Variance to sidewalk requirements, shall be approved if it meets all of the applicable criteria in Subsection (a) above and all of the following criteria:

- a. The area is of low-intensity land use to an extent that the normal installation of sidewalks will not contribute to the public welfare, and the absence of a sidewalk will not create a gap in an existing sidewalk system extended to 1 or more sides of the subject property or area.
- b. The City's right-of-way is insufficient in width to permit the construction of a sidewalk of standard dimension and placement, but there is sufficient right-of-way to meet minimum ADA or PROWAG guidance.
- c. The adjoining sidewalks are non-standard as to width and/or location, and the Variance would enable the new and existing sidewalks to match in width and/or location, or could create a smooth transition between areas of different width and/or character.

**6-6(L)(3)(c) Variance for Front Yard Parking**

A Variance to the maximum front yard parking area requirements in Subsection 14-16-5-5(F)(2)(a)1 shall be granted if it meets all of the applicable criteria in Subsection (a) above and if each dwelling unit within 300 linear feet of the property has no more than 1 on-street parking space.

**6-6(L)(3)(d) Variance for a Carport in a Required Front or Side Setback**

A Variance to allow a carport in a required front or side setback shall be approved if all of the following criteria are met:

1. The proposed carport would strengthen or reinforce the architectural character of the surrounding area.
2. The proposed carport would not be injurious to adjacent properties, the surrounding neighborhood, or the larger community.
3. The design of the carport complies with the provisions in Subsection 14-16-5-5(F)(2)(a)2 (Carports).
4. No carport wall is a hazard to traffic visibility, as determined by the Traffic Engineer.
5. The carport is not taller than the primary building on the lot.

**6-6(M) VARIANCE – EPC**

All applicable provisions of Section 14-16-6-4 (General Procedures) apply unless specifically modified by the provisions of this Subsection 14-16-6-6(M) or the DPM.

**6-6(M)(1) Applicability**

6-6(M)(1)(a) This Subsection 14-16-6-6(M) applies to all requests for Variances from any development standard in this IDO other than Sections 14-16-5-3 (Access and Connectivity), 14-16-5-4 (Subdivision of Land), or 14-16-5-5 (Parking and Loading) requested as part of a Site Plan – EPC application.

6-6(M)(1)(b) This Subsection 14-16-6-6(M) applies to requests for Variances to standards in the Coors Boulevard – VPO-1 for setback, structure height, or structure bulk and massing.

6-6(M)(1)(c) This Subsection 14-16-6-6(M) applies to requests for Variances to the 15-foot structure height limit in the Height Restriction Sub-Area of the Northwest Mesa Escarpment – VPO-2 for one of the following variations in structure height:

1. A Variance for up to 4 feet of additional height for non-residential structures may be allowed in order to screen rooftop equipment.
2. A Variance to allow up to 26 feet above natural grade may be granted for low-density residential developments of 1 dwelling unit per acre or less that are set back a minimum of 200 feet from the escarpment face (i.e. 9 percent or greater slopes).

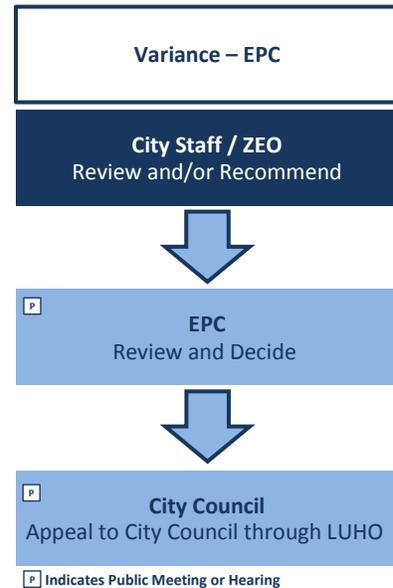
**6-6(M)(2) Procedure**

6-6(M)(2)(a) The City Planning Department staff shall review the application and forward a recommendation to the EPC pursuant to all applicable provisions of Section 14-16-6-4 (General Procedures).

6-6(M)(2)(b) The EPC shall conduct a public hearing and make a decision on the application pursuant to all applicable provisions of Section 14-16-6-4 (General Procedures) as part of the associated Site Plan – EPC review and decision.

6-6(M)(2)(c) A Variance – EPC may not be granted until after any necessary Conditional Use Approvals are obtained pursuant to Subsection 14-16-6-6(A).

6-6(M)(2)(d) Any Variances granted associated with a Site Plan shall be noted on the approved Site Plan.



6-6(M)(2)(e) Requests for a Variance to structure heights in Subsection 14-16-3-6(E) (Northwest Mesa Escarpment – VPO-2) shall at a minimum include all of the following:

1. Site plans, site elevations, and site sections showing the location of the major public views (i.e. views from the site perimeter or nearest public road to the east, west, south, and north property lines and views to the escarpment),
2. View plane exhibits that illustrate the expected impact of structure height on major public views given the relationship of slopes, building heights, setbacks, escarpment height, and view corridors.
3. Analysis and demonstration of at least 1 of the techniques required by Subsection 14-16-3-6(E)(3) (i.e. height/slope, view corridors, or height/slope/setback) to minimize the impact of additional structure height on views to and from the escarpment.
4. A Grading and Drainage Plan that has been approved by the City Engineer.

**6-6(M)(3) Review and Decision Criteria**

6-6(M)(3)(a) Except as indicated in Subsections (b) and (c) below, an application for a Variance – EPC shall be approved if it meets all of the following criteria:

1. There are special circumstances applicable to the subject property that are not self-imposed and that do not apply generally to other property in the same zone district and vicinity, including but not limited to size, shape, topography, location, surroundings, and physical characteristics, and such special circumstances were created either by natural forces or by government eminent domain actions for which no compensation was paid. Such special circumstances of the property either create an extraordinary hardship in the form of a substantial and unjustified limitation on the reasonable use or return on the property, or practical difficulties result from strict compliance with the minimum standards.
2. The Variance will not be materially contrary to the public safety, health, or welfare.
3. The Variance does not cause significant material adverse impacts on surrounding properties or infrastructure improvements in the vicinity.
4. The Variance will not materially undermine the intent and purpose of this IDO or the applicable zone district.
5. The Variance approved is the minimum necessary to avoid extraordinary hardship or practical difficulties.

6-6(M)(3)(b) The EPC shall approve an application for a Variance from the standards for setback, structure height, or structure bulk and

massing in Subsection 14-16-3-6(D) (Coors Boulevard – VPO-1) if it meets all of the following criteria:

1. The Variance will not materially undermine the protected views described in Subsection 14-16-3-6(D)(2).
2. The intent of the view regulations in Subsection 14-16-3-6(D)(5) is met.

6-6(M)(3)(c) The EPC shall approve an application for a Variance from the 15-foot structure height limit in the Height Restriction Sub-area in Subsection 14-16-3-6(E)(3) (Northwest Mesa Escarpment – VPO-2) if it meets all of the following criteria.

1. **Hardship**  
 The intent of the view regulations in Section 14-16-3-6(E) (Northwest Mesa Escarpment – VPO-2) must be met. The burden is on the applicant to demonstrate that strict adherence to VPO-2 building height regulations would render the lot undevelopable because of physical and/or engineering constraints (e.g. rock outcroppings, street grades, ADA compliance, utility design, etc.).
2. **Visual Impact**  
 The impact of the proposed development on views to and from the escarpment will be the same as, or less than, the impact if the 15-foot height limit were met.

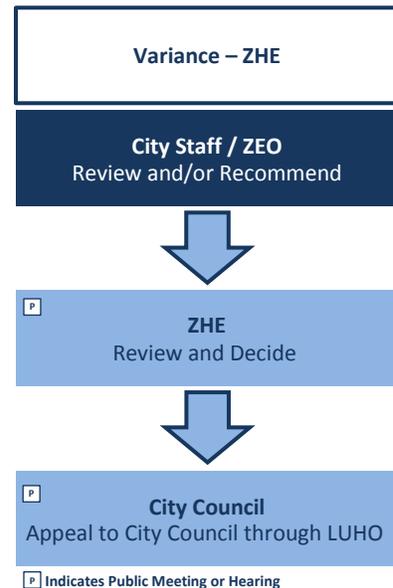
**6-6(N) VARIANCE – ZHE**

All applicable provisions of Section 14-16-6-4 (General Procedures) apply unless specifically modified by the provisions of this Subsection 14-16-6-6(N) or the DPM.

**6-6(N)(1) Applicability**

6-6(N)(1)(a) This Subsection 14-16-6-6(N) applies to all requests for Variances from an IDO standard other than the following:

1. Standards in Section 14-16-5-3 (Access and Connectivity), 14-16-5-4 (Subdivision of Land), or 14-16-5-5 (Parking and Loading), or in the DPM (which require a Variance – DRB per Section 14-16-6-6(L)).
2. Variances to IDO standards requested in applications for a Site Plan – EPC (which requires a Variance – EPC per Subsection 14-16-6-6(M)).



3. Variances to standards in Section 14-16-3-6 (View Protection Overlay Zones) shall only be granted by the EPC pursuant to Subsection 14-16-6-6(M) (Variance – EPC).

6-6(N)(1)(b) This Subsection 14-16-6-6(N) applies to all applications for walls or fences that that require a Variance – ZHE pursuant to Subsection 14-16-5-7(D)(3)(d) (Exceptions to Maximum Wall Height).

**6-6(N)(2) Procedure**

6-6(N)(2)(a) A Variance – ZHE may not be granted until after any necessary Conditional Use Approvals are obtained pursuant to Subsection 14-16-6-6(A).

6-6(N)(2)(b) All applications for a wall or fence in an HPO zone or on a property or in a district listed on the State Register of Cultural Properties or the National Register of Historic Places shall first be reviewed by the Historic Preservation Planner pursuant to Subsection 14-16-6-5(D) (Historic Certificate of Appropriateness – Minor), and a recommendation sent to the ZHE.

6-6(N)(2)(c) The City Planning Department staff shall review the application and forward a recommendation to the ZHE pursuant to all applicable provisions of Section 14-16-6-4 (General Procedures).

6-6(N)(2)(d) The ZHE shall conduct a public hearing and make a decision on the application pursuant to all applicable provisions of Section 14-16-6-4 (General Procedures).

**6-6(N)(3) Review and Decision Criteria**

**6-6(N)(3)(a) General**

Except as indicated in Subsections (b) and (c) below, an application for a Variance – ZHE shall be approved if it meets all of the following criteria:

1. There are special circumstances applicable to the subject property that are not self-imposed and that do not apply generally to other property in the same zone district and vicinity, including but not limited to size, shape, topography, location, surroundings, and physical characteristics, and such special circumstances were created either by natural forces or by government eminent domain actions for which no compensation was paid. Such special circumstances of the property either create an extraordinary hardship in the form of a substantial and unjustified limitation on the reasonable use or return on the property, or practical difficulties result from strict compliance with the minimum standards.
2. The Variance will not be materially contrary to the public safety, health, or welfare.
3. The Variance does not cause significant material adverse impacts on surrounding properties or infrastructure improvements in the vicinity.

4. The Variance will not materially undermine the intent and purpose of this IDO or the applicable zone district.
5. The Variance approved is the minimum necessary to avoid extraordinary hardship or practical difficulties.

**6-6(N)(3)(b) Variance in the APO Zone**

1. An application for a Variance from a standard in the APO zone shall be approved for a structure or vegetation within the Air Space Protection Sub-area, excluding the Runway Protection Sub-area, if it meets all of the following criteria:
  - a. The request meets the requirements of this Subsection 14-16-6-6(N).
  - b. The ZHE determines that the request will not cause an increase of minimum requirements for instrument or night flying, or will not otherwise cause or create a greater hazard to air navigation.
2. A Variance may be conditioned to require hazard marking and lighting per Subsection 14-16-3-3(F).

**6-6(N)(3)(c) Variance for a Taller Front or Side Yard Wall**

An application for a Variance for a wall in the front or street side yard of a lot in a Residential zone district or on a lot with low-density residential development abutting a Residential zone district that meets the requirements in Subsection 14-16-5-7(D)(3)(d) (Exceptions to Maximum Wall Height) and Table 5-7-2 shall be approved if it meets all of the following criteria:

1. The proposed wall would strengthen or reinforce the architectural character of the surrounding area.
2. The proposed wall would not be injurious to adjacent properties, the surrounding neighborhood, or the larger community.
3. The wall is proposed on a lot that meets any of the following criteria:
  - a. The lot is at least ½ acre.
  - b. The lot fronts a street designated as a collector or above in the LRTS Guide.
  - c. At least 20 percent of the properties within 330 feet of the lot where the wall or fence is being requested have a wall or fence over 3 feet in the front yard.
4. The design of the wall complies with any applicable standards in Section 14-16-5-7 (Walls and Fences), including but not limited to Subsection 14-16-5-7(E)(2) (Articulation and Alignment) and Subsection 14-16-5-7(E)(3) (Wall Design), and all of the following:
  - a. The wall or fence shall not block the view of any portion of any window on the front façade of the primary building

when viewed from 5 feet above ground level at the centerline of the street in front of the house.

- b. The design and materials proposed for the wall or fence shall reflect the architectural character of the surrounding area.

### 6-6(O) WIRELESS TELECOMMUNICATIONS FACILITY WAIVER

All applicable provisions of Section 14-16-6-4 (General Procedures) apply unless specifically modified by the provisions of this Subsection 14-16-6-6(O).

#### 6-6(O)(1) Applicability

This Subsection 14-16-6-6(O) applies to all applications to deviate from the wireless telecommunications regulations otherwise applicable to the erection or installation of a Wireless Telecommunications Facility (WTF) under this IDO.

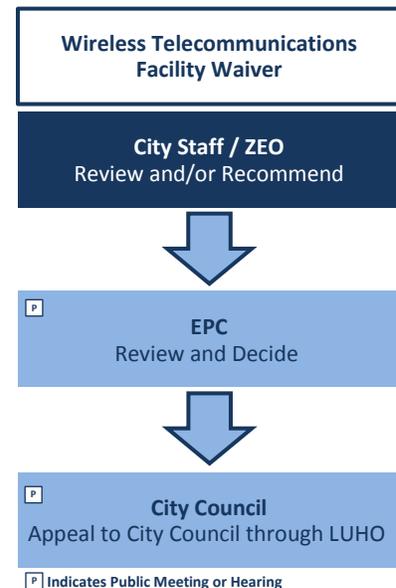
#### 6-6(O)(2) Procedure

6-6(O)(2)(a) The City Planning Department staff shall review the application for a Waiver and forward a recommendation to the EPC pursuant to all applicable provisions of Section 14-16-6-4 (General Procedures).

6-6(O)(2)(b) The EPC shall hold a public hearing and make a decision on the application for a Waiver pursuant to all applicable provisions of Section 14-16-6-4 (General Procedures) and may grant a Waiver of those requirements over which the EPC has review authority except for allowed maximum height, which does not qualify for a Waiver.

#### 6-6(O)(3) Review and Decision Criteria

- 6-6(O)(3)(a) An application for a WTF Waiver shall be approved if it meets all of the following criteria:
1. It is in the best interest of the community as a whole.
  2. It will expedite the approval of an antenna, tower, or tower alternative.
  3. It will not jeopardize public health, safety, and welfare.
  4. It will either ameliorate the adverse impacts of antenna and tower proliferation or the adverse impact of requiring new construction of towers or antennas.
  5. It will better serve the stated purposes of the City's telecommunications regulations.
  6. It will not permit the WTF to be taller or higher from the ground than would otherwise be allowed by this IDO.



6-6(O)(3)(b) The facts to be considered by the EPC in reaching its decision include:

1. The height of the proposed tower.
2. The proximity of the tower antenna to any Residential zone district or a dwelling in any other zone district.
3. The nature of uses on adjacent and nearby properties.
4. The surrounding topography.
5. The surrounding vegetation and foliage.
6. The design of the tower or antenna, with particular reference to design characteristics that have the effect of reducing or eliminating any visual obtrusiveness.
7. The proposed ingress and egress.
8. The availability of suitable existing towers or other structures.

**6-7 POLICY DECISIONS**

**6-7(A) ADOPTION OR AMENDMENT OF COMPREHENSIVE PLAN**

All applicable provisions of Section 14-16-6-4 (General Procedures) apply unless specifically modified by the provisions of this Subsection 14-16-6-7(A).

**6-7(A)(1) Applicability**

This Subsection 14-16-6-7(A) applies to all applications to have the City adopt or amend the Albuquerque/Bernalillo County Comprehensive Plan.

**6-7(A)(2) Procedure**

6-7(A)(2)(a) The City Planning Department staff shall review the application, including any specific regulations applicable to a proposed adoption or amendment of the Comprehensive Plan, and forward a recommendation to the EPC pursuant to all applicable provisions of Section 14-16-6-4 (General Procedures).

6-7(A)(2)(b) The EPC shall conduct a public hearing on the application and shall make a recommendation to the City Council pursuant to all applicable provisions of Section 14-16-6-4 (General Procedures).

6-7(A)(2)(c) The City Council shall conduct a public hearing and shall make a decision on the application pursuant to all applicable provisions of Section 14-16-6-4 (General Procedures).

**6-7(A)(3) Review and Decision Criteria**

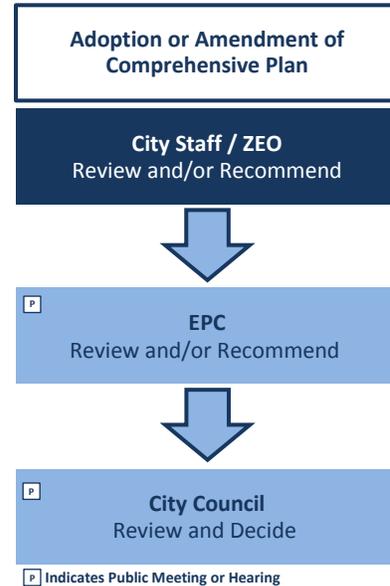
An application for Adoption or Amendment of the Comprehensive Plan shall be approved if it meets all of the following criteria:

6-7(A)(3)(a) Because of changed economic, social, environmental or other conditions, the adoption or amendment is necessary to protect the public health, safety, or welfare.

6-7(A)(3)(b) The adoption or amendment will protect the public health, safety, or welfare better than retention of the continued application of the existing Comprehensive Plan.

6-7(A)(3)(c) The adoption or amendment will result in general benefits to a large portion of the residents or property owners in the City.

6-7(A)(3)(d) If the adoption or amendment is being proposed by a small group of residents or property owners, it would not create significant adverse impacts on the remaining residents or property owners in the City.



**6-7(B) ADOPTION OR AMENDMENT OF FACILITY PLAN**

Facility Plans may specify amendment procedures different from the provisions in this IDO. Where a Facility Plan is silent or requires review by the EPC and final decision by City Council, the provisions of this Subsection 14-16-6-7(B) apply. In such cases, all applicable provisions of Section 14-16-6-4 (General Procedures) apply unless specifically modified by the provisions of this Subsection 14-16-6-7(B).

**6-7(B)(1) Applicability**

This Subsection 14-16-6-7(B) applies to any application for adoption or amendment of a Facility Plan.

**6-7(B)(2) Procedure**

6-7(B)(2)(a) The City Planning Department staff shall review the application and forward a recommendation to the EPC pursuant to all applicable provisions of Section 14-16-6-4 (General Procedures).

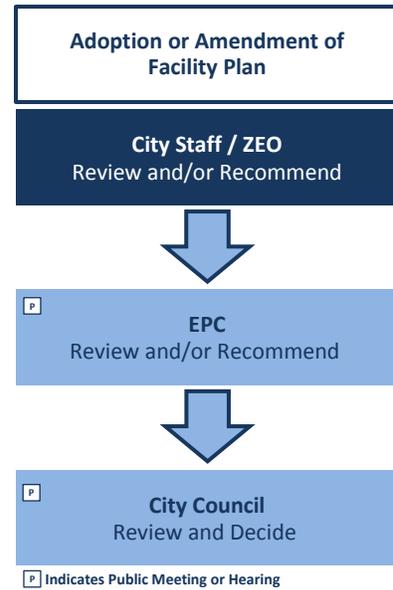
6-7(B)(2)(b) The EPC shall conduct a public hearing on the application and shall make a recommendation to the City Council on the application pursuant to all applicable provisions of Section 14-16-6-4 (General Procedures).

6-7(B)(2)(c) The City Council shall conduct a public hearing and shall make a decision on the application pursuant to all applicable provision of Section 14-16-6-4 (General Procedures).

**6-7(B)(3) Review and Decision Criteria**

An application for Adoption or Amendment of a Facility Plan shall be approved if it meets all of the following criteria:

- 6-7(B)(3)(a) The proposed plan or amendment is consistent with the spirit and intent of the ABC Comp Plan, as amended, and with other policies and plans adopted by the City Council.
- 6-7(B)(3)(b) The proposed plan or amendment promotes the efficient use or administration of public or quasi-public facilities.
- 6-7(B)(3)(c) The plan or amendment will promote public health, safety, and general welfare.



**6-7(C) ADOPTION OR AMENDMENT OF HISTORIC DESIGNATION**

All applicable provisions of Section 14-16-6-4 (General Procedures) apply unless specifically modified by the provisions of this Subsection 14-16-6-7(C).

**6-7(C)(1) Applicability**

This Subsection 14-16-6-7(C) applies to all applications to do the following.

- 6-7(C)(1)(a) Designate an area of the City as an HPO zone.
- 6-7(C)(1)(b) Amend the boundaries of an existing HPO zone, including removing or adding property.
- 6-7(C)(1)(c) Terminate an HPO zone.
- 6-7(C)(1)(d) Designate a landmark site or structure.
- 6-7(C)(1)(e) Remove a site or an area from the City’s list of designated landmarks sites.



**6-7(C)(2) Procedure**

- 6-7(C)(2)(a) The City Planning Department staff (Historic Preservation Planner) shall forward a recommendation to the LC.
- 6-7(C)(2)(b) The LC shall conduct a public hearing and shall make a recommendation to City Council pursuant to all applicable provisions of Section 14-16-6-4 (General Procedures).
- 6-7(C)(2)(c) The City Council shall conduct a public hearing and shall make a decision on the application pursuant to all applicable provisions of Section 14-16-6-4 (General Procedures).
- 6-7(C)(2)(d) The LC shall adopt specific design standards and guidelines for the HPO zone or City landmark within 60 consecutive days following Council adoption pursuant to Subsection 14-16-6-6(E) (Historic Design Standards and Guidelines). Any amendments to such standards and guidelines shall be reviewed pursuant to the same procedure.

**6-7(C)(3) Review and Decision Criteria**

**6-7(C)(3)(a) Adoption or Amendment of an HPO Zone**

An application for adoption or amendment of an HPO zone boundary shall be approved if the area contains a significant concentration, linkage, or continuity of sites, buildings, structures, or objects united by past events or united aesthetically by plan or physical development. An HPO zone may also comprise individual elements separated geographically but linked by association or history, provided that any of the following criteria is met:

1. Embodies the distinctive characteristics of a type, period, or method of construction.

2. Portrays the environment of a group of people in an era of history characterized by a distinctive architectural type.
3. Has yielded, or is likely to yield, information important in history or prehistory.
4. Possesses high artistic values.
5. Has a relationship to designated landmarks or HPO zone that makes the area's preservation critical.

**6-7(C)(3)(b) Termination of an HPO Zone**

An application to terminate an HPO zone shall be approved if the criteria used in the designation of that HPO zone are no longer met due to changing conditions in the HPO zone.

**6-7(C)(3)(c) Designation of a Landmark Site or Structure**

An application for designation of a landmark site or structure shall be approved if it is of particular historical, architectural, cultural, or archaeological significance and meets any of the following criteria:

1. It is the site of a significant historic event.
2. It is identified with a person who significantly contributed to the history of the city, state, or nation.
3. It portrays the environment of a group of people in an era of history characterized by a distinctive architectural style.
4. It embodies the distinctive characteristics of a type, period, or method of construction.
5. It possesses high architectural value.
6. It represents the work of an architect, designer, or master builder whose individual work has influenced the development of the city.
7. It embodies elements of architectural design, detail, materials, or craftsmanship which represent a significant architectural innovation.
8. Its preservation is critical because of its relationship to already-designated landmarks or other real property which is simultaneously proposed as a landmark.
9. It has yielded or is very likely to yield information important in history or prehistory.
10. It is included in the National Register of Historic Places or the New Mexico Cultural Properties Register.

**6-7(C)(3)(d) Termination of Landmark Status**

An application to terminate the landmark designation of a site or structure shall be approved if that site or structure no longer meets the criteria used in the designation.

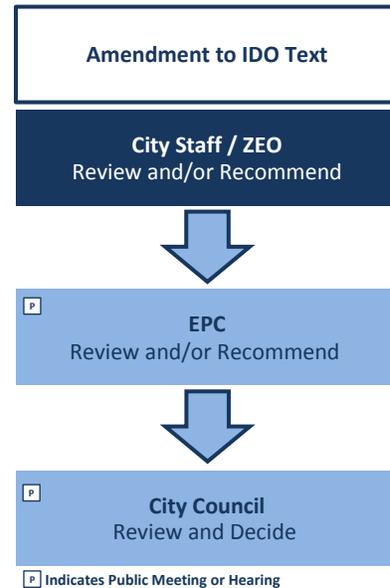
**6-7(D) AMENDMENT TO IDO TEXT**

All applicable provisions of Section 14-16-6-4 (General Procedures) apply unless specifically modified by the provisions of this Subsection 14-16-6-7(D).

**6-7(D)(1) Applicability**

This Subsection 14-16-6-7(D) applies to all applications to amend the text of this IDO, except for the following:

- 6-7(D)(1)(a) Applications to create or amend the text of a Character Protection Overlay zone or View Protection Overlay zone, which are processed as part of a Zoning Map Amendment – Council pursuant to Subsection 14-16-6-7(G).
- 6-7(D)(1)(b) Applications to create or amend a Historic Protection Overlay zone, which are processed pursuant to Subsection 14-16-6-7(C).



**6-7(D)(2) Procedure**

- 6-7(D)(2)(a) The City Planning Department staff shall review the application, including any specific regulations applicable to a proposed Overlay zone, and forward a recommendation to the EPC pursuant to all applicable provisions of Section 14-16-6-4 (General Procedures).
- 6-7(D)(2)(b) If the proposed change includes any change to the process of designating HPO zones or landmark structures or sites (as opposed to an amendment to the boundaries or standards applicable in a specific HPO zone), the LC staff planner shall review and submit staff comments to the EPC pursuant to all applicable provisions of Section 14-16-6-4 (General Procedures).
- 6-7(D)(2)(c) The EPC shall conduct a public hearing on the application and shall make a recommendation to the City Council pursuant to all applicable provisions of Section 14-16-6-4 (General Procedures).
- 6-7(D)(2)(d) The City Council shall conduct a public hearing and shall make a decision on the application pursuant to all applicable provision of Section 14-16-6-4 (General Procedures).

**6-7(D)(3) Review and Decision Criteria**

An application for an Amendment to IDO Text shall be approved if it meets all of the following criteria:

- 6-7(D)(3)(a) The proposed amendment is consistent with the spirit and intent of the ABC Comp Plan, as amended (including the distinction between Areas of Consistency and Areas of Change), and with other policies and plans adopted by the City Council.

6-7(D)(3)(b) The change to the IDO text does not apply to a single lot or development project.

6-7(D)(3)(c) The proposed amendment also meets any of the following criteria:

1. The change to the IDO text is required because of changed conditions or circumstances in all or a significant portion of the city.
2. The change to the IDO text is required in order to address a new or unforeseen threat to the public health, safety, and welfare.
3. The change to the IDO text is required in order to promote economic growth and investment in the City as a whole that will not create material risks to the public health, safety, and general welfare.

**6-7(E) ANNEXATION OF LAND**

All applicable provisions of Section 14-16-6-4 (General Procedures) apply unless specifically modified by the provisions of this Subsection 14-16-6-7(E).

**6-7(E)(1) Applicability**

This Subsection 14-16-6-7(E) applies to all petitions to annex land into the municipal limits of the City that have received approval from Bernalillo County.

**6-7(E)(2) Procedure**

**6-7(E)(2)(a) Review and Decision**

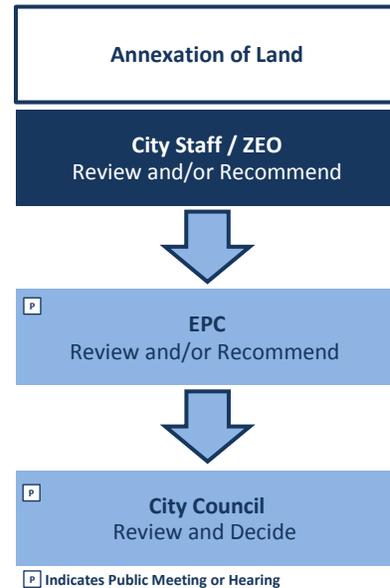
1. The City Planning Department staff shall review the application, including any specific regulations applicable to a proposed annexation, and forward a recommendation to the EPC pursuant to all applicable provisions of Section 14-16-6-4 (General Procedures).
2. The EPC shall conduct a public hearing on the application and shall make a recommendation to the City Council pursuant to all applicable provisions of Section 14-16-6-4 (General Procedures).
3. The City Council Section 14-16-6-4 (General Procedures) shall conduct a public hearing and shall make a decision on the application pursuant to all applicable provision of Section 14-16-6-4 (General Procedures).

**6-7(E)(2)(b) Withdrawal of Petition**

1. Persons who petition the City for annexation may withdraw their names and their land from petitioner status at any time before the full City Council votes on the annexation and simultaneous establishment of zoning, but they may not withdraw after that time.
2. Withdrawal of persons or land from annexation petitions does not prevent any person from again petitioning the City for annexation at any time and also does not prevent the City from seeking to annex such land by any legal method in subsequent proceedings.

**6-7(E)(3) Review and Decision Criteria**

The City Council shall consider the following criteria and may approve an application to annex land into the City at its legislative discretion.



- 6-7(E)(3)(a) Annexation of areas designated in the ABC Comp Plan, as amended, as Established Urban and/or Developing Urban will be approved when the following criteria are met:
1. Compliance with City policy regarding land dedication for public facilities is assured.
  2. The applicant agrees in writing to at least one of the following criteria for timing of capital expenditures for necessary major streets, water, sanitary sewer, and stormwater-handling facilities:
    - a. The timing to be per a written City statement of intent as to when it or another public body will be able to provide such capital facilities, such City statement to be issued prior to annexation.
    - b. The timing to remain indefinite but a substantial number of years in the future, based on a written City statement, made prior to annexation, that it will provide the facilities but no timing can be assured.
    - c. A commitment by the land owner that he/she or his/her successors in interest will, in a manner that satisfies City standards, install and pay for such facilities or cause them to be installed and paid.
  3. The anticipated delay in provision of City services is not so far into the future as to be speculative and therefore an unreasonable basis to provide for annexation.
  4. The land annexed shall be to some extent contiguous to the City limits, except land owned by the City may be annexed when it is not contiguous where this is allowed by state statutes.
  5. The land to be annexed shall have provision for convenient street access to the City.
  6. The land to be annexed shall have reasonable boundaries so that providers of public services can easily determine where the City boundary is located and so that public services can be delivered under appropriate service extension policies at reasonable operating and capital cost to the City.
  7. City boundaries shall be established along platted lines that clearly define the City limits; annexation plats need not meet all requirements of a subdivision plat as specified in the DPM.
- 6-7(E)(3)(b) Areas that are designated in the ABC Comp Plan, as amended, as Reserve Development Areas are appropriate for annexation if they create high-quality, mixed-use, largely self-sufficient planned communities. Annexation of such areas will be approved when the following criteria are met:
1. The criteria in Subsection (a) above.

- 
2. Applications are accompanied or preceded by satisfactory plans for each proposed community.
- 6-7(E)(3)(c) Areas that are designated in the ABC Comp Plan, as amended, as Semi-Urban and as Rural Development Areas are appropriate for annexation where the Semi-urban and Rural Development Area policies in the ABC Comp Plan are furthered or where the general public welfare clearly is better served by annexation. Zoning appropriate for low-intensity uses shall be assigned. Annexation of such areas will be approved when the following criteria are met:
1. The criteria in Subsection (a) above.
  2. Since the eventual annexation of all these areas is unlikely, special care shall be taken to maintain reasonable, compact boundaries in these areas. To this end, the City will not annex such land unless it meets one of the following criteria:
    - a. Has at least 10 percent of its boundary contiguous to the City boundary.
    - b. Does not create an arm of the City's incorporated area that is at any point less than 1,000 feet wide.
  3. Barring exceptional conditions, the City will not annex land on one side of a public street without also annexing the land on the other side of the street.
  4. The City will not annex land unless appropriate City zone districts are available for regulation of development consistent with planned and appropriate land development patterns.
- 6-7(E)(3)(d) The City may annex land even though some or all of the above policies are not met where the EPC and City Council find that at least one of the following applies:
1. There is a particular hazard to the health of persons that would be removed or materially alleviated by the City upon annexation, and that no other adequate and timely remedy for the removal or material alleviation of such hazard is available.
  2. City-owned land used for a public purpose is being annexed to better facilitate that use.

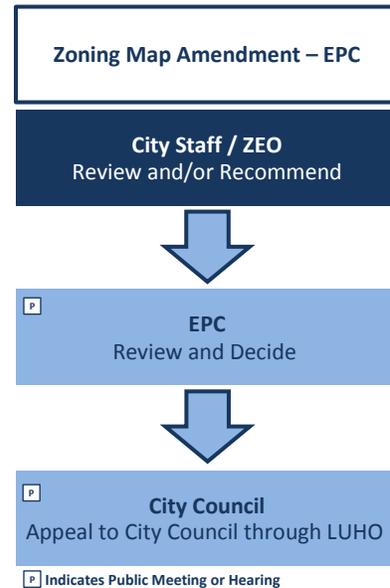
**6-7(F) ZONING MAP AMENDMENT – EPC**

All applicable provisions of Section 14-16-6-4 (General Procedures) apply unless specifically modified by the provisions of this Subsection 14-16-6-7(F).

**6-7(F)(1) Applicability**

6-7(F)(1)(a) This Subsection 14-16-6-7(F) applies to any application:

1. That would amend the Official Zoning Map to change less than 10 gross acres of land located wholly or partially in an Area of Consistency (as shown in the ABC Comp Plan, as amended) or less than 20 gross acres of land in any zone district located entirely in an Area of Change (as shown in the ABC Comp Plan, as amended) to a different zone district.
2. That does not create or amend any text or map of any Overlay zone.



6-7(F)(1)(b) An application to amend the Official Zoning Map by any entity other than the City may not be submitted within 12 consecutive months after the date of final action by the City denying or approving (with or without conditions) a prior application to amend the Official Zoning Map with the same requested change.

**6-7(F)(2) Procedure**

- 6-7(F)(2)(a) The City Planning Department staff shall review the application and forward a recommendation to the EPC pursuant to all applicable provisions of Section 14-16-6-4 (General Procedures).
- 6-7(F)(2)(b) If the application is for a zone change to an MX-FB, NR-SU, or PD zone district, the associated Site Plan – EPC shall be reviewed and decided simultaneously pursuant to all applicable provisions of Section 14-16-6-6(H) (Site Plan – EPC). A denial of either requested action shall result in the denial of all associated requests.
- 6-7(F)(2)(c) The EPC shall conduct a public hearing on the application and shall make a decision on the application pursuant to all applicable provisions of Section 14-16-6-4 (General Procedures).
- 6-7(F)(2)(d) The City shall provide a zoning certificate to the applicant that documents the new zone district designation.
- 6-7(F)(2)(e) A final decision by EPC can be protested pursuant to Subsection 14-16-6-7(G)(1)(c), in which case, the application shall proceed through the process set forth in Subsection 14-16-6-7(G)(2)(h) (Procedure).

**6-7(F)(3) Review and Decision Criteria**

An application for a Zoning Map Amendment shall be approved if it meets all of the following criteria:

- 6-7(F)(3)(a) The proposed zone change is consistent with the health, safety, and general welfare of the City as shown by furthering (and not being in conflict with) a preponderance of applicable Goals and Policies in the ABC Comp Plan, as amended, and other applicable plans adopted by the City.
- 6-7(F)(3)(b) If the proposed amendment is located wholly or partially in an Area of Consistency (as shown in the ABC Comp Plan, as amended), the applicant has demonstrated that the new zone would clearly reinforce or strengthen the established character of the surrounding Area of Consistency and would not permit development that is significantly different from that character. The applicant must also demonstrate that the existing zoning is inappropriate because it meets any of the following criteria:
1. There was typographical or clerical error when the existing zone district was applied to the property.
  2. There has been a significant change in neighborhood or community conditions affecting the site.
  3. A different zone district is more advantageous to the community as articulated by the ABC Com Plan, as amended (including implementation of patterns of land use, development density and intensity, and connectivity), and other applicable adopted City plan(s).
- 6-7(F)(3)(c) If the proposed amendment is located wholly in an Area of Change (as shown in the ABC Comp Plan, as amended) and the applicant has demonstrated that the existing zoning is inappropriate because it meets at least one of the following criteria:
1. There was typographical or clerical error when the existing zone district was applied to the property.
  2. There has been a significant change in neighborhood or community conditions affecting the site that justifies this request.
  3. A different zone district is more advantageous to the community as articulated by the ABC Comp Plan, as amended (including implementation of patterns of land use, development density and intensity, and connectivity), and other applicable adopted City plan(s).
- 6-7(F)(3)(d) The zone change does not include permissive uses that would be harmful to adjacent property, the neighborhood, or the community, unless the Use-specific Standards in Section 16-16-4-3 associated with that use will adequately mitigate those harmful impacts.

- 6-7(F)(3)(e) The City's existing infrastructure and public improvements, including but not limited to its street, trail, and sidewalk systems meet 1 the following requirements:
1. Have adequate capacity to serve the development made possible by the change of zone.
  2. Will have adequate capacity based on improvements for which the City has already approved and budgeted capital funds during the next calendar year.
  3. Will have adequate capacity when the applicant fulfills its obligations under the IDO, the DPM, and/or an Infrastructure Improvements Agreement.
  4. Will have adequate capacity when the City and the applicant have fulfilled their respective obligations under a City-approved Development Agreement between the City and the applicant.
- 6-7(F)(3)(f) The applicant's justification for the requested zone change is not completely based on the property's location on a major street.
- 6-7(F)(3)(g) The applicant's justification is not based completely or predominantly on the cost of land or economic considerations.
- 6-7(F)(3)(h) The zone change does not apply a zone district different from surrounding zone districts to one small area or one premises (i.e. create a "spot zone") or to a strip of land along a street (i.e. create a "strip zone") unless the change will clearly facilitate implementation of the ABC Comp Plan, as amended, and at least one of the following applies:
1. The area of the zone change is different from surrounding land because it can function as a transition between adjacent zone districts.
  2. The site is not suitable for the uses allowed in any adjacent zone district due to topography, traffic, or special adverse land uses nearby.
  3. The nature of structures already on the premises makes it unsuitable for the uses allowed in any adjacent zone district.

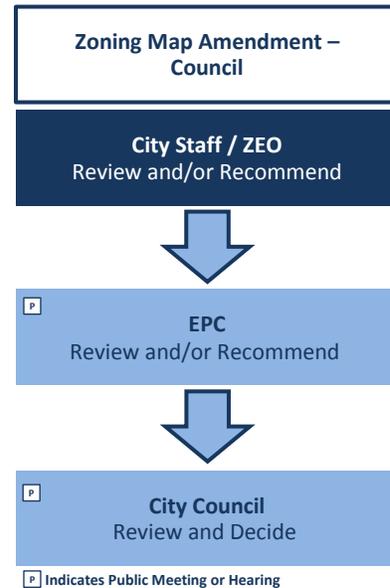
**6-7(G) ZONING MAP AMENDMENT – COUNCIL**

All applicable provisions of Section 14-16-6-4 (General Procedures) apply unless specifically modified by the provisions of this Subsection 14-16-6-7(G).

**6-7(G)(1) Applicability**

This Subsection 14-16-6-7(G) applies to any of the following:

- 6-7(G)(1)(a) An application that would amend the Official Zoning Map to change 10 gross acres of land or more located wholly or partially in an Area of Consistency (as shown in the ABC Comp Plan, as amended) or 20 gross acres of land or more in any zone district located entirely in an Area of Change (as shown in the ABC Comp Plan, as amended) to a different zone district.



- 6-7(G)(1)(b) An application that would create or amend the text and/or boundaries of any Overlay zone other than an HPO zone.
- 6-7(G)(1)(c) An application for a Zoning Map Amendment – EPC for which a protest of the final action has been received that meets all of the following criteria:
  1. All of the equitable owners of land that comprises at least 20 percent of the area proposed for change or 20 percent of the area within 100 feet (excluding public right-of-way) of the area proposed for change have protested in writing the proposed amendment to the Official Zoning Map.
  2. The persons filing the protest have shown that this Subsection 14-16-6-7(G)(1)(c) applies through clear and convincing evidence.
- 6-7(G)(1)(d) An application to amend the Official Zoning Map by any entity other than the City may not be submitted within 12 consecutive months after the date of final action by the City denying or approving (with or without conditions) a prior application to amend the Official Zoning Map with the same requested change.

**6-7(G)(2) Procedure**

- 6-7(G)(2)(a) City Planning Department staff shall review the application, including any specific regulations applicable to a proposed Overlay zone, and forward a recommendation to the EPC pursuant to all applicable provisions of Section 14-16-6-4 (General Procedures).
- 6-7(G)(2)(b) The EPC shall conduct a public hearing on the application and shall make a recommendation to the City Council pursuant to all applicable provisions of Section 14-16-6-4 (General Procedures).

- 6-7(G)(2)(c) The City Council shall conduct a public hearing and make a decision on the application pursuant to all applicable provisions of Section 14-16-6-4 (General Procedures).
- 6-7(G)(2)(d) If the application is for a zone change to the NR-BP zone district, an associated Master Development Plan shall be reviewed and decided simultaneously, pursuant to all applicable provisions of Subsection 14-16-6-6(F) (Master Development Plan). A denial of either requested action shall result in denial of all associated requests.
- 6-7(G)(2)(e) If the application is for the creation of a PC zone district, a Framework Plan shall be reviewed and decided simultaneously and the approved Framework Plan shall be binding on future development on all property within the PC zone district.
- 6-7(G)(2)(f) If the application is for a zone change to an MX-FB, NR-SU, or PD zone district, the associated Site Plan – EPC shall be reviewed and decided simultaneously pursuant to all applicable provisions of Section 14-16-6-6(H) (Site Plan – EPC). A denial of either requested action shall result in the denial of all associated requests.
- 6-7(G)(2)(g) The City shall provide a zoning certificate to the applicant that documents the new zone district designation.
- 6-7(G)(2)(h) If a protest has been received pursuant to Subsection 14-16-6-7(G)(1)(c), the application shall be processed as a Zoning Map Amendment – Council.
1. The final action of the EPC becomes the recommendation to Council.
  2. The application may only be approved if a majority of the membership of the City Council vote to approve the request.

### **6-7(G)(3) Review and Decision Criteria**

An application for a Zoning Map Amendment – Council shall be approved if it meets all of the following criteria, as applicable:

- 6-7(G)(3)(a) The criteria for approval of a Zoning Map Amendment – EPC in Subsection 14-16-6-7(F)(3).
- 6-7(G)(3)(b) If the application is for the creation or amendment of an NR-BP zone district, all of the following criteria:
1. The NR-BP zone district and Master Development Plan will result in an internally coordinated system of land uses, development intensities, and open spaces that is more consistent with the adopted ABC Comp Plan, as amended, that is visually more attractive to surrounding areas, and that promotes economic development of the City better, than could be achieved without the NR-BP zone district.
  2. The NR-BP zone district and Master Development Plan will result in street, circulation, open space, and storm drainage systems that connect and integrate with the City's existing systems.

3. The City and other service providers have adequate infrastructure and public service capacity to serve the proposed development without decreasing service quality to existing City residents or increasing financial burdens on existing City residents, or the applicant has made adequate financial commitments to ensure this result.

6-7(G)(3)(c) If the application is for the creation or amendment of a PC zone district, all of the following requirements must be met:

1. The proposed amendment and related Framework Plan meet any criteria for approval for a Planned Community adopted by City Council.
2. The Framework Plan for the property will result in street, circulation, open space, and storm drainage systems that connect and integrate with the City’s existing system.
3. The Framework Plan for the property accommodates reasonably anticipated growth of the City in a manner that is more consistent with the ABC Comp Plan, as amended, than the accommodation of such growth that could be achieved without the PC zone district.
4. The City and other service providers have adequate infrastructure and public service capacity to serve the proposed development without decreasing service quality to existing City residents or increasing financial burdens on existing City resident, or the applicant has made adequate financial commitments to ensure this result.

## 6-8 NONCONFORMITIES

### 6-8(A) PURPOSE

The purpose of this Section 14-16-6-8 is to regulate land uses, buildings, lots, signs, and site features that were legally established, but that do not conform to the requirements of this IDO due to some action of the government (collectively “nonconformities”). These regulations are intended to reduce or eliminate over time any nonconformity that does not meet the regulatory standards of the IDO and/or the goals of the ABC Comp Plan, as amended, and that creates adverse impacts on the surrounding area or the city.

### 6-8(B) APPLICABILITY

#### 6-8(B)(1) General Applicability

The regulations in this Section 14-16-6-8 apply to land uses, buildings, lots, signs, and site features, including:

- 6-8(B)(1)(a) Those that were legally established prior to the effective date of this IDO but that become nonconforming due to the adoption of this IDO.
- 6-8(B)(1)(b) Those that were legally established after the effective date of this IDO but that become nonconforming due to the adoption of a future amendment to this IDO.

#### 6-8(B)(2) Authority to Continue

##### 6-8(B)(2)(a) General Nonconformities

Nonconformities that in general do no harm to the surrounding area may be allowed to continue or expand based on the regulations and criteria of this Section 14-16-6-8 in order to preserve the integrity of a neighborhood and prevent adverse impacts resulting from unused buildings or vacant lots.

##### 6-8(B)(2)(b) Timeframes for Compliance

Where the IDO establishes timeframes for compliance, the effective date of this IDO shall mark the beginning of the timeframe, unless specified otherwise in this IDO or another adopted City Ordinance in ROA 1994.

##### 6-8(B)(2)(c) Nonconforming Use of Land or a Structure in the APO Zone

Notwithstanding Subsections (a) and (b) above, the City shall not grant any permit or approval under this IDO that would allow a nonconforming use of a parcel of land or a structure to become a greater hazard or obstruction to air navigation than it was on the effective date of this IDO or any relevant amendments to this IDO.

### 6-8(C) NONCONFORMING USES

#### 6-8(C)(1) Authority to Continue

Unless specified otherwise in this Section 14-16-6-8 or elsewhere in this IDO, the nonconforming use of land or a structure shall be allowed to continue regardless of any change in ownership or occupancy of the use, until that use is discontinued or another provision of this Section 14-16-6-8 requires the termination of the use.

**6-8(C)(2) Discontinuance of Nonconforming Use**

- 6-8(C)(2)(a) Except as noted in Subsection (b) below, when a nonconforming use of land or a structure is discontinued for a period of 24 consecutive months, any later use shall only be an allowable use as indicated in Table 4-2-1 for the zone district in which the property is located.
- 6-8(C)(2)(b) When a nonconforming residential use of a single-family detached dwelling located in any Non-residential zone district is discontinued for a period of 5 consecutive years, any later use shall only be an allowable use as indicated in Table 4-2-1 for the zone district in which the property is located.
- 6-8(C)(2)(c) Neither the intention of the owner nor that of anybody else to use a lot or part of a lot for any nonconforming use, nor the fact that the lot or part of a lot may have been used by a makeshift nonconforming use shall prevent the ZEO from determining that the use has been discontinued for purposes of this Subsection 14-16-6-8(C)(2).

**6-8(C)(3) Expansion of Nonconforming Use**

A nonconforming use of land or a structure shall not be expanded, except that the portion of a structure or land containing a nonconforming use may be expanded in size if approved by the ZHE pursuant to Subsection 14-16-6-6(C).

**6-8(C)(4) Change in Nonconforming Use**

A nonconforming use of land or a structure may be changed to another use equally or more restrictive than the immediately preceding nonconforming use, as determined by the ZEO.

**6-8(C)(5) Helipads**

A helipad shown on a Site Plan approved by the EPC prior to March 5, 2000, shall be deemed conforming.

**6-8(C)(6) Mobile Home Dwellings**

- 6-8(C)(6)(a) A single mobile home dwelling on an individual lot outside of the R-MC zone district is a nonconforming use and shall be removed within 5 years.
- 6-8(C)(6)(b) A nonconforming use of land and incidental structures consisting of a mobile home development may remain for the life of the structures, which shall never be more than 30 years, but only if all of the following provisions apply:
1. This use does not cease operation for a period of 12 consecutive months.
  2. Any private street system servicing the mobile home dwellings is paved at least to a standard approved by the City Engineer according to the applicable standards of this IDO and related DPM standards and criteria, even though there may be no new subdivision.

3. Mobile home dwellings are skirted with materials similar in appearance and durability to the siding of the mobile home, or the unit is situated at ground level, within 2 years of the use becoming nonconforming.

6-8(C)(6)(c) Any additional development on a lot that includes 1 or more mobile home dwellings shall conform to the regulations in this IDO.

6-8(C)(6)(d) For changes of use or rezoning of developments that include mobile homes associated with bringing those developments into conformity that will result in expiration or termination of resident occupancy, see Subsection 14-16-2-3(C)(3) (R-MC Zone District Standards).

## 6-8(D) NONCONFORMING STRUCTURES

### 6-8(D)(1) Authority to Continue

Unless specified otherwise in this Section 14-16-6-8, a nonconforming structure shall be allowed to continue to be used, regardless of any change in ownership or occupancy of the structure, until the structure is vacant for 24 consecutive months, or until another provision of this Section 14-16-6-8 requires the termination of the use. Mobile home dwellings are subject to provisions in Subsection 14-16-6-8(C)(6) (Mobile Home Dwellings). Signs are subject to provisions in Subsection 14-16-6-8(F) (Nonconforming Signs).

### 6-8(D)(2) Repair and Maintenance

A nonconforming structure may be maintained, repaired, or altered, but no maintenance, repair, or alteration may increase the extent of nonconformance.

### 6-8(D)(3) Height Nonconformance

A structure nonconforming as to height regulations cannot be added to or enlarged unless the addition or enlargement conforms to all the regulations of the zone district in which it is located.

### 6-8(D)(4) Setback Nonconformance

A structure nonconforming as to setback regulations cannot be added to or enlarged unless the addition conforms to all the regulations of the zone district in which the structure is located.

### 6-8(D)(5) Expansion of Nonconforming Structure

A nonconforming structure may be expanded in size, provided that the expansion will not increase an existing nonconformity or create a new nonconformity, if approved by the ZHE pursuant to Subsection 14-16-6-6(C).

### 6-8(D)(6) Relocation of Nonconforming Structure

A nonconforming structure may be moved in whole or in part to another location on the lot, provided that the moving will make it nonconforming to a lesser extent.

### 6-8(D)(7) Damage

A nonconforming structure that is damaged through natural or other causes may be restored, provided the restoration is started within 6 months of the

damage and is continued diligently to completion, unless the ZEO determines that the continued use of the structure creates a significant threat to public health or safety, even after repairs that meet the requirements in Articles 14-1 and 14-3 of ROA 1994 (Uniform Administrative Code and Uniform Housing Code) are made.

#### **6-8(D)(8) Walls and Fences**

6-8(D)(8)(a) A nonconforming wall or fence may remain for the life of the structure, except that a wall or fence nonconforming because it is in a clear sight triangle may remain only if the City Engineer gives and does not withdraw a written opinion that the wall or fence is not a traffic hazard.

6-8(D)(8)(b) Walls or fences partially or wholly constructed of barbed tape, barbed wire, razor wire, or similar materials where these materials are not allowed pursuant to Subsection 14-16-5-7(E)(1)(c) are considered illegal and must be removed within the timeframe specified by the Code Enforcement Division of the City Planning Department in notice provided to the property owner.

#### **6-8(D)(9) Airport Protection Overlay (APO) Zone**

6-8(D)(9)(a) Whenever the ZEO determines that a nonconforming structure located in the APO has been abandoned or that more than 80 percent of the structure has physically deteriorated, decayed, or demolished, such structure or obstruction shall be discontinued, demolished, and removed by the owner.

6-8(D)(9)(b) No permit shall be granted that would allow a permanent or temporary nonconforming structure to exceed the applicable height limit or otherwise deviate from standards in Section 14-16-3-3 (Airport Protection Overlay Zone) or any other applicable standards of this IDO.

#### **6-8(E) NONCONFORMING LOTS**

6-8(E)(1) A lot that does not meet minimum lot size or width requirements for the zone district where it is located, particularly Subsection 14-16-5-1(C)(2) (Contextual Residential Development in Areas of Consistency), may be used without a Variance if the lot was legally created and placed on the records of the County and the use of the property is permissive, has an approved conditional use, or is legally nonconforming. At least 1 of the following must also apply:

6-8(E)(1)(a) The existing structure(s) on the property is allowed or legally nonconforming.

6-8(E)(1)(b) Any new structure or outdoor use proposed for the lot meets all of the following conditions:

1. Complies with the dimensional standards for the zone district where the lot is located to the maximum extent practicable.
2. Does not exceed the maximum building height allowed in the zone district where the lot is located.

3. Does not include any encroachments that would not be allowed pursuant to Table 5-1-4.

6-8(E)(1)(c) Lots legally nonconforming to minimum lot width in the R-MH zone district may be developed governed by the R-T zone in all respects; no Variance is required for such development.

## 6-8(F) NONCONFORMING SIGNS

### 6-8(F)(1) Authority to Continue

6-8(F)(1)(a) A nonconforming sign shall be allowed to continue in use, regardless of any change in ownership or occupancy of the structure, for the life of the physical sign structure in the size, height, lighting/illumination type, and configuration that existed at the time it became nonconforming, unless Subsection (b) below applies.

6-8(F)(1)(b) If 1 or more of the signatories to a Joint Sign Premises agreement withdraws from the agreement, the sign automatically becomes illegal and is subject to the provisions of Subsection 14-16-6-9(C) (Enforcement).

### 6-8(F)(2) Repair and Maintenance

A nonconforming sign may be maintained, repaired, or altered, but no maintenance, repair, or alteration may increase the extent of nonconformance.

### 6-8(F)(3) Modification

6-8(F)(3)(a) Any modification of size, height, lighting/illumination type, or configuration or any replacement of the sign face shall conform to all requirements of Section 14-16-5-12 (Signs) and all other applicable requirements of this IDO.

6-8(F)(3)(b) Conversion of a non-electronic nonconforming sign to an electronic sign is not allowed unless the erection of a new electronic sign with the same size, height, and configuration as the nonconforming sign in that location would be allowed under Subsection 14-16-5-12(H) (Electronic Signs).

## 6-8(G) NONCONFORMING SITE FEATURES

### 6-8(G)(1) Authority to Continue

Except for property acquired by government entities (addressed in Subsection 14-16-6-8(H)), a parcel of land that does not comply with the standards of this IDO in Sections 14-16-5-3 (Access and Connectivity); 14-16-5-5 (Parking and Loading); 14-16-5-6 (Landscaping, Buffering, and Screening); 14-16-5-7 (Walls and Fences); 14-16-5-8 (Outdoor Lighting); or 14-16-5-9 (Neighborhood Edges), except for the Building Height Stepdown provision, may continue to be used and occupied, and uses may be changed or expanded as allowed by other provisions of this Section 14-16-6-8, notwithstanding those nonconformities, unless and until the gross square footage of the primary building on the parcel is expanded pursuant to the criteria in Subsection 14-16-6-6(C) (Expansion of Nonconforming Use or Structure), at which time any portion of the parcel

affected by the expansion shall be brought into compliance with any relevant standards in the Sections listed above in this provision.

**6-8(G)(2) Landscaping in the APO Zone**

No native vegetation or landscaping in the APO zone shall be allowed to exceed the applicable height limit or otherwise deviate from standards in Section 14-16-3-3 (Airport Protection Overlay Zone) or any other applicable standards of this IDO.

**6-8(G)(3) Front Yard Parking**

Parking on areas other than allowed pursuant to Subsection 14-16-5-5(F)(1)(a)6 is illegal, and such parking must be discontinued within the timeframe specified by Code Enforcement in notice provided to the property owner, with the following exceptions:

**6-8(G)(3)(a) Front Yard Parking Areas in Existence Prior to June 17, 2007**

1. Front yard parking areas that do not satisfy the requirements of this IDO that were improved for and specifically dedicated to use as a front yard parking area prior to June 17, 2007 (when City Council adopted O-07-61, which first regulated front yard parking), and that otherwise satisfied the requirements of all applicable regulations in place at the time of their installation, may continue to be used for as a front yard parking areas pursuant to the provisions of this IDO governing nonconforming uses and structures.
  - a. For the purpose of this Subsection 14-16-6-8(G)(3), “improvements” include only impervious surfaces, including but not limited to concrete, asphalt, or all-weather pervious services surfaces such as recycled asphalt or driveway gravel (as distinguishable from landscape gravel). In order to enjoy non-conforming status under this Section 14-16-6-8, any such improvements must have been installed for and be suitable for the specific purpose of front yard parking and maneuvering.
  - b. Where a residential unit has an existing, improved front yard parking area, parking on unimproved surfaces such as dirt, grass, or landscape areas, or on surfaces that were improved for any purpose other than front yard parking, including but not limited to decorative gravel areas, patios, or pedestrian walkways, must be discontinued regardless of the year of development of the property or improvement.
2. Where an existing residential unit lacks an improved front yard parking area, and improved front yard parking areas were not required at the time of the unit’s initial development, such residential unit may continue to use a portion of the front yard for parking subject to the size and area limitations in Subsection 14-16-5-5(F)(2)(a)1.

**6-8(G)(3)(b) Lawful Improvements Installed between June 17, 2007 and the Effective Date of this IDO.**

Front yard parking areas that do not satisfy the requirements of this IDO but that satisfied the requirements of all applicable regulations in place between June 17, 2007 and the effective date of this IDO may continue to be used for front yard parking pursuant to this Section 14-16-6-8.

**6-8(H) PROPERTY ACQUISITION BY GOVERNMENT ENTITIES**

No property shall be considered nonconforming solely because it fails to meet applicable lot size or dimensional standards if the reason for those failures is the acquisition of part of the property by an exercise of eminent domain or a transfer to a governmental body as an alternative to an exercise of eminent domain.

## 6-9 VIOLATIONS, ENFORCEMENT, AND PENALTIES

### 6-9(A) PURPOSE

This Section 14-16-6-9 describes what is a violation of this IDO, how the standards and requirements of this IDO will be enforced, and what penalties the City may impose for different types of violations of this IDO.

### 6-9(B) VIOLATIONS

The following activities and actions are a violation of this IDO and are subject to the enforcement and penalty provisions of this IDO and Section 1-1-99 of ROA 1994 (General Penalty):

- 6-9(B)(1) A building or structure erected, constructed, reconstructed, altered, repaired, converted, or maintained in violation of this IDO.
- 6-9(B)(2) Any building, structure, or land used in violation of this IDO.
- 6-9(B)(3) Providing false or misleading information in an application for any permit or approval.
- 6-9(B)(4) Failure to comply with the terms or conditions attached to any permit or approval issued pursuant to this IDO.
- 6-9(B)(5) Dividing or re-dividing land within the City into lots for sale or development without an approval required by this IDO or recording any plat that has not been approved by the City pursuant to this IDO with the County Clerk.
- 6-9(B)(6) Transferring or conveying a parcel created by subdivision without the approval of a final plat of such subdivision and recording that plat with the County Clerk, unless the parcel resulted from an exercise of eminent domain or purchase under threat of an exercise of eminent domain. Public agencies shall record plats reflecting acquisitions and transfer of parcels resulting from an exercise of eminent domain or purchase under threat of an exercise of eminent domain within 6 months of the decision by the court or the purchase, as applicable.
- 6-9(B)(7) Grading or other alteration of a site without meeting the following requirements, as applicable:
  - 6-9(B)(7)(a) Approval of a preliminary plat, if the grading or site alteration is related to a proposed subdivision.
  - 6-9(B)(7)(b) Approval of a drainage plan or report, or a determination by the City Engineer that no such plan or report is required.
  - 6-9(B)(7)(c) Compliance with the provisions of a drainage plan or drainage report or to the requirements of a preliminary or final plat, approved pursuant to this IDO.
  - 6-9(B)(7)(d) Obtaining all required permits pursuant to Part 9-5-1 of ROA 1994 (Air Quality Control Board).
- 6-9(B)(8) Failure to immediately cease demolition, development, or land disturbance activity upon the discovery of an archaeological resource.
- 6-9(B)(9) Failure to pay any required impact fees as specified by Article 14-19 of ROA 1994 (Impact Fees) and any associated procedures in the DPM.

**6-9(C) ENFORCEMENT****6-9(C)(1) Authority to Enforce**

- 6-9(C)(1)(a) The ZEO has the authority and duty to enforce this IDO pursuant to Subsection 14-16-6-2(B)(1)(c) (Zoning Enforcement Officer).
- 6-9(C)(1)(b) A permit, license, or certificate issued in conflict with the provisions of this IDO is void.
- 6-9(C)(1)(c) In enforcing the requirements of this IDO the City may use any enforcement powers allowed by the State of New Mexico, in any order. The choice of one method of enforcement does not foreclose the City from pursuing others later if the violation is not remedied.
- 6-9(C)(1)(d) Without limiting the generality of Subsection (c) above, the City may enforce this IDO through any of the following powers:
1. To institute proceedings to prevent the unlawful action.
  2. To deny, delay, or withhold permits and approvals.
  3. To revoke permits and approvals after giving the property owner or applicant notice of intent to revoke the permit or approval.
  4. To issue a stop work order requiring that all work on a property or structure or operation of a use that is in violation of this IDO cease, or if a violation is suspected but not known, then until the existence or absence of the violation can be confirmed.
  5. To require the immediate abatement of any use or the vacation or removal of a structure that creates a threat to the public health and safety or to the health and safety of those in or around the use or structure.
  6. To order the removal of any sign or violating portion of a sign that is erected or maintained in violation of this IDO.
    - a. At least 10 consecutive days' notice in writing shall be given to the owner of such sign, or of the structure or premises on which such sign is located, to remove the sign or to bring it into compliance with this IDO.
    - b. Upon failure to remove the sign or to comply with this notice, the ZEO shall have the sign removed.
    - c. Any cost of removal incurred by the City shall be assessed to the owner of the property on which such sign is located and may be collected in the manner of ordinary debt or in the manner of taxes, and such charge shall be a lien on the property.
  7. To terminate all or part of a Site Plan where the applicant has used the property or constructed improvements in violation of the terms and conditions attached to an approved Site Plan.

- a. If an approved Site Plan has been partially developed, the termination shall only apply to the undeveloped portion of the property, and any termination of a part of the Site Plan shall not adversely affect or impose additional requirements on the developed parcels.
  - b. Termination of all or part of a Site Plan does not preclude approval of a similar plan at a later date.
  - c. If a Site Plan is terminated, the City shall review applicable Infrastructure Improvements Agreements or development agreements to determine necessary amendments to such agreements and/or release of any financial guarantee pursuant to Section 14-16-6-4(Q) (Required Improvements and Financial Assurance).
8. To terminate all or part of a Master Development Plan where constructed improvements are in violation of the terms and conditions attached to an approved Master Development Plan, pursuant to provisions a through c in Subsection 14-16-6-9(C)(1)(d)7 for a Site Plan above.
9. To impose civil and criminal penalties as allowed by New Mexico law.

**6-9(C)(2) Notice and Timing of Enforcement**

- 6-9(C)(2)(a) The City shall attempt to give the property owner, agent, or occupant of a parcel of land or a building that contains a violation of this IDO written notice of the violation and a reasonable amount of time to cure the violation.
- 6-9(C)(2)(b) The property owner, agent, or occupant may request additional time (beyond that allowed by this IDO or the notice of violation) to cure a violation, and the ZEO may approve additional time to cure for good cause shown.

**6-9(C)(3) Inspectorial Searches by Consent**

- 6-9(C)(3)(a) Within the scope of his/her authority, the ZEO or authorized zoning inspectors may conduct an inspectorial search, with the voluntary consent of an occupant or custodian of the premises or vehicles to be inspected, who reasonably appears to the ZEO or the inspector to be in control of the places to be inspected or otherwise authorized to give such consent.
- 6-9(C)(3)(b) Before requesting consent for an inspectorial search, the ZEO or inspector shall inform the person to whom the request is directed of the authority under and purposes for which the inspection is to be made and shall, upon demand, exhibit an identification card or official City document evidencing their authority to make such inspections.
- 6-9(C)(3)(c) Inspections undertaken pursuant to this Subsection 14-16-6-9(C)(3) shall be carried out with due regard for the convenience and privacy of the occupants, and during the daytime unless,

because of the nature of the premises, the convenience of the occupants, the nature of the possible violation or other circumstances, there is a reasonable basis for carrying out the inspection at night.

- 6-9(C)(3)(d) Unless advance notice would be likely to cause the suspected violation to be temporarily eliminated so as to frustrate enforcement, notice of the purpose and approximate time of an inspectorial search of an area not open to the general public shall be sent to the occupants or custodians of premises or vehicles.

#### **6-9(C)(4) Inspectorial Searches without Consent**

6-9(C)(4)(a) Upon sufficient showing that required consent to an inspectorial search has been refused or is otherwise unobtainable within a reasonable period of time, the ZEO may make application to the district court for an inspection order/search warrant. Such application shall be made to a district court having jurisdiction over the premises or vehicle to be searched. Such application shall set forth the following information:

1. The particular vehicle(s), premises, or portion of a vehicle or premises sought to be inspected.
2. That the owner or occupant of the premises or vehicle(s), has refused entry.
3. That inspection of the premises or vehicle(s) is necessary to determine whether they comply with the requirements of this IDO.
4. Any other reason necessitating the inspection, including knowledge or belief that a particular condition exists in the premises or vehicle(s) which constitutes a violation of this IDO.
5. That the ZEO or inspector is authorized by the City to make the inspection.

6-9(C)(4)(b) The application shall be granted and the inspection order/search warrant issued upon a sufficient showing that inspection in the area in which the premises or vehicles in question are located, or inspection of the particular premises or vehicles, is in accordance with reasonable legislative or administrative standards, and that the circumstances of the particular inspection for which application is made are otherwise reasonable. The district court shall make and keep a record of the proceedings on the application and enter thereon its finding in accordance with the requirements of this section.

6-9(C)(4)(c) The ZEO or inspector executing the inspection order/search warrant shall, if the premises or vehicle in question are unoccupied at the time of execution, be authorized to use such force as is reasonably necessary to enter and make the inspection.

6-9(C)(4)(d) After execution of the order or after unsuccessful efforts to execute the order, as the case may be, the ZEO shall return the

order to the district court with a sworn report of the circumstances of execution or failure to execute the order.

**6-9(C)(5) Disclaimer**

This IDO shall not be construed to hold the City or its authorized representatives responsible for any damage to persons or property by reason of the inspection or re-inspection authorized by this IDO, or failure to inspect or re-inspect, or the issuance of a building permit authorized by this IDO, the DPM, or other adopted City regulations.

**6-9(D) PENALTIES**

- 6-9(D)(1) Any person, firm, or corporation violating any provision of this IDO, or any amendments to it, shall be subject to the penalty provisions set forth in Section 1-1-99 of ROA 1994 (General Penalty) or in any resolution of City Council establishing those penalties.
- 6-9(D)(2) Each day this IDO is violated shall be considered a separate offense.
- 6-9(D)(3) The City may, in its discretion, waive financial penalties for periods before violation is cured or may condition such waivers on prompt cure of the violation. Any waiver of penalties shall be accompanied by a written rationale for the waiver.

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