

# CITY OF ALBUQUERQUE



**PLANNING DEPARTMENT**  
**URBAN DESIGN & DEVELOPMENT DIVISION**  
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## OFFICIAL NOTIFICATION OF DECISION

April 14, 2016

City of Albuquerque  
Council Services  
One Civic Plaza NW  
9th Floor, Suite 9087  
Albuquerque, NM 87102

**Project# 1001620**  
16EPC-40014 Amendment to Chapter 14 ROA 1994-  
Zoning, Planning and Building

### LEGAL DESCRIPTION:

The above action to add a new article (Article 20) to Chapter 14 ROA 1994, Zoning, Planning and Building, to be known as the Vacant Commercial Buildings Ordinance. City-wide. Staff Planner: Catalina Lehner

PO Box 1293 On April 14, 2016 the Environmental Planning Commission (EPC) voted to forward a recommendation of DENIAL of Project #1001620/16EPC-40014, a proposed new Article to regulate vacant commercial buildings, based on the following findings:

### Albuquerque FINDINGS:

1. The request is for a recommendation to City Council regarding the addition of a proposed new article (Article 20) to Chapter 14- Zoning, Planning & Building, Revised Ordinances of Albuquerque (ROA) 1994 to allow the regulation of vacant commercial buildings. The proposed new article would apply City-wide.
2. Vacant commercial buildings would be defined as non-residential buildings that have not been lawfully occupied or subject to any construction activity for three consecutive months. Vacant commercial buildings would be required to be maintained, monitored, and secured. The building owner, or a responsible party, would be required to register the building and pay an associated fee within 30 days of it becoming vacant or assuming ownership. Liability insurance would also be required.
3. The proposed new article is found in legislation authored by Council Services Staff and known as Bill No. O-16-11. O-16-11 was introduced at City Council on February 17, 2016 and subsequently referred to the Planning Department for review. The EPC's task is to make a recommendation to the City Council regarding the proposed new article. The City Council is the City's Zoning Authority and will make the final decision.
4. The Albuquerque/Bernalillo County Comprehensive Plan and the Revised Ordinances of Albuquerque (ROA) 1994 are incorporated herein by reference and made part of the record for all

**OFFICIAL NOTICE OF DECISION**

Project #1001620/16EPC-40014

April 14, 2016

Page 2 of 5

purposes.

**5. Intent of the City Charter:**

Adding a new article to the ROA 1994 to allow regulation of vacant commercial buildings is an exercise in local self-government (City Charter, Article 1). Establishing regulations to require maintenance, security, and registration of vacant commercial buildings generally expresses the Council's desire to ensure the proper use and development of land (City Charter, Article IX). The proposed new article would generally help promote and maintain an aesthetic and humane urban environment and would apply City-wide.

**6. The request generally furthers the following, applicable Comprehensive Plan Goals:**

**A. Developing and Established Urban Areas Goal:** The proposed new article would generally contribute to a quality urban environment because it would require the maintenance and registration of vacant commercial buildings, which would help create a visually pleasing built environment. However, it would not apply retroactively to commercial properties that were already vacant as of the ordinance's effective date. Buildings that become vacant after that time would have to be registered. Though it may not have a significant effect in some areas, the Goal is generally furthered.

**B. Developed Landscape Goal:** In general, the proposed new article would help maintain and improve the quality of the developed landscape because it would require that vacant commercial buildings be maintained and repaired so that they appear to be in a good condition and are safe.

**7. The request generally furthers the Public Safety Goal and Public Safety Policy II.D.9d.** The proposed new article would generally help support development of a safe and secure community since it would address vacant buildings that have become a problem due to being improperly maintained or in a state of disrepair (Goal). Similarly, addressing such vacant buildings would generally help continue and improve crime prevention efforts (Policy II.D.9d).

**8. Most of what is contained in the proposed new article is already found in ROA 1994.** Regulations that address the removal of weeds and refuse, securing of doors, windows and openings, maintaining building exteriors, and removing graffiti, are found in the Weed & Anti-Litter Ordinance (§9-8-1 ROA 1994), the Uniform Administrative Code (106.4), the International Existing Building Code (Sections 115-117), the Zoning Code, and the Graffiti Vandalism Ordinance (Article 1, Chapter 11- Nuisance Abatement).

**9. The Planning Department would be required to develop a system to administer and enforce the proposed legislation.** Three requirements would have to be tracked for each vacant commercial building: the thirty day period to register a vacant commercial building, the no more than three consecutive months that a building is allowed to be vacant, and the no more than 180 days in one year that a vacant commercial building can be boarded up. More often than not, however, it won't be possible to know exactly when a commercial building became vacant and building owners are not likely to self-report, especially knowing that penalties such as fees and enforcement actions could result.

**OFFICIAL NOTICE OF DECISION**

**Project #1001620/16EPC-40014**

**April 14, 2016**

**Page 3 of 5**

10. In addition to fees and violations, three requirements would have to be tracked: the thirty day period to register a vacant commercial building, the no more than three consecutive months that a building is allowed to be vacant, and the no more than 180 days in one year that a vacant commercial building can be boarded up. More often than not, however, it won't be possible to know exactly when a commercial building became vacant.
11. The proposed legislation is likely to be invoked on an "as reported" basis. Individuals could report vacant commercial buildings if they become concerned about a building's state of disrepair, appearance or a safety issue. It is unfeasible for Staff to patrol the entire City looking for commercial buildings that have just become vacant. Even supposing this is possible, there would not be a way to know by a site visit if the building became vacant that same day, yesterday or months ago.
12. As of its effective date, the proposed new article would be an unfunded mandate. Though proposed language states that the Council will work with the Administration during Fiscal Year 2017 to fund adequate code enforcement staff, funding is not guaranteed and adequate is undefined. Furthermore, the costs of implementing the legislation are not limited to staffing and could be considerable. Additional funds would be needed for demolition of commercial buildings, which can be quite expensive. The proposed fees would be insufficient to off-set implementation costs.
13. The proposed new article (Article 20) would establish an appeal procedure, using an independent hearing officer, to settle instances of non-compliance when there is a disagreement about a Notice of Violation. The proposed new article would not create criminal complaints because it would not be part of the Zoning Code (Article 16 of Chapter 14), which is a criminal code.
14. The proposed legislation would require that the Code Enforcement Division of the Planning Department administer and enforce the new regulations, but without any additional resources to make implementation possible and consistent. As of its effective date, the proposed new article would be another unfunded mandate. Though Page 2, Lines 27-30 states that "the City Council will work with the Administration during Fiscal Year 2017" to obtain adequate funding, this is not a guarantee of funding and the Administration may have other priorities.
15. The costs of implementing the proposed new article could be considerable. Additional funds would need to be set aside to cover other City costs, such as demolition, or the money would have to be taken from other portions of the City Budget. Demolishing a commercial building can quickly become very expensive, especially if asbestos or lead-based paint is found. One commercial building, especially if it is old and large, could consume the entire budget and leave no funding to implement the regulations for the remainder of the fiscal year. The proposed fees would not be sufficient to off-set administrative costs or implement the new regulations.
16. The proposed text amendments were announced in the March/April 2016 issue of the Neighborhood News, published by the Office of Neighborhood Coordination (ONC), and at the Planning Department's Development Discussion on February 18, 2016. As of this writing, Staff received one comment from a development company.

**OFFICIAL NOTICE OF DECISION**

**Project #1001620/16EPC-40014**

**April 14, 2016**

**Page 4 of 5**

17. Though comments were not provided in advance of the EPC hearing, a representative of the NAIOP, the Commercial Real Estate Development Association, and others affiliated with this group, provided testimony in opposition to the proposed legislation. Concerns include overall costs, enforceability, vagueness of definitions, and burdensome timelines. Additional concerns are that the proposed legislation does not meet the goal of what's intended and that, since new legislation does not apply retroactively, it would not address existing blighted conditions.
18. Should the City Council disagree with the EPC's recommendation, the EPC suggests that the conditions in the Staff report be included in a C/S version of the proposed legislation.

**PROTEST:** It is not possible to appeal EPC recommendations to the City Council. Rather, a formal protest of the EPC's recommendation can be filed within the 15 day period following the EPC's decision, which in this case is by **APRIL 29, 2016**.

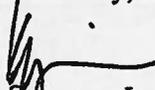
**APPEAL TO THE CITY COUNCIL:** If you wish to appeal a final decision, you must do so in the manner described below. A non-refundable filing fee is required at the time the appeal is filed. For more information regarding the appeal process, please refer to Zoning Code Section 14-16-4-4.

Persons aggrieved with a determination of the EPC, and who have legal standing as defined in Zoning Code Section 14-16-4-4(B)(2), may file an appeal to the City Council by submitting a written application, on Planning Department forms, to the Planning Department within 15 days of the decision. The date the determination in question is not included in the 15-day period for filing an appeal and, if the fifteenth day falls on a Saturday, Sunday or holiday as listed in the Merit System Ordinance, the next working day is considered the deadline for filing the appeal.

Appeals to the City Council are heard by the Land Use Hearing Office (LUHO), who will make a recommendation for approval, denial, or remand to the EPC. The City Council may accept or reject, in whole or in part, the LUHO's recommendation. The City Council has the option of hearing the appeal if it decides to do so. Such appeal, if heard, shall be heard within 45 days of its filing.

You will receive notification if any person files an appeal. If there is no appeal, you can receive building permits, if applicable, any time after the appeal deadline, provided that all conditions imposed at the time of approval have been met. Successful applicants are reminded that other regulations of the City Zoning Code must be complied with, even after approval of the referenced application(s).

Sincerely,

  
For Suzanne Lubar  
Planning Director

SL/CLL

cc: City of Albuquerque, City Council, Attn: Andrew Webb, P.O. Box 1293, Abq. NM 87102  
City of Albuquerque, Planning Department, Attn: Brennon Williams, P.O. Box 1293, Abq. NM 87102

**OFFICIAL NOTICE OF DECISION**

**Project #1001620/16EPC-40014**

**April 14, 2016**

**Page 5 of 5**

**Terrie Hestweck, 2424 Louisiana NE, ABQ, NM 87110**  
**Lynne Andersen, 504 Camino Espanol NW ABQ, NM 87107**  
**Martin Haynes, P.O. Box 9043, ABQ, NM 87119**  
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**David Hassard, 115 Amherst Drive SE, ABQ, NM 87106**  
**Jim Wible, 6801 Jefferson NE #200, ABQ, NM 87109**  
**Dave Hill, 6801 Jefferson NE #200, ABQ, NM 87109**  
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