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# ***RULES OF CONDUCT OF BUSINESS BY THE ENVIRONMENTAL PLANNING COMMISSION***

## **A. ORGANIZATION AND MEETINGS**

1. Annually at the first public hearing on the second Thursday in January, or more frequently at the pleasure of the Environmental Planning Commission (hereafter EPC), the EPC Commissioners present shall elect by majority vote a chair, vice-chair, and any other officers that seem appropriate to the EPC. All officers shall be elected for a term of one year and no officer shall serve more than two consecutive terms in the same position. Should a vacancy in any of these positions occur between regular elections, a special election shall be held to fill the office for the remainder of the term. The special election shall be held at the next EPC meeting for which there has been at least one week notice given to all commissioners regarding the vacancy. For any meeting occurring prior to the special election, Pro-tem officers shall be elected to serve for that meeting only.
2. Regular public hearings on current land use applications shall be on the second Thursday of each month. In the event such a day is a public holiday, the hearing shall be exactly one week later. Special meetings, including hearings, may be scheduled by the EPC Chair at other times when necessary provided that notice is given. Unless otherwise posted, meetings shall be in the Plaza del Sol Hearing Room, Lower Level, 600 2<sup>nd</sup> Street NW.
3. Notice for all meetings of the EPC (including special meetings and public hearings) shall comply with applicable notification requirements specified in the Comprehensive City Zoning Code, including publication of notice 15 days or more prior to the meeting. Continuances and deferrals that are approved by the EPC for a specific hearing date do not require re-advertisement or additional notice.
4. Five Commissioners of the EPC shall constitute a quorum for the transaction of business. Whenever a quorum is not present, no action shall be taken except to adjourn the meeting to the next scheduled public meeting.
5. The EPC has regular study sessions for the purpose of receiving information, hearing presentations, and discussion information one week before the regular public hearing. Also, the Chair may from time to time call special study sessions. No official action shall be taken at study sessions. Presentation of information by staff or discussion relating to any application that is quasi-judicial in nature shall be recorded and such record shall be made available to interested parties; comment and discussion by the public is not allowed. Study sessions shall be open to the public and notice shall be provided as required for EPC meetings.
6. The Chair shall preside at all meetings of the EPC. In the event of the absence or disability of the Chair, the Vice- chair shall preside; in the event of the absence or disability of the Chair and Vice-chair, a Chair Pro Tempore shall be elected by the EPC Commissioners present.
7. The Planning Director shall appoint a staff secretary to receive pertinent exhibits and documents and to record minutes for the EPC.
8. Draft minutes shall be prepared after an EPC hearing and shall be approved, amended or disapproved at the next EPC hearing where a quorum is present. Drafts of such minutes shall be submitted to EPC Commissioners at least one week in advance. The minutes shall include at a minimum the date, time and place of the hearing, the names of Commissioners in attendance

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and those absent, the substance of the proposals considered and a record of any decisions and votes taken, including findings and conditions, that show how each member voted. Minutes shall not become official until approved by the EPC.

9. Copies of these Rules of Conduct shall be available to the public upon request, shall be published on the EPC website, and shall be available in the hearing room at each EPC meeting.

## **B. HEARING PROCEDURES:**

1. The EPC conducts two types of hearings: quasi-judicial proceedings and non-quasi-judicial proceedings.
  - a. Quasi-judicial proceedings are those in which the EPC must provide particularized procedural due process rights to both the applicant and those members of the public with standing. EPC hearings on applications initiated by the owner of a particular property, or by such owner's agent (including, but not limited to, zone changes, site development plans for subdivision, site development plans for building permits or amendments to sector development plans) are most often conducted as quasi-judicial proceedings. Other types of applications may also require quasi-judicial proceedings, as determined on a case-by-case basis.
  - b. Non-quasi-judicial proceedings do not require the same procedural protections as are provided during a quasi-judicial proceeding. Hearings on applications for a recommendation from the EPC to the City Council regarding proposed amendments to city-wide Codes and Ordinances are most often conducted as non-quasi-judicial proceedings. Other types of applications may also not require quasi-judicial proceedings, as determined on a case-by-case basis.
2. Any party may appear on their own behalf or may be represented by an agent. In the absence of any personal appearance on behalf of an applicant, the EPC may proceed with such matter.
3. Any changes to the meeting agenda, barring emergencies or unusual circumstances, shall be announced at the beginning of each meeting and should be posted for the public. The agenda, as amended, shall be approved at the beginning of each meeting and shall be a part of the record of the meeting. There shall be no consent agenda. Applications shall be considered in the order in which they appear on the approved agenda. An approved agenda may be changed at any time by the EPC, for good cause shown, upon motion passed by majority vote.
4. The order of considering an application shall be as follows unless the EPC approves a motion to alter the order of presentation:
  - a. Planning staff presentation
  - b. Applicant's presentation
  - c. Testimony by other concerned parties
  - d. Applicant's response and cross-examination, if any
  - e. Other concerned parties' cross-examination, if any
  - f. Staff response
  - g. Floor is closed
  - h. Chair's summary of the issues (when appropriate)
  - i. Comments by EPC Commissioners
  - j. Motions including findings, and any conditions that may be requiredEPC Commissioners may ask clarifying questions of any speakers at a public hearing at any time prior to closing of the floor. Persons with standing may cross-examine any person speaking at a hearing, as permitted by these rules. The Chair has the discretion to allow additional comment and response while the floor is open.

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5. The Chair is responsible for the management and administration of EPC hearings. At hearings, time limits on presentations and testimony are generally as follows:

- 5 minutes for staff presentation
- 10 minutes for the applicant's presentation
- 2 minutes for each public speaker
- 5 minutes applicant's response
- 5 minutes staff response

Neighborhood groups and other parties are encouraged to select one or more spokespersons to express common viewpoints. The Chair shall determine appropriate time limits under such circumstances and may grant additional time to any speaker as is appropriate. Individual speakers may not cede their speaking time to others.

6. After a staff report is distributed to the Planning Commission, withdrawal of an application requires EPC approval.

7. EPC Motions and Voting

- a. The EPC will vote on motions to approve, defer, continue or deny any matter brought before it. If any such motion fails for lack of a second, such motion dies.
- b. All motions, other than those in 7.a., do not require a second.
- c. A majority vote by the EPC is required to approve any motion, unless otherwise specified in these Rules.
- d. When approving a motion to approve, deny, continue or defer an application, the EPC will adopt findings of fact, based on the record, upon which it has based its decision. The EPC may impose conditions on the approval of an application as may be appropriate under the circumstances.
- e. The EPC may continue or defer a matter to another hearing at the request of staff, an applicant or other interested party or when the EPC determines that additional information is necessary or beneficial to render a decision. When the applicant or his agent or a member of the public is present and objects to continuation or deferral to another day, the affirmative vote of a simple majority of the EPC Commissioners present is required to continue or defer the hearing.
- f. In the event of a tie vote on any motion, only that motion fails. However, if there are motions to approve, deny, continue or defer an application, and all four types of motions end in a tie vote and/or fail, then the application is denied and no findings shall be adopted.
- g. The Chair may vote on any motion, second any motion, and may make any motions except motions to approve, defer, continue or deny a final action.

8. The EPC may continue or defer an application to a later date.

- a. A continuance is usually approved because the Commission needs more time to consider the case before them. The subsequent hearing picks up where it left off. If public testimony has been taken, taking additional testimony is optional, provided that, if the Applicant modifies the application at all, the EPC must give an opportunity for public testimony on the changed portion(s) of the application only. In order to vote at a subsequent hearing, Commissioners who were not present at the original hearing(s) must review the entire oral and written record of previous hearing(s).
- b. A deferral is usually approved to allow for additional information to be presented to the

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Commission, ie. revisions to site plans, additional justification from the applicant, additional meetings with the public, etc. A deferral by the Commission is usually accompanied by directions to the staff or applicant. Public testimony must be taken. In order to vote at a subsequent hearing, Commissioners who were not present at the original hearing(s) must review the entire oral and written record of previous hearing(s).

9. The EPC shall not re-vote on any motion, unless one of the following occurs: (a) a Commissioner states immediately after the original vote that he/she had not understood the effects of the motion, or (b) the City Council returns a matter to the EPC for rehearing and decision.
10. Only actual applications shall be presented to the EPC. Hypothetical or what-if scenarios are not permissible. The EPC shall not give advice on how it might rule in future cases or might have ruled in past cases.
11. All evidence presented to the EPC or Planning staff regarding an application shall be deposited with the Planning Department until such time as all administrative and judicial remedies are exhausted. Where the deposition of an original document creates an undue inconvenience for the depositor, copies of the original may be substituted in lieu thereof. A hard/printed copy of information presented electronically to the EPC shall be placed into the record/file at the time of presentation. If possible, an electronic copy of the information shall also be placed into the record/file at the time of presentation.
12. All written materials including petitions, legal analyses, and other documents should be submitted to the Planning Department at least 10 days prior to the EPC hearing, in time for full consideration by staff and presentation to the EPC at its Study Session. Except in extraordinary circumstances, the EPC will consider limited, clarifying written material only if it has been submitted to the EPC and any known opposing party at least 48 hours prior to the public hearing. In quasi-judicial proceedings, all communications, written or oral, with the EPC shall be through the staff of the Planning Department.
13. Cross examination shall be afforded to anyone with standing who requests the opportunity to question an opposing speaker regarding matters relevant to the application.
  - a. Persons with standing are:
    - 1) The applicant; or
    - 2) any person who owns a property interest within 300 feet of the subject-site (excluding the public right-of-way) and organized neighborhood associations if the boundaries of the association include any part of the subject-site or any land within 600 feet thereof (excluding the public right-of-way); or
    - 3) any person who demonstrates a personal or pecuniary interest or property right that may be adversely affected by the Commission's decision, which right or interest must be more than merely nominal or remote.
  - b. Notice of the right of cross-examination shall be prominently placed in the agenda for each EPC hearing.
  - c. Persons with standing desiring to question any other person who has testified during the hearing shall sign a list maintained by Commission staff. The Chair may restate the person's questions and may require that questions be addressed to the Chair. The Chair shall rule as out of order any improper, irrelevant or unnecessarily long questions or answers.
14. Appeals heard by the EPC are quasi-judicial proceedings. The hearings are open to the public, but public comment is not permitted. Only the following parties are allowed to speak to an

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appeal, in the following order and only for the allotted time:

Appellant:	15 minutes
Party Opponent (appellee):	20 minutes
Planning Staff:	5 minutes
Appellant:	5 minutes

The EPC shall adhere to the appeal provisions of the Zoning Code, including §14-16-4-4-(E)(2)(e), which reads as follows:

“Staff of the appellate body, other than employees of a city division which is the appellant or the appellee, may upon request of a member of the appellate body communicate with that member at any time and by any means; copies of any written materials shall be distributed to all parties. Any other person who communicates outside a hearing with a member of an appellate body concerning a pending filed appeal to the body shall do so only by printed materials and shall supply copies of said printed communications to the record, to any neighborhood association entitled to notice on the case, and to all parties; the copies shall be distributed at least five days before the next hearing on the appeal, and there shall be no communication after the five-day deadline until the public hearing.”

### **C. RULES:**

1. These rules shall control the conduct of business by the EPC. In the event of a conflict between these rules, city ordinances or resolutions of the City Council, and /or state or federal laws; city ordinances, resolutions of the City Council, and/or state or federal laws shall control.
2. The appearance of impropriety shall be avoided. Commissioners shall recuse themselves from hearing a matter if a conflict of interest exists or appears to exist, including, for example, a direct or indirect financial conflict of interest, or if circumstances exist which would impair or appear to impair the independence of judgment of the Commissioner. However, EPC Commissioners have a duty to hear cases presented to them and recusal should only occur for good reason. Commissioners who recuse themselves from hearing and voting on a quasi-judicial matter shall not be present in the hearing room when the matter is heard.
3. EPC Commissioners shall not engage in *ex parte* communication about any filed or prospective application requiring quasi-judicial proceedings with any person or organization interested in such application. For purposes of these rules, an *ex parte* communication shall be defined as a substantive communication, outside the public hearing process, between an EPC Commissioner and any member of the public.

Communications with the staff of the Planning Department or the City Attorney’s Office shall not be considered *ex parte* communications. Communication with staff outside of an open meeting regarding the substance of a case shall be by email. This communication shall be made part of the public record.

Any material received by a Commissioner from any person or organization shall be forwarded to the staff of the Planning Department for distribution to the Commission. Copies of all such materials shall be submitted to the Planning Department in a manner consistent with item B.11 above.

Attendance at meetings, seminars, open houses or other similar functions in which a pending or prospective application is discussed incidentally or in general terms for information purposes only, without any communications being directed to or by the EPC Commissioner, shall not constitute an *ex parte* communication. However, such an incident shall be disclosed by the EPC Commissioner at the public hearing on said application.

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An EPC Commissioner who has engaged in *ex parte* communication shall recuse himself or herself from hearing the application. EPC Commissioners shall disclose any instance of an attempted *ex parte* communication; however, any such attempt should not, in and of itself, be grounds for recusal.

4. Commissioners shall not conduct independent fact-finding investigations of any property that is the subject of a quasi-judicial proceeding before the Planning Commission. However, a cursory site visit by an individual Commissioner to generally familiarize that Commissioner with the location and environs of such a property, that does not include an independent fact finding investigation, is permitted.
5. The EPC Chair has authority, subject to a Commissioner's right to appeal to the Commission as a whole, to limit repetitive, irrelevant or inappropriate testimony, evidence and cross examination presented at a public hearing, as well as limit an EPC Commissioner's comments, questions, or arguments that are repetitive, irrelevant, or otherwise inappropriate. Commissioners and speakers shall confine their remarks to the question under discussion or debate.
6. The Chair, subject to these rules, shall decide all points of procedure. An appeal may be made on any decision of the Chair, in which event the Commissioner appealing shall state his or her reason therefore, to which the Chair may respond. Such appeals shall be acted upon immediately and no motions shall be entertained until the question has been decided. A vote of a majority of the Commissioners present shall be required to sustain an appeal.
7. The Planning Director shall adopt standard requirements for submission of applications, which detail the required information and/or materials. Incomplete submissions are grounds for deferral. Inaccurate, false or misleading information is grounds for denial.
8. These rules may be suspended for the consideration of a given agenda item by a vote of three-fourths of the EPC Commissioners present.
9. All EPC Commissioners shall adhere to these rules. An EPC Commissioner can be removed temporarily or permanently for violation of these rules by an affirmative vote of three-fourths of the EPC Commissioners.
10. Robert's Rules of Order, as modified and as applicable for Small Boards, apply in situations not covered by these rules. However, a violation of Robert's Rules of Order not brought to the attention of the Commission during the proceedings and prior to the vote at issue shall not be the basis for an appeal.
11. These rules may be amended by the majority vote of EPC Commissioners at a public meeting, provided written notice of the proposed changes and their time of consideration is given to all EPC Commissioners at least one week in advance and the public and others are properly notified, pursuant to the Public Boards, Commissions and Committees Ordinance, Section 2-6-1-4(C) of the Albuquerque Code of Ordinances.

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***END OF RULES***

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## **EPC GUIDELINES**

*(The following guidelines are not rules or requirements of the EPC; these guidelines are suggestions offered to help produce a constructive working environment.)*

1. Commissioners should attend EPC training conducted by Planning staff and/or others.
2. No Commissioner should express the views of an absent Commissioner.
3. Commissioners should express reasons for votes where it may benefit the public, the parties, or the City Council.
4. A Commissioner should not request alternate findings regarding a particular case without stating a reason for the request.
5. EPC Commissioners should make every reasonable effort to attend EPC meetings and study sessions. Commissioners should communicate anticipated absences to the EPC secretary and/or the Chairperson with as much forewarning as possible.
6. When a neighborhood association or other organization presents an official position to the EPC, the association or organization should identify how the position was arrived at. The Neighborhood Association Recognition Ordinance (§14-8-2-5-(D)) specifies pertinent requirements for recognized neighborhood associations.
7. During the course of a hearing, Commissioners are expected to remain attentive to the pending matters before them. Commissioners should not engage in private discourse, sidebars or use of personal electronic devices or any other activity tending to distract from the matters before them. The use of electronic devices to conduct EPC business is not prohibited.

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**PASSED AND ADOPTED on October 10, 2013**

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**Hugh Floyd, Chair**  
**Environmental Planning Commission**

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**Date**

First Printing of the EPC Rules on July 18, 2002  
Revised 8/2002; 5/2006; 12/2009; 6/2010; 5/2012, 10/2013