

# WSCONA IDO Technical and Administrative Edit Recommendation

## Introduction: Form Based Zoning and the IDO

Generally Form-Based Zoning, unlike the IDO, do not supersede other higher ranked planning documents or have citywide application. Form-based zoning substitutes proscriptive definitions of composite building form, minimum density, and multi-uses, as opposed to Euclidian zoned classifications restricting density and segregating land use. Most cities use both. Limitations in form-based zoning ordinances are usually constrained by other planning documents. Albuquerque is unique in that a form-based type IDO zoning scheme has been applied to the whole City and had a City Council majority vote to void all other planning and sector documents (Plans that took Albuquerque many years to create applying citizen input). One usually sees form-based zoning in historic downtown districts, transportation corridors or planned communities or other grid-like, pedestrian friendly, high density, urban developments, where visual uniformity is a benefit. The IDO inevitably conflicts with the Comprehensive Plan, and prior sector plans, because nothing about this city is uniform. Albuquerque's sense of place is valued for varied cultural influences, different ages and influences of architecture, including the Pueblo Revival Movement. City architectural traditions include use of natural materials and colors, varied methods of construction, and responding to an extreme variety of seismic, geodetic, soil formations and climatic contexts. It is uniform within sectors, but varied by sector, because it is varied by geography. Uniqueness and variety can make great cities iconic. Think about images of San Francisco's China Town and Pacific Palisade Heights Neighborhood. These places would never comply with the same form-based zoning requirements. Great Cities preserve neighborhood and that is what makes them great. Albuquerque is a western city with problems concerning water recharge or infiltration to the underlying aquifer. Although it has a riparian Bosque and Rio Grande Valley, a lava flow cap covers the West mesa and the eastern Heights and East Mountain communities are located on a rocky uplift mountain range. Albuquerque is the only rift formation in a metropolitan area in North America. A form-based zoning like the IDO was never a good idea for the entire City. Setting aside the character and historic preservation considerations, the city should have different zoning and building requirements for its different climatic zones, water infiltration, seismic issues, along with subdivision, building and zoning criteria for fire prone areas. The National Fire Protection Assoc.1141 is the Standard for Fire Protection Infrastructure for Development in Wildland, and Suburban Areas. NFPA standards don't seem to be integrated into the IDO, especially when fire danger is a seasonal threat for Albuquerque.

Uniformity from City-wide Form Base Zoning as codified in the IDO enables developers of investment vehicle financed, cookie cutter buildings, to cut costs by using the same plan seen in other cities: Austin, Texas; Charlotte South Carolina; Denver, Colorado; Tucson, Arizona and Albuquerque New Mexico. NAIOP Developer driven Ordinances don't add improvement to Albuquerque's other important nongovernment economic contributors: the tourism industry, film and tech relocation efforts or the economic well being of resident property owners who contribute the greatest share of Gross Receipts. The IDO hasn't helped Albuquerque's economic outcomes or the Diaspora of New Mexico College educated millennial going to cities that have learned the price of lobbyist domination of a city's planning department. Austin voted to rescind- CODENEXT- another form-based type IDO code, by citizen

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referendum. We hear many of our Albuquerque citizens say, let's keep Albuquerque unique, let's keep Albuquerque quirky.

## Proposed Amendments to the IDO 10/07/2019

### 1. Avoidance of Sensitive Lands 5-2(C)(1)

- 1.1. Clarify that a Sensitive Lands Analysis be done including the following regarding sensitive land features:
- 1.2. Map of each feature.
- 1.3. Photographs of each side of the feature.
- 1.4. Description of the feature to include heights, widths, bulk, age, vulnerabilities, condition/stability of feature, soil types.
- 1.5. Remove the language: "to the maximum extent practicable"

### 2. Lot Design and Layout: Lot Dimensions 5-4(F)(3)

- 2.1.1. Clarify that (b) is the only reduced lot option in Sensitive Lands.
- 2.1.2. Clarify that (d) clustering refers to development that does not fall in Sensitive Lands

### 3. Properties 5 Acres or greater adjacent to Major Public Open Space.

- 3.1.1. Clarify what the statement of no material negative impact is by required some of the details in an environmental impact statement.

4. Review the schedule for fees. Remove the fee for a facilitated meeting from appeal actions. Should it cost \$262 to file an appeal of a DRB variance?

5. Make the standing for appeal requirement match the former zone code, i.e., appeal any variance should be 300 feet for adjacent property owners, excluding public rights-of-way of the property that is the subject of the applications. When any of the property immediately beyond the radius described is under the same ownership as the property that is the subject of the application, the owner of the property next adjacent, disregarding public ways will be notified and have standing for appeal. Public right of ways include: streets, highways, open spaces, parks and rivers.

6. A distance of 100 ft. is not enough distance for notification to affected Neighborhoods. The current Albuquerque Office of Neighborhood Coordination (ONC) resulted in more NA's being left out of the public process and appealing Planning Department decisions because they were not notified. Most cities consider between 300 to 600 feet excluding public right of ways as appropriate notification, noting the economic effects zoning of increased density can have economic and property tax mil rate increase implications for regional property owners, as well as, adjacent properties. The City Council approved shifting of impact costs of development and educational planning and funding from developers and to property tax payers in Albuquerque makes this IDO change particularly egregious.

7. Consider the new quasi-judicial powers given to the DRB and their current performance to conduct business outside the hearing and with contempt to the public. Should the DRB chair be confirmed by the City Council? Should variance powers be taken away from the DRB?

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7.1. Variances and Conditional Use permits are quasi-judicial in nature, meaning these decisions involve the property rights of surrounding property owners and residents as well as the individual property rights of applicants. Quasi-judicial zoning procedures mean The people of Albuquerque never voted to waiver their rights under the City Charter or to have certain quasi-judicial zoning matters reviewed administratively rather than under quasi-judicial rules. The City Council simply voted to take these Albuquerque City Charter protected citizen's rights, and mischaracterized them as administrative actions or legislative approvals under the IDO.

7.2. Where in the IDO are City of Albuquerque prohibitions on developer or applicant ex parte contacts with City staff and departments concern pending decisions on applications? (Ex parte meaning in this context private, not memorialized, one party meeting with COA staff. Are pre-application meetings memorialized as a part of procedures? There appear to be no prohibitions on successive applications or penalties for applicants responding with incomplete, incorrect or misleading information or applicant attempting irregular negotiations through ex parte staff communications.

7.3. "[W]here the focus of the zoning authority shifts from the entire city or county to one specific tract of land for which a zoning change is urged, the function of the zoning authority becomes more quasi-judicial in nature than legislative...in addition to the right to individual notice, interested parties in a quasi-judicial zoning matter "are entitled to an opportunity to be heard, to an opportunity to present and rebut evidence, to a tribunal which is impartial in the matter i.e., having had no pre-hearing or ex parte contacts concerning the question at issue and to a record made and adequate findings executed...The burden is on the proponent of the zone change to establish that the change is justified." (New Mexico Supreme Court ruling: ALBUQUERQUE COMMONS V. ALBUQUERQUE CITY COUNCIL, 2008-NMSC-025, 144 N.M. 99, 184 P.3d 411)

8. Review uses such as adult bookstores, business with outdoor storage, and large refueling facilities to determine if these uses are allowed in current zones and under what specific variance criteria or conditional use requirements.

9. Do proposed revisions in the COA Development Planning Manual DPM limit impacts fees associated with development in areas of limited or insufficient: roads, infrastructure, school capacity? Are requirements for developer offsets or donations of lands for parks, open spaces and community facilities outlined in DPM policies?

10. Why does the IDO not mirror language in other Bernalillo County Zoning Ordinances and New Mexico State Zoning Statues and NM Supreme Court rulings on "spot zoning"?

11. Development Standards Chapter 5: MPOS -Major Public Open Space

12. Single loaded street/pg. 205: the IDO requires a single loaded street along Major Public Open space. The IDO also allows the Open Space Superintendent to decide whether to substitute a single loaded

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street for a 20 ft. buffer, while meeting with the developer behind closed doors, before hearing public input (an ex parte communication).

12.1. Open space superintendents should be constrained by existing legislation such as that creating the Rio Grande State Park as operators, not owners. The existing City Council approved Rank II management plans involving multiple state, county and federal enforcement agencies. These plans should supersede the IDO, a rank III Plan and certainly should constrain an Open Space Superintendent from deciding appropriate buffers or to make land consignments to developers.

12.2. Many Open Space Superintendent are hired without the requisite education or experience to make such a technical judgment.

13. No prohibitions or proscriptions in the IDO prevented the COA Planning Department from deferring to a later date or entirely waiving technical studies or, information concerning coordination or approvals from other agencies or similarly important data that would be requisite to a decision to cede buffers or single loaded streets or consign land described as private sensitive lands within public open spaces or state and local parks to developers or so-called "private open space".

14. Maintain & Enforce IDO language that requires a single loaded street, as a street edge to separate and buffer Open Space from development. Note: A single loaded street is an attractive design feature that has been used in Albuquerque around parks and Open space area in past years. It offers better edge treatment & protection for Open Space and the homeowners.

14.1. Eliminate IDO language that allows City staff to make decisions on whether a single loaded is preferred or not. Note: This language places too much pressure on staff to be too agreeable in exchanging the single loaded street for a 20 ft. buffer; thereby making the single loaded street edge treatment nonexistent.

14.2. Contiguous Open Space/ Pg. 205: IDO language requires on-site open space to be contiguous with Major Public Open space. Note: This IDO provision is beneficial in providing the necessary buffer to protect MPOS areas. Unfortunately the Planning dept. is accepting Site plans that are not following this requirement. Site Plans should not be submitted without following this requirement

14.3. Train staff to understand and enforce the existing Contiguous Open Space regulation. Note: The IDO has up-zoned most of the zoning in Albuquerque. The only protection citizens & natural resources have are the protective design standards. City Boards and staff are giving away these standards through waivers and variances to developers, undermining the protection of the community and its assets.

15. Consider requiring more Buffer with a minimum of 500 ft. adjacent to the Bosque, Escarpment, and other sensitive Open Space areas. The MPOS Facility Plan promotes a 500 ft. buffer to better protect wildlife and sensitive open space areas from human impacts. A large buffer also protects homeowners from natural disasters such as wildland fires, drainage, flooding, rock falls and erosion.

15.1. At present, state capital outlay funds are used to ameliorate past damages to proximally impacted property owners in developments placed too close to abutting public lands. City

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approval of deficient designs also can mean developers are waived from future liabilities. The increase in IDO variances coupled with a series of recent COA Planning Department decisions causes tax payers or future HOA property owners to have the liability for city approved deficient development infrastructure, conversion of buffers and existing sensitive private land within state parks to private open space not under existing management restrictions such as those in the "Bosque Action Plan". The public will shoulder possible remediation cost for the loss of irreplaceable resources.

16. Color /pg.205: We recommend showing the color pallet the IDO lists for development adjacent to Open Space. What does these colors look like: yellow ochre, browns, and dull reds, grey greens?

17. Coors Overlay Zones Chapter 3: Improvement to overlay zones is needed

17.1. Background: Sector Plans were eliminated, and replaced with IDO/overlay zones.

Unfortunately, information in the overlay zones are incomplete, with information scattered throughout the IDO. This makes it difficult to maintain the vision of the Coors Corridor Plan in providing the west side quality development, with architectural consistency & protection of area assets.

17.2. Amendment: Reinstate the Coors Corridor Plan as a reference document so that the CCP goals and policies can be brought into the IDO into one chapter:

17.3. Developments that follow the Coors Corridor Plan design guidelines have a more desirable appearance along the roadway than developments that do not. Below are samples of the CCP guidelines demonstrating the importance of maintaining the intent and vision of the Coors Plan.

17.4. Building Color: Maintain color consistency along Coors by following CCP language:

"Development shall be compatible with the built and natural landscape." "Preferred colors are those used in traditional Southwest Architecture." Note: Color consistency is being challenged along Coors.

18. The CCP & IDO promote Cluster development. Cluster developments are designed to cluster dwelling units together in order to preserve open space. La Luz is a great example of cluster development.

18.1. Cluster developments in the IDO are limited to 50 dwelling units per site. (See Chapter 4 Use Regulations pg.136:)

18.2. Note: The ZEO has been granting the development community multiple clusters per site plan. This adds too much density and defeats the purpose of preserving open space.

18.3. Technical edit: Enforce existing IDO limitation of no more than 50 dwelling units per site.

19. The IDO fails to protect critical water infiltration areas located from Coors east to the Bosque and instead irrationally consigns them to higher density based on misapplied traffic corridor analysis. The taxpayers of the region have spent million on artificial infiltration and infusion sites, to support the aquifer, while these zoning omissions only exacerbate the problem of ground water sufficiency.

20. View regulations: Maintain and strengthen the intent of the Coors Corridor Plan view regulations to permit views of the mountains, valley, Bosque and landscape, with lower buildings near roadway and

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larger buildings in the back or interior. Note: Developments that do comply with the Coors Corridor Plan view regulations have maintained great views of the Bosque tree tops, the City and the Mountains.

21. Multi-family: "Individual dwelling units should be apparent in form. This helps to reduce the scale of the building and increase the feeling of individual identity of each unit." Note: Apartments in Taylor Ranch that follow this design requirement are visually more attractive, avoiding the square box look.

22. Building setback, height, and bulk: "Buildings should be located and designed to provide a pleasing and functional relationship to the roadway..." Note: People want to see architecture facing the road, not the backs of buildings.

23. Trademark buildings are discouraged in the CCP. Note: Developments along Coors that followed this requirement have maintained color consistency and an attractive Southwest design.

24. CCP pg. 53: A minimum of 100 ft. wide setback along the top of the bluff shall be obtained, through purchase, public easement, open space dedication, or transfer of development rights. Note: A significant buffer better protects the Bosque and the homeowners against soil erosion, wildlife conflicts, mosquito diseases, environmental impacts, Bosque fires & flooding. A large buffer is necessary and should not be ignored for the health and safety of the residents and resource protection.

25. Ironically the IDO is not an integrated zoning plan. The Coors Corridor and other sector plans integrated Rank I and Rank II planning documents, and management plans. These plans referenced existing Joint Powers Agreements, enforcement authorities, operations delegation and other cooperative county, state, regional, federal and international agreements. The IDO has vague language and no explicit procedural references to these requirements. Recent planning review decisions on behalf of developers have ignored these constraints and other requirements of due process concerning resources that are publically and communally owned and held in public trust not just by the City of Albuquerque, but other legally delegated operational and enforcement entities.

25.1. Many Coors Corridor Plan guidelines have not been incorporated into the IDO Overlay zone. As a result the Westside will lose valuable views, color consistency, allow too much signage, and lose sensitive design treatments that make Coors an attractive roadway.

25.2. Reinstate the Coors Corridor Plan to be used as a reference until all its goals/ policies and regulations are accurately portrayed in the IDO.

25.3. Many of the " May 2015 Land Regulation Diagnosis, Best Practices and Annotated Outline" produced by Clarion Associates LLC and others for the ABC-Z Comprehensive Plan were never integrated into the IDO.

26. Public Process needs improvement:

26.1. Eliminate Administrative Amendments.

26.2. Note: Administrative approvals from the ZEO, DRB, planning staff etc. are happening behind closed doors, which undermine quality development; thereby creating anger and distrust from the citizens of Albuquerque towards the Planning department, resulting in many appeals.

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Please see quasi-judicial and ex parte zoning determinations from NM Supreme Court. (New Mexico Supreme Court ruling: ALBUQUERQUE COMMONS V. ALBUQUERQUE CITY COUNCIL, 2008-NMSC-025, 144 N.M. 99, 184 P.3d 4112.)

26.3. Notifications need improvement. Reinstate previous rules for notifications.

26.4. Notification shall go to Property owners within 300 ft. of subject property, minus street ROW.

26.5. Registered Neighborhood Associations, and HOA's shall be notified within 600 ft. of Subject property, minus street ROW.

26.6. Go back to prior notification methods that have worked well for many years, in providing only pertinent information to all interested and affected parties. Note: Neighborhood Associations & Coalitions contact is being inundated with unnecessary notifications for every type of permit.

27. Historic Preservation: Include Preservation language for all of Albuquerque, not just a few areas of Albuquerque. All areas of Albuquerque contain a cultural, historic figures history, iconic architectural examples and sense of place. Fifty years forward from today meritorious design and development projects including on the west side of the river, should be eligible for preservation protections or a place on the National Register and State Register of Historic and Culturally significant places. To preclude areas of Albuquerque from the economic and cultural benefits of Historic Preservation programs is both undemocratic and unseemly.

27.1. Architect Antoine Predock promoted development that provides the Highest & Best Use of the Land. Albuquerque should strive to accommodate similar architectural and land use innovation moving forward. La Luz, a Predock Westside development was placed on the State and National Historic Register almost immediately after it was illegible for inclusion. New developments should have the same possibility and attain the same level of excellence, regardless of their location. Whole categories for inclusion were removed from Albuquerque's preservation criteria because they might delay certain types of commercial development.

27.2. All Albuquerque residents contribute tax dollars to historic preservation measures, although only some locations reap the benefits. The IDO application of Historic Preservation Overlays and Ordinance protections has been degraded to favor developer demolition so that it bears little relationship to the national and state criteria or legislative templates. These biases reduce the illegibility for preservation related grants and economic opportunities to whole sections of the City.

28. Tax incentives: Tax incentives or public private partnership funding should focus primarily on projects that preserve Albuquerque's unique historic buildings, as well as its natural, & cultural features and Community assets.

