

# Proposed amendments to the IDO for O-22-10

April 13<sup>th</sup>

Land Use, Planning and Zoning Committee Meeting

Amendment	Topic
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**Published April 6, 2022**

Check the ABC-Zone webpage for the latest version of the amendment packet:  
<https://abc-zone.com/ido-annual-update-2021>

## A2 – Non-residential conversions to residential uses for affordable housing

### LAND USE, PLANNING AND ZONING COMMITTEE of the CITY COUNCIL

April 13<sup>th</sup>, 2022

COMMITTEE AMENDMENT NO. \_\_\_\_\_ TO Exhibit A to O-22-10

AMENDMENT SPONSORED BY COUNCILOR Isaac Benton

1. Amend IDO Section 14-16-4-3(B)(7) Dwelling, Multi-family to add a new subsection and amend the definition in Section 14-16-7 for “kitchen” as described in the Exhibit A to this amendment

**Explanation:** This amendment proposes to add a new use-specific standard to the Dwelling, Multi-family use to allow for special provisions for the conversion of non-residential development to residential development when that conversion is associated with funding provided through the City’s Family and Community Services department in conjunction with an affordable housing project as defined by Article 14-21 of ROA 1994 (Affordable Housing Implementation Ordinance).

Today, to convert a non-residential use such a hotel/motel or office to a multi-family development the developer would need to ensure each unit can meet the requirements of a “dwelling unit” as defined in the IDO. This includes requiring a full kitchen, presently defined as:

*“An area of a dwelling where there is a sink of adequate size and shape for washing dishes and food items (as opposed to washing hands) and a cooking stove, range, or oven. The presence of a sink and a hot plate or microwave does not constitute a kitchen.”*

For the type of housing that would be offered with a hotel conversion to affordable housing, some of this provision presents a large barrier, namely the requirement for a full stove, range, or oven. This amendment will allow a microwave or hotplate to meet the requirement of a ‘kitchen’ *only* for conversions of non-residential to residential where the City has distributed affordable housing money. A refrigerator would also be required in addition to occupancy standards for units based on the number of bedrooms.

## **A2 – Non-residential conversions to residential uses for affordable housing**

As indicated in the use-specific standard, projects partnered with the City through the FCS department will require 40 hours of service coordination to be provided on-site, in addition to any property manager or property management staff working on the premises. These duties will include:

- providing residents with information about available onsite and community services
- assisting residents in accessing available services through referral and advocacy
- arranging for access to transportation
- organizing community-building and/or other enrichment events for residents.

## Exhibit A to Amendment A2

1. Amend IDO Subsection 14-16-4-3(B)(7) to add a new subsection that provides an exemption for dwelling units created from a conversion of non-residential development to residential use as shown below.
2. Amend the definition of kitchen in IDO Section 14-16-7-1 as follows:

“An area of a dwelling where there is a sink of adequate size and shape for washing dishes and food items (as opposed to washing hands) and a cooking stove, range, or oven. The presence of a sink and a hot plate or microwave does not constitute a kitchen [, unless specified otherwise in this IDO].”

### 4-3(B) RESIDENTIAL USES

#### 4-3(B)(7) Dwelling, Multi-family

4-3(B)(7)(x) [In Mixed-use zone districts, a maximum of 100 dwelling units resulting from a conversion of existing non-residential development to a residential use shall be exempt from the definition of kitchen in IDO Section 14-16-7-1 in dwellings that receive funding through the City of Albuquerque Department of Family and Community Services as affordable housing as defined by Article 14-21 of ROA 1994 (Affordable Housing Implementation Ordinance), if all of the following requirements are met.

1. A separate kitchen and bathroom shall be provided in each dwelling unit.
2. The kitchen shall include all of the following requirements:
  - a. a sink of adequate size and shape for washing dishes and food items (as opposed to washing hands).
  - b. A refrigerator that includes a separate freezer compartment.
  - c. a countertop surface, an appliance for warming food (such as microwave or hotplate), and an electrical outlet that allows the appliance to be plugged in safely.
3. An accessory or primary use for office or personal services is provided on the same premises for service coordination.
4. An agreement proving that a minimum of 40 hours of support services a week will be provided to residents shall be provided with application materials.
5. Units shall have a maximum of two bedrooms and be occupied by no more than:
  - a. 2 people per efficiency unit
  - b. 2 people per one-bedroom unit
  - c. 4 people per two-bedroom unit]

# A12 | Option 1 – Safe Outdoor Spaces

## LAND USE, PLANNING AND ZONING SUBCOMMITTEE of the CITY COUNCIL

April 13<sup>th</sup>, 2022

COMMITTEE AMENDMENT NO. \_\_\_\_\_ TO Exhibit A to O-22-10

AMENDMENT SPONSORED BY COUNCILOR Jones, Bassan, Benton

1. On Page 146, in Table 4-2-1, in the Civic and Institutional Uses category, add a new use “Safe Outdoor Space”. Add a “C” in the MX-T and MX-L zone districts, and add a “P” in the MX-M, MX-H, NR-C, NR-BP, NR-LM, and NR-GM zone districts. Add “4-3(C)(9)” for the Use Specific Standards column.
2. On Page 161, in Subsection 4-3(C)(8)(a) amend the use-specific standard for religious institution use as follows:  
Incidental activities, including but not limited to recreational, educational, overnight shelters, campgrounds [, and safe outdoor spaces] are allowed, provided that all of the following conditions are met.
3. On page 161, in Subsection 4-3(C)(8)(a), add a new subsection 4-3(C)(8)(a)4. that reads as follows:  
[4. Safe Outdoor Spaces must comply with all applicable State and local regulations for safe outdoor spaces. For the purposes of this IDO, a conditional use approval is not required, but the use specific standards for Safe Outdoor Spaces pursuant to IDO Subsection 14-16-4-3(C)(9) do apply, with the exception that the prohibition in proximity to R-A, R-1, R-MC, or R-T in 14-16-4-3(C)(9)(a) does not apply.]
4. On page 161, add a new use-specific standard as a new IDO Subsection 4-3(C)(9):  
[4-3(C)(9) Safe Outdoor Space  
4-3(C)(9)(a) Any portion of a lot in use as a safe outdoor space shall be at least 330 feet from any property zoned R-A, R-1, R-MC, or R-T that contains low-density residential development.  
4-3(C)(9)(b) The maximum number of designated spaces shall be 40 per safe outdoor space development. One (1) tent, recreational vehicle, or light vehicle is allowed per designated space. The maximum number of occupants per safe outdoor space development is 50 people.

## A12 | Option 1 – Safe Outdoor Spaces

4-3(C)(9)(c) Safe outdoor spaces with more than 10 designated spaces and 15 or more occupants are prohibited within 660 feet in any direction of a lot containing any other Safe Outdoor Space with more than 10 designated spaces and 15 or more occupants.

4-3(C)(9)(d) One water-flush or composting toilet shall be provided for every 8 designated spaces, and one hand washing station shall be provided for every 10 designated spaces.

- i. Hand washing and toilet stations shall not be located more than 300 feet in any direction of any designated space.
- ii. Plumbed hand washing and water-flush or composting toilet stations shall be provided within 2 years of the City approval of the Safe Outdoor Space.
- iii. Prior to the installation of plumbed handwashing stations and water-flush or composting toilets, portable toilets and handwashing stations may be provided to meet this requirement.
  - a. Portable toilets and handwashing stations shall be provided at a ratio of one station per 8 designated spaces.
  - b. Portable toilets and handwashing stations shall be serviced at regular intervals.

4-3(C)(9)(e) Designated spaces, toilets, hand washing stations, and lavatories shall be set back a minimum of 20 feet from each property line abutting R-ML or R-MH or any Mixed-Use zone district, and a minimum of 5 feet from any other property line.

4-3(C)(9)(f) The area containing the designated spaces shall be screened on all sides by an opaque wall or fence or vegetative screen at least 6 feet high. Other Landscaping, Buffering, and Screening requirements in Section 5-6 do not apply.

4-3(C)(9)(g) Each Safe Outdoor Space shall include a management plan or security agreement to ensure the safety of individuals occupying the designated spaces. Proof of the plan or agreement shall be required with the application for a Safe Outdoor Space. The plan or agreement shall indicate on-site or on-call support on a 24 hours a day, 7 days a week basis.

4-3(C)(9)(h) Each safe outdoor space shall offer social services and support facilities to its occupants. These may include but are not limited to showers, education and job training, storage space for residents' belongings, recreational services, facilities, and activities for use by occupants to provide comprehensive livability options.]

## A12 | Option 1 – Safe Outdoor Spaces

5. On page 265, in Table 5-5-1, add a new use “[Safe Outdoor Space]” in the Use column, and in the IDO Parking Requirement Column add “[2 spaces per project site]”.
6. In Subsection 7-1, Definitions, add in appropriate alphabetical order a new definition for “Safe Outdoor Space” as follows:  
[Safe Outdoor Space A lot, or a portion of a lot, developed to provide designated spaces for occupancy by tents, recreational vehicles, and/or light vehicles. Designated spaces are provided to occupants at no charge. A safe outdoor space offers social services and support facilities. See also Vehicles definitions for *Recreational Vehicle* and *Light Vehicle*.]

**Explanation:** This amendment proposes to create a new use “Safe Outdoor Space” in order to allow for the development of sites that can be quickly and easily established that would provide a safe space for members of the unhoused community to have a tent, recreational vehicle, or place to park their vehicle safely. The latest census of homeless individuals in Albuquerque was 1,570 individuals. While the city and county have a number of initiatives underway, these don’t meet the needs of all. And for many in the unhoused community, are not somewhere they are comfortable going. Safe Outdoor Spaces are intended to be a fast and efficient way to serve our unhoused community members.

A Safe Outdoor Space would be:

- Be limited in scale (maximum of 40 designated spaces)
- Provide facilities for personal hygiene
- Provide social services and support facilities
- Include space for individuals to securely store their belongings
- Provide an address for mail for each resident
- Fenced and screened

Safe Outdoor Spaces are modelled after Camp Hope in Las Cruces which in the past 11 years of existence, has served an average of 200 individuals per year. This is 200 people per year in just one facility who were kept safe, offered services and helped with transitioning to more permanent housing.

This amendment differs from option 2 in that this version retains the wall, fence, or vegetative screening requirements for all types of occupants of safe outdoor spaces. Section 4-3(C)(9)(f) contains the language that is different between the two versions. The council will need to adopt one of these versions and should not adopt both.

In 2019, the 9th Circuit Court of Appeals held that ordinances that criminalize sleeping, sitting, or lying in public spaces, when no alternative sleeping space is available, violate the Eighth Amendment. (*Martin v. City of Boise*, 920 F.3d 584). This holding is non-binding in New Mexico (10th Circuit), however, this is a relevant development in the law

## **A12 | Option 1 – Safe Outdoor Spaces**

on this topic, and it may be prudent to keep in mind when legislating in this area. This proposed amendment creates locations in which unhoused individuals can legally settle as opposed to settling in locations where that conduct may be criminalized.

# A12 | Option 2 – Safe Outdoor Spaces

## LAND USE, PLANNING AND ZONING SUBCOMMITTEE of the CITY COUNCIL

April 13<sup>th</sup>, 2022

COMMITTEE AMENDMENT NO. \_\_\_\_\_ TO Exhibit A to O-22-10

AMENDMENT SPONSORED BY COUNCILOR Tammy Fiebelkorn

1. On Page 146, in Table 4-2-1, in the Civic and Institutional Uses category, add a new use “Safe Outdoor Space”. Add a “C” in the MX-T and MX-L zone districts, and add a “P” in the MX-M, MX-H, NR-C, NR-BP, NR-LM, and NR-GM zone districts. Add “4-3(C)(9)” for the Use Specific Standards column.
2. On Page 161, in Subsection 4-3(C)(8)(a) amend the use-specific standard for religious institution use as follows:  
Incidental activities, including but not limited to recreational, educational, overnight shelters, campgrounds [, and safe outdoor spaces] are allowed, provided that all of the following conditions are met.
3. On page 161, in Subsection 4-3(C)(8)(a), add a new subsection 4-3(C)(8)(a)4. that reads as follows:  
[4. Safe Outdoor Spaces must comply with all applicable State and local regulations for safe outdoor spaces. For the purposes of this IDO, a conditional use approval is not required, but the use specific standards for Safe Outdoor Spaces pursuant to IDO Subsection 14-16-4-3(C)(9) do apply, with the exception that the prohibition in proximity to R-A, R-1, R-MC, or R-T in 14-16-4-3(C)(9)(a) does not apply.]
4. On page 161, add a new use-specific standard as a new IDO Subsection 4-3(C)(9):  
[4-3(C)(9) Safe Outdoor Space  
4-3(C)(9)(a) Any portion of a lot in use as a safe outdoor space shall be at least 330 feet from any property zoned R-A, R-1, R-MC, or R-T that contains low-density residential development.  
4-3(C)(9)(b) The maximum number of designated spaces shall be 40 per safe outdoor space development. One (1) tent, recreational vehicle, or light vehicle is allowed per designated space. The maximum number of occupants per safe outdoor space development is 50 people.

## A12 | Option 2 – Safe Outdoor Spaces

4-3(C)(9)(c) Safe outdoor spaces with more than 10 designated spaces and 15 or more occupants are prohibited within 660 feet in any direction of a lot containing any other Safe Outdoor Space with more than 10 designated spaces and 15 or more occupants.

4-3(C)(9)(d) One water-flush or composting toilet shall be provided for every 8 designated spaces, and one hand washing station shall be provided for every 10 designated spaces.

- i. Hand washing and toilet stations shall not be located more than 300 feet in any direction of any designated space.
- ii. Plumbed hand washing and water-flush or composting toilet stations shall be provided within 2 years of the City approval of the Safe Outdoor Space.
- iii. Prior to the installation of plumbed handwashing stations and water-flush or composting toilets, portable toilets and handwashing stations may be provided to meet this requirement.
  - a. Portable toilets and handwashing stations shall be provided at a ratio of one station per 8 designated spaces.
  - b. Portable toilets and handwashing stations shall be serviced at regular intervals.

4-3(C)(9)(e) Designated spaces, toilets, hand washing stations, and lavatories shall be set back a minimum of 20 feet from each property line abutting R-ML or R-MH or any Mixed-Use zone district, and a minimum of 5 feet from any other property line.

4-3(C)(9)(f) The area containing designated spaces for tents shall be screened on all sides by an opaque wall or fence or vegetative screen at least 6 feet high. Other requirements in Section 14-16-5-6 Landscaping, Buffering, and Screening do not apply.

4-3(C)(9)(g) Each Safe Outdoor Space shall include a management plan or security agreement to ensure the safety of individuals occupying the designated spaces. Proof of the plan or agreement shall be required with the application for a Safe Outdoor Space. The plan or agreement shall indicate on-site or on-call support on a 24 hours a day, 7 days a week basis.

4-3(C)(9)(h) Each safe outdoor space shall offer social services and support facilities to its occupants. These may include but are not limited to showers, education and job training, storage space for residents' belongings, recreational services, facilities, and activities for use by occupants to provide comprehensive livability options.]

## A12 | Option 2 – Safe Outdoor Spaces

5. On page 265, in Table 5-5-1, add a new use “[Safe Outdoor Space]” in the Use column, and in the IDO Parking Requirement Column add “[2 spaces per project site]”.
6. In Subsection 7-1, Definitions, add in appropriate alphabetical order a new definition for “Safe Outdoor Space” as follows:

**Safe Outdoor Space** A lot, or a portion of a lot, developed to provide designated spaces for occupancy by tents, recreational vehicles, and/or light vehicles. Designated spaces are provided to occupants at no charge. A safe outdoor space offers social services and support facilities. See also Vehicles definitions for *Recreational Vehicle* and *Light Vehicle*.]

**Explanation:** This amendment proposes to create a new use “Safe Outdoor Space” in order to allow for the development of sites that can be quickly and easily established that would provide a safe space for members of the unhoused community to have a tent, recreational vehicle, or place to park their vehicle safely. The latest census of homeless individuals in Albuquerque was 1,570 individuals. While the city and county have a number of initiatives underway, these don’t meet the needs of all. And for many in the unhoused community, are not somewhere they are comfortable going. Safe Outdoor Spaces are intended to be a fast and efficient way to serve our unhoused community members.

A Safe Outdoor Space would be:

- Be limited in scale (maximum of 40 designated spaces)
- Provide facilities for personal hygiene
- Provide social services and support facilities
- Include space for individuals to securely store their belongings
- Provide an address for mail for each resident
- Fenced and screened

Safe Outdoor Spaces are modelled after Camp Hope in Las Cruces which in the past 11 years of existence, has served an average of 200 individuals per year. This is 200 people per year in just one facility who were kept safe, offered services and helped with transitioning to more permanent housing.

This amendment differs from option 1 in that there are no wall, fence, or screening requirements if the Safe Outdoor Space has only light vehicles or recreational vehicles as occupants (as opposed to tents). Section 4-3(C)(9)(f) contains the language that is different between the two versions. The council will need to adopt one of these versions and should not adopt both.

In 2019, the 9th Circuit Court of Appeals held that ordinances that criminalize sleeping, sitting, or lying in public spaces, when no alternative sleeping space is available, violate the Eighth Amendment. (*Martin v. City of Boise*, 920 F.3d 584). This holding is non-

## **A12 | Option 2 – Safe Outdoor Spaces**

binding in New Mexico (10th Circuit), however, this is a relevant development in the law on this topic, and it may be prudent to keep in mind when legislating in this area. This proposed amendment creates locations in which unhoused individuals can legally settle as opposed to settling in locations where that conduct may be criminalized.

# A13 – Temporary Campgrounds

## LAND USE, PLANNING AND ZONING SUBCOMMITTEE of the CITY COUNCIL

April 13<sup>th</sup>, 2022

COMMITTEE AMENDMENT NO. \_\_\_\_\_ TO Exhibit A to O-22-10

AMENDMENT SPONSORED BY COUNCILOR Isaac Benton

1. On Page 149, in Table 4-2-1, in the Temporary Use that Require a Permit category, add a new use “Temporary Campground”. Add a “P” in the MX-T, MX-L, MX-M, MX-H, NR-C, NR-BP, NR-LM, and NR-GM zone districts. Add “4-3(G)(1)” for the Use Specific Standards column.
2. On Page 161, in Subsection 4-3(C)(8)(a) amend the use-specific standard for religious institution use as follows:  
Incidental activities, including but not limited to recreational, educational, overnight shelters, campgrounds [, and temporary campgrounds] are allowed, provided that all of the following conditions are met.
3. On page 161, in Subsection 4-3(C)(8)(a), add a new subsection 4-3(C)(8)(a)4. that reads as follows:  
[4. Temporary Campgrounds must comply with all applicable State and local regulations for temporary campgrounds. For the purposes of this IDO, a conditional use approval is not required, but the use specific standards for temporary campgrounds pursuant to IDO Subsection 14-16-4-3(G)(1) do apply, with the exception that the prohibition in proximity to any Residential zone district or lot containing a residential use in any Mixed-use zone district in 4-3(G)(1)(b) does not apply.]
4. On page 161, add a new use-specific standard as a new IDO Subsection 4-3(G)(1):  
[4-3(G)(1) Campground, Temporary  
4-3(G)(1)(a) This use is limited to 1 year. A Temporary Use Permit may be extended for 1 additional year. A new Temporary Use Permit pursuant to Subsection 14-16-6-5(D) shall not be approved within 6 months of the last date the use was allowed in a previous Temporary Use permit.

## A13 – Temporary Campgrounds

4-3(G)(1)(b) Any portion of a lot in use as a Temporary Campground shall be at least 330 feet in any direction from any Residential zone district or lot containing a residential use in any Mixed-use zone district.

4-3(G)(1)(c) This use is prohibited adjacent to Major Public Open Space.

4-3(G)(1)(d) The maximum number of camp sites shall be 30 per temporary campground development. One (1) tent or recreational vehicle is allowed per camp site. The maximum number of occupants per temporary campground is 40 people.

4-3(G)(1)(e) Lavatories with at least one toilet and one handwashing station for every 5 camp sites shall be provided and shall not be more than 300 feet in any direction of any camp site. One shower per 10 camp sites shall be provided. Portable showers, toilets, and handwashing stations may be provided to meet this requirement, but proof of a maintenance agreement shall be required demonstrating that they will be serviced at regular intervals.

4-3(G)(1)(f) Camp sites and lavatories shall be set back a minimum of 25 feet from each property line.

4-3(G)(1)(g) The portion of a temporary campground containing the camp sites shall be screened on all sides by an opaque fence, wall, or vegetative screen at least 6 feet high.

4-3(G)(1)(h) For the duration of the Temporary Permit, either a caretaker shall live on-site or a contract shall be in place with a security company that provides response for 24 hours a day, 7 days a week.

1. Proof of a lease or rental agreement for the caretaker or contract for the security company shall be required with the application for a Temporary Permit.

5. In Subsection 7-1, Definitions, add in appropriate alphabetical order a new definition for “Campground, Temporary” as follows:

**[Campground, Temporary** A temporary use added to a lot for occupancy by tents or recreational vehicles, provided to occupants at no charge and which are following requirements and as limited by the use-specific standard in IDO Subsection 14-16-4-3(G)(1). See also *Campground or Recreational Vehicle Park*.]

**Explanation:** This amendment proposes to create a new use “Campground, Temporary” in order to allow for the development of temporary campgrounds, that would last for a period of no more than 1 year (365 days). The unhoused population in

## **A13 – Temporary Campgrounds**

Albuquerque has increased significantly in recent years, with many members of the community living in tents throughout the community. This new use would allow for the creation temporary campgrounds that could be established more quickly throughout the city. The latest census of homeless individuals in Albuquerque was 1,570 individuals.

# A21 – Pre-Application Meeting

## LAND USE, PLANNING AND ZONING COMMITTEE of the CITY COUNCIL

April 13<sup>th</sup>, 2022

COMMITTEE AMENDMENT NO. \_\_\_\_\_ TO Exhibit A to O-22-10

AMENDMENT SPONSORED BY COUNCILOR Dan Lewis, Louie E. Sanchez

1. Throughout the IDO strike all references to the PRT – Pre-Application Meeting.

**Explanation:** This amendment proposes to strike the requirement for a Pre-Application Meeting. In Table 6-1-1 Pre-Application meetings are required for the following applications:

- Conditional Use Approval
- Demolition Outside of an HPO
- Expansion of a Nonconforming Use or Structure
- Historic Certificate of Appropriateness Major
- Historic Design Standards and Guidelines
- Master Development Plan
- Site Plan DRB
- Site Plan EPC
- Bulk Land Subdivision
- Preliminary Plat
- Vacation of Public Right-of-Way – City Council
- Vacation of Public Right-of-Way – DRB
- Variance EPC
- Adoption or Amendment of Comprehensive Plan
- Adoption or Amendment of Facility Plan
- Adoption or Amendment of Historic Designation
- Amendment to IDO text – Citywide
- Amendment to IDO text – Small Area
- Annexation of land
- Zoning Map Amendment – EPC
- Zoning Map Amendment – Council

Section 6-4(B)(1) states:

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

## **A21 – Pre-Application Meeting**

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. A sketch plat review by the DRB meets the requirement of a pre-application meeting.

Prior to the adoption of the IDO, the Planning Department offered Pre-application (PRT) meetings as a service to the public, and as a means for the public to meet with Planning staff and get assistance with questions on how they might develop or redevelop a property. These meetings were voluntary and resulted in a non-binding review of city requirements with appropriate city staff. With the adoption of the IDO, the PRTs went from voluntary to mandatory for the above list of applications. This created a significant increase in the number of requests for PRT meetings. With the onset of COVID, the meetings shifted from in-person meetings to an email request and email response. Over the past year the PRT meeting email slots are often booked several weeks out and the responses take several weeks to be sent back. This can create a significant delay in the development timeline for a property owner seeking approvals through the city.

The intent of making the PRT meetings mandatory was to ensure a more complete application, however, the responses are no longer timely and often provide very generic information. This amendment proposes to stop requiring the pre-application meetings as mandatory, however the Planning Department will still be able to provide them to the public if a property owner chooses to opt-in to the process. Overall, the intent of removing PRTs as mandatory is to streamline the application process.