

CITY of ALBUQUERQUE

TWENTY SEVENTH COUNCIL

COUNCIL BILL NO. O-26-10 ENACTMENT NO. _____

SPONSORED BY: Klarissa J. Peña

1 **ORDINANCE**

2 **AMENDING SECTION 14-6-6-4(U)(5) OF THE INTEGRATED DEVELOPMENT**
3 **ORDINANCE TO DEFINE THE CRITERIA FOR AWARDING APPEAL COSTS.**

4 **WHEREAS, land use appeals to the City Council under the City's Integrated**
5 **Development Ordinance (IDO) are closed record proceedings, meaning that**
6 **the Land Use Hearing Officer (LUHO) and the City Council must base their**
7 **findings and recommendations solely on the administrative record and the**
8 **arguments presented by the parties; and**

9 **WHEREAS, existing language in Section 6-4(U)(5)(b) of the IDO requires**
10 **consideration of factors such as financial hardship and the City's Social**
11 **Vulnerability Index, which are not part of the administrative record and**
12 **therefore cannot be properly evaluated within the procedural limits of a closed**
13 **record appeal; and**

14 **WHEREAS, defining the procedures for incorporating these extra-record**
15 **factors into the record and incorporating the additional considerations**
16 **identified below ensures that the LUHO's findings on appeal costs and fees**
17 **are based solely on the merits of an appeal, the record, and conduct presented**
18 **in the record, consistent with the fair and impartial administration of the**
19 **appeal process; and**

20 **WHEREAS, these revised criteria are objective, legally sound factors that**
21 **align more closely with the standards used in judicial proceedings for**
22 **determining the extent to which reasonable costs and attorney's fees should**
23 **be awarded; and**

24 **WHEREAS, these revised criteria promote fairness and accountability while**
25 **preserving access to the appeal process; and**

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1 WHEREAS, this amendment ensures that the assessment of costs and fees
2 remains consistent with both the closed-record nature of the appeal and the
3 legal and equitable principles that guide similar determinations in court
4 settings.

5 BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF
6 ALBUQUERQUE:

7 SECTION 1. Section 14-6-6-4(U)(5) of the Integrated Development
8 Ordinance is hereby amended as follows:

9 6-4(U)(5) Appeal Costs [and Fees]

10 6-4(U)(5)(a) For an appeal to City Council related to an application that was
11 denied, all parties shall be responsible for their own costs [and fees].

12 6-4(U)(5)(b) For an appeal to City Council related to an application that was
13 approved, if the appellant loses their appeal, they shall be responsible for
14 paying [up to] \$1,000 for the [reasonable] costs and fees of the appellee.

15 1. A finding on [the reasonableness of any] costs and fees shall be made
16 by the LUHO. [The finding shall be based on the following factors:]

17 [a. The conduct of the parties during the appeal, and whether that
18 conduct was in bad faith, or malicious.

19 b. The objective reasonableness of the claims and defenses asserted
20 by the parties.

21 c. The extent to which an award of costs and fees in the case would
22 deter others from asserting good faith claims or defenses in similar
23 appeals.

24 d. The extent to which an award of a costs and fees in the case would
25 deter others from asserting meritless claims and defenses in future
26 appeals.

27 e. The objective reasonableness of the parties and the diligence of the
28 parties and/or their attorneys during the proceedings.]

29 2. [A costs and fees exemption may be granted to an appellant that
30 demonstrates in their appeal application that they meet one of the following
31 criteria. The review of these criteria shall be conducted administratively by the
32 Planning Department and included in the appeal record transmitted to the
33 LUHO.] ~~[The LUHO may grant an exception to either of the following:]~~

1 a. Any individual appellant that demonstrates hardship, low income, or
2 indigent status.

3 b. Any entity appellant with a geographic boundary that includes more than
4 50 percent of its area within an area that has an overall score of 50 or greater
5 on the City's Social Vulnerability Index.

6 SECTION 2. SEVERABILITY. If any section, paragraph, sentence, clause,
7 word or phrase of this Ordinance is for any reason held to be invalid or
8 unenforceable by any court of competent jurisdiction, such decision shall not
9 affect the validity of the remaining provisions of this Ordinance. The Council
10 hereby declares that it would have passed this Ordinance and each section,
11 paragraph, sentence, clause, word or phrase thereof irrespective of any
12 provision being declared unconstitutional or otherwise invalid.

13 SECTION 3. COMPILATION. SECTION 1 of this Ordinance amends, is
14 incorporated in, and is to be compiled as part of the Revised Ordinances of
15 Albuquerque, New Mexico, 1994.

16 SECTION 4. EFFECTIVE DATE. This Ordinance takes effect five days after
17 publication by title and general summary.

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