

# CITY OF ALBUQUERQUE

PLANNING DEPARTMENT  
ADMINISTRATION  
600 2<sup>nd</sup> Street NW, 3<sup>rd</sup> Floor  
Albuquerque, NM 87102  
Tel: (505) 924-3339



## **DECLARATORY RULING**

**FROM:** Michael J. Vos, AICP, Principal Planner and Zoning Enforcement Officer (ZEO)

**DATE:** June 18, 2024

**SUBJECT:** Declaratory Ruling regarding Heavy Vehicle Fueling at 1701 12<sup>th</sup> Street NW

The City's Metropolitan Redevelopment Agency (MRA) has made a request for a Declaratory Ruling on two matters related to potential development of the property located at 1701 12<sup>th</sup> Street NW (the "subject property"), which is zoned Non-residential Business Park (NR-BP), pursuant to the City of Albuquerque's Integrated Development Ordinance (IDO). The two matters are 1) whether Heavy Vehicle Fueling, as that term is defined in IDO §14-16-7-1 would be allowed at the subject property without the owner first obtaining a Conditional Use Approval; and 2) if a Conditional Use Approval is required, whether the owner can apply for a Site Plan – EPC depicting a Heavy Vehicle Fueling use without first obtaining the Conditional Use Approval.

### **BACKGROUND**

The owner of 1701 12<sup>th</sup> Street NW has applied for three Conditional Uses for the property, including nicotine retail, liquor retail, and heavy vehicle fueling. Those three Conditional Uses were denied by the Zoning Hearing Examiner (ZHE) on November 21, 2023 [PR-2023-009345 / VA-2023-00294, VA-2023-00295, VA-2023-00296]. The applicant appealed to the City's Land Use Hearing Officer (LUHO), and the LUHO remanded the Conditional Use requests back to the ZHE to be heard on May 21, 2024.

The applicant requested deferral of the remanded applications to June 18, 2024. According to the request for the Declaratory Ruling, the MRA was shown a site plan depicting semi-trucks and related facilities on the west side of the property. It is also alleged that the applicant requested the deferral for "Heavy Vehicle Fueling [conditional use] until its site plan [is] heard by the EPC." This is the basis for MRA requesting this Declaratory Ruling, as clarity is needed regarding the use and appropriate review processes under the IDO.

### **DEFINITIONS**

#### **IDO §14-16-7-1, Definitions, Heavy Vehicle and Equipment Sales, Rental, Fueling, and Repair**

A facility that is engaged in the sales, fueling, rental, and/or vehicle repair of heavy vehicles and equipment typically used in agricultural, transit, commercial, or industrial operations. This use does not include any vehicle that meets a definition for a distinct vehicle in this IDO, including but not limited to Recreational Vehicle. Sales of parts, whether new or used, for heavy vehicles and equipment, and incidental storage of heavy vehicles related to sales, rental, fueling, repair, service, and maintenance are included in this use. See also *Vehicle Definitions for Heavy Vehicle*.

#### **IDO §14-16-7-1, Definitions, Light Vehicle Fueling Station**

An establishment primarily engaged in the retail dispensing or sale of light vehicle fuels, including but not limited to gasoline, gas/oil mixtures, diesel fuel, compressed natural gas, electricity, and hydrogen

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through fixed, approved dispensing equipment. Incidental activities include, but are not limited to car washes; vehicle service and maintenance; and the sale of convenience items, food, beverages, household necessities, lubricants, and batteries. This use does not include any facility meeting the definition of light vehicle repair (except those incidental services listed above), light vehicle sales and rental, outdoor vehicle storage, or liquor retail. See also *Liquor Retail*, *Outdoor Vehicle Storage*, and *Vehicle Definitions for Light Vehicle Repair*, *Light Vehicle Sales and Rental*, *Light Vehicle*, *Vehicle Repair*, and *Vehicle Service and Maintenance*.

### **IDO §14-16-7-1, Definitions, Light Vehicle**

A vehicle that has a gross vehicle weight rating of less than 10,000 pounds, including but not limited to automobiles, light trucks, sport utility vehicles, vans, boats, recreational vehicles, trailers, motorcycles, mopeds, scooters, and ATVs.

### **IDO §14-16-7-1, Definitions, Heavy vehicle**

A vehicle with a gross vehicle weight rating of 10,000 pounds or greater, including but not limited to tractors, semi-trucks and/or trailers, buses, harvesters, loaders, and all tracked vehicles.

### **ANALYSIS**

#### ***Heavy Vehicle Fueling Requires a Conditional Use Approval in the NR-BP Zone District.***

In the IDO, “Heavy vehicle and equipment sales, rental, fueling, and repair” and “Light vehicle fueling station” are land uses categorized as Motor Vehicle-related Commercial Uses in IDO Table 4-2-1. For the subject property, located in an NR-BP zone district, heavy vehicle fueling is allowed as a “C” or Conditional Primary Use, and Light vehicle fueling is allowed as a “P” or Permissive Primary Use.

Pursuant to IDO §14-16-4-1(C)(2), “A ‘C’ in a cell of Table 4-2-1 indicates that the use is Conditional Primary (i.e. a primary use allowed **only after the applicant obtains a Conditional Use Approval** pursuant to Subsection 14-16-6-6(A)) and subject to any Use-specific Standards referenced in the right-hand column of that line of the table” [emphasis added]. Whereas, a Permissive Primary use is allowed by right in the applicable zone district.

In reviewing the IDO definitions for heavy vehicle fueling, light vehicle fueling, and each classification of vehicle, it is clear that heavy vehicles are those with a gross vehicle weight rating of 10,000 pounds or greater and specifically include semi-trucks and/or trailers. It is further my determination that a development or site plan that is designed to accommodate the entry, circulation, *fueling*, and exit of heavy vehicles meets the definition of “Heavy vehicle and equipment sales, rental, fueling, and repair,” which is “[a] facility that is **engaged in** the sales, **fueling**, rental, and/or vehicle repair **of heavy vehicles** and equipment typically used in agricultural, transit, commercial, or industrial operations.”

Insofar as the definition for Light vehicle fueling is “**primarily** engaged in the retail dispensing or sale of light vehicle fuels...” [emphasis added], any secondary uses do not extend to facilities that cater to semi-trucks or other heavy vehicles. Pursuant to IDO §14-16-4-1(A)(3), “Definitions of each land use may allow another land use listed in the table as incidental to the defined use.” Other activities listed as incidental activities within the definition of light vehicle fueling station include, but are not limited to, car washes, minor maintenance, or a convenience store. Heavy vehicle fueling is not a listed incidental use within the

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definition of Light vehicle fueling station. If diesel fuel is available at a station primarily designed to provide that fuel for automobiles, light trucks, and sport utility vehicles, it may qualify as a light vehicle fueling station even if a heavy vehicle might fuel there on rare occasion. It is the determination of the Zoning Enforcement Officer that it is not the single case of a heavy vehicle visiting a site that defines the use, but rather the clear engagement through site design and development in providing fuel for a certain class of vehicles. Otherwise, a single or rare incident case would be difficult or impossible to enforce as the vehicle in question will likely have left the premises by the time an investigation could occur.

It is also important to note that IDO §14-16-4-1(D) provides that multiple primary uses may occur within one development. A choice does not need to be made between these two uses for the purposes of assigning the use of a single development. The property may be developed with both a light vehicle fueling and heavy vehicle fueling use if it meets both definitions, and the proper approvals are secured. Further, if both primary uses are intended to be on the property, both must be reviewed and decided through the proper processes.

According to Merriam-Webster, to engage in something can mean to do or take part in, to give attention to, or to induce to participate in something. A development that is providing special facilities that will attract semi-trucks to refuel, whether they are interstate or local, is engaging in the fueling of heavy vehicles. In the NR-BP zone district, this heavy vehicle use requires a Conditional Use Approval.

### ***A Site Plan May Be Submitted but Cannot be Approved until a Conditional Use Approval Is Obtained.***

The second issue raised for this Declaratory Ruling is whether the owner can apply for or request review of a Site Plan – EPC showing a heavy vehicle fueling use prior to obtaining a Conditional Use Approval. The MRA cites IDO §14-16-6-6(l)(2)(e) in its request, which states “A Site Plan – EPC may not be **approved** until after any necessary Conditional Use Approvals are obtained pursuant to Subsection 14-16-6-6(A)” [emphasis added].

Based on this, an application may be submitted and accepted by the Planning Department, as long as that application includes all application materials required by the City pursuant to IDO §14-16-6-4(E)(2) and meets the completeness criteria in IDO §14-16-6-4(G); however, prior to the EPC deciding to approve the Site Plan, the applicant would need to obtain the Conditional Use Approval.

### **CONCLUSION**

It is my official determination as ZEO that a development with a site plan depicting heavy vehicle fueling located on a property within the NR-BP zone district, such as the subject property at 1701 12<sup>th</sup> Street NW, is required to obtain a Conditional Use Approval prior to approval of the relevant Site Plan.

Respectfully,

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Albuquerque Planning Department