

CITY OF ALBUQUERQUE

PLANNING DEPARTMENT URBAN DESIGN & DEVELOPMENT DIVISION

600 2nd Street NW, 2nd Floor
Albuquerque, NM 87102
Tel: (505) 924-3860



DECLARATORY RULING

FROM: Kate Clark, AICP, Principal Planner and Zoning Enforcement Officer (ZEO)

DATE: August 28, 2026

SUBJECT: Declaratory Ruling regarding Applicability of the Integrated Development Ordinance to the Proposed New Mexico School for the Deaf Pre-School Facility at 5600 Eagle Rock Ave. NE

Ursula R. Wilkinson, Esq., attorney with Rodey, Dickason, Sloan, Akin & Robb, P.A., on behalf of Central New Mexico Community College (CNM) and the New Mexico School for the Deaf (NMSD) ("Applicant"), has requested a Declaratory Ruling regarding the applicability of the City of Albuquerque's Integrated Development Ordinance (IDO) to a proposed NMSD pre-school facility to be constructed on CNM-owned land located at 5600 Eagle Rock Ave. NE (the "subject property"). Specifically, the request seeks an official determination as to whether IDO § 14-16-1-4(D) exempts the proposed development from applicable IDO requirements.

BACKGROUND

CNM owns three parcels associated with the proposed NMSD development at 5600 Eagle Rock Ave. NE (collectively, the "subject property"):

- the WORKforce Training Center parcel (UPC 101806409043620704),
- a smaller undeveloped parcel west of the Training Center (UPC 101806405845820716), and
- an undeveloped parcel north of the Training Center (UPC 101806412249020908).

The proposed NMSD pre-school facility would be located on the undeveloped western parcel and a portion of the southwestern area of the WORKforce Training Center parcel, while the northern parcel would provide additional parking for the facility. CNM proposes to adjust the boundaries of the two parcels comprising the pre-school site prior to executing the lease in order to consolidate the site into a single parcel. The pre-school site and additional parking parcel would then be leased to NMSD for construction and operation of the proposed facility.

The subject property is currently zoned NR-LM. An Adult or Child Day Care Facility, which includes pre-schools pursuant to IDO § 14-16-7-1, is listed as a Permissive Accessory use in the NR-LM zone district. This use is allowed as accessory to the WORKforce Training Center as part of the CNM premises.

DEFINITIONS

IDO § 14-16-7-1, Definitions, Adult or Child Day Care Facility

A facility other than an occupied residence that provides care for adults or children during the day. For the purposes of this IDO, the City regulates child care facilities that require a license from the state. This use includes pre-schools. This use does not include overnight care.

IDO § 14-16-7-1, Definitions, Premises

Any lot or combination of abutting or adjacent lots held in single ownership, together with the development on that lot or lots; there may be multiple occupancy.

IDO § 14-16-7-1, Definitions, University or College

An institution, other than a vocational school, that provides full-time or part-time education beyond high school.

IDO § 14-16-7-1, Definitions, Use Definitions, Accessory Use

A land use that is subordinate in use, area, or purpose to a primary land use on the same lot or, in any Mixed-use or Non-residential zone district, the same premises. An accessory use may or may not be located in an accessory structure. For the purposes of this IDO, accessory uses are listed in Table 4-2-1, may have separate Use-specific Standards, or may be defined as incidental to another primary use.

IDO § 14-16-7-1, Definitions, Use Definitions, Allowable Use

A land use allowed in a particular zone district by Table 4-2-1 as a primary or accessory use, whether allowed permissively or conditionally.

IDO § 14-16-7-1, Definitions, Use Definitions, Permissive Use

A land use that is allowed by-right in a particular zone district, either as a primary or accessory use. Permissive Primary uses are listed as P in Table 4-2-1. Permissive Accessory uses are listed as A in Table 4-2-1.

IDO § 14-16-7-1, Definitions, Use Definitions, Primary Use

A land use that is a primary use of a property and allowable within a particular zone district either permissively or conditionally. A primary use may be combined with other primary or accessory uses allowable within that zone district, subject to IDO standards.

ANALYSIS

Scope of IDO §14-16-1-4(D) and the Meaning of "Explicitly Exempted"

IDO § 14-16-1-4(D) provides that the IDO may not be applicable to state or governmental activities or development on lands owned by a state or governmental or quasi-governmental entity, to the extent the State of New Mexico has explicitly exempted them from the operation of local land use regulations.

The applicant has raised the question of what constitutes an “explicit exemption” under this provision and whether the proposed development qualifies as exempt. The IDO does not define the phrase “explicitly exempted” or identify a particular statutory mechanism through which such an exemption must be established; therefore, the phrase does not require the existence of a single statute naming a particular entity and declaring it categorically exempt from local land use regulation. In the context of this project, the exemption may instead be established through the constitutional and statutory authority under which CNM and NMSD were created and operate, together with applicable New Mexico case law. This interpretation is consistent with New Mexico case law recognizing limitations on the application of local zoning regulations to state governmental bodies and state-owned land. See *City of Santa Fe v. Armijo*, 1981-NMSC-102, 96 N.M. 663, 634 P.2d 685.

Central New Mexico Community College Is a Governmental Entity

Central New Mexico Community College is a public community college established pursuant to New Mexico law and governed by the New Mexico Community College Act, [NMSA 1978 § 21-13-2](#). CNM is governed by an elected Governing Board and is supported through public funding mechanisms established

by state law, including legislative appropriations, voter-approved tax revenues, and general obligation bonds. CNM and its Governing Board are also subject to state laws governing public bodies. These characteristics establish CNM as a governmental entity created under state law to perform a public educational function. Accordingly, CNM qualifies as a governmental entity for purposes of IDO § 14-16-1-4(D).

New Mexico School for the Deaf Is a State Educational Agency

The New Mexico School for the Deaf is a state educational institution established under New Mexico law and operates as a state educational agency pursuant to 6.31.2.11(K)(1) NMAC. As a state educational agency proposing to construct and operate the pre-school facility on land owned by CNM, NMSD's proposed activities constitute state or governmental activities for purposes of IDO § 14-16-1-4(D).

The Proposed Development Qualifies for the IDO §14-16-1-4(D) Exemption

The proposed NMSD pre-school facility constitutes state or governmental activity on land owned by a governmental entity. As discussed above, CNM qualifies as a governmental entity for purposes of IDO § 14-16-1-4(D) and owns the subject property. NMSD, as a state educational agency, proposes to construct and operate the pre-school facility and associated parking. Based on the governmental status of CNM and NMSD, and the public educational function of the proposed development, the proposed development falls within the governmental activities and development contemplated by IDO § 14-16-1-4(D). As discussed above, the authority under which CNM and NMSD were established and operate satisfies the IDO's "explicitly exempted" standard. Accordingly, the IDO is not applicable to the proposed development.

This determination applies specifically to the IDO and its land use requirements, including platting, use-specific standards, and site plan review. Certain development activities may still require permits or approvals through other City processes. These include, but are not limited to, utility connections, stormwater discharge into City systems, and access construction within the public right-of-way.

CONCLUSION

It is my official determination as ZEO that the proposed NMSD pre-school facility at 5600 Eagle Rock Ave NE constitutes state or governmental activity on land owned by a governmental entity within the meaning of IDO § 14-16-1-4(D). As discussed above, CNM qualifies as a governmental entity and NMSD operates as a state educational agency, and the state law under which the entities were established and operate satisfies the IDO's "explicitly exempted" standard. Accordingly, the proposed development is not subject to the IDO's land use requirements, including platting, rezoning, and site plan review. Certain development activities may still require permits or approvals through other City processes, including but not limited to utility connections, stormwater discharge into City systems, and access construction within the public right-of-way.

Sincerely,



Kate Clark, AICP
Principal Planner and Zoning Enforcement Officer
Albuquerque Planning Department