

RULES OF PROCEDURE AND CONDUCT

LANDMARKS COMMISSION

PURPOSE AND INTENT

These Rules define procedures for the application, notification, and decision-making by the Landmarks Commission (LC).

The Boards and Commission Ordinance § 2-6-1-4-C provides for Rules to be adopted for each board or commission and filed with the City Clerk bearing the signature of the presiding Officers.

These Rules replace previous and all Rules contained in other LC handbooks and guideline document

These Rules incorporate procedural issues in the Integrated Development Ordinance (hereafter IDO) Subsection 14-16-6-4(N)(2) and other ordinances, resolutions, plans, and guidelines under the LC's jurisdiction. These Rules may be revised or amended by a majority vote of the Landmarks Commission in accordance with provisions of Boards and Commissions Ordinance § 2-6-1-4-C.

A. ORGANIZATION AND MEETINGS

1. Annually at the first public meeting in April, or more frequently at the pleasure of the Landmarks Commission (LC), the LC members present shall elect by majority vote a Chair, Vice Chair, and any other officers that seem appropriate to the LC. Should a vacancy in these positions occur between regular elections, a special election shall be held to fill the remainder of the term.
2. Regular public hearings of the LC shall be on the second Wednesday of each month. In the event such day is a public holiday, the LC shall establish an alternate meeting date. Special meetings, including hearings, may be scheduled by the Chairperson or the LC when necessary provided that notice is given. For the foreseeable future, the meetings will continue as Zoom hearings. The Planning Department is in the process of working on a hybrid (in-person and Zoom) hearing but details have yet to be finalized. Once meetings return to in-person hearings, please refer to A below for the meeting location.

A. Location. Plaza del Sol Hearing Room, Lower Level, 600 2nd Street NW, Albuquerque, New Mexico.

3. Notice for all meetings of the LC (including special meetings and public hearings) shall comply with all applicable notification requirements specified in the Integrated Development Ordinance.. Continuances and deferrals of items that are approved by the LC for a specified hearing date do not require additional notification.

4. Four Commissioners of the LC shall constitute a quorum for the transaction of business. Whenever a quorum is not present at a public hearing, no action shall be taken except to adjourn the meeting to another time.
5. The LC may hold study sessions for the purpose of receiving information, hearing presentations, or discussing issues. No official action may be taken at such meetings. These sessions shall be open to the public and notice shall be provided as required for LC meetings. The LC may designate the meeting will be for public observation only or for public comment.
6. The Chair may form ad-hoc committees to study specific tasks. All ad-hoc committees will be formed at publicly noticed meetings, and reporting will also occur at publicly noticed meetings.
7. The Chair shall preside at all meetings of the LC except that in the event of the absence or disability of the Chair, the Vice Chair shall preside; in the absence or disability of the Chair and Vice Chair, a Chair Pro Tempore shall be elected by the LC members present.
8. The Planning Department shall provide administrative support for the LC, including a secretary to record minutes of LC hearings, including any preparation for and subsequent tasks after the LC public hearings.
9. At the beginning of a regular or special hearing, the LC may approve minutes of its preceding hearings for which minutes have not been approved. Drafts of such minutes shall be submitted to the LC at least one week in advance. The minutes shall include, at a minimum, the date, time and place of the hearing, the names of Commissioners in attendance and those absent, the substance of the proposals considered and a record of any decisions and votes taken, including findings and conditions, that show how each member voted. Minutes shall not become official until approved by the LC.

B. PUBLIC HEARING PROCEDURES

1. Applicant may appear on his/her own behalf or be represented by an agent. In the absence of any personal appearance on behalf of an Applicant, the LC may defer, continue to another date, or proceed with the case.
2. Any changes to the meeting agenda, barring emergencies or unusual circumstances, shall be announced at the beginning of each meeting. The agenda, as amended, shall be approved at the beginning of each meeting. Applications shall be considered in the order in which they appear on the approved agenda. An approved agenda may be changed at any time by the LC, for good cause shown, upon motion passed by majority vote.

3. After a staff report is distributed to the LC, withdrawal of an application requires LC approval.
4. The order of considering an application shall be as follows unless the LC approves a motion to alter the order of presentation:
 - (a) Planning staff presentation
 - (b) Applicant's presentation
 - (c) Testimony by other concerned parties
 - (d) Applicant's response and cross-examination, if any
 - (e) Other concerned parties cross-examination, if any
 - (f) Staff response, if any
 - (g) Closing of the floor and comments by the LC members
 - (h) Motions, including findings and any conditions required.
5. LC Commissioners may ask clarifying questions of any speakers at any time prior to the closing of the floor. The Chair has the discretion to allow additional comment and response while the floor is open. The floor can be re-opened by a majority vote if warranted.
6. Any party to an application may cross-examine a witness on matters relevant to the application by presenting the question to the Chair. The Chair shall rule as out of order any improper, irrelevant or unnecessarily long questions or answers.
7. Any person wishing to speak at a hearing shall register with the recording secretary.
8. The Chair may choose to limit the time allowed to all witnesses for their presentation and testimony. Repetitive or irrelevant testimony is discouraged. At hearings, the time limits on presentations and testimony are generally as follows:
 - 5 minutes for staff presentation
 - 10 minutes for applicant's presentation
 - 2 minutes for each public speaker
 - 5 minutes for applicants response
 - 5 minutes staff response

Neighborhood groups and other parties are encouraged to select one or more spokesperson to express common view points. The Chair shall determine appropriate time limits under such circumstances and may grant additional time to any speaker as is appropriate.
9. All evidence presented to the LC or the Planning Department staff during a hearing shall be deposited with the recording secretary until all administrative and judicial remedies are exhausted. Where the submission of an original document creates a hardship, copies of the original may be substituted.

10. LC Motions and Voting

a) The Chair may vote on any motion, second any motion and may make any motions except motions to approve, defer, continue or deny a final action.

b) A majority vote by the LC is required to approve any motion, unless otherwise specified in these rules. In the event of a tie vote on any motion, that motion fails. If there are motions to approve, deny, continue or defer an application, and all four types of motions end in a tie vote and/or fail, then the application is denied and no findings shall be adopted.

c) When approving a motion to approve, deny, continue or defer an application, the LC will adopt finding of fact, based on the record, upon which it has based its decision. The LC may impose conditions on the approval of an application as may be appropriate under the circumstances.

d) The LC may continue or defer a matter to another hearing at the request of staff, an applicant or other interested party or when the LC determines that additional information is necessary or beneficial to render a decision. When the applicant or his agent or a member of the public is present and objects to continuation or deferral to another day, the affirmative vote of a simple majority of LC Commissioners present is required to continue or defer the hearing.

1) A continuance is usually approved because the Commission needs more time to consider the case before them. The subsequent hearing picks up where it left off. If public testimony has been taken, taking additional testimony is optional, provided that, if the Applicant modifies the application at all, the LC must give an opportunity for public testimony on the changed portion(s) of the application only. In order to vote at a subsequent hearing, Commissioners who were not present at the original hearing(s) must review the entire oral and written record of previous hearing(s).

2) A deferral is usually approved to allow for additional information to be presented to the Commission, i.e. revisions to site plans, additional justification from the applicant, additional meetings with the public, etc. A deferral by the Commission is usually accompanied by directions to the staff or applicant. Public testimony must be taken. In order to vote at a subsequent hearing, Commissioners who were not present at the original hearing(s) must review the entire oral and written record of previous hearing(s).

11. The LC shall not re-vote on any motion unless a member states immediately after the original vote that he had not understood the effects of the motion, or if the City Council returns a matter to the LC for rehearing and decision. A Commissioner shall be allowed to change his or her vote, but only before the result has been announced.

C. APPLICATION

1. All applications for a Certificate of Appropriateness that are received after construction has begun are subject to review by staff. Applications for work for which staff approval is normally permitted may be approved with the concurrence of the Chairperson of the LC. Applications for work which is outside of staff approval authority or for which the Chairperson determines that the work conditions warrant further analysis, is subject to review by the LC at a public hearing.
2. Applicants should review their proposed projects with City staff prior to preparing final plans and submitting an application. Staff will determine the level of review required for the circumstances of the case.
3. An application for a Certificate of Appropriateness or a Certificate of Compliance shall be in writing on forms prescribed by the City. The application must include all items, as indicated by City staff and checked/checked on the applicant's Form L Checklist and other Project Drawings Checklists provided by the City. The applicant shall provide sufficient copies of the submittal for the review as determined by the City. Incomplete submittals are grounds for a deferral or denial. Inaccurate information provided in an application is grounds for a denial.
4. Drafting standards: In order to document and understand the exact nature of the proposed work, drawings must be submitted with the application. All drawings must be to scale, with the scale indicated on each drawing. Drawings may be by hand, but must present the project in a clear fashion. Drawings shall show the relationship of the project to the existing building(s), the surrounding neighboring structures and the street context as applicable.

Major design elements shall have the dimensions clearly indicated on the drawing(s). Examples of major design elements to show dimensions include: roof heights, trusses, porches, overhangs, windows, doors, awnings, walls, fences, steps, decks, and every major design element intended for the final construction of the project.

All plans submitted for LC review must be able to be built as drawn. If the City of Albuquerque requires a licensed design professional's stamp for the building permit, then a licensed design professional must design and draw the submittal for LC review.

5. Any documents, photos, plans, or other information provided to the City in conjunction with an application shall be available to the public.

6. For applications requiring a public hearing, all supporting materials and project plans must be submitted by the application deadline in order to allow time for analysis and preparation of a staff report and review by other agencies as appropriate. Any materials intended to be distributed to the LC with the staff report must be submitted at least a week prior to the hearing. The LC discourages the submittal of additional material at the public hearing. If visual materials, such as photographs, are submitted, they should be identified as to location, photographer, date, and categorized into an exhibit sequence so that the LC may refer to one specific photograph or document as an exhibit. The LC may accept new materials at the public hearing subject to majority vote.

D. DECISIONS BY LC STAFF

1. Planning staff will authorize changes, alterations and additions to contributing and non-contributing properties in Historic Protection Overlay (HPO) zones and City Landmarks as follows:

- (a) Staff may authorize alterations that do not require a building permit
- (b) Staff may authorize re-roofing projects for replacement with similar or historically appropriate materials provided those materials are permissible under the guidelines.
- (c) Staff may authorize additions of 190 square feet or less that are not readily visible from any street. Any addition visible from any street are subject to a Commission decision.
- (d) Staff may authorize alterations that require a permit that are for replacement with like material and appearance.
- (e) The staff may approve changes to the LC approved plans that do not have an impact on any significant historic characteristic. If the changes do have an impact on a significant historic characteristic, staff may refer that decision to the LC, and shall refer that decision to the LC if the item to be changed was a point of discussion at the hearing where the application was approved. If, in the opinion of staff, such a referral would delay the construction and present a significant economic hardship to the owner, the staff may confer with the Chairperson of the LC in order to form a decision.

2. Staff will determine if the proposed change is consistent with the development guidelines, does not significantly diminish the historic or architectural character of the property or the neighborhood, and does not alter the distinguishing original qualities of the property.
3. When an applicant requests a change that is addressed in the guidelines as “should not,” “discouraged,” “shall not,” or similar language, the staff shall deny the change or recommend that the application be forwarded to the LC.
4. Staff may decide to approve the application as presented, approve the application with certain conditions, or deny the application. All actions by the staff shall have findings of fact relating to that decision.
5. Notice
 - (a) If the application is approved and a Certificate of Appropriateness (CofA) is issued, applicants will be provided with a sign (or signs) to post on the subject property indicating the nature of the approval. It is the Applicant’s responsibility to post and maintain these signs for 15 days following issuance of the CofA.
 - (b) Designated Neighborhood Associations will be notified by email of the issuance of a CofA by the City Planning Department at the time of issuance of the CofA.
 - (c) The effective (issuance) date of a CofA will be the date of acceptance of the posting signs at the City Planning Department by the Applicant.
6. Staff shall provide the LC with documentation concerning all decisions. The documentation shall contain the decision and a brief description of the work requested.

E. DEMOLITION PROCEDURES

1. IDO Sections 14-16-6-5(B) and 14-16-6-6(D) provide the procedures for a Certificate of Appropriateness for the demolition of buildings within HPO zones and for City Landmarks. Staff may authorize a demolition permit application for non-contributing buildings when the specific development guidelines for the HPO provide that non-contributing buildings may be demolished without a Certificate of Appropriateness.
2. Section 14-12-8-A (5) provides that a Certificate of Appropriateness is not required for “any alteration or demolition which is necessary to correct or abate a condition which has been declared unsafe by the appropriate City official after notification of the Commission and consultation with the Chairperson of the Commission and where emergency measures have been declared necessary by such departments.”

For the purposes of 14-12-8-A (5) regarding exemptions from the requirements for a Certificate of Appropriateness, the issuance of a Notice and Order by the City's Code Enforcement division shall constitute a declaration of unsafe conditions. The code enforcement official shall notify the Commission in writing noting the unsafe conditions and providing a copy of the Notice and Order. The Chairperson of the Commission shall acknowledge receipt of the notice, in writing, to the code enforcement official. This procedure shall satisfy the ordinance requirements and staff may subsequently authorize a demolition permit application. The Commission may choose to communicate, in writing, to the Code Enforcement Official that it objects to the demolition.

3. The IDO Section 14-16-6-6 (B) provides procedures for demolition review outside of an HPO when applicable.
 - a) For the purposes of this article, the signature of approval by Planning Department staff on a demolition permit application shall constitute the referenced written determination of whether the structure may be eligible for demolition review as required by the ordinance.
 - b) For the purposes of this article, the signature of denial by Commission staff on a demolition permit application shall constitute the written determination that the structure may be subject to demolition review and Commission staff shall schedule a public hearing according to the provisions of IDO Section 6-6(B)(2)(e) (1) through (3). At the public hearing the LC shall determine if a one-hundred-twenty day review period should be implemented on the subject property.

F. GENERAL

1. These rules shall control the conduct of business by the LC. In the event of a conflict between these rules, city ordinances or resolutions of the City Council, and/or state or federal laws; city ordinances, resolutions of the City Council, and/or state or federal laws shall control.
2. The appearance of impropriety shall be avoided. Commissioners shall recuse themselves from hearing a matter if a conflict of interest exists or appears to exist, including, for example, a direct or indirect financial conflict of interest, or if circumstances exist which would impair or appear to impair the independence of judgment of the Commissioner. However, LC Commissioners have a duty to hear cases presented to them and recusal should only occur for good reason. Commissioners who recuse themselves from hearing and voting on a quasi-judicial matter shall not be present in the hearing room when the matter is heard. Commissioners should reveal any information relevant to a conflict of interest or the potential for the perception of a conflict of interest, thereby providing the opportunity for any objection to their participation.
3. LC Commissioners shall not engage in *ex-parte* communication about any filed or prospective application requiring quasi-judicial proceedings with any person or organization interested in such application. For purposes of these rules, an *ex-parte* communication shall be defined as a substantive communication, outside the public hearing process, between a LC Commissioner and any member of the public. Communications with the staff of the Planning Department or the City Attorney's office shall not be considered *ex-parte* communication. Any material received by a Commissioner from any person or organization shall be forwarded to the staff of the Planning Department for distribution to the Commission.

Attendance at meetings, seminars, open houses or other similar functions, in which a pending or prospective application is discussed incidentally or in general terms for information purposes only, without any communications being directed to or by the LC Commissioner, shall not constitute *ex-parte* communication.

However, such an incident shall be disclosed by the LC Commissioner at the public hearing on said application.

An LC Commissioner who has engaged in *ex-parte* communication shall recuse himself or herself from hearing the application. LC Commissioners shall disclose any instance of an attempted *ex-parte* communication, however, any such attempt should not, in and of itself, be grounds for recusal.

4. Commissioners shall not conduct independent fact-finding investigations of any property that is the subject of a quasi-judicial proceeding before the LC. A cursory site visit by an individual Commissioner to generally familiarize that Commissioner with the location and environs of such a property, that does not include an independent fact finding investigation, is permitted.
5. The LC Chair has authority, subject to a Commissioner's right to appeal to the Commission as a whole, to limit repetitive, irrelevant or inappropriate testimony, evidence and cross examination presented at a public hearing, as well as limit a LC Commissioner's comments, questions, or arguments that are repetitive, irrelevant, or otherwise inappropriate. Commissioners and speakers shall confine their remarks to the question under discussion or debate.
6. The Chair, subject to these rules, shall decide all points of procedure. An appeal may be made on any decision of the Chair, in which event the Commissioner appealing shall state his or her reason therefore, to which the Chair may respond. Such appeals shall be acted upon immediately and no motions shall be entertained until the question has been decided. A vote of the majority of the Commissioners present shall be required to sustain an appeal.
7. Only actual cases shall be presented to the LC. Hypothetical or what-if cases are not permissible. The LC should not give advice on how it might rule in future cases or might have ruled in past cases.
8. These rules may be amended by a quorum of the LC at a public meeting, provided written notice of the proposed changes and their time of consideration is given to all LC members at least one week in advance and the public and others are properly notified, pursuant to the Public Boards, Commissions and Committees Ordinance, Section 2-6-1-4© of the Albuquerque Code of Ordinances.
9. These rules may be suspended for the consideration of a given agenda item by a vote of majority of the members of the LC present.
10. Where questions not covered by these rules are asked, the LC may move/call the question with a majority vote of the LC members present. A majority vote of the members present decides the question.

APPROVED and ADOPTED xxxxxxxx.

Chair, Landmarks Commission