

## **§ 14-16-3-20 ARCHAEOLOGICAL SITES.**

- (A) ***Short title.*** This section may be cited as the "Albuquerque Archaeological Ordinance."
- (B) ***Applicability.*** This section applies when an applicant initiates the approval process for any of the following:
- (1) A preliminary plat for any subdivision that is five acres or more in size; or
  - (2) A site development plan or master development plan for a project that is five acres or more in size on property that is zoned SU-1 Special Use, IP Industrial Park, an SU-2 zone that requires site plan review, PC Planned Community with a site plan requirement, or meets the Zoning Code definition of a shopping center site.
- (C) ***Definitions.*** For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**APPLICANT.** A person who files an application and/or begins the city approval process for which this section applies.

**ARCHAEOLOGICAL RESOURCE.** Material remains of past human activity and life which are of archaeological interest including, but not limited to: pottery, basketry, bottles, weapon projectiles, tools, structures or portions of structures, pit houses, rock paintings, rock carvings, intaglios, graves, human skeletal materials, or any portion or piece of any of the foregoing items. Non-fossilized and fossilized paleontological specimens, or any portion or piece thereof, shall not be considered archaeological resources unless found in an archaeological context. No item shall be treated as an archaeological resource unless such item is at least 75 years old. Material remains that are structures may be considered under the city's Landmarks and Urban Conservation Ordinance (§§ 14-12-1 et seq., ROA 1994).

**ARCHAEOLOGICAL SITE, SIGNIFICANT.** A geographic location which contains an archaeological resource likely, as determined by the City Archaeologist, to yield information important to the prehistory or history of the Albuquerque area.

**ARCHAEOLOGICAL SURVEY.** A visual inspection conducted on foot that examines, identifies, records, evaluates and interprets all surface visible archaeological resources.

**ARCHAEOLOGIST, QUALIFIED.** A professional archaeologist who meets minimum standards to hold a current State General Permit at the Principal Investigator level issued by the New Mexico Cultural Properties Review Committee. The City Archaeologist shall be a qualified archaeologist who, within six months of hire, obtains a current State Annual General Permit at the Principal Investigator level and a State Annual Unmarked Burial Permit.

**PERSON.** An individual, corporation, governmental agency, business trust, estate, trust, partnership, association, two or more persons having a joint common interest, or any other legal entity.

**(D) *City Archaeologist.***

- (1) The City Planning Department shall employ a qualified archaeologist to implement the Albuquerque Archaeological Ordinance. A qualified archaeologist may be contracted on a temporary basis when the position is not filled or when the City Archaeologist is unable to perform day-to-day duties. Such archaeologist shall be referred to as the "City Archaeologist."

- (2) The City Archaeologist shall be housed in the City Planning Department and shall report to the Planning Department Director.
- (3) The City Archaeologist shall:
  - (a) Have such qualifications as established by this section;
  - (b) Contract with or hire such assistants and support staff as are necessary to perform the duties assigned and delegate such duties of the City Archaeologist to such assistants and support staff as is deemed appropriate;
  - (c) Assist any city department in complying with this section;
  - (d) Consult the New Mexico Cultural Resources Information System and other information sources to compile and maintain a digital database of surveyed areas, site locations, site types, cultural time periods and site conditions that is compatible with the Albuquerque Geographic Information System;
  - (e) Determine whether an archaeological resource is of historic or pre-historic significance;
  - (f) Maintain records of project areas that received a "Certificate of No Effect" or a "Certificate of Approval";
  - (g) Inspect ground-disturbing activities and/or archaeological resources, as needed;
  - (h) Review and comment on cases in the EPC process. Comment on DRB cases as necessary;
  - (i) Review any application for a Certificate of No Effect or proposed treatment plan and approve or deny it within 15 days;
  - (j) Coordinate with other divisions and departments as necessary to ensure compliance with treatment plans;
  - (k) Maintain a list of qualified archaeologists; and
  - (l) Such other activities that will promote the public's understanding and appreciation for the City of Albuquerque's archeology.

**(E) *Certificate of No Effect; Certificate of Approval.***

- (1) Prior to the approval of a preliminary plat or a site development or master development plan, the applicant must first obtain either a Certificate of No Effect or a Certificate of Approval.
- (2) A Certificate of No Effect shall be issued when the City Archaeologist determines that the proposed development will not adversely impact any significant archaeological sites. The City Archaeologist shall issue a Certificate of No Effect upon determining that the applicant has demonstrated any of the following:
  - (a) That an archaeological investigation has been conducted on the property and that, based on a report prepared by a qualified archaeologist, it has been determined that no significant archaeological site exists on the property. The factual basis necessary to support this determination shall be met through the presentation of an archaeological investigation report prepared in compliance with federal or New Mexico state historic

preservation laws and regulations which used a comparable definition for a significant archaeological site. Documentation indicating that the report was accepted by the relevant agency shall accompany the report;

- (b) That the property has been disturbed through previous land use or development to such an extent that there is a substantial reduction in the probability of the continuing existence of any significant archaeological site. It shall be adequate evidence that the property was previously disturbed to such an extent so as to meet this requirement if the property has been graded, demolition has occurred on the property, or the project involves redevelopment or rehabilitation of existing improvements; or
  - (c) That the informational value of any significant archaeological sites located on the property has been satisfactorily documented through previous archaeological investigation.
- (3) If the applicant fails to obtain a Certificate of No Effect, a Certificate of Approval may be obtained as follows:
- (a) A qualified archaeologist shall prepare a treatment plan. The treatment plan shall be a site specific plan in report format that shall:
    1. Detail strategies for the management of the affected archaeological sites;
    2. Include standards for further testing, sampling, documentation, data recovery, preservation and protection, analysis and report preparation;
    3. Outline an effective preservation plan or data recovery and documentation plan for those resources that the City Archaeologist has determined to have significant research or other value;
    4. Provide a schedule for the implementation of the treatment plan; and
    5. Provide a cost estimate for mitigation strategies, including testing, data recovery, curation and report preparation.
  - (b) The City Archaeologist shall review the treatment plan and shall approve or deny the proposed plan within 15 days of its submission. If the plan is approved, a Certificate of Approval shall be issued by the City Archaeologist. If the plan is not approved as submitted, the City Archaeologist shall advise the applicant of the changes needed in the plan for its approval. In making a decision on the plan, the City Archaeologist shall consider methods to avoid, reduce or mitigate effects on archaeological resources, including the use of conservation easements, while taking into consideration the needs of the property owner.
  - (c) The Director of the Planning Department shall require that the treatment plan is included on the applicable infrastructure lists of preliminary plats and site plans for building permit such that compliance is a condition of final plat approval.
  - (d) The Director of the Planning Department shall require that any necessary treatment plan is referenced on the first sheet of the site development plan and/or master development plan. Implementation of the necessary treatment plan shall be made a condition of approval in the Official Notice of Decision.

- (e) The Director of the Planning Department shall promptly advise the Landmarks and Urban Conservation Commission of (i) any archaeological resource that the City Archaeologist has determined is significant, and (ii) any application for a Certificate of Approval.
- (4) Failure to obtain a Certificate of Approval required by this section or failure to complete and implement a city approved treatment plan, which is the basis of a Certificate of Approval, shall subject the property owner to the penalties in § 1-1-99 ROA 1994. The city may also seek injunctive relief or take administrative action, including the revocation of a city issued permit, for failure to obtain a Certificate of Approval or complete or implement an approved treatment plan.
- (5) The city may promulgate regulations for the implementation of this section.

**(F) *Unexpected archaeological discovery.***

- (1) In the event that an archaeological resource is unexpectedly discovered in the city during demolition, development or land disturbance activity on any property for which a Certificate of No Effect has been issued, such activity in the immediate vicinity of the archaeological resource shall immediately cease and the person or entity responsible for or overseeing the demolition, development or land disturbance activity shall immediately notify the Director of the Planning Department or the City Archaeologist of the discovery.
  - (2) Activity that ceases because of the unexpected discovery of an archaeological resource may resume only after the City Archaeologist determines that the resource is not significant or a treatment plan is approved by the city as set forth in division (D). If the City Archaeologist determines that the area containing the archaeological resource can be separated from the project and the resource protected until the treatment plan is completed, the demolition, development or land disturbance activity may resume.
  - (3) The failure to immediately cease demolition, development or land disturbance activity upon the discovery of an archaeological resource is a violation subject to the penalties in § 1-1-99 ROA 1994.
- (G) *Appeals.*** The City Archaeologist's decision may be appealed to the Landmarks and Urban Conservation Commission (LUCC). The LUCC shall be the final appellate body within the city administrative process.
- (H) *Human remains.*** In the event that human remains or funerary artifacts are discovered on any property in the city during demolition, development or land disturbance activity, Section 18-6-11.2 of the New Mexico Cultural Properties Act shall control.

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