



***ENVIRONMENTAL  
PLANNING COMMISSION***

***[DISCUSSION DRAFT]***

***RULES of PRACTICE  
and PROCEDURE***

***— [EFFECTIVE DATE] —, 2019***

## ARTICLE I – RULES

Section 1. Authorization for Rules. These Rules of Practice and Procedure (hereafter Rules) of the Environmental Planning Commission (hereafter EPC) are authorized pursuant to Section 14-13-3-3 (B), ROA 1994, and the Integrated Development Ordinance (hereafter IDO) Section 14-16-6-4(M)(2). In the event of a conflict between the 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. [{hyperlink to Section 14-16-6-4\(M\)\(2\)}](#)

Section 2. Interpretation of Rules. The Rules shall be construed and administered by the EPC and its staff to secure the just and efficient determination of every matter or proceeding before the EPC while adhering to the laws, and the stated goals of those laws, that govern the particular matter or proceeding at issue.

Section 3. Control by Rules. The Rules shall control the conduct of all business before EPC. All EPC Commissioners, EPC staff, and those appearing before the EPC or having business in front of the EPC shall adhere to the Rules. An EPC Commissioner can be removed temporarily for violation of these rules by an affirmative vote of a majority of the EPC Commissioners present.

Section 4. Suspension of Rules. Except for Rules matching or mandated by charter, statutory or ordinance provisions, the Rules, or any part thereof, may be temporarily suspended by a majority vote of the EPC Commissioners present.

Section 5. Not Covered by Rules. Any matter not covered by the Rules shall be governed by **Roberts' Rules of Order** (latest edition), or, if not covered by **Roberts' Rules of Order**, by a decision of the chair, subject to the right of appeal. A violation of **Robert's Rules of Order** not brought to the attention of the EPC during the proceedings and prior to the vote at issue shall not be the basis for an appeal.

Section 6. Amendment of Rules. The Rules may be amended by the majority vote of EPC Commissioners at a public meeting, provided written notice of the proposed changes and their time of consideration is given to all EPC Commissioners 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(C) of the Albuquerque Code of Ordinances.

Section 7. Dissemination of Rules. Copies of the Rules shall be available to the public upon request, shall be published on the EPC website, and copies shall be available in the hearing room at each EPC meeting or hearing. Cross-examination request forms shall separately be made available in the hearing room at which an EPC public hearing has been scheduled.

Section 8. Citation to Rules. A particular rule of the Rules may be cited by giving the Roman numeral of Article first, then the Section number, followed by the subsections if any. For example, the rule concerning appealing decisions of the Chair by a Commissioner would be cited or called 'Rule II.6.A(1)(a)'.

## ARTICLE II – ORGANIZATION AND MEETINGS

Section 1. Annual Election of Officers. Annually at the first public hearing on the second Thursday in January, or as soon thereafter as is practical, the EPC members present shall elect by majority vote a chair and a vice-chair. These officers shall be elected for a term of one year and no officer shall serve more than two consecutive terms in the same position. Should a vacancy in either of these positions occur between regular elections, a special election shall be held to fill the office for the remainder of the year. The special election shall be held at the next EPC meeting for which there has been at least one week notice given to all commissioners regarding the vacancy. For any meeting occurring prior to the special election, Pro-tem officers shall be elected to serve for that meeting only.

Section 2. Regular Meetings and Hearings and Special Meetings and Hearings. Regular public meetings and hearings on current land use applications shall be on the second Thursday of each month. In the event such a day is a public holiday, the meeting or hearing shall be exactly one week later. Special meetings and hearings may be scheduled by the EPC Chair at other times when necessary. Generally, a public meeting is less formal than a public hearing. Unless otherwise posted, hearings and meetings shall be in the Plaza del Sol Hearing Room, Lower Level, 600 2nd Street NW.

A. Public Comment and Public Testimony. At a public meeting, the EPC may or may not allow public comment at its discretion; at a public hearing, public testimony is allowed, and a record of the proceeding is created. See Section 6-1-1 of the IDO. [{hyperlink to Section 6-1-1}](#)

Section 3. Public Notice. Notice for all meetings of the EPC (including special meetings, public hearings, and study sessions) shall comply with applicable notification requirements specified in Section 14-16-6-4(K) and Table 6-1-1 of the IDO, including publication of notice 15 days or more prior to the meeting. Continuances and deferrals that are approved by the EPC for a specific hearing date do not require re-advertisement or additional notice, nor does an appeal of the decision. [{hyperlink to Section 14-16-6-4\(K\) and Table 6-1-1}](#)

Section 4. Quorum. Five Commissioners of the EPC shall constitute a quorum for the transaction of business. Whenever a quorum is not present, no action shall be taken except to adjourn the meeting to the next scheduled public meeting.

Section 5. Study Sessions. Upon motion of any Commissioner, passed by a majority of Commissioners present, the EPC may hold a study session for the purpose of receiving information, hearing presentations, and for discussion of such information, during the week prior to the regular public hearing. Also, the Chair, in its discretion may from time to time call special study sessions. No official action shall be taken at study sessions. Presentation of information by staff or others, or discussion relating to any application that is quasi-judicial in nature shall be recorded and such record shall be made available to interested parties; comment and discussion by the public during such study sessions is not allowed.

Section 6. The Chair. The Chair shall preside at all meetings of the EPC. The Chair is responsible for the management and administration of EPC hearings and meetings, to include requiring appropriate decorum as befits the deliberations of a public body. In the event of the absence or disability of the Chair, the Vice- chair shall preside and have all the powers of the Chair;

in the event of the absence or disability of the Chair and Vice-chair, a Chair Pro Tempore shall be elected by the EPC Commissioners present. A duly elected Chair Pro Tempore shall preside and have all the powers of the Chair.

A. The Chair shall possess the powers to perform the duties herein described, to wit:

(1) The Chair shall decide all questions of order and procedure, subject to the Rules and another Commissioner's right to appeal to the EPC as a whole. *See also* Rule I.5. This authority includes but is not limited to halt or limit repetitive, irrelevant or inappropriate testimony, evidence and cross examination presented at a public hearing, as well as halt or limit an EPC 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.

(a) Any Commissioner may appeal 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 a majority of the Commissioners present shall be required to sustain an appeal.

(2) The Chair may place any party or witness under oath or affirmation to not commit perjury.

(3) The Chair may grant additional time to any speaker as the Chair deems appropriate.

(4) 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.

Section 7. Duties of the EPC. The EPC has the responsibility to:

A. Make recommendations or decisions on development application types shown as EPC responsibilities in Table 6-1-1 of the IDO. [{hyperlink to Table 6-1-1}](#)

B. Study urban and regional planning and the means of protecting and improving the environment and promote the understanding of planning and environmental matters among public officials and residents of the city.

C. Advise the Mayor, Council, and City staff concerning the development and revision of community goals, Community Planning Area assessments, plans for urban development and protection of the environment, policies on development and protection of the environment, ordinances appropriate for affecting such plans and policies, and annexations to the city.

D. Make recommendations for programming of capital improvements for the city pursuant to Sections 2-12-1, et seq., ROA 1994 (Capital Improvements) and the resolution establishing priorities for each biannual capital improvement plan, designation of land desirable and needed for public purposes, adoption of air and water quality standards, and other appropriate matters. The EPC has not been delegated the power to deny development plans or refuse to issue building permits on the basis of alleged air quality effects, inadequacy of present air quality regulations, or the like. See *In re Environmental Planning Commission of City of Albuquerque, 1974 -*

NMSC- 093, Paragraph 8.

E. Review any recommendations, concerns, or comments provided by commenting agencies, departments, stakeholders, and the public prior to final decisions.

F. Perform those duties and responsibilities and exercise those powers that are delegated to it by the City Council through the IDO or independently of the IDO.

G. Form standing committees or task forces composed of EPC members in order to carry out the assigned duties, responsibilities, and powers of the EPC.

Section 8. EPC Administrative Staff. The Planning Director shall appoint a staff person to handle the routine administrative duties for the EPC and to record minutes for the EPC.

Section 9. Minutes. Draft minutes shall be prepared after an EPC meeting and shall be approved, amended or disapproved at the next EPC meeting where a quorum is present. Drafts of such minutes shall be submitted to EPC Commissioners at least one week in advance of the meeting in which they are to be considered. The minutes shall include 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 EPC.

Section 10. Agenda. Any changes to the meeting agenda, barring emergencies or unusual circumstances, shall be made at the beginning of each meeting or hearing. The agenda, as amended, shall be approved at the beginning of each meeting or hearing and shall be a part of the record of the meeting or hearing. There shall be no consent agenda. An approved agenda may be changed at any time by the EPC, for good cause shown, upon motion passed by majority vote. *See also* Rule III. \_\_\_\_\_. Notice of the right of cross-examination shall be prominently placed in the agenda for which a public hearing is scheduled.

### **ARTICLE III – PUBLIC HEARINGS**

Section 1. Public Hearing Types. Each public hearing (other than appeal hearings) shall include an opportunity for all parties to the hearing to be heard regarding the application. A record shall be kept of each person asking questions or offering testimony about the application. Depending on what is required by law, the EPC may conduct two types of public hearings: quasi-judicial and non-quasi-judicial. The fact that the EPC may treat a matter with the additional procedural safeguards of a quasi-judicial hearing is not to be deemed an admission that the matter has a right to those additional safeguards.

A. Quasi-judicial Hearings. For decisions that would result in changes to property rights or entitlements on a particular property or affecting a small area, or are otherwise not considered legislative decisions involving policy or regulatory changes that would apply citywide or to a large area, the decision-making body shall conduct a quasi-judicial hearing to make a discretionary decision. Quasi-judicial hearings shall be subject to the additional provisions set forth below. The EPC may at its discretion treat any matter in a quasi-judicial fashion.

(1) Appearance of Record. An appearance of record in a hearing is made through a written statement of the person's name and address, signed by the person or by his/her agent, and filed with or otherwise received by the EPC prior to the termination of public comment on the case. Any party may appear on their behalf or may be represented by an agent. In the absence of any personal appearance on behalf of an applicant, the EPC may proceed to consider such matter.

(2) Conduct. At public hearings on IDO applications, the order of consideration and time limits on presentations and testimony are generally as follows:

- (a) Planning staff presentation - 5 minutes;
- (b) Applicant's presentation - 10 minutes;
- (c) Testimony by public speakers including those with and without standing - 2 minutes for each public speaker except a City-recognized neighborhood association will have 5 minutes. Neighborhood groups and other parties are encouraged to select one or more spokespersons to express common viewpoints;
- (d) The EPC may call witnesses and introduce documents of its own volition during the public hearing. EPC Commissioners may not themselves testify at the hearing. EPC Commissioners are not subject to cross-examination. Commissioners may ask clarifying questions of any speaker or witness at a public hearing at any time prior to the announcement by the Chair that presentational portion of the hearing has ended;
- (e) Applicant's response and cross-examination, if any - 5 minutes;
- (f) Cross-examination by others with standing;
- (g) Staff response and cross-examination, if any - 5 minutes;
- (h) Presentational portion is announced as ended by the Chair;
- (i) Chair's summary of the issues (when appropriate);
- (j) Comments by EPC Commissioners;
- (k) Motions including findings, and any conditions that may be required EPC.

(3) Testimony Under Oath or Affirmation. All testimony at the hearing shall be under oath or affirmation.

(4) Cross-examination. Cross-examination shall be afforded to anyone with standing in accordance with the Rules. Persons with standing desiring to question any other person who has testified during the hearing shall sign a list maintained by EPC staff and complete the cross-examination request form, a sample of which appears in the Appendix of the Rules. The Chair shall review the questions submitted on the request forms by persons with standing who have signed up on the list maintained by EPC staff. The Chair shall rule as out of order any improper, irrelevant or unnecessarily long questions or answers. The Chair may restate the person's questions and may require that questions be addressed to the Chair.

(a) Persons with standing for purposes of cross-examination are:

- (1) The applicant; or
- (2) any person who owns a property interest within 300 feet of the subject-site (excluding the public right-of-way) and organized neighborhood associations if the boundaries of the association include any part of the subject-site or any land within 600 feet thereof (excluding the public right-of-way); or

(3) any person who demonstrates a personal or pecuniary interest or property right that may be adversely affected by the EPC's decision, which right or interest must be more than merely nominal or remote.

(5) The Record. A full record of the public hearing will be made by sound recording or transcription; any person shall have the opportunity to listen to, copy, or transcribe the recording during regular business hours.

(a) Evidence. For the purposes of maintaining a proper record, all evidence presented to the EPC or Planning staff regarding an application shall be deposited with the Planning Department until such time as all administrative and judicial remedies are exhausted. Copies of the original maybe substituted in lieu thereof. A hard/printed copy of information presented electronically to the EPC shall be placed into the record/file at the time of presentation. If possible, an electronic copy of the information shall also be placed into the record/file at the time of presentation.

(b) Written Materials. All written materials including petitions, legal analyses, and other documents containing substantive arguments, evidence or analysis shall be submitted to the Planning Department at least 15 days prior to the EPC hearing, in time for full consideration by staff, interested parties or members of the public, and for proper presentation to the EPC prior to its regular scheduled meeting. Any written materials including petitions, legal analyses, and other documents containing substantive arguments, evidence or analysis strictly limited to addressing or rebutting written materials submitted 15 days prior shall be submitted 10 days prior. The EPC will only consider limited, clarifying written material if it has been submitted to the EPC and any known opposing party at least 48 hours prior to the public hearing. In quasi-judicial proceedings, ex parte communications with EPC Commissioners are forbidden. Therefore, all communications, written or oral, prior to or outside the public hearing must be made to or in care of the staff of the Planning Department. Written materials should be addressed to and include the following references:

The EPC  
c/o Planning Department Staff  
600 2nd St NW  
Albuquerque, NM 87102

Case No. \_\_\_\_\_  
Project No. \_\_\_\_\_

(6) Ex Parte Communications. Ex parte communications with EPC Commissioners are not permitted in relation to any matter of a quasi-judicial nature. An ex parte communication is a substantive communication, outside the public hearing process, between an EPC 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 communications.

(a) Prior to making a decision at a quasi-judicial public hearing and until the expiration of any applicable appeal period, an EPC Commissioner shall not do any of the following:

(1) Communicate, directly or indirectly, with any party or party representative in connection with the merits of any issue involved, except upon advanced prior notice and opportunity for all parties to participate.

(2) Use nor rely upon any communication, reports, staff

memoranda, or other materials prepared in connection with the particular case unless made a part of the record. Communication with staff outside of an open meeting regarding the substance of a case shall be by email. This communication shall be made part of the record.

(3) Inspect the site in issue with any party or his/her representative unless all parties are given opportunity to be present. EPC Commissioners shall not conduct independent fact-finding investigations of any property that is the subject of a quasi-judicial proceeding before the EPC. However, a cursory site visit by an individual Commissioner acting alone to generally familiarize that Commissioner with the location and environs of such a property does not constitute an independent fact finding investigation and is permitted.

(b) Prior to making a decision at a quasi-judicial public hearing and until the expiration of any applicable appeal period, an EPC Commissioner shall do the following:

(1) Conscientiously and in good faith avoid any regular media and social media articles or discussions concerning the facts or the merits of any issue involved in a matter pending before the EPC unless that media article or discussion has become part of the official record.

(2) Forward any application related material inadvertently received from any person or organization to the staff of the Planning Department for distribution to the EPC. Copies of all such materials shall be processed in a manner consistent with Rules \_\_\_\_\_.

(3) Disclose at the public hearing any attendance at a meeting, seminar, open house or other similar function in which a pending prospective application is discussed incidentally or in general terms for information purposes only, without any communications being directed to or by the EPC Commissioner. Such an incidental discussion shall not constitute an ex parte communication.

(4) Recuse himself or herself from hearing an application concerning which the Commissioner has engaged in ex parte communications. EPC 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.

(7) Decisions. The EPC shall take any one of the following actions:

(a) Approve or recommend approval of the application as presented.

(b) Approve or recommend approval of the application with conditions.

(c) Deny or recommend denial of the application.

(d) Defer the matter to a date no more than 60 consecutive days following its first appearance on the agenda, unless a longer deferral is accepted by the applicant.

(e) Continue the matter to a date no more than 60 consecutive days following the opening of the public hearing, unless a longer continuance is requested by the applicant.

(f) For decisions to continue or defer a hearing, the time and place shall be announced at the hearing without the need for the applicant or the City to provide additional notice.

(8) Written Decisions.

(a) For decisions to continue or defer a hearing, written findings in support of the decision are not required.

(b) For final decisions, the EPC shall provide a written decision with findings based on the review criteria for that type of application that shall be made part

of the record.

(c) Each finding shall be supported by substantial evidence.

(d) The EPC shall make a decision at the public hearing and shall issue a written decision with findings necessary to the decision within 15 consecutive days after the close of the public hearing.

(9) Criteria For Review and Decision. For all applications, the EPC shall review the applicant's justification for the request and only approve the request if it finds that the justification is sound based on substantial evidence. The applicant bears the burden of providing a sound justification for the requested decision, based on substantial evidence. See section 14-16-6-4(F)(2) of IDO. The EPC should pay proper deference to Planning Department staff expertise contained in staff reports and other City departmental comments. In addition, the EPC should:

(a) where the IDO or other pertinent law lists specific criteria for the approval of an application, approve the application if it finds that those criteria have been met;

(b) where the IDO or other pertinent law does not list additional or more specific criteria for the review and decision on applications, recommended for approval (or approval with conditions) or approve (or approve with conditions) if your review causes you to conclude the application complies with all applicable standards in the IDO, other adopted City regulations or policies that may be applicable, and any conditions specifically applied to development of the property in a prior permit or approval affecting the property.

(c) deny any application of a type identified in Table 6-1-1 of the IDO if an applicant meets any of the following criteria:

(1) Has not complied with all applicable statutes of the State of New Mexico, provisions of the Charter of the City of Albuquerque, or City ordinance;

(2) Is in default or has defaulted on a written agreement with the City; or,

(3) Has failed to pay fees, charges, taxes, special assessments, and other debts or obligations that are due from the applicant and payable to the City regarding any matter.

(10) Appeals. Appeals heard by the EPC are quasi-judicial proceedings and are subject to the following special rules:

(a) The hearings are open to the public, but public comment is not permitted. Only the following parties are allowed to speak to an appeal, in the following order and only for the allotted time:

Appellant: 15 minutes

Party Opponent (appellee): 20 minutes

Planning Staff: 5 minutes

Appellant: 5 minutes

(b) Once an appeal has been accepted by the Planning Director, the City Planning Department staff shall prepare and transmit a record of the appeal together with all appeal material received from the appellant to the property owner and appellant(s) and to the EPC. The EPC shall schedule a hearing on the matter within 45 consecutive days of receipt. City Planning Department staff shall notify the parties. Appellants and parties to the appeal may submit written arguments to the EPC so long as the written argument is received by EPC staff at least 10 consecutive days prior to the hearing.

(c) The EPC may accept new evidence into the record if it appears that such additional evidence is necessary for the proper disposition of the matter and could not have been placed into the record during the previous decision-making process. New evidence that clarifies evidence already in the record, that is offered to contradict evidence in the record, or that is offered on a key factual issue, may be allowed or may justify remand.

(d) The EPC may impose reasonable limitations on the number of witnesses heard and on the nature and length of their testimony and cross-examination.

(e) The EPC shall make findings exclusively on the record of the decision appealed, supplemented by any evidence allowed at the hearing.

(f) The EPC may affirm, reverse, or otherwise modify the lower decision to bring it into compliance with the standards and criteria of this IDO, applicable City regulations, and any prior approvals related to the property.

(g) If the EPC determines that the matter should be remanded, the EPC shall set forth the reason(s) for the remand and the matters to be reconsidered and may order such remand. The matter must be heard and decided by the original decisionmaking body prior to any further appeal of the matter.

B. Non-Quasi-judicial Hearings (Legislative or Advisory). Non-quasi-judicial proceedings do not require the same procedural protections as are provided during a quasi-judicial proceeding. The EPC performs a wide variety of duties. See Rule II.7. Whether the particular matter or application requires a quasi-judicial proceeding shall be determined on a case- by-case basis if necessary, but the EPC may in its discretion treat any matter with more procedural safeguards than required by law.

Section 2. Applications. The EPC shall not consider any application subject to the IDO that has not been determined by the Director of the Planning Department to be complete. Only actual applications shall be presented to the EPC. Hypothetical or what-if scenarios are not permissible. The EPC shall not give advice on how it might rule in future cases or might have ruled in past cases. All applications subject to the IDO that are to be considered by the EPC require a public hearing. See Table 6-1-1 of the IDO. After a staff report is distributed to the EPC, withdrawal of an application requires EPC approval. Inaccurate, false or misleading information within an application or in documentation by applicant in support of the application is grounds for denial.

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**PASSED AND ADOPTED on \_\_\_\_\_, 20\_\_\_\_**

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**Dan Serrano, Chair**  
**Environmental Planning Commission**

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**Date**

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First Printing of the EPC Rules on \_\_\_\_\_, 2019  
Revised 8/2002; 5/2006; 12/2009; 6/2010; 5/2012, 10/2013, 9/201

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– APPENDIX –  
**CROSS-EXAMINATION REQUEST FORM**

Please print clearly. If you believe it is likely you will be asking a question, it would be prudent to fill out as much of the form as possible in advance. In addition to filling out this form, you must sign a list maintained by EPC staff. Only questions from persons with standing who have signed up on the list and filled out this form will be considered. See EPC Rules of Practice and Procedure, Rule III.1.A(4).

YOUR NAME

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YOUR ADDRESS

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NAME of WITNESS  
YOUR QUESTION IS  
ADDRESSED TO

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QUESTION(S)

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BRIEF STATEMENT OF STANDING, I.E., WHAT IS YOUR INTEREST IN THIS APPLICATION OR MATTER?

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ALSO PLEASE CHECK ALL APPLICABLE BOXES:

- I am owner of the property listed in the application
- I am the applicant
- I am a person who owns a property interest within 300 feet of the subject-site
- I represent a neighborhood association with boundaries that includes all or part of the subject-site
- Other – explain above per EPC Rule III.1.A(4)(a)

I do swear or affirm under penalty of perjury that the information provided on this form is true and correct to the best of my knowledge.

\_\_\_\_\_  
signature

\_\_\_\_\_  
date