

***RULES OF PROCEDURE AND CONDUCT
LANDMARKS AND URBAN CONSERVATION COMMISSION***

Adopted by the LUCC June 12, 2013

PURPOSE AND INTENT

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

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 LUCC handbooks and guideline documents.

These Rules incorporate procedural issues in the LUC Ordinance §14-12 and other ordinances, resolutions, plans, and guidelines under the LUCC's jurisdiction. These Rules may be revised or amended by a majority vote of the Landmarks and Urban Conservation 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 and Urban Conservation Commission (LUCC), the LUCC members present shall elect by majority vote a Chair, Vice Chair, and any other officers that seem appropriate to the LUCC. 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 LUCC shall be on the second Wednesday of each month. In the event such day is a public holiday, the LUCC shall establish an alternate meeting date. Special meetings, including hearings, may be scheduled by the Chairperson or the LUCC when necessary provided that notice is given. Unless otherwise posted, meetings shall be in the Plaza del Sol Hearing Room, Lower Level, 600 2nd St. NW.
3. Notice for all meetings of the LUCC (including special meetings and public hearings) shall comply with all applicable notification requirements specified in the Comprehensive City Zoning Code and the LUC Ordinance. Continuances and deferrals of items that are approved by the LUCC for a specified hearing date do not require additional notification.

4. Four Commissioners of the LUCC 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 LUCC 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 LUCC meetings. The LUCC 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 LUCC 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 LUCC members present.
8. The Planning Department shall provide administrative support for the LUCC, including a secretary to record minutes of LUCC hearings, including any preparation for and subsequent tasks after the LUCC public hearings.
9. At the beginning of a regular or special hearing, the LUCC may approve minutes of its preceding hearings for which minutes have not been approved. Drafts of such minutes shall be submitted to the LUCC 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 LUCC.

B. PUBLIC HEARING PROCEDURES

1. Applicant may appear in his/her own behalf or be represented by an agent. In the absence of any personal appearance on behalf of an Applicant, the LUCC 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 LUCC, for good cause shown, upon motion passed by majority vote.

3. After a staff report is distributed to the LUCC, withdrawal of an application requires LUCC approval.
4. The order of considering an application shall be as follows unless the LUCC 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 LUCC members
 - (h) Motions, including findings and any conditions required.
5. LUCC 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 LUCC 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. LUCC 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 LUCC 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 LUCC will adopt finding of fact, based on the record, upon which it has based its decision. The LUCC may impose conditions on the approval of an application as may be appropriate under the circumstances.

d) The LUCC may continue or defer a matter to another hearing at the request of staff, an applicant or other interested party or when the LUCC 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 LUCC 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 LUCC 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 LUCC 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 LUCC 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 or Compliance 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 LUCC. 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 LUCC 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/marked 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 LUCC 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 LUCC 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 LUCC with the staff report must be submitted at least a week prior to the hearing. The LUCC 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 LUCC may refer to one specific photograph or document as an exhibit. The LUCC may accept new materials at the public hearing subject to majority vote.

D. DECISIONS BY LUCC STAFF

1. Planning staff will authorize changes, alterations and additions to contributing and non-contributing properties in historic overlay zones, urban conservation overlay 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 120 square feet or less that are not readily visible from any street. Additions of 120 feet or less that are 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) Staff may authorize other alterations with the advice and consent of the Chairperson of the LUCC.
- (f) The staff may approve changes to the LUCC 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 LUCC, and shall refer that decision to the LUCC 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 LUCC 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 LUCC.
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 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 Certificate.
 - (b) Designated Neighborhood Associations will be notified by mail of the issuance of a Certificate by the City Planning Department at the time of issuance of the Certificate.
 - (c) The effective (issuance) date of a Certificate will be the date of acceptance of the posting signs at the City Planning Department by the Applicant.
6. Staff shall provide the LUCC with documentation concerning all decisions. The documentation shall contain the decision and a brief description of the work requested.
7. Staff decisions in the Huning Highland East Downtown Urban Conservation Overlay Zone (HH-EDo UCOZ) shall be administered in accordance with D.1 through D.6 above. Applications for a Certificate of Compliance for Non-Contributing properties not eligible under Section D.1 above will be reviewed by an Architectural Review Committee.
 - (a) An Architectural Review Committee (ARC) serves as an advisory committee to the LUCC for issuing Certificates of Compliance for non-contributing properties within the HH-EDo UCOZ, as stipulated in the Huning Highland/East Downtown Regulatory Plan.
 - (b) The ARC consists of one LUCC member and one member from each city-recognized neighborhood association within the boundaries of the HH-

EDo UCOZ and the Huning Highland Historic Overlay Zone (HHHOZ). One LUCC staff member shall act as facilitator. The Planning Department staff person shall have the sole authority to render administrative rulings and issue a Certificate of Compliance for approved development proposals.

- (1) The LUCC Vice-Chairperson shall serve as designated representative to the ARC, with the Chairperson acting as an alternate.
 - (2) Neighborhood association representatives are to be designated by their association. Each association shall also select an alternate representative to serve in the absence of the designated representative.
 - (3) LUCC staff shall request the representative's and alternate's names in a letter addressed to the association's president. The request is to be sent "return receipt requested."
 - (4) Failure of a neighborhood association to provide designated representatives or to provide a representative to participate in the review of an application shall not delay the consideration of the application.
- (c) LUCC staff will review the application and provide the application package to members of the ARC within one week of the application if the submittal is complete. LUCC staff may schedule a presentation of the proposed project to the ARC by the Applicant. Presentations of proposed projects are open to the public for informational purposes.
- (1) Applicants shall demonstrate project compliance with the HH-EDo UCOZ Regulatory Plan on forms provided by the City.
 - (2) Staff shall request agency comments as appropriate.
- (d) Applications will be reviewed by the ARC members for compliance with the HH-EDo UCOZ Regulatory Plan. Written comments or analysis are to be provided by the ARC members to the LUCC staff person within 10 days of a presentation of the project, or receipt of the application if no presentation is scheduled. Failure of a designated representative to provide comment in the review of an application shall not delay the consideration of the application.
- (e) Issuance of Certificates of Compliance
- (1) After review and comment from the ARC, LUCC staff will make a determination and shall issue a Certificate of Compliance within 30

days of the receipt of the application if the project is determined to be in compliance with the Regulatory Plan for the HH-EDo UCOZ.

- (2) An approval may include conditions or specific modifications to the proposed project in the Certificate of Compliance.
- (3) After the issuance of a Certificate of Compliance, any substantial change from the approved plans must be review by ARC members and staff.

E. DEMOLITION PROCEDURES

1. Section 14-12-8 provides the procedures for a Certificate of Appropriateness. for the demolition of buildings within Historic Overlay Zone and for City Landmarks. Staff may authorize a demolition permit application for non-contributing buildings when the specific development guidelines for the Historic Overlay Zone 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 Landmarks and Urban Conservation Ordinance 14-12-9 provides procedures for demolition review when called for in a Sector Development Plan and not covered under Section 14-12-8.
 - 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 14-12-9 (6) through (12). At the public hearing the LUCC 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 LUCC. 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, LUCC 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. LUCC 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 LUCC 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 LUCC Commissioner, shall not constitute *ex-parte* communication.

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

An LUCC Commissioner who has engaged in *ex-parte* communication shall recuse himself or herself from hearing the application. LUCC 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 LUCC. 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 LUCC 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 LUCC 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 LUCC. Hypothetical or what-if cases are not permissible. The LUCC 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 LUCC at a public meeting, provided written notice of the proposed changes and their time of consideration is given to all LUCC 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 LUCC present.
10. Where questions not covered by these rules are asked, the LUCC may move/call the question with a majority vote of the LUCC members present. A majority vote of the members present decides the question.

APPROVED and ADOPTED June 12, 2013.

Chair, Landmarks and Urban Conservation Commission