



CITY OF ALBUQUERQUE
OFFICE OF ADMINISTRATIVE HEARINGS
ZONING HEARING EXAMINER
NOTIFICATION OF DECISION

City of Albuquerque Family and Community Services (Agent, Consensus Planning) requests a conditional use to allow an overnight shelter for Lot A1A1A/Lovelace Hospital, Lovelace Hospital, located at 5400 Gibson BLVD SE, zoned MX-H [Section 14-16-4-2]

Special Exception No:..... **VA-2021-00316**
Project No: **Project#2021-005834**
Hearing Date: 09-21-21
Closing of Public Record: 09-21-21
Date of Decision: 10-06-21

On the 21st day of September, 2021, Consensus Planning, agent for property owner, City of Albuquerque Family and Community Services (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a conditional use to allow an overnight shelter (“Application”) upon the real property located at 5400 Gibson BLVD SE (“Subject Property”). Below are the ZHE’s finding of fact and decision:

FINDINGS:

1. Applicant is requesting a conditional use to allow an overnight shelter.
2. The City of Albuquerque City of Albuquerque Integrated Development Ordinance (“IDO”), Section 14-16-7-1 defines an overnight shelter as “*A facility that provides sleeping accommodations for 6 or more persons for a period of less than 24 hours with no charge or a charge substantially less than market value; it may provide meals and social services. Any such facility open to clients between 10:00 P.M. and 7:00 A.M. is considered an overnight shelter.*”
3. The Subject Property is zoned MX-H, the purpose of which under the IDO is to “*provide for large-scale destination retail and high-intensity commercial, residential, light industrial, and institutional uses, as well as high-density residential uses, particularly along Transit Corridors and in Urban Centers. The MX-H zone district is intended to allow higher-density infill development in appropriate locations.*”
4. Table 4-2-1 of the IDO states that an overnight shelter in the MX-H zone requires a conditional use approval.
5. IDO Section 14-16-6-6(A)(3) (Review and Decision Criteria– Conditional Use) reads: “*An application for a Conditional Use Approval shall be approved if it meets all of the following criteria:*
 - (a) *It is consistent with the ABC Comp. Plan, as amended;*
 - (b) *It complies with all applicable provisions of this IDO, including but not limited to any Use-specific Standards applicable to the use in Section 14-16-4-3; the DPM; other adopted City regulations; and any conditions specifically applied to development of the property in a prior permit or approval affecting the property, or there is a condition of approval that any Variances or Waivers needed to*

comply with any of these provisions must be approved or the Conditional Use Approval will be invalidated pursuant to Subsection (2)(c)2 above.

- (c) *It will not create significant adverse impacts on adjacent properties, the surrounding neighborhood, or the larger community.*
 - (d) *It will not create material adverse impacts on other land in the surrounding area through increases in traffic congestion, parking congestion, noise, or vibration without sufficient mitigation or civic or environmental benefits that outweigh the expected impacts.*
 - (e) *On a project site with existing uses, it will not increase non-residential activity within 300 feet in any direction of a lot in any Residential zone district between the hours of 10:00 P.M. and 6:00 A.M.*
 - (f) *It will not negatively impact pedestrian or transit connectivity without appropriate mitigation.*
6. The applicant bears the burden of providing a sound justification for the requested decision, based on substantial evidence, pursuant to IDO Section 14-16-6-4(E)(3).
 7. The applicant bears the burden of showing compliance with required standards through analysis, illustrations, or other exhibits as necessary, pursuant to IDO Section 14-16-6-4(E)(4).
 8. Applicant timely submitted a written authorization for Agent to act on Applicant's behalf.
 9. Applicant's community outreach regarding the proposed Gateway Center dates back to 2018, and that outreach utilized community input sessions, online surveys, focus groups with people experiencing homelessness, and neighborhood community meetings.
 10. On March 15, 2021, the Albuquerque City Council approved Resolution R-21-141, which required two community input sessions within 45 days and advancement towards a Good Neighbor Agreement by the City with area residents and businesses to be in place for so long as the Gateway Center operates at the Gibson Health Hub site. The City held the two community input meetings on June 10 and June 12, 2021. The first meeting was held online and the second was held at the Gibson Health Hub Educational Building. Input from the meetings is posted on the City website at www.cabq.gov/gateway.
 11. Applicant provided evidence that all property owners and neighborhood associations entitled to notice were notified of the Application. Although a neighboring business owner complained that he did not receive notice, his business was not listed on the list of properties located within the required notice perimeter pursuant to the IDO, and it appears from evidence in the record, including without limitation the perimeter buffer map for the Subject Property, that the complainant's business is located outside the required notice perimeter. Further, the complainant clearly had notice, given that he submitted written evidence before the ZHE hearing and oral testimony at the ZHE hearing. Based on evidence in the record, Application provided the required timely notice to all property owners whose properties are within the required notice perimeter. Opponents submitted a petition signed by business owners who complained of inadequate notice. Nevertheless, based on evidence of mailings, emails, publication, and sign porting, the ZHE finds that the notice given by Applicant was compliant with the requirements of the IDO.
 12. Applicant timely mailed neighborhood meeting requests on June 4, 2021.
 13. On June 22, 2021, the City Land Use Facilitation Program conducted a facilitated pre-application meeting with community members, online via Zoom, to which were invited representatives of the affected neighborhood associations and the community at large.

According to the facilitated meeting report dated June 24, 2021, approximately 98 people registered for the meeting and as many as 80 participated in the meeting at the highest participation.

14. Applicant attended a pre-application meeting with City staff on June 29, 2021.
15. Regarding the requirement under IDO Section 14-16-6-6(A)(3)(a) that the requested conditional use be “*consistent with the ABC Comp. Plan, as amended*”:
 - a. Applicant and supporters of the Application submitted, among other things, the following:
 - i. Goal 6.2 Multi-Modal System: Encourage walking, biking, and transit, especially at peak-hour commuting times, to enhance access and mobility for people of all ages and abilities. Applicant Response: The proposed Gateway Center overnight shelter at the Gibson Health Hub furthers Goal 6.2 Multi-Modal System by placing it in an area with excellent multi-modal access, including transit services, major street network, and pedestrian and bicycle access and connections. The subject property is along Gibson Boulevard, an Urban Principal Arterial, and designated as a Commuter Corridor by the Comprehensive Plan. It is within the designated San Mateo Boulevard Major Transit Corridor area and a 1/2-mile west of the Louisiana Boulevard Major Transit Corridor area.
 - ii. Goal 9.4 Homelessness: Make homelessness rare, short-term, and non-recurring. Applicant Response: The Gateway Center overnight shelter will further Goal 9.4 Homelessness by being a critical component of the City's comprehensive approach to making homelessness rare, short-term, and non-recurring. The City estimates that there are at least 1,525 people in shelters or on the streets in Albuquerque each night, and at least 5,000 households experienced homelessness in 2020. The Gateway Center will address chronic homelessness in Albuquerque by providing safe, dignified emergency shelter within a central, developed area of Albuquerque. In addition, clients will receive wraparound services that help them exit the overnight shelter into stable, permanent housing and other community resources.
 - iii. POLICY 9.4.1: Best Practices: Implement an appropriate and effective model to address chronic homelessness. Applicant Response: The Gateway Center overnight shelter furthers Policy 9.4.1 Best Practices by providing emergency shelter for those experiencing homelessness and work with them to transition into permanent housing. The proposed Gateway Center overnight shelter will function as a "gateway" to end chronic homelessness through the use of three models to effectively transition unhoused community members into housing
 - iv. POLICY 9.4.2 Services: Provide expanded options for shelters and services for people experiencing temporary homelessness. Applicant Response: The proposed Gateway Center overnight shelter will further Policy 9.4.2 Services by expanding options for temporary shelter and services for the City's unhoused populations. Although there are many service providers in Albuquerque that serve the unhoused populations, the City does not currently have a centralized 24/7 center that can connect

unhoused individuals to the support organizations they need, often creating a "gap" in services. By building strong partnerships with existing providers, the City's proposed Gateway Center can serve as a centralized center, allowing for a more efficient connection to essential services and reducing the potential gap in services.

- v. POLICY 9.4.3 Equitable Distribution: Support a network of service points that are easily accessible by residents and workers, geographically distributed throughout the City and County, and proximate to transit. Applicant Response: Locating the proposed Gateway Center overnight shelter at the Gibson Health Hub furthers Policy 9.4.3 Equitable Distribution as reflected in comments from the individuals experiencing homelessness focus groups. The Gateway Center location is accessible to trusted nearby service providers in the International District and is located within the San Mateo Major Transit Corridor area. The proposed Gateway Center is the City's first step towards a dispersed shelter model that will add more shelters and supportive services in other locations within Albuquerque.
- vi. Goal 9.5 Vulnerable Populations: Expand capacity to provide quality housing and services to vulnerable populations. Applicant Response: The proposed Gateway Center will expand the City's capacity to provide services and access to quality housing to vulnerable populations, thereby furthering Goal 9.5 Vulnerable Populations.
- vii. POLICY 9.5.1 Quality Housing: Ensure well maintained, safe transitional and permanent housing for the lowest income households that are most at risk of homelessness. Applicant Response: The proposed Gateway Center furthers Policy 9.5.1 Quality Housing by providing the first step to permanent housing for the most vulnerable in our community. The Time-Limited Model ensures that clients of the overnight shelter have secured permanent housing before they leave the shelter. Low-income clients will have Wraparound services, including case management and assistance securing financial support for housing expenses. The goal of the Gateway Center is to reduce the risk of homelessness by ensuring clients have the support to maintain stable, permanent housing.
- viii. POLICY 9.5.2 Transitional Services: Encourage on-site transitional services with culturally competent service delivery that respects the dignity of individuals and families and fosters self-determination and self-sufficiency, including job training, financial education, and behavioral health assistance. Applicant Response: The services provided at the Gateway Center will support Policy 9.5.2 Transitional Services by providing Wraparound services for individuals and families. The individual leads the team-based, collaborative Wraparound approach to case management. The program is flexible, comprehensive, and can involve a number of organizations. The City will partner with existing community organizations and service providers specializing in delivering culturally competent services that will respect the individual and prepare individualized transition plans.

- b. Opponents of the Application submitted, among other things, the following:
 - i. Under “A Vision for Albuquerque & Bernalillo County” page 3-3 “As the county and city grow in population over the next 20 years, neighborhoods will be safer and easier places to walk through and between. The positive characteristics that contribute to their unique identities will be protected and enhanced.” “The City and the County commit to analyzing the health of our communities and the geographic distribution of our public investments and assets. Where gaps are identified, governments will collaborate with communities, nonprofits, public agencies, and private enterprises to address them.” Opponent Response: This request does not help the positive characteristics of the neighborhood as it adds a further potential crime element to the area, (in an area with the highest overall crime in the City) increases the likelihood of encampments along Gibson Blvd, and fails to create a distribution of investments, and assets for the homeless throughout the City.
 - ii. Guiding Principles found on page 3-8 state the following:
 - 1. **STRONG NEIGHBORHOODS** New development creates desirable places to live and encourages diverse housing and amenities, while respecting the unique history and character of each neighborhood. Opponent Response: does not increase the quality of life as it adds another homeless shelter to Council District 6 which already has the highest number of homeless shelters. This does not increase the quality of life of the residents as the area is suffering from homeless encampments, public urination, defecation and other undesirable activities.
 - 2. **MOBILITY** Residents have improved options to move throughout Albuquerque for work, school, recreation, and services. Opponent Response: homeless encampments along Zuni make the area difficult to walk as there is extensive amounts of debris on the sidewalks, this particularly affects our residents with disabilities as it creates an additional hazard while they are attempting to get from their home to their destination and back again.
 - 3. **ECONOMIC VITALITY** The local economy supports a mix of market activities and promotes financial security for all residents. Opponent Response: Economic Vitality is suffering due to high crime in the area. Additionally homeless encampments would not help to encourage new businesses to open in the area.
 - 4. **EQUITY** All residents have access to good public services, a range of housing options, and healthy places to live, work, learn, and play. Opponent Response: Concentration of homeless services in this sector of the city does not balance negative impact equally across the City.
 - 5. **COMMUNITY HEALTH** All residents are protected from harm where they live, work, learn, and play. Everyone has convenient access to healthy food, parks and open space, and a wide range of

amenities and services. Opponent Response: Increasing homeless encampments would discourage use of parks and open space.

16. Although opponents point out that homeless and behavioral health services are not spread equally throughout the City, the Comp Plan *“uses the term ‘equity’ to describe ensuring that different people or places have the opportunities, access, and services they most need. Many people think ‘equity’ and ‘equality’ are interchangeable terms. ‘Equality’ aims to ensure that all people or places have the same opportunities, access, and services – a laudable goal. Distributing an equal amount to each would be fair if people and places had the same starting amounts. Discussions of “equity” acknowledge that people and places might need and want different things – and have different starting places. The equity approach involves assessing the different needs that people and places have and prioritizing resources and efforts to address them in the order of urgency that best matches those needs to move toward equality over time.”* See Comp Plan at 4-2. Accordingly, the Comp Plan does not require distribution of resources and unwanted land uses equally throughout the City, but rather institutes the policy that resources and unwanted land uses be located equitably, in consideration of the totality of the circumstances.
17. Further, Comp Plan POLICY 5.3.7 states *“Locally Unwanted Land Uses: Ensure that land uses that are objectionable to immediate neighbors but may be useful to society are located carefully and equitably to ensure that social assets are distributed evenly and social responsibilities are borne fairly across the Albuquerque area. (a) Minimize the impacts of locally unwanted land uses on surrounding areas through policies, regulations, and enforcement. (b) Ensure appropriate setbacks, buffers, and/or design standards to minimize offsite impacts.”* Applicant has demonstrated, by the evidence cited in the Notification of Decision and other evidence in the record, its efforts to locate its proposed overnight shelter carefully and equitably in an area of need surrounded by social and governmental assets, and that its operations will benefit not only people suffering homelessness in the immediate area, but in the community as a whole. Also, Applicant has submitted that policies, regulations, enforcement, setbacks, buffers, and design standards will be implemented to minimize any negative impacts.
18. On balance, the ZHE finds that Applicant has provided a sound justification showing compliance with IDO Section 14-16-6-6(A)(3)(a) based on substantial evidence.
19. Regarding the requirement under IDO Section 14-16-6-6(A)(3)(b) that the requested conditional use comply *“with all applicable provisions of this IDO, including but not limited to any Use-specific Standards applicable to the use in Section 14-16-4-3; the DPM; other adopted City regulations; and any conditions specifically applied to development of the property in a prior permit or approval affecting the property, or there is a condition of approval that any Variances or Waivers needed to comply with any of these provisions must be approved or the Conditional Use Approval will be invalidated pursuant to Subsection [14-16-6-6(A)(2)(c)2]”*:
 - a. Applicant and supporters of the Application submitted, among other things, the following:
 - i. The proposed overnight shelter is allowed under the MX-H zone as a Conditional Use. There are ongoing functions at the Gibson Health Hub that fall under hospital use, which is permissive under the MX-H zone. The proposed Gateway Center overnight shelter will comply with the Use-Specific Standards contained in Section 4-3-(C)(6) Overnight Shelter.

- b. Opponents of the Application submitted, among other things, the following:
 - i. The intent of the MX-H zone is undermined because, in the estimation of opponents, the proposed use is not appropriately sited at the Subject Property.
- 20. On balance, the ZHE finds that Applicant has provided a sound justification showing compliance with IDO Section 14-16-6-6(A)(3)(b) based on substantial evidence.
- 21. Regarding the requirement under IDO Section 14-16-6-6(A)(3)(c) that the requested conditional use “*will not create significant adverse impacts on adjacent properties, the surrounding neighborhood, or the larger community*”:
 - a. Applicant and supporters of the Application submitted, among other things, the following:
 - i. By providing secure shelter and services for individuals living in vulnerable situations, the Gateway Center will positively impact the adjacent properties, surrounding neighborhoods, and the larger community that are currently dealing with the unhoused population.
 - ii. The City has been working diligently on the draft Operations Plan for the Gateway Center, which is attached to the Application and posted on the City's website (www.cabq.gov/gateway) as of 7/3/2021. The draft Operations Plan addresses many community concerns, including impacts on adjacent properties, surrounding neighborhoods, and the larger community, and contains provisions concerning, among other things:
 1. Transportation -A shuttle system will be in place to transport referred guests for intake and assessment as well as transport guests to their exit destination, with pick-up and drop-off points at the Gateway Center.
 2. Secure entrance - The Gateway Center will have a secured entrance that is staffed 24 hours a day, 7 days a week, to ensure only enrolled guests, staff, and volunteers enter the facility.
 3. Physical design - The Gateway Center will utilize Trauma-informed Design and Crime Prevention through Environmental Design (CPTED) design principles. The City's intent is to upgrade all building-mounted lighting and parking lot lighting prior to opening the Gateway Center. Appropriate fencing, landscaping, and other design features will be incorporated to ensure curb appeal and low visual impact.
 4. Security - Onsite professional security is currently provided at the Gibson Health Hub and will continue to be once the Gateway Center is open.
 5. Weapons - Weapons will not be allowed at the Gateway Center.
 6. Entry and Exit - A team of intake officers and front desk staff will be stationed at the entrance, with only enrolled shelter guests, staff, program staff and volunteers, and registered partner agency staff and volunteers allowed to enter the facility.
 7. Shelter capacity - If the Gateway Center reaches capacity, single adults seeking shelter will be referred to the Westside Emergency Housing Center or other appropriate shelter options. Transportation

will be provided, if needed. Emergency overflow for families will be established in the community or through the use of motel vouchers.

8. Critical Incidence Response - Procedures addressing threats and assaults to clients and staff will be established. Guests that threaten or assault another client or staff will be exited from the Gateway Center and will receive transportation to their exit destination. In addition, de-escalation procedures will be established, with staff receiving training in conflict resolution and de-escalation techniques. The procedures will address the appropriate use of the Albuquerque Police Department resources to resolve safety issues at the Gateway Center.
9. Trash removal - The Solid Waste Department will clean and remove trash on a daily basis from surrounding areas, including sidewalks, bus stops, store fronts, and area parks.
10. Pedestrian safety - Pedestrian crosswalks in the vicinity of the Gateway Center will be improved to promote use, ease, and safety of crossing roadways. Roadway medians will be improved to prevent jaywalking.
11. Encampments - Encampments are expressly prohibited on the Gibson Health Hub property. The Family and Community Services public outreach team will monitor a 14-mile radius for encampments on public and private property. The public outreach team will refer encampments on private property to the City's Code Enforcement Division and a notice for encampments on public property will be posted by the public outreach team on the same day the encampment is observed.
12. Good Neighbor Agreement - The City intends to enter into a Good Neighbor Agreement with the Elder Homestead, Parkland Hills, Siesta Hills, South San Pedro, and Trumbull neighborhood associations. The following will be established through the Good Neighbor Agreement:
 - a. A phone number where residents can report any issues related to the Gateway Center.
 - b. A community dispute resolution process.
13. A Neighborhood Advisory Committee. The Agreement will set the membership of the Committee, which will include neighborhood representatives, City representatives from the organization(s) operating the Gateway Center, and current or former guests of the Gateway Center. The Committee will meet at least quarterly and will issue an annual survey to community members. The Committee will review and update as needed the Good Neighbor Agreement annually. The Neighborhood Advisory Committee will review baseline data and information over time to provide feedback on high impact strategies to keep community, staff, and clients safe.

- b. Opponents of the Application submitted, among other things, the following:
 - i. The operations plan is merely a draft and the community has no guaranties as to what the final version, if any, will contain.
 - ii. The Good neighbor Agreement has not been finalized and signed, and the community has no guaranties as to what the final version, if any, will contain.
 - iii. Articles have shown that crime increases in the area of overnight shelters (however, the research cited was not done on permanent shelters).
22. Applicant's justification showing compliance with IDO Section 14-16-6-6(A)(3)(c) is based largely on its draft operations plan.
23. Regarding the requirement under IDO Section 14-16-6-6(A)(3)(d) that the requested conditional use "*will not create material adverse impacts on other land in the surrounding area through increases in traffic congestion, parking congestion, noise, or vibration without sufficient mitigation or civic or environmental benefits that outweigh the expected impacts*":
- a. Applicant and supporters of the Application submitted, among other things, the following:
 - i. Development of the Gateway Center will focus on interior renovations. No increases in noise or vibrations will occur or create adverse impacts to the surrounding area. People utilizing the services at the Gateway Center will primarily be relying on shuttles from pick-up locations and service provider facilities, and public bus transit, which will decrease the potential for traffic congestion. The site contains large parking areas, which are more than adequate to support the parking needs of the Gateway Center and the existing tenants.
 - b. Opponents of the Application submitted, among other things, the following:
 - i. The Gateway Center will attract homeless and other pedestrians that will have an increased burden on traffic safety and congestion.
24. IDO Table 5-5-1 contains no off-street parking requirement for an overnight shelter.
25. On balance, the ZHE finds that Applicant has provided a sound justification showing compliance with IDO Section 14-16-6-6(A)(3)(d) based on substantial evidence.
26. Regarding the requirement under IDO Section 14-16-6-6(A)(3)(e) that "*on a project site with existing uses, [the requested conditional use] will not increase non-residential activity within 300 feet in any direction of a lot in any Residential zone district between the hours of 10:00 P.M. and 6:00 A.M.*":
- a. Applicant and supporters of the Application submitted, among other things, the following:
 - i. The overnight shelter use at the Gibson Health Hub will not increase non-residential activity within 300 feet of a residential zone district between the hours of 10:00 P.M. and 6:00 A.M. The overnight shelter use will be a relatively small portion of the Gibson Health Hub premise. The initial phase of the Gateway Shelter is anticipated to limit intakes to between 8:00 A.M to 8:00 P.M. for most community partner referrals, but intakes will be conducted at all hours for referrals from hospitals, first responders, and law enforcement. The intake activity will be more than 500 feet from the R-ML zoned property to the east and buffered by a large parking lot.

The closest apartment building within the R-ML site is setback approximately 67 feet east of its shared property line with the Gibson Health Hub. These existing physical conditions and separation between uses, and operating procedures will ensure the adjacent residential use will not be impacted by the overnight shelter use at the Gibson Health Hub facility.

- b. Opponents of the Application submitted, among other things, the following:
 - i. The proposed overnight shelter will operate 24 hours a day.
27. On balance, the ZHE finds that Applicant has provided a sound justification showing compliance with IDO Section 14-16-6-6(A)(3)(e) based on substantial evidence.
28. Regarding the requirement under IDO Section 14-16-6-6(A)(3)(f) that the requested conditional use “*will not negatively impact pedestrian or transit connectivity without appropriate mitigation*”:
- a. Applicant and supporters of the Application submitted, among other things, the following: The Gateway Center overnight shelter will draw pedestrians, transit riders, shuttles, and vehicles to the site. Impacts on pedestrian and transit connectivity will be appropriately mitigated by various City departments through services and actions that include:
 - i. Shuttle service to and from the site from designated pick-up sites and community partner organizations;
 - ii. Designated onsite pick-up and drop-off location;
 - iii. Evaluation and prioritization of improvements to sidewalks, pedestrian crossings, and medians in Gibson Boulevard and San Mateo by the Department of Municipal Development to ensure pedestrians, neighborhood residents, and visitors have a safe and comfortable walking experience in the area;
 - iv. Evaluation and potential modification to existing transit routes by the City Transit Department to accommodate a potential increase in ridership; and
 - v. Conducting a speed study of Gibson Boulevard and taking appropriate measures as determined by the study.
 - b. Opponents of the Application submitted, among other things, the following:
 - i. The Gateway Center will attract homeless and other pedestrians that will have an increased burden on traffic safety and congestion.
29. On balance, the ZHE finds that Applicant has provided a sound justification showing compliance with IDO Section 14-16-6-6(A)(3)(f) based on substantial evidence.
30. The City Traffic Engineering Division stated no objection to the Application.
31. IDO Section 14-16-4-3(C)(6) requires the following Use-Specific Standards for an Overnight Shelter: *This use is prohibited within 1,500 feet in any direction of any other overnight shelter.*
32. Applicant has satisfied the use specific criteria by establishing that no other overnight shelter is located within 1,500 feet in any direction of the Subject Property, as the closest overnight shelter to the Subject Property is located 2,308 feet away.
33. It would appear that Applicant has met its burdens of providing a sound justification for the requested decision, and of showing compliance with required standards, based on substantial evidence. However, Applicant’s justification showing compliance with IDO Section 14-16-6-6(A)(3)(c) (that the requested conditional use “*will not create significant*

adverse impacts on adjacent properties, the surrounding neighborhood, or the larger community”) is based largely on Applicant’s draft operations plan, which draft would appear subject to change until finalized.

34. This matter should be deferred to allow Applicant the opportunity to finalize and adopt the operations plan on which rests a significant portion of the justification of the Application.

DECISION:

CONTINUANCE of the Application to the ZHE hearing to take place on October 19, 2021, which begins at 9:00 a.m.

APPEAL:

If you wish to appeal this decision, you must do so by October 21, 2021 pursuant to Section 14-16-6-4(V), of the Integrated Development Ordinance, you must demonstrate that you have legal standing to file an appeal as defined.

Successful applicants are reminded that other regulations of the City must be complied with, even after approval of a special exception is secured. This decision does not constitute approval of plans for a building permit. If your application is approved, bring this decision with you when you apply for any related building permit or occupation tax number. Approval of a conditional use or a variance application is void after one year from date of approval if the rights and privileges are granted, thereby have not been executed, or utilized.



Robert Lucero, Esq.
Zoning Hearing Examiner

cc:

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NOTIFICATION OF DECISION

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Project No: **Project#2021-005834**
Hearing Date: 09-21-21
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- (c) *It will not create significant adverse impacts on adjacent properties, the surrounding neighborhood, or the larger community.*
 - (d) *It will not create material adverse impacts on other land in the surrounding area through increases in traffic congestion, parking congestion, noise, or vibration without sufficient mitigation or civic or environmental benefits that outweigh the expected impacts.*
 - (e) *On a project site with existing uses, it will not increase non-residential activity within 300 feet in any direction of a lot in any Residential zone district between the hours of 10:00 P.M. and 6:00 A.M.*
 - (f) *It will not negatively impact pedestrian or transit connectivity without appropriate mitigation.*
6. The applicant bears the burden of providing a sound justification for the requested decision, based on substantial evidence, pursuant to IDO Section 14-16-6-4(E)(3).
 7. The applicant bears the burden of showing compliance with required standards through analysis, illustrations, or other exhibits as necessary, pursuant to IDO Section 14-16-6-4(E)(4).
 8. Applicant timely submitted a written authorization for Agent to act on Applicant's behalf.
 9. Applicant's community outreach regarding the proposed Gateway Center dates back to 2018, and that outreach utilized community input sessions, online surveys, focus groups with people experiencing homelessness, and neighborhood community meetings.
 10. On March 15, 2021, the Albuquerque City Council approved Resolution R-21-141, which required two community input sessions within 45 days and advancement towards a Good Neighbor Agreement by the City with area residents and businesses to be in place for so long as the Gateway Center operates at the Gibson Health Hub site. The City held the two community input meetings on June 10 and June 12, 2021. The first meeting was held online and the second was held at the Gibson Health Hub Educational Building. Input from the meetings is posted on the City website at www.cabq.gov/gateway.
 11. Applicant provided evidence that all property owners and neighborhood associations entitled to notice were notified of the Application. Although a neighboring business owner complained that he did not receive notice, his business was not listed on the list of properties located within the required notice perimeter pursuant to the IDO, and it appears from evidence in the record, including without limitation the perimeter buffer map for the Subject Property, that the complainant's business is located outside the required notice perimeter. Further, the complainant clearly had notice, given that he submitted written evidence before the ZHE hearing and oral testimony at the ZHE hearing. Based on evidence in the record, Application provided the required timely notice to all property owners whose properties are within the required notice perimeter. Opponents submitted a petition signed by business owners who complained of inadequate notice. Nevertheless, based on evidence of mailings, emails, publication, and sign porting, the ZHE finds that the notice given by Applicant was compliant with the requirements of the IDO.
 12. Applicant timely mailed neighborhood meeting requests on June 4, 2021.
 13. On June 22, 2021, the City Land Use Facilitation Program conducted a facilitated pre-application meeting with community members, online via Zoom, to which were invited representatives of the affected neighborhood associations and the community at large.

According to the facilitated meeting report dated June 24, 2021, approximately 98 people registered for the meeting and as many as 80 participated in the meeting at the highest participation.

14. Applicant attended a pre-application meeting with City staff on June 29, 2021.

15. Regarding the requirement under IDO Section 14-16-6-6(A)(3)(a) that the requested conditional use be “*consistent with the ABC Comp. Plan, as amended*”:

a. Applicant and supporters of the Application submitted, among other things, the following:

- i. Goal 6.2 Multi-Modal System: Encourage walking, biking, and transit, especially at peak-hour commuting times, to enhance access and mobility for people of all ages and abilities. Applicant Response: The proposed Gateway Center overnight shelter at the Gibson Health Hub furthers Goal 6.2 Multi-Modal System by placing it in an area with excellent multi-modal access, including transit services, major street network, and pedestrian and bicycle access and connections. The subject property is along Gibson Boulevard, an Urban Principal Arterial, and designated as a Commuter Corridor by the Comprehensive Plan. It is within the designated San Mateo Boulevard Major Transit Corridor area and a 1/2-mile west of the Louisiana Boulevard Major Transit Corridor area.
- ii. Goal 9.4 Homelessness: Make homelessness rare, short-term, and non-recurring. Applicant Response: The Gateway Center overnight shelter will further Goal 9.4 Homelessness by being a critical component of the City's comprehensive approach to making homelessness rare, short-term, and non-recurring. The City estimates that there are at least 1,525 people in shelters or on the streets in Albuquerque each night, and at least 5,000 households experienced homelessness in 2020. The Gateway Center will address chronic homelessness in Albuquerque by providing safe, dignified emergency shelter within a central, developed area of Albuquerque. In addition, clients will receive wraparound services that help them exit the overnight shelter into stable, permanent housing and other community resources.
- iii. POLICY 9.4.1: Best Practices: Implement an appropriate and effective model to address chronic homelessness. Applicant Response: The Gateway Center overnight shelter furthers Policy 9.4.1 Best Practices by providing emergency shelter for those experiencing homelessness and work with them to transition into permanent housing. The proposed Gateway Center overnight shelter will function as a "gateway" to end chronic homelessness through the use of three models to effectively transition unhoused community members into housing
- iv. POLICY 9.4.2 Services: Provide expanded options for shelters and services for people experiencing temporary homelessness. Applicant Response: The proposed Gateway Center overnight shelter will further Policy 9.4.2 Services by expanding options for temporary shelter and services for the City's unhoused populations. Although there are many service providers in Albuquerque that serve the unhoused populations, the City does not currently have a centralized 24/7 center that can connect

unhoused individuals to the support organizations they need, often creating a "gap" in services. By building strong partnerships with existing providers, the City's proposed Gateway Center can serve as a centralized center, allowing for a more efficient connection to essential services and reducing the potential gap in services.

- v. POLICY 9.4.3 Equitable Distribution: Support a network of service points that are easily accessible by residents and workers, geographically distributed throughout the City and County, and proximate to transit. Applicant Response: Locating the proposed Gateway Center overnight shelter at the Gibson Health Hub furthers Policy 9.4.3 Equitable Distribution as reflected in comments from the individuals experiencing homelessness focus groups. The Gateway Center location is accessible to trusted nearby service providers in the International District and is located within the San Mateo Major Transit Corridor area. The proposed Gateway Center is the City's first step towards a dispersed shelter model that will add more shelters and supportive services in other locations within Albuquerque.
- vi. Goal 9.5 Vulnerable Populations: Expand capacity to provide quality housing and services to vulnerable populations. Applicant Response: The proposed Gateway Center will expand the City's capacity to provide services and access to quality housing to vulnerable populations, thereby furthering Goal 9.5 Vulnerable Populations.
- vii. POLICY 9.5.1 Quality Housing: Ensure well maintained, safe transitional and permanent housing for the lowest income households that are most at risk of homelessness. Applicant Response: The proposed Gateway Center furthers Policy 9.5.1 Quality Housing by providing the first step to permanent housing for the most vulnerable in our community. The Time-Limited Model ensures that clients of the overnight shelter have secured permanent housing before they leave the shelter. Low-income clients will have Wraparound services, including case management and assistance securing financial support for housing expenses. The goal of the Gateway Center is to reduce the risk of homelessness by ensuring clients have the support to maintain stable, permanent housing.
- viii. POLICY 9.5.2 Transitional Services: Encourage on-site transitional services with culturally competent service delivery that respects the dignity of individuals and families and fosters self-determination and self-sufficiency, including job training, financial education, and behavioral health assistance. Applicant Response: The services provided at the Gateway Center will support Policy 9.5.2 Transitional Services by providing Wraparound services for individuals and families. The individual leads the team-based, collaborative Wraparound approach to case management. The program is flexible, comprehensive, and can involve a number of organizations. The City will partner with existing community organizations and service providers specializing in delivering culturally competent services that will respect the individual and prepare individualized transition plans.

- b. Opponents of the Application submitted, among other things, the following:
 - i. Under “A Vision for Albuquerque & Bernalillo County” page 3-3 “As the county and city grow in population over the next 20 years, neighborhoods will be safer and easier places to walk through and between. The positive characteristics that contribute to their unique identities will be protected and enhanced.” “The City and the County commit to analyzing the health of our communities and the geographic distribution of our public investments and assets. Where gaps are identified, governments will collaborate with communities, nonprofits, public agencies, and private enterprises to address them.” Opponent Response: This request does not help the positive characteristics of the neighborhood as it adds a further potential crime element to the area, (in an area with the highest overall crime in the City) increases the likelihood of encampments along Gibson Blvd, and fails to create a distribution of investments, and assets for the homeless throughout the City.
 - ii. Guiding Principles found on page 3-8 state the following:
 - 1. **STRONG NEIGHBORHOODS** New development creates desirable places to live and encourages diverse housing and amenities, while respecting the unique history and character of each neighborhood. Opponent Response: does not increase the quality of life as it adds another homeless shelter to Council District 6 which already has the highest number of homeless shelters. This does not increase the quality of life of the residents as the area is suffering from homeless encampments, public urination, defecation and other undesirable activities.
 - 2. **MOBILITY** Residents have improved options to move throughout Albuquerque for work, school, recreation, and services. Opponent Response: homeless encampments along Zuni make the area difficult to walk as there is extensive amounts of debris on the sidewalks, this particularly affects our residents with disabilities as it creates an additional hazard while they are attempting to get from their home to their destination and back again.
 - 3. **ECONOMIC VITALITY** The local economy supports a mix of market activities and promotes financial security for all residents. Opponent Response: Economic Vitality is suffering due to high crime in the area. Additionally homeless encampments would not help to encourage new businesses to open in the area.
 - 4. **EQUITY** All residents have access to good public services, a range of housing options, and healthy places to live, work, learn, and play. Opponent Response: Concentration of homeless services in this sector of the city does not balance negative impact equally across the City.
 - 5. **COMMUNITY HEALTH** All residents are protected from harm where they live, work, learn, and play. Everyone has convenient access to healthy food, parks and open space, and a wide range of

amenities and services. Opponent Response: Increasing homeless encampments would discourage use of parks and open space.

16. Although opponents point out that homeless and behavioral health services are not spread equally throughout the City, the Comp Plan *“uses the term ‘equity’ to describe ensuring that different people or places have the opportunities, access, and services they most need. Many people think ‘equity’ and ‘equality’ are interchangeable terms. ‘Equality’ aims to ensure that all people or places have the same opportunities, access, and services – a laudable goal. Distributing an equal amount to each would be fair if people and places had the same starting amounts. Discussions of “equity” acknowledge that people and places might need and want different things – and have different starting places. The equity approach involves assessing the different needs that people and places have and prioritizing resources and efforts to address them in the order of urgency that best matches those needs to move toward equality over time.”* See Comp Plan at 4-2. Accordingly, the Comp Plan does not require distribution of resources and unwanted land uses equally throughout the City, but rather institutes the policy that resources and unwanted land uses be located equitably, in consideration of the totality of the circumstances.
17. Further, Comp Plan POLICY 5.3.7 states *“Locally Unwanted Land Uses: Ensure that land uses that are objectionable to immediate neighbors but may be useful to society are located carefully and equitably to ensure that social assets are distributed evenly and social responsibilities are borne fairly across the Albuquerque area. (a) Minimize the impacts of locally unwanted land uses on surrounding areas through policies, regulations, and enforcement. (b) Ensure appropriate setbacks, buffers, and/or design standards to minimize offsite impacts.”* Applicant has demonstrated, by the evidence cited in the Notification of Decision and other evidence in the record, its efforts to locate its proposed overnight shelter carefully and equitably in an area of need surrounded by social and governmental assets, and that its operations will benefit not only people suffering homelessness in the immediate area, but in the community as a whole. Also, Applicant has submitted that policies, regulations, enforcement, setbacks, buffers, and design standards will be implemented to minimize any negative impacts.
18. On balance, the ZHE finds that Applicant has provided a sound justification showing compliance with IDO Section 14-16-6-6(A)(3)(a) based on substantial evidence.
19. Regarding the requirement under IDO Section 14-16-6-6(A)(3)(b) that the requested conditional use comply *“with all applicable provisions of this IDO, including but not limited to any Use-specific Standards applicable to the use in Section 14-16-4-3; the DPM; other adopted City regulations; and any conditions specifically applied to development of the property in a prior permit or approval affecting the property, or there is a condition of approval that any Variances or Waivers needed to comply with any of these provisions must be approved or the Conditional Use Approval will be invalidated pursuant to Subsection [14-16-6-6(A)(2)(c)2]”*:
 - a. Applicant and supporters of the Application submitted, among other things, the following:
 - i. The proposed overnight shelter is allowed under the MX-H zone as a Conditional Use. There are ongoing functions at the Gibson Health Hub that fall under hospital use, which is permissive under the MX-H zone. The proposed Gateway Center overnight shelter will comply with the Use-Specific Standards contained in Section 4-3-(C)(6) Overnight Shelter.

- b. Opponents of the Application submitted, among other things, the following:
 - i. The intent of the MX-H zone is undermined because, in the estimation of opponents, the proposed use is not appropriately sited at the Subject Property.
- 20. On balance, the ZHE finds that Applicant has provided a sound justification showing compliance with IDO Section 14-16-6-6(A)(3)(b) based on substantial evidence.
- 21. Regarding the requirement under IDO Section 14-16-6-6(A)(3)(c) that the requested conditional use “*will not create significant adverse impacts on adjacent properties, the surrounding neighborhood, or the larger community*”:
 - a. Applicant and supporters of the Application submitted, among other things, the following:
 - i. By providing secure shelter and services for individuals living in vulnerable situations, the Gateway Center will positively impact the adjacent properties, surrounding neighborhoods, and the larger community that are currently dealing with the unhoused population.
 - ii. The City has been working diligently on the draft Operations Plan for the Gateway Center, which is attached to the Application and posted on the City's website (www.cabq.gov/gateway) as of 7/3/2021. The draft Operations Plan addresses many community concerns, including impacts on adjacent properties, surrounding neighborhoods, and the larger community, and contains provisions concerning, among other things:
 1. Transportation -A shuttle system will be in place to transport referred guests for intake and assessment as well as transport guests to their exit destination, with pick-up and drop-off points at the Gateway Center.
 2. Secure entrance - The Gateway Center will have a secured entrance that is staffed 24 hours a day, 7 days a week, to ensure only enrolled guests, staff, and volunteers enter the facility.
 3. Physical design - The Gateway Center will utilize Trauma-informed Design and Crime Prevention through Environmental Design (CPTED) design principles. The City's intent is to upgrade all building-mounted lighting and parking lot lighting prior to opening the Gateway Center. Appropriate fencing, landscaping, and other design features will be incorporated to ensure curb appeal and low visual impact.
 4. Security - Onsite professional security is currently provided at the Gibson Health Hub and will continue to be once the Gateway Center is open.
 5. Weapons - Weapons will not be allowed at the Gateway Center.
 6. Entry and Exit - A team of intake officers and front desk staff will be stationed at the entrance, with only enrolled shelter guests, staff, program staff and volunteers, and registered partner agency staff and volunteers allowed to enter the facility.
 7. Shelter capacity - If the Gateway Center reaches capacity, single adults seeking shelter will be referred to the Westside Emergency Housing Center or other appropriate shelter options. Transportation

will be provided, if needed. Emergency overflow for families will be established in the community or through the use of motel vouchers.

8. Critical Incidence Response - Procedures addressing threats and assaults to clients and staff will be established. Guests that threaten or assault another client or staff will be exited from the Gateway Center and will receive transportation to their exit destination. In addition, de-escalation procedures will be established, with staff receiving training in conflict resolution and de-escalation techniques. The procedures will address the appropriate use of the Albuquerque Police Department resources to resolve safety issues at the Gateway Center.
9. Trash removal - The Solid Waste Department will clean and remove trash on a daily basis from surrounding areas, including sidewalks, bus stops, store fronts, and area parks.
10. Pedestrian safety - Pedestrian crosswalks in the vicinity of the Gateway Center will be improved to promote use, ease, and safety of crossing roadways. Roadway medians will be improved to prevent jaywalking.
11. Encampments - Encampments are expressly prohibited on the Gibson Health Hub property. The Family and Community Services public outreach team will monitor a 14-mile radius for encampments on public and private property. The public outreach team will refer encampments on private property to the City's Code Enforcement Division and a notice for encampments on public property will be posted by the public outreach team on the same day the encampment is observed.
12. Good Neighbor Agreement - The City intends to enter into a Good Neighbor Agreement with the Elder Homestead, Parkland Hills, Siesta Hills, South San Pedro, and Trumbull neighborhood associations. The following will be established through the Good Neighbor Agreement:
 - a. A phone number where residents can report any issues related to the Gateway Center.
 - b. A community dispute resolution process.
13. A Neighborhood Advisory Committee. The Agreement will set the membership of the Committee, which will include neighborhood representatives, City representatives from the organization(s) operating the Gateway Center, and current or former guests of the Gateway Center. The Committee will meet at least quarterly and will issue an annual survey to community members. The Committee will review and update as needed the Good Neighbor Agreement annually. The Neighborhood Advisory Committee will review baseline data and information over time to provide feedback on high impact strategies to keep community, staff, and clients safe.

- b. Opponents of the Application submitted, among other things, the following:
 - i. The operations plan is merely a draft and the community has no guaranties as to what the final version, if any, will contain.
 - ii. The Good neighbor Agreement has not been finalized and signed, and the community has no guaranties as to what the final version, if any, will contain.
 - iii. Articles have shown that crime increases in the area of overnight shelters (however, the research cited was not done on permanent shelters).
22. Applicant's justification showing compliance with IDO Section 14-16-6-6(A)(3)(c) is based largely on its draft operations plan.
23. Regarding the requirement under IDO Section 14-16-6-6(A)(3)(d) that the requested conditional use "*will not create material adverse impacts on other land in the surrounding area through increases in traffic congestion, parking congestion, noise, or vibration without sufficient mitigation or civic or environmental benefits that outweigh the expected impacts*":
- a. Applicant and supporters of the Application submitted, among other things, the following:
 - i. Development of the Gateway Center will focus on interior renovations. No increases in noise or vibrations will occur or create adverse impacts to the surrounding area. People utilizing the services at the Gateway Center will primarily be relying on shuttles from pick-up locations and service provider facilities, and public bus transit, which will decrease the potential for traffic congestion. The site contains large parking areas, which are more than adequate to support the parking needs of the Gateway Center and the existing tenants.
 - b. Opponents of the Application submitted, among other things, the following:
 - i. The Gateway Center will attract homeless and other pedestrians that will have an increased burden on traffic safety and congestion.
24. IDO Table 5-5-1 contains no off-street parking requirement for an overnight shelter.
25. On balance, the ZHE finds that Applicant has provided a sound justification showing compliance with IDO Section 14-16-6-6(A)(3)(d) based on substantial evidence.
26. Regarding the requirement under IDO Section 14-16-6-6(A)(3)(e) that "*on a project site with existing uses, [the requested conditional use] will not increase non-residential activity within 300 feet in any direction of a lot in any Residential zone district between the hours of 10:00 P.M. and 6:00 A.M.*":
- a. Applicant and supporters of the Application submitted, among other things, the following:
 - i. The overnight shelter use at the Gibson Health Hub will not increase non-residential activity within 300 feet of a residential zone district between the hours of 10:00 P.M. and 6:00 A.M. The overnight shelter use will be a relatively small portion of the Gibson Health Hub premise. The initial phase of the Gateway Shelter is anticipated to limit intakes to between 8:00 A.M to 8:00 P.M. for most community partner referrals, but intakes will be conducted at all hours for referrals from hospitals, first responders, and law enforcement. The intake activity will be more than 500 feet from the R-ML zoned property to the east and buffered by a large parking lot.

The closest apartment building within the R-ML site is setback approximately 67 feet east of its shared property line with the Gibson Health Hub. These existing physical conditions and separation between uses, and operating procedures will ensure the adjacent residential use will not be impacted by the overnight shelter use at the Gibson Health Hub facility.

- b. Opponents of the Application submitted, among other things, the following:
 - i. The proposed overnight shelter will operate 24 hours a day.
27. On balance, the ZHE finds that Applicant has provided a sound justification showing compliance with IDO Section 14-16-6-6(A)(3)(e) based on substantial evidence.
28. Regarding the requirement under IDO Section 14-16-6-6(A)(3)(f) that the requested conditional use “*will not negatively impact pedestrian or transit connectivity without appropriate mitigation*”:
- a. Applicant and supporters of the Application submitted, among other things, the following: The Gateway Center overnight shelter will draw pedestrians, transit riders, shuttles, and vehicles to the site. Impacts on pedestrian and transit connectivity will be appropriately mitigated by various City departments through services and actions that include:
 - i. Shuttle service to and from the site from designated pick-up sites and community partner organizations;
 - ii. Designated onsite pick-up and drop-off location;
 - iii. Evaluation and prioritization of improvements to sidewalks, pedestrian crossings, and medians in Gibson Boulevard and San Mateo by the Department of Municipal Development to ensure pedestrians, neighborhood residents, and visitors have a safe and comfortable walking experience in the area;
 - iv. Evaluation and potential modification to existing transit routes by the City Transit Department to accommodate a potential increase in ridership; and
 - v. Conducting a speed study of Gibson Boulevard and taking appropriate measures as determined by the study.
 - b. Opponents of the Application submitted, among other things, the following:
 - i. The Gateway Center will attract homeless and other pedestrians that will have an increased burden on traffic safety and congestion.
29. On balance, the ZHE finds that Applicant has provided a sound justification showing compliance with IDO Section 14-16-6-6(A)(3)(f) based on substantial evidence.
30. The City Traffic Engineering Division stated no objection to the Application.
31. IDO Section 14-16-4-3(C)(6) requires the following Use-Specific Standards for an Overnight Shelter: *This use is prohibited within 1,500 feet in any direction of any other overnight shelter.*
32. Applicant has satisfied the use specific criteria by establishing that no other overnight shelter is located within 1,500 feet in any direction of the Subject Property, as the closest overnight shelter to the Subject Property is located 2,308 feet away.
33. It would appear that Applicant has met its burdens of providing a sound justification for the requested decision, and of showing compliance with required standards, based on substantial evidence. However, Applicant’s justification showing compliance with IDO Section 14-16-6-6(A)(3)(c) (that the requested conditional use “*will not create significant*

adverse impacts on adjacent properties, the surrounding neighborhood, or the larger community”) is based largely on Applicant’s draft operations plan, which draft would appear subject to change until finalized.

34. This matter should be deferred to allow Applicant the opportunity to finalize and adopt the operations plan on which rests a significant portion of the justification of the Application.

DECISION:

CONTINUANCE of the Application to the ZHE hearing to take place on October 19, 2021, which begins at 9:00 a.m.

APPEAL:

If you wish to appeal this decision, you must do so by October 21, 2021 pursuant to Section 14-16-6-4(V), of the Integrated Development Ordinance, you must demonstrate that you have legal standing to file an appeal as defined.

Successful applicants are reminded that other regulations of the City must be complied with, even after approval of a special exception is secured. This decision does not constitute approval of plans for a building permit. If your application is approved, bring this decision with you when you apply for any related building permit or occupation tax number. Approval of a conditional use or a variance application is void after one year from date of approval if the rights and privileges are granted, thereby have not been executed, or utilized.



Robert Lucero, Esq.
Zoning Hearing Examiner

cc:

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