



RULES OF PRACTICE ANDPROCEDURE
ZONING HEARING EXAMINER (ZHE)

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ARTICLE I – RULES AND GUIDELINES

1. Authorization for Rules

These Rules of Practice and Procedure (hereafter Rules) of the Zoning Hearing Examiner (hereafter ZHE) are authorized pursuant to §14-2-6-1, ROA 1994, Article 6: Public Boards, Commissions and Committees, §14-13-3-1, ROA 1994, Article 13: Planning; Goals and Objectives, and the Integrated Development Ordinance (hereafter IDO) §14-16-6-4(L)(2). In the event of a conflict, City ordinances, City Council resolutions, and state or federal laws shall prevail over these Rules. These Rules are intended to supplement, and not supplant, the provisions of the IDO and other applicable ordinances.

2. Interpretation of Rules

The Rules shall be interpreted and applied by the Zoning Hearing Examiner (ZHE) and Planning Department staff to ensure the fair, consistent, and efficient resolution of cases brought before the ZHE. Interpretation shall be guided by the Integrated Development Ordinance (IDO), applicable City ordinances, and relevant state and federal laws. When ambiguity occurs, the Rules shall be interpreted to uphold the principles of due process, transparency, and procedural fairness. The references herein to sections of the IDO are in reference to the version of the IDO that became effective on April 21, 2025. If the IDO is updated after the adoption of these rules, those references are to be interpreted as referencing the same sections or their successor sections.

3. Control by Rules

The Rules shall control the conduct of all business before the ZHE. The ZHE, Planning Department staff, and those appearing before the ZHE, or having business in front of the ZHE shall adhere to the Rules.

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 the ZHE.

5. Not Covered by Rules

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

6. Amendment of Rules

The Rules may be amended by the ZHE at a public hearing of the ZHE, provided written notice of the proposed changes and their time of consideration is given to all affected parties at least one week in advance and the public and others are properly notified, pursuant to the Public Boards, Commission and Committee Ordinance, Section 2-6-1-4(C) of the Albuquerque Code of Ordinances.

7. Dissemination of Rules

Copies of the Rules shall be published on the ZHE website and provided to the public upon request. During ZHE hearings, the hearing monitor can provide a copy of the rules to participants upon request.

8. Citation to Rules

A particular rule of the Rules may be cited by giving the Roman numeral of the Article first, then the Section number, followed by the subsections, if any.

ARTICLE II – ORGANIZATION

1. Hearings

Regular public hearings on zoning hearing applications shall be held on the third Tuesday of each month. In the event that it is a public holiday, the hearing shall be scheduled exactly one week later.

A. Location

Unless otherwise posted, hearings shall be held remotely or with both in-person and remote attendance. Remote options shall be pursuant to the Public Boards, Commissions and Committees Ordinance 2-6-1-4(B). Remote or hybrid meetings will be held via Zoom. The Zoom link will be located on the ZHE webpage and included in the agenda for City staff, the ZHE, and members of the public to access. Any in-person or hybrid hearing shall be held in the Plaza del Sol Hearing Room, Lower Level, 600 2nd Street NW, Albuquerque, New Mexico.

B. Public Comment

The ZHE has a discretion to limit general public comments during ZHE hearings. See §14-16-6-4(L) of the IDO.

2. Public Notice

Notice for all hearings of the ZHE shall comply with applicable notification requirements specified in Section §14-16-6-4(J) and IDO Table 6-1-1: Summary of Development Review Procedures. Continuances and deferrals that are approved by the ZHE for a specific hearing date do not require re-advertisement or additional notice, nor does an appeal of the decision.

3. Duties of the ZHE

A. Managing ZHE Hearings

The ZHE shall preside at all ZHE hearings. The ZHE is responsible for managing and administering the ZHE hearings, including requiring appropriate decorum as befitting the deliberations of a public body.

B. Halting or Limiting Testimony and Cross Examination

The ZHE shall have the authority to decide all questions of order and procedure, subject to the Rules. This authority includes, but is not limited to, the right to halt or limit

repetitive, irrelevant or inappropriate testimony; evidence and cross examination presented at a public hearing.

C. Placing Witnesses Under Oath

The ZHE may place any part or witness under oath or affirmation to not commit perjury by stating, for instance, “do you swear (or affirm) to tell the truth under penalty of perjury?”

The ZHE may grant additional time to any speaker as the ZHE deems appropriate.

4. ZHE Administrative Staff

The Planning Director shall appoint a staff member to handle the routine administrative duties for the ZHE and to record minutes for public hearings.

5. Agenda

Any changes to the meeting agenda, barring emergencies or unusual circumstances, shall be made at the beginning of each hearing. The agenda, as amended, shall be approved at the beginning of each hearing and shall be a part of the record of the hearing. There shall be no consent agenda. An approved agenda may be modified at any time by the ZHE, for good cause shown. Notice of the right of cross-examination shall be prominently placed in the agenda for which a public hearing is scheduled.

6. Minutes

Minutes shall be prepared after a ZHE hearing and shall be posted on the ZHE website with the Notices of Decision. The minutes shall include the date, time and place of the hearing, the proposals considered, and a record of any decisions.

ARTICLE III – CONDUCTING PUBLIC HEARINGS

1. 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 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.

A. Conflict of Interest and Recusal

The ZHE has a duty to hear cases presented to them, and recusal should only occur for good reason. The ZHE shall recuse themselves from hearing a matter if there is a conflict of interest or one appears to exist, including, for example, a direct or indirect financial conflict of interest, or if circumstances exist that would impair or appear to impair the independence of judgement of the ZHE.

If the ZHE is recused from hearing a matter, the Planning Director shall identify a replacement ZHE for the limited purpose of hearing the matter subject to the recusal. The ZHE shall not be present in the hearing room or Zoom meeting when the matter is heard. Additionally, the ZHE shall not draft or assist in the drafting of the Notice of Decision (“Decision”). The replacement ZHE shall draft the decision. If the ZHE is recused from

hearing a matter, the ZHE recused shall not be present for the hearing on the application.

B. Appearance of Record

An appearance of record in a hearing is made through a written or verbal statement of the person’s name, physical address, and filed with or otherwise received by the ZHE 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 ZHE may proceed to consider such a matter.

C. Public Hearing Procedures

The standard time allotments for testimony are as follows:

- i. Staff may present for up to 5 minutes.
- ii. The applicant may present testimony for up to 5 minutes.
- iii. Interested parties may provide testimony for up to 2 minutes each.
- iv. The applicant is allowed up to 2 minutes for rebuttal.
- v. Anyone may cross examine the applicant or an interested party for up to 2 minutes.

The ZHE may grant additional time for good cause, such as when an individual represents a neighborhood association or other organization.

D. Rules for Testimony at a Public Hearing

Each public hearing shall provide an opportunity for all parties of the hearing to be heard regarding the application. A record shall be kept of each person asking questions or offering testimony about the application.

The ZHE has the authority to limit repetitive, irrelevant or inappropriate testimony, and evidence that is presented at a ZHE public hearing. The ZHE and speakers shall confine their remarks to the relevant cases pertaining to the application. The ZHE shall not take into consideration testimony or evidence presented during a public hearing that is not pertinent to the application. The ZHE, subject to these rules, shall be permitted to amend the procedure of a public hearing, provided that the amendments are reasonable and do not violate municipal, state, or federal law.

E. Cross-Examination of Applicant(s)/Interested Parties During a Public Hearing

The ZHE shall allow reasonable and relevant cross-examination of any applicant or interested party who testifies at a ZHE public hearing. The cross-examination questions shall be directed to the ZHE who shall re-direct the question towards the person under cross-examination. The cross-examination shall be limited to two minutes in duration. A person subject to cross-examination is not obligated to answer any of the questions, however may choose to do so. The ZHE has discretion to limit time allocated to cross examination.

F. The Record

A full record of the public hearing will be made by sound recording or transcription; any person shall have the opportunity to request a copy of the hearing or transcript through the City Clerk as an IPRA request.

i. Evidence

For the purposes of maintaining a proper record, all evidence presented to the ZHE or ZHE staff regarding an application shall be retained with the Planning Department until all administrative and judicial remedies are exhausted. Copies may replace originals when appropriate. An electronic copy of information presented to the ZHE shall be placed into a record/file at the time of presentation.

ii. Written Material

a. Prior to the ZHE Public Hearing

The applicant and interested parties to a case before the ZHE shall be allowed to provide written material to the ZHE up to 6 days (Wednesday at 5:00 pm) to the public hearing. Violation of the 6-day rule may be grounds for a continuance or deferral by the ZHE.

b. Written material submitted at the ZHE Public Hearing.

[Only if shown on screen and all participants can comment/cross-examine on the record]. Must be emailed to ZHE Planning Staff by 5:00 p.m. the Friday following the hearing.

c. Material Submitted after the Public Hearing

No written material or new evidence shall be admitted after the close of the public hearing. If an application has been deferred or continued, an applicant may submit additional written material up to 6 days prior to the next public hearing.

iii. Agency Comments

Prior to the hearing, the Planning Director shall request City departments and other agencies which he/she judges would be interested to comment on the application. Comments received shall be submitted to the ZHE and shall be part of the hearing record.

G. Ex Parte Communications

The ZHE shall not engage in “ex parte communication” about the merits of any filed or prospective application requiring quasi-judicial proceedings before the ZHE, 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 the ZHE and any member of the public regarding the merits of the application.

i. Planning Staff and City Attorney’s Office

Communications with the staff of the Planning Department, or the City Attorney's Office shall not be considered ex parte communication.

ii. Attendance at Meetings

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 ZHE, shall not constitute ex parte communication; however, such an incident shall be disclosed by the ZHE at the public hearing on said application.

iii. Fact-Finding Investigations

The ZHE shall not conduct independent fact-finding investigations of any property that is the subject of a quasi-judicial proceeding before the ZHE.

iv. Recusal

The ZHE who has engaged in ex parte communication shall recuse themselves from hearing the application. The ZHE shall disclose any attempted ex parte communication; however, any such attempt should not, in and of itself, be grounds for recusal.

H. Decisions

The ZHE shall take any one of the following actions:

- i. Approve or recommend approval of the application as presented.
- ii. Approve or recommend approval of the application with conditions.
- iii. Deny or recommend denial of the application.
- iv. Defer or continue the matter to a date no more than two regularly scheduled ZHE hearings following its first appearance on the agenda, unless a longer deferral is accepted by the applicant.
 - a. A deferral of an application is a decision made prior to an application being heard by the ZHE, and deferring an application means any discussion regarding the application will be postponed until the public hearing for which it is scheduled.
 - b. A continuance of an application is a decision made after an application has begun to be heard by the ZHE, and continuing an application means that the discussion about the application will be resumed where it was left off at the public hearing for which it is scheduled.
 - c. For decisions to defer or continue a hearing, the time and place for the next hearing shall be announced at the hearing without the need for the applicant or the City to provide additional notice.
- v. Criteria for Review and Decisions

For all applications, the ZHE 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. In addition to review and decision criteria for the specific application type, the application must also meet general review and decision criteria in IDO Subsection 14-16-6-4(M). The applicant bears the burden of providing a sound justification for the requested decision, based on substantial evidence. See IDO Subsection 14-16-6-4(E)(3).

vi. Conditions of Approval

Based on findings, the ZHE may impose conditions necessary to meet the stated criteria for granting exceptions.

vii. Notice of Decision of the ZHE

The ZHE shall act on an application within 15 days of the conclusion of the hearing. The ZHE shall prepare a written Notice of Decision, which includes the key findings of fact. This Decision shall be made part of the record. Each material finding shall be supported by substantial evidence.

I. Remand Hearings

Occasionally, the ZHE will re-hear a matter remanded to it from the Land Use Hearing Officer (LUHO), the City Council, or the state court. Staff will make a diligent effort to assure that all counsel of record in the legal case, as well as the parties, receive timely notice of the ZHE hearing occurring because of the remand.