



**Environmental
Planning
Commission**

**Agenda Number: 8
Project Number: 1001620
Case #: 12EPC-40063
October 11, 2012**

Staff Report

Agent	Planning Department
Applicant	City of Albuquerque
Request(s)	Text Amendments to the Zoning Code
Legal Description	§14-16-1-5 Definitions §14-16-4-3 Nonconformance Regulations
Location	City-wide

Staff Recommendation
APPROVAL of Case #12EPC-40063 based on the Findings beginning on Page 16, and subject to the Conditions of Approval beginning on Page 19.

Staff Planner
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Summary of Analysis

This request, initiated by the City Council, is for text amendments to the above listed sections of the Zoning Code. The Environmental Planning Commission (EPC)’s role is to make a recommendation to City Council.

In 2012, the City Council passed a moratorium on the enforcement of Non-conforming properties that fit within this category until further action. Subsequently, City Council drafted amendments to the Zoning Code to address this issue. The proposed text amendments (also referred to as the “proposed legislation”) are contained in Council Bill No. O-12-30. This bill was sponsored by Councilor Jones and O’Malley at the City Council meeting on August 20, 2012 and referred to the Environmental Planning Commission (EPC).

The intent of the proposed legislation is to remove the amortization period for nonconforming structures and uses. It also divides current nonconformance regulations into clear categories dealing with nonconforming uses, nonconforming structures, nonconforming lot size, nonconforming signs and nonconforming landscaping. These changes mainly serve to clarify the situations and manner in which the nonconformance regulations apply. A new Paragraph (F) is proposed by Staff to address nonconformance related to government acquisition of property.

The proposed text amendments meet the intent of the City Charter and Zoning Code (Section 14-16-1-3) by facilitating orderly, harmonious, and economically sound development while maintaining the health, safety, and general welfare of the citizens of the City. Allowing nonconforming structures and uses to remain for the life of the structure or use will prevent undue hardship on the property owner, who invested in their property according to applicable rules and regulations at the time the site or use was developed. The proposed amendments also do not harm the community because the structures and uses will be required to convert to conforming structures/uses at the end of their useful life.

This request was announced in the Neighborhood News, e-mailed to neighborhood representatives, and a Legal Advertisement was placed in the newspaper.

Staff has identified minor aspects of the proposed text amendment that need additional clarification; they are discussed in this report. Staff recommends that an approval recommendation be forwarded to the City Council.

City Departments and other interested agencies reviewed this application from 9/14/2012 to 9/14/2012. Agency comments used in the preparation of this report begin on Page 22.

I. INTRODUCTION

Request

This request is for text amendments to §14-16-1-5, Definitions; §14-16-3-4, Nonconformance Regulations.

The proposed legislation deletes the removal schedule for buildings and structures that are non-conforming as to use, the removal schedule for nonconforming use of land, and the section addressing nonconformance due to amendment. Secondly, the proposed amendment deletes reference to amortization periods that have already elapsed [§14-16-3-4(A)(1)(c)(2)]. Finally, the proposed legislation reorganizes the regulations into new divisions addressing structures, use, lot size, and signs. The regulations regarding nonconforming landscaping will remain the same.

This request is considered legislative in nature.

Environmental Planning Commission (EPC) Role

The EPC is a recommending body with review authority. The EPC's task is to make a recommendation to the City Council regarding the proposed text amendments. The City Council is the City's Zoning Authority and will make the final decision.

Background

Since 1999, when the amortization period was due to expire, City Council has approved multiple extensions of the amortization period for nonconforming structures. In early 2012, the City Council passed a moratorium on the enforcement of Non-conforming properties that fit within this category until further action. City Council has drafted amendments to the Zoning Code to address this issue. The proposed text amendments (also referred to as the "proposed legislation") are contained in Council Bill No. O-12-30. This bill was co-sponsored by Councilor Jones and Councilor O'Malley at the City Council meeting on August 20, 2012 and subsequently referred to the Environmental Planning Commission (EPC).

Purpose/Intent

Currently, nonconforming structures and uses are subject to an amortization period, which limits the lifetime of the structure or use. Nonconforming structures and uses may apply for a variance or expansion of nonconforming use (§14-16-4-2 Special Exceptions), a zone change (pursuant to R-270-1980), or to become "Status Established Building" (§14-16-4-13 Status Established Building). These processes allow a nonconforming structure or use to become legal structures and/or uses.

The intent of the proposed text amendment is to remove the amortization period for nonconforming structures and uses. It also divides current nonconformance regulations into clear categories dealing with nonconforming uses, nonconforming structures, nonconforming lot size, nonconforming signs and nonconforming landscaping. These changes mainly serve to clarify the situations and manner in which the nonconformance regulations apply.

The existing nonconformance regulations have an inherent enforcement challenge. The Code Enforcement Division cannot start enforcing the Nonconformance Regulations until the amortization period has ended, at which time, the nonconforming structure or use becomes illegal. Once a nonconforming structure or use is illegal, the property owner cannot apply to become a Status Established Building. By removing the amortization period, Code Enforcement will be able to work with property owners to become Status Established, to obtain a variance, or change the property's zoning, as needed on a case-by-case basis.

The various amortization/compliance deadlines may also pose a hardship for Code Enforcement. This division may not have adequate staff for routine code enforcement, as well as enforcing the Nonconformance Regulations when structures or uses all expire at the same time. However, in general, the proposed legislation removes the amortization period for nonconforming uses and structures, which may help alleviate enforcement/staffing issues. There is no change proposed to the amortization deadline for nonconforming helipads, certain types and locations of alcohol sales, nonconforming structures and uses that are vacant for a period of 6 months to one year, nonconforming mobile homes and mobile home development, nonconforming signs, and nonconforming landscaping. In general, the proposed text amendments make it less burdensome to property-owners and Code Enforcement.

Finally, the addition of Paragraph (F) will allow nonconforming structures or uses that were caused by government acquisition to become legally nonconforming.

Summary of Proposed Legislation

§14-16-1-5, Definitions.

Two new definitions are proposed, "Nonconforming Structure," and "Nonconforming Use." They are proposed to help clearly distinguish between the two types of nonconformance.

§14-16-3-4, Nonconformance Regulations.

(A) Nonconforming Structure. The proposed text removes the current requirement for nonconforming structures to be removed or converted to a conforming structure or use according to the amortization schedule in Division (A)(1). It allows nonconforming structures to remain, except in the specific situations listed or as modified by a sector development plan. Other minor changes to existing text are proposed to improve clarity as well as reorganization.

(B) Nonconforming Use of a Structure or Land. The proposed text removes the current requirement for nonconforming uses to be removed or converted to a conforming structure or use within one year of becoming nonconforming. It allows nonconforming structures to remain, except in the specific situations listed or as modified by a sector development plan. Other minor changes to existing text are proposed to improve clarity as well as reorganization.

(C) Nonconforming Lot Size. There are no major changes proposed to this Paragraph.

(D) Nonconforming Sign. This is a new Paragraph created by the present request to consolidate all sign related nonconformance regulations. It consists of text that has been reorganized from Paragraph (A) and (B) in the current regulations. It has minor modifications proposed to improve

its clarity. It maintains the current amortization periods that range from one year to the life of the sign, depending on the situation.

(E) Nonconforming Landscaping. There are no changes proposed to this Paragraph. The legislation maintains the two year amortization period from the time the premises was required to conform.

(F) Property Acquisition by Government Entities. The purpose of the proposed new Paragraph (F) is to allow violations of the zoning code resulting from real property acquisitions by government entities to constitute a legally nonconforming use.

Sample Definitions from Another Jurisdiction

USE means the employment or occupation of a building, structure or land for a person's service, benefit or enjoyment. (Floyd County, IN Zoning Ordinance)

USE, LEGAL NONCONFORMING means an existing use of land or building that meet the requirements of previous ordinance but now which fails to comply with the requirements set forth in this ordinance. (Floyd County, IN Zoning Ordinance)

USE, ILLEGAL NONCONFORMING means an existing use of land or building that did not meet the requirements previous ordinance and now which fails to comply with the requirements set forth in this ordinance. (Floyd County, IN Zoning Ordinance)

II. ANALYSIS OF APPLICABLE ORDINANCES, PLANS AND POLICIES

Note: Policy citations are in regular text; ***Staff analysis is in bold italics.***

Charter of the City of Albuquerque

The Citizens of Albuquerque adopted the City Charter in 1971. Applicable articles include:

Article I, Incorporation and Powers

“The [...] City of Albuquerque shall remain and continue to be a body corporate and may exercise all legislative powers and perform all functions not expressly denied by general law or charter. Unless otherwise provided in this Charter, the power of the city to legislate is permissive and not mandatory. If the city does not legislate, it may nevertheless act in the manner provided by law. The purpose of this Charter is to provide for maximum local self government. A liberal construction shall be given to the powers granted by this Charter.”

Article IX, Environmental Protection

“The Council (City Commission) in the interest of the public in general shall protect and preserve environmental features such as water, air and other natural endowments, ensure the proper use and development of land, and promote and maintain an aesthetic and humane urban environment. To affect these ends the Council shall take whatever action is necessary and shall enact ordinances and shall establish appropriate Commissions, Boards or Committees with jurisdiction, authority and staff sufficient to effectively administer city policy in this area.”

Article XVII, Planning

The Council is the city's ultimate planning and zoning authority, including the adoption and interpretation of the Comprehensive Plan and the Capital Improvement Plan. The Council is also the city's ultimate authority with respect to interpretation of adopted plans, ordinances, and individual cases.

Revising portions of the Zoning Code is an exercise in local self government (City Charter, Article 1). Revising the nonconformance regulations will help the City more effectively administer nonconforming properties. City Council has the authority to amend the Zoning Code. The request is consistent with the intent of the City Charter.

Albuquerque Comprehensive Zoning Code

Authority and Purpose (summarized): The Zoning Code is Article 16 within Chapter 14 of the Revised Code of Ordinances of Albuquerque, New Mexico, 1994 (often cited as ROA 1994). The administration and enforcement of the Zoning Code is within the City's general police power authority for the purposes of promoting the health, safety, and general welfare of the public. As such, the Zoning Code is a regulatory instrument for controlling land use activities for general public benefit.

Amendment Process (summarized): The City Council is the zoning authority for the City of Albuquerque and has sole authority to amend the Zoning Code. Through the City Charter, the City Council has delegated broad planning and zoning authorities to the Environmental Planning Commission (EPC). The EPC is advisory to the City Council regarding proposed text amendments to the Zoning Code.

The application for proposed text amendments to the Zoning Code was filed in accordance with Zoning Code requirements. The proposed text amendments may result in an enhanced administration of nonconforming properties, which supports general health, safety and welfare. The request generally furthers the Zoning Code purpose and is consistent with the amendment process of the Zoning Code.

Zoning Code Section 14-16-1-3, Intent: (A) This article is intended to help achieve Article IX of the Charter of the City of Albuquerque and the city's master plan; in particular the master plan documents which comprise the Albuquerque/Bernalillo County Comprehensive Plan. This article is intended to create orderly, harmonious, and economically sound development in order to promote the health, safety, convenience, and general welfare of the citizens of the city. These regulations are necessary to provide adequate open spaces for light and air including solar access; to avoid undue concentration of population, to secure safety from fire, panic, and other dangers; to help control congestion in the streets and public ways; to control and abate unsightly use of buildings or land; to facilitate adequate provisions for community utilities and facilities such as transportation, water, sewer, schools, and parks; to encourage the most appropriate use of land; to properly channel flood water runoff; to conserve and stabilize the value of property; and to enhance the appearance of the landscape.

The proposed text amendment meets the intent of the Zoning Code (Section 14-16-1-3) by facilitating orderly, harmonious, and economically sound development while maintaining the health, safety, and general welfare of the citizens of the City. The request promotes the health, safety, convenience, and general welfare of the City by deleting language in the existing Zoning Code that is no longer applicable and by clarifying the Nonconformance regulations through improved organization. The proposed amendment will help members of the community better understand the regulations as they apply to their property. It may also facilitate enforcement by making the regulations more straight-forward. The request is consistent with the intent of the Zoning Code (Section 14-16-1-3).

III. ANALYSIS - PROPOSED TEXT AMENDMENTS

New language is [underlined and bracketed]. Deleted language is [~~bracketed and struck through~~]. Planning Staff's analysis is in ***Bolded Italics***. Proposed changes are highlighted.

Note ⇒ These regulations identify the situations in which a nonconforming building, structure, sign, landscaping, and property may be maintained, repaired, or altered. With the exception of deleting the removal schedule for non-conforming buildings and structures, the majority of regulations listed below have been retained and relocated to the appropriate new divisions that are categorized according to nonconforming structure, use, sign, and landscaping.

§ 14-16-1-5 Definitions.

NONCONFORMING. A structure or use of structure or land which does not conform to [~~this article -~~] [applicable zoning +] and which was in conformity with [~~any zoning ordinance -~~] [applicable zoning +] in effect at the time it was created.

Code Enforcement has indicated that the proposed phrase "applicable zoning" is not clear, and has indicated the text as it is currently written is preferable.

However, the proposed change is intended to incorporate both the zoning code and sector development plan zoning regulations. It is also intended to capture all of the situations described in the current Paragraph (C), including change in street line, map change, text amendment, and annexation.

Further consideration of the implications of each version is warranted prior to final action by City Council.

[NONCONFORMING STRUCTURE. A structure which does not conform to this Article or to the regulations of +] an applicable sector development plan for reasons other than the use of the structure and which structure did not violate this Article or any applicable sector development plan at the time the structure was constructed. By way of example: a

nonconforming structure could be one that violates height, setback, aesthetic, or form requirements. +]

[+ NONCONFORMING USE. A use of a structure or land which does not conform to uses allowed under this Article or to uses allowed under [+ the regulations of +] an applicable sector development plan and which was an allowed use at the time the use was first undertaken. +]

Two new definitions are proposed – “nonconforming structure” and “nonconforming use” – which help to clearly distinguish between nonconforming structures and uses.

The proposed definitions refer to “this Article or to an applicable sector development plan.” The intent of the proposed change is to make it abundantly clear that the Nonconformance Regulations apply to both regulations in the Zoning Code as well as those provided in Sector Development Plans. Specifically referencing “the regulations of” the Sector Development Plan clarifies that only the binding portion of sector plans apply.

Code Enforcement recommended deleting reference to “this section or in an applicable Sector Development Plan” and replacing with “this Article.” Sector Development Plans are adopted as part of the Zoning Code, so distinguishing between the two may not be necessary. Code Enforcement also commented that these new definitions are unnecessary because they essentially repeat the definition of “Nonconforming.”

Further consideration of the implications of each version is warranted prior to final action by City Council. Staff recommends all three Nonconforming definitions should be consistent.

§ 14-16-3-4 Nonconformance Regulations.

- (A) *Nonconforming [- ~~Building or~~ -] Structure.* [+Except as otherwise provided for herein or pursuant to an applicable sector development plan, a nonconforming structure is not required to be made to conform. +]

This text modifies the current requirement for nonconforming structures to be removed or converted to a conforming structure or use. It allows nonconforming structures to remain, except in the specific situations listed below or as modified by a sector development plan.

Allowing nonconforming structures and uses to remain for the life of the structure or use will prevent undue hardship on the property owner, who invested in their property according to applicable rules and regulations at the time the site or use was developed. The proposed amendments also do not harm the community because the structures and uses will be required to convert to conforming structures/uses at the end of their useful life.

- (1) ~~Removal Schedule for Buildings and Structures Which Did Not Violate Applicable Zoning Regulations When Erected.~~

- (a) ~~Buildings.~~

-
1. — A building which is non-conforming as to use must be removed or converted to a conforming structure, or approved to maintain its nonconforming use as a status established building, in the following periods for types of buildings as defined in the 1959 edition of the city's Building Code, except as qualified by division 2. below:
- a. — Types I and II, 60 years;
 - b. — Types III and IV, 53 years;
 - e. — Type V, 53 years.

Deleting Paragraph 14-16-3-4(A)(1)(a), Removal Schedule for Buildings and Structures, is consistent with the intent of the proposed legislation. This text is no longer necessary since, if approved, there will be no requirement to remove or convert nonconforming structures. They will be permitted to remain for the life of the structure.

[- (2) -] [+ (1) +] A nonconforming structure may be maintained, repaired, or altered [+unless such maintenance, repair or alteration would increase the extent of nonconformance. +] [- , provided that the structure nonconforming as to use is not structurally altered except as required by law. -]

This text intends to clarify that maintenance, repair, or alteration is allowed, except if it increases nonconformance. The existing language about “except as required by the law” is somewhat unclear.

Code Enforcement has commented that deleting the above text, which prohibits structural alterations, could indefinitely extend the life of non-conforming structures. This conflicts with the original intent of phasing out nonconforming structures and uses.

Also, the text may be problematic for those historic buildings that need to be preserved. Further consideration of the implications of each version is warranted prior to final action by City Council.

[- (5) -] [+ (2) +] A structure nonconforming [- only -] as to height regulations cannot be added to or enlarged unless the addition or enlargement conforms to all the regulations of the zone in which it is located.

Code Enforcement recommends deleting this word to clarify that a structure may be nonconforming in relation to height as well as other elements, such as setbacks.

[- (6) -] [+ (3) +] A structure nonconforming [- only -] as to setback regulations cannot be added to or enlarged unless the addition conforms to all the regulations of the zone in which the structure is located.

This change is recommended for the same reason as listed above in Division (2).

[- (7) -] [+ (4) +] A nonconforming structure may be moved in whole or in part to another location on the lot, provided that the moving will make it nonconforming to a lesser extent.

[- (8) -] [+ (5) +] A nonconforming structure which is damaged may be restored, provided the restoration is started within six months of the damage and is prosecuted diligently to completion.

The Divisions are re-numbered consecutively.

[+ (6) A wall or fence nonconforming by virtue of being in the clear sight triangle may remain only if the Traffic Engineer gives and does not withdraw a written opinion that the wall or fence is not a traffic hazard. Other nonconforming walls and fences may remain for the life of the structure. +]

This text has been relocated from §14-16-3-4(A)(1)(e), with minor modifications for clarity.

There is a concurrent request to modify portions of §14-16-3-4 related to the regulation of razor wire (Council Bill No. O-12-25, 12EPC-40055). That amendment proposes to add the following sentence: “A wall or fence which is legally nonconforming to this Zoning Code because it is partially or wholly constructed of barbed tape, razor wire, barbed wire or similar materials in a zone where such materials are prohibited shall be removed within six months of the adoption of this provision, except at public utility structures.” If Council Bill No. O-12-25 (12EPC-40055) is approved, the text, as adopted, should be included in the new location, §14-16-3-4(A)(6).

(B) Nonconforming Use of [+ a Structure or +] Land [- ~~Removal Schedule.~~ -]

[+ (1) Except as otherwise provided in this section or in an applicable sector development plan a structure which did not violate applicable zoning [- as to use when that use -] [+ when it +] was initiated and which use violates subsequently adopted zoning shall be allowed to continue to exist as a nonconforming use for the life of the use. +]

This text replaces the existing §14-16-3-4(B)(1), which requires that nonconforming uses shall be made to conform within one year of the activity becoming nonconforming. This text is consistent with the intent of this request to allow non-conforming structures and uses to continue for the life of the use or structure.

Code Enforcement provided clarifications suggested above in grey highlighting. Additionally Code Enforcement recommended deleting reference to “this section or in an applicable sector development plan” and replacing with “this Article.” See analysis above for the Definitions.

Code Enforcement also recommended replacing the first instance of “structure” with “use.” That suggestion may change the intent of the Division, which is to allow nonconforming uses in existing structures to remain for the life of the use. This parallels the text in Division (8), which allows six months amortization for nonconforming uses of land. Staff recommends

relocating Division (8) as Division (2), because they parallel each other. Further consideration of the implications of each version is warranted prior to final action by City Council.

~~[- (4.) -] [+ (e) +] [+ (2) +]~~ Land used in whole or in part for nonconforming purposes according to the provisions of this Zoning Code, which thereafter ~~-~~ [+ Land with a nonconforming use which thereafter +] becomes and remains vacant for a continuous period of six months or more shall not again be used except in conformity with the ~~[- regulations of the zone in which such land is situated.-]~~ [+ the applicable zoning. +] Neither the intention of the owner nor that of anybody else to use a lot or part thereof for any nonconforming use, nor the fact that said lot or part thereof may have been used by a makeshift or pretended nonconforming use shall be taken into consideration in interpreting and construing the word "vacant" as used in this division ~~[- (4.) -] [+ (e) +] [+ (2) +]~~

Staff recommends that this section be relocated to Division (2), because it closely parallels Division (1). Consequently, the text would be renumbered (B)(2), instead of (B)(4) in the existing regulation, or (B)(8)(c), as proposed in O-12-30.

~~[- (2.) -] [+ (3) +]~~ Any adult amusement establishment or adult store that was in conformance with the Zoning Code on March 1, 2004, that becomes a nonconforming use as a result of the 2004 adult use amendments to the Zoning Code shall be allowed to continue to exist as a nonconforming use for the life of the use. ~~[Any adult amusement establishment or adult store that was nonconforming as of March 1, 2004 under the Zoning Code must cease the adult activity within five years from the effective date of this amendment or by January 1, 2010, whichever is later. -]~~

This text has been relocated from §14-16-3-4(A)(1)(b)(2). Code Enforcement commented that the last sentence is not necessary, since the amortization period has elapsed and recommends that it be deleted.

~~[- (3.) -] [+ (4) +]~~ Helipads, law enforcement helipads and medical helipads, which constitute a nonconforming use, must be removed from the premises they are located on within twelve months after they become nonconforming. A helipad, law enforcement helipad or medical helipad which is located in an SU-1 zone and has a site development plan depicting such a helipad approved by the Environmental Planning Commission prior to March 5, 2000 shall be deemed conforming.

~~[- (4.) -] An establishment that sells alcoholic drink for consumption off premises in the following packages within 500 feet of a pre-elementary, elementary or secondary school, a religious institution, a residential zone, a designated Metropolitan Redevelopment Area (as defined in the State Metropolitan Redevelopment Code), a city owned park or city owned major public open space:~~

~~(a) distilled spirits, as defined in the New Mexico Liquor Control Act, in any package that contains less than 750 milliliters; (b) beer, as defined in the New Mexico Liquor Control Act, in any single container labeled as containing 16 or fewer ounces; and (c) fortified wines with a volume of alcohol of more than 13.5 percent, must vacate the premises, be removed or convert to a conforming use by no later than July 1, 2005 or within one year after it becomes nonconforming, whichever is later. -]~~

This text has been relocated from §14-16-3-4(A)(12). Code Enforcement commented the City is enjoined from enforcing this section by the New Mexico Supreme Court and recommends it be removed.

- (5) That portion of a structure or land containing a nonconforming use shall not be increased; provided, however, that the portion of a structure or land containing a nonconforming use may be expanded by up to 25% if approved by the Zoning Hearing Examiner pursuant to the special exception procedures of § 14-16-4-2.

This text has been relocated, with minor modifications for clarity, from §14-16-3-4(A)(12). Code Enforcement commented that an increase in a nonconforming use or addition to a nonconforming structure may be construed as increasing the extent of nonconformance, and may conflict with other portions of the Nonconformance Regulations. Further consideration of the implications of Code Enforcement’s comment is warranted prior to final action by the City Council.

- (6) A structure or portion thereof which has been nonconforming as to use, including a status established building, and which hereafter becomes vacant and remains vacant or is not used for a continuous period of one year or more is not to be occupied thereafter except by a conforming use as specified in the regulations of the zone in which such structure is located. Neither the intention of the owner nor that of anybody else to use such a structure or part thereof for any nonconforming use, nor the fact that said structure or part thereof may have been used by a makeshift or pretended nonconforming use shall be taken into consideration in interpreting and construing the word "vacant" as used in this division ~~[- (9).-]~~ [+ (6). +]

This text has been relocated, from §14-16-3-4(A)(9). Staff recommends changing the current reference “(9)” to reflect the new proposed Division number “(6).”

- (7) A nonconforming use may be changed to another use equally or more restrictive than the immediately preceding nonconforming use.

This text has been relocated, with minor modifications for clarity, from §14-16-3-4(A)(10).

- ~~[- (a)-]~~ [+ (8) +] A nonconforming use of land consisting of a mobile home shall be made to conform within five years of becoming nonconforming.

This text has been relocated, with minor modifications for clarity, from §14-16-3-4(B)(2). Staff recommends renumbering, as shown.

- ~~[- (b)-]~~ [+ (9) +] A nonconforming use of land and incidental structures consisting of a mobile home development may remain for the life of the fixtures, which shall never be more than 50 years but only if:

[+ (a) +] [- (i) -] The mobile home development does not cease operation for a continuous period of one year or more

[+ (b) +] [- (ii) -] Any private street system servicing the mobile homes is paved at least to a standard approved by the Planning Director and the Traffic Engineer according to the standards of § 14-14-4-6, Subdivision Regulations (even though there may be no new subdivision); and

[+ (c) +] [- (iii) -] Mobile homes within the development are skirted with materials compatible with the siding of the mobile home or the unit is situated at ground level within two years of the mobile home development becoming non-conforming.

[+ (d) +] [- (iv) -] Additions to nonconforming mobile home developments shall conform to current zoning.

This text has been relocated, with minor modifications for clarity, from §14-16-3-4(B)(3). Staff recommends renumbering, as shown.

~~[- (C) **Nonconformance Due to Amendment.** The provisions of this section apply to a structure or use which becomes nonconforming due to a change in street line, map change, text amendment, or annexation, provided that where a date or time period is specified for the removal of a nonconformance, it is to be computed from the date the amendment or annexation became effective. -]~~

Staff is not clear why this language is recommended to be deleted, because there are still aspects of the nonconformance regulations that have an amortization period. This text describes how to calculate the amortization period for structures or uses that become nonconforming due to amendments to the zone map, sector plan adoptions, text amendments, or annexations. Staff recommends that this text remain in the Nonconformance Regulations, and be moved to the end as Section (F).

The amendments propose to delete this section. Staff recommends preserving it and relocating this text from §14-16-3-4(C) to §14-16-3-4(G). This text describes how to calculate the amortization period for structures or uses that become nonconforming due to amendments to the zone map, sector plan adoptions, text amendments, or annexations. It only applies to structures or uses that have a date or time period specified for the removal of a nonconformance. The proposed text amendments retain amortization periods for walls in a clear site triangle, helipads, certain alcohol sales, nonconforming uses that are not used for a period of one year, mobile home lots and developments, signs, and landscaping. Further consideration of this Paragraph is warranted prior to final action by the City Council.

This section may become unnecessary if the definitions are adopted as proposed, with reference to the “applicable zoning.” Further consideration of this text is warranted prior to final action by the City Council.

~~[- (D) -]~~ [+ (C) +] **Nonconforming Lot Size.** A lot which ~~[- has less area or width than required by the zone applied to the lot -]~~ [+ does not meet minimum lot size requirements +] may be used without a variance as a separate lot occupied by a [+ structure and +] use permitted in that zone if:

- (1) The lot was legally created and placed on the records of the County, complying with any zoning and subdivision standards and procedures then applicable; and
- (2) The use and structure are permitted or are legally nonconforming, ~~[- or if it is a new use or new use or new construction which is the use which most nearly meets lot area and width requirements. -]~~

[+ (3) It is a new use or new construction and there is no use allowed under applicable zoning because of the size of the lot and the proposed use is the use which most nearly meets lot size requirements. +]

~~[- (3) -]~~ [+ (4) +] Animal keeping which requires special lot size is not permitted on lots smaller than the size specified.

The text proposed has minor amendments that provide clarity. The new Division (C)(3) is a second criterion that was previously included in Division (D)(2) in the existing regulation, or (C)(2) as proposed by O-12-30.

[+ (D) **Nonconforming signs.** A nonconforming sign shall be made to conform within five years of becoming nonconforming, except: +]

This text has been relocated, with minor modifications for clarity, from §14-16-3-4(A)(1)(b)(1). Code Enforcement has stated that a New Mexico Court ruling (Battaglini v, Town of Red River, 1983) ordered the City to pay for any signs that it caused to be removed. Additionally, according to State Law, NMSA 1978, Section 42A-1-34, compensation must be paid when a local ordinance requires the removal of signs. Because of this ruling and the State Law, the City does not currently enforce this regulation. Code Enforcement has indicated that the amortization period for signs may need to be removed. Further consideration of this Paragraph is warranted prior to final action by the City Council.

- (1.) Any sign which violates the brightness regulations of this Zoning Code shall be made to conform as to brightness within one year of becoming nonconforming.

This text has been relocated from §14-16-3-4(A)(1)(c)(1).

- (2.) Signs erected contrary to zoning regulations in force at the time of erection and signs identified in § 14-16-3-5(B)(1) of this Zoning Code are subject to immediate removal under the terms of § 14-16-4-11 of this Zoning Code.

This text has been relocated from §14-16-3-4(A)(1)(c)(3).

- (3.) Nonconforming signs may remain for the life of the sign if the sign's degree of nonconformance does not exceed 10% nonconformance for each of setback or overhang, size, or separation and does not exceed 20% nonconformance of height.

This text has been relocated, with minor modifications for clarity, from §14-16-3-4(A)(1)(c)(4).

- (4.) Signs nonconforming as to size or number shall not be enlarged.

This text has been relocated from §14-16-3-4(A)(4).

- (5.) Signs installed under variances from former zoning regulations which were less strict than those subsequently adopted shall be made to conform within five years of the effective date of the subsequently adopted zoning.

This text has been relocated, with minor modifications for clarity, from §14-16-3-4(B)(1)(d).

- (E) **Nonconforming Landscaping.** Premises which, when they were developed, were not required to be developed according to a landscaping plan approved by the city shall be made to conform to such a plan within two years of the time they were required to so conform due to amendment of the map or text of this Zoning Code.

No change is proposed to this Paragraph.

- [+ **(F) Property Acquisition by Government Entities.** A violation of any regulation of the Zoning Code that results from an acquisition of real property by a government entity with the power of eminent domain, shall deem the remaining property as legally nonconforming. Such nonconformance status cannot be added to or enlarged, and shall continue until such time as the owner of the property violates this provision by constructing additional square footage greater than 25% of the original area or applies for and obtains a change of zoning designation.+]

The purpose of the proposed new Paragraph (F) is to allow violations of the zoning code resulting from real property acquisitions by government entities to constitute a legally nonconforming use.

This new Paragraph will facilitate necessary acquisition of right-of-way and other property through the process of eminent domain. Currently, there are situations where the City causes a property to become nonconforming. The property-owner may be subject to the nonconformance amortization period or other restrictions on development – as a result of governmental property acquisition. For example, with a right-of-way acquisition, a property may no longer have adequate parking and/or landscape buffers along the new street frontage that results from the land condemnation. The property owner may then have to obtain a special exception for a non-conformance situation she/he did not create and/or she/he may make a claim against the government entity for damages, which may delay the project

associated with the property acquisition. This new Paragraph allows the structure or use to remain, with up to 25% expansion as a legally nonconforming property; the property would not be subject to the Nonconformance amortization period.

IV. CONCERNS OF REVIEWING AGENCIES / PRE-HEARING DISCUSSION

City Departments and other interested agencies reviewed this application from 9/4/12 to 9/14/12.

Code Enforcement provided several comments to improve the clarity of the proposed text amendment. Many of their concerns are addressed above in Section III, Analysis of Proposed Text Amendments, which begins on page 5 of this report. Staff has addressed these recommended changes in the analysis section, above, and has included the changes as recommended conditions of approval.

The full text of the agency comments begins on page 22.

V. NEIGHBORHOOD/PUBLIC CONCERNS

The proposed text amendments were announced in the Neighborhood News and a legal advertisement was placed in the newspaper. The Office of Neighborhood Coordination (ONC) sent an e-mail notification to neighborhood organization contact persons. As of this writing, Staff has received a couple of email inquiries regarding the proposed text amendments.

One comment has been received concerning this request. The comment received from Ms. Henrie, see attached, recommended a clarification to the proposed definitions that “the regulations of” Sector Development Plans be considered for determining nonconforming status. Code Enforcement recommended deleting the text that referred to Sector Development Plans, because they are adopted by resolution as part of the Zoning Code (“this Article”). Because the text is recommended for deletion, the suggested changes are no longer applicable to the text. If the changes recommended by Code Enforcement are not accepted, staff recommends including the clarification as suggested by Ms. Henrie.

There is no known neighborhood or other opposition to the proposed text amendment.

VI. CONCLUSION

This is a request by City Council to amend the text in Section 14-16-3-4 of the Zoning Code. A summary of the proposed changes follows:

§14-16-1-5, Definitions.

Two new definitions are proposed, “Nonconforming Structure,” and “Nonconforming Use.” They are proposed to help clearly distinguish between the two types of nonconformance.

§14-16-3-4, Nonconformance Regulations.

(A) Nonconforming Structure. The proposed text removes the current requirement for nonconforming structures to be removed or converted to a conforming structure or use according to the amortization schedule in Division (A)(1). It allows nonconforming structures to remain,

except in the specific situations listed or as modified by a sector development plan. Other minor changes to existing text are proposed to improve clarity as well as reorganization.

(B) Nonconforming Use of a Structure or Land. The proposed text removes the current requirement for nonconforming uses to be removed or converted to a conforming structure or use within one year of becoming nonconforming. It allows nonconforming structures to remain, except in the specific situations listed or as modified by a sector development plan. Other minor changes to existing text are proposed to improve clarity as well as reorganization.

(C) Nonconforming Lot Size. There are no major changes proposed to this Paragraph.

(D) Nonconforming Sign. This is a new Paragraph created by the present request to consolidate all sign related nonconformance regulations. It consists of text that has been reorganized from Paragraph (A) and (B) in the current regulations. It has minor modifications proposed to improve its clarity. It maintains the current amortization periods that range from one year to the life of the sign, depending on the situation.

(E) Nonconforming Landscaping. There are no changes proposed to this Paragraph.

(F) Property Acquisition by Government Entities. The purpose of the proposed new Paragraph (F) is to allow violations of the zoning code resulting from real property acquisitions by government entities to constitute a legally nonconforming use.

The intent of the proposed text amendment is to remove the amortization period for nonconforming structures and uses. It also divides current nonconformance regulations into clear categories dealing with nonconforming uses, nonconforming structures, nonconforming lot size, nonconforming signs and nonconforming landscaping. These changes mainly serve to clarify the situations and manner in which the nonconformance regulations apply.

Allowing nonconforming structures and uses to remain for the life of the structure or use will prevent undue hardship on the property owner, who invested in their property according to applicable rules and regulations at the time the site or use was developed. The proposed amendments also do not harm the community because the structures and uses will be required to convert to conforming structures/uses at the end of their useful life.

There is no known opposition to the request. The request furthers the intent of the City Charter and the Zoning Code Section 14-16-1-3. Planning Staff recommends approval of this request, subject to conditions of approval.

FINDINGS – 12EPC-40063 – October 11, 2012 – Amendments to the Zoning Code

1. This is a request by City Council to amend the text in §14-16-3-4, Nonconformance Regulations, of the Zoning Code.
 - a. The request adds two new definitions for ‘nonconforming structures’ and ‘nonconforming uses.’
 - b. The request deletes the portion that requires the owner of a building that became nonconforming in 1959 with the adoption of the Zoning Code to either remove or convert that structure or to prove the use existed in 1959 under the procedures that apply to Status Established Buildings.
 - c. The request divides the current Nonconformance Regulations into clear categories dealing with nonconforming structures, nonconforming uses, nonconforming lot size, nonconforming signs and nonconforming landscaping.
 - d. The request clarifies and amends current language.
 - e. The request adds a new Paragraph (F), which allows violations of the zoning code resulting from real property acquisitions by government entities to constitute a legally nonconforming use.
2. The request was introduced by the City Council on August 20, 2012 as Bill No. O-12-30 and affects §4-16-1-5, Definitions, and §14-16-3-4, Nonconformance Regulations, of the Zoning Code.
3. The Revised Code of Ordinances of Albuquerque, New Mexico, 1994, including the Zoning Code, is incorporated herein by reference and made part of the record for all purposes.
4. The request is consistent with the intent of the City Charter. Revising portions of the Zoning Code is an exercise in local self government (City Charter, Article 1). Revising the nonconformance regulations will help the City more effectively administer nonconforming properties. City Council has the authority to amend the Zoning Code.
5. The request is consistent with the authority, purpose, and the amendment process of the Zoning Code. The application for proposed text amendments to the Zoning Code was filed in accordance with Zoning Code requirements. The proposed text amendments may result in an enhanced administration of nonconforming properties, which supports general health, safety and welfare.
6. The proposed text amendment meets the intent of the Zoning Code (Section 14-16-1-3) by facilitating orderly, harmonious, and economically sound development while maintaining the

health, safety, and general welfare of the citizens of the City. The request promotes the health, safety, convenience, and general welfare of the City by deleting language in the existing Zoning Code that is no longer applicable and by clarifying the Nonconformance regulations through improved organization. The proposed amendment will help members of the community better understand the regulations as they apply to their property. It may also facilitate enforcement by making the regulations more straight-forward.

7. Allowing nonconforming structures and uses to remain for the life of the structure or use will prevent undue hardship on the property owner, who invested in their property according to applicable rules and regulations at the time the site or use was developed. The proposed amendments also do not harm the community because the structures and uses will be required to convert to conforming structures/uses at the end of their useful life.
8. Code Enforcement has provided additional language and revisions to better clarify portions of the proposed amendment and improve the ability to enforce the regulations. These changes are provided as recommended Conditions of Approval.
9. There is no change proposed to the amortization deadline for nonconforming helipads, certain types and locations of alcohol sales, nonconforming structures and uses that are vacant for a period of 6 months to 1 year, nonconforming mobile homes and mobile home development, nonconforming signs, and nonconforming landscaping.
10. The various amortization/compliance deadlines may pose a staffing hardship for Code Enforcement. This division may not have adequate staff for routine code enforcement, as well as enforcing the Nonconformance Regulations when structures or uses all expire at the same time. The proposed text amendments are likely to make it less burdensome to property-owners and Code Enforcement.
11. There are two additional concurrent requests to amend Section 14-16-3-4, Nonconformance Regulations, of the Zoning Code – 12EPC-40055, and 12EPC-40056. The final text of the Nonconformance Regulations should incorporate each proposed amendment, as approved by City Council. Recommended Conditions of Approval #1 and #2 address these other amendments to §14-16-3-4.
12. The following sections of the proposed legislation warrant further consideration by Council Services and Code Enforcement Staff:

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- a. Proposed §14-16-1-5, Definitions, may need further editing based on Code Enforcement's comments. The implications of each option should be considered prior to final approval.
 - b. Proposed §14-16-3-4(A)(1), which prohibits structural alterations, could indefinitely extend the life of non-conforming structures. This conflicts with the original intent of phasing out nonconforming structures and uses and may lead to unintended consequences.
 - c. Proposed §14-16-3-4(B)(1), regarding nonconforming use of a building or structure. Code Enforcement also recommended replacing the first instance of "structure" with "use." That suggestion may change the intent of the Division, which is to allow nonconforming uses *in existing structures* to remain for the life of the use.
 - d. Proposed §14-16-3-4(B)(5), regarding expansion of nonconforming structures and uses. Code Enforcement commented that an increase in a nonconforming use or addition to a nonconforming structure may be construed as increasing the extent of nonconformance, and may conflict with other portions of the Nonconformance Regulations.
 - e. Proposed §14-16-3-4(C), regarding nonconformance due to amendment. It is not clear why this language is recommended to be deleted, because there are still aspects of the nonconformance regulations that have an amortization period.
 - f. Proposed §14-16-3-4(D), regarding nonconforming signs. The NM Supreme Court enjoined the City from enforcing this regulation, and the amortization period may need to be removed or revised.
 - g. The proposed legislation should clarify if the Status Established Building procedure is intended to continue, or if that section of the Zoning Code should be repealed.
 - h. It may be desirable to explain what a legal nonconforming use is, potentially as a new defined term. This term is used in proposed Division §14-16-3-4(C)(2) and the proposed new Paragraph §14-16-3-4(F).
13. The proposed text amendments were announced in the Neighborhood News and a legal advertisement was placed in the newspaper. The Office of Neighborhood Coordination (ONC) sent an e-mail notification to neighborhood organization contact persons. No comments have been received concerning this request and there is no known neighborhood or other opposition to the proposed text amendment.

RECOMMENDATION – 12EPC-40063 – October 11, 2012 – Amendments to the Zoning Code

That a Recommendation of APPROVAL of Case 12EPC-40063, Council Bill O-12-20, to amend the text of the Zoning Code §14-16-3-4, be forwarded to the City Council, based on the preceding Findings and subject to the following Conditions of Approval.

**RECOMMENDED CONDITIONS OF APPROVAL – 12EPC-40063 – October 11, 2012 –
Amendments to the Zoning Code**

1. If Council Bill O-12-25, 12EPC-40055, Zoning Code Text Amendment regarding razor wire, is adopted, the adopted text shall be added to §14-16-3-4(A)(6) as the second to last sentence.
2. If Council Bill O-12-26, 12EPC-40056, Zoning Code Text Amendment regarding short term vacation rentals of property is adopted, the adopted text shall be added as a new Division subsequent to the last numerical Division in Paragraph §14-16-3-4(B).
3. The following additions, deletions, and modifications are recommended for the proposed text amendment (highlight indicates changes proposed from O-12-30):
 - a. All Paragraphs, Divisions, Subdivisions should be consecutively renumbered.
 - b. **§14-16-1-5: NONCONFORMING.** Additional changes may be warranted.
 - c. **§14-16-1-5: [+ NONCONFORMING STRUCTURE.** A structure which does not conform to this Article or to [+ the regulations of +] an applicable sector development plan for reasons other than the use of the structure and which structure did not violate this Article or any applicable sector development plan at the time the structure was constructed. By way of example: a nonconforming structure could be one that violates height, setback, aesthetic, or form requirements. +] Additional changes may be warranted.
 - d. **§14-16-1-5: [+ NONCONFORMING USE.** A use of a structure or land which does not conform to uses allowed under this Article or to uses allowed under [+ the regulations of +] an applicable sector development plan and which was an allowed use at the time the use was first undertaken. +] Additional changes may be warranted.
 - e. **§14-16-3-4(A)(1):** Maintenance, repair, or alteration of nonconforming structures. The proposed change could indefinitely extend the life of non-conforming structures. This conflicts with the original intent of phasing out nonconforming structures and uses and may lead to unintended consequences. Additional changes may be warranted.
 - f. **§14-16-3-4(A)(2):** [- ~~(5)~~ -] [+ (2) +] A structure nonconforming [- only -] as to height regulations cannot be added to or enlarged unless the addition or enlargement conforms to all the regulations of the zone in which it is located.
 - g. **§14-16-3-4(A)(3):** [- ~~(6)~~ -] [+ (3) +] A structure nonconforming [- only -] as to setback regulations cannot be added to or enlarged unless the addition conforms to all the regulations of the zone in which the structure is located.
 - h. **§14-16-3-4(B)(1):** [+ (1.) Except as otherwise provided in this section or in an applicable sector development plan a structure which did not violate applicable zoning [- as to use

~~when that use -~~ [+ when it +] was initiated and which use violates subsequently adopted zoning shall be allowed to continue to exist as a nonconforming use for the life of the use. +]. Additional changes may be warranted.

- i. **§14-16-3-4(B)(8)(c):** [- (4.) -] [~~(e)~~ +] [+ (2) +] [- Land used in whole or in part for nonconforming purposes according to the provisions of this Zoning Code, which thereafter -] [+ Land with a nonconforming use which thereafter +] becomes and remains vacant for a continuous period of six months or more shall not again be used except in conformity with the [- regulations of the zone in which such land is situated.-] [+ the applicable zoning. +] Neither the intention of the owner nor that of anybody else to use a lot or part thereof for any nonconforming use, nor the fact that said lot or part thereof may have been used by a makeshift or pretended nonconforming use shall be taken into consideration in interpreting and construing the word "vacant" as used in this division [- (4). -] [~~(e)~~ +] [+ (2). +]
- j. **§14-16-3-4(B)(2):** [- (2.) -] [+ (3) +] Any adult amusement establishment or adult store that was in conformance with the Zoning Code on March 1, 2004, that becomes a nonconforming use as a result of the 2004 adult use amendments to the Zoning Code shall be allowed to continue to exist as a nonconforming use for the life of the use. [- Any adult amusement establishment or adult store that was nonconforming as of March 1, 2004 under the Zoning Code must cease the adult activity within five years from the effective date of this amendment or by January 1, 2010, whichever is later. -]
- k. **§14-16-3-4(B)(4):** [- (4.) An establishment that sells alcoholic drink for consumption off premises in the following packages within 500 feet of a pre elementary, elementary or secondary school, a religious institution, a residential zone, a designated Metropolitan Redevelopment Area (as defined in the State Metropolitan Redevelopment Code), a city owned park or city owned major public open space:
- (a) ~~distilled spirits, as defined in the New Mexico Liquor Control Act, in any package that contains less than 750 milliliters; (b) beer, as defined in the New Mexico Liquor Control Act, in any single container labeled as containing 16 or fewer ounces; and (c) fortified wines with a volume of alcohol of more than 13.5 percent, must vacate the premises, be removed or convert to a conforming use by no later than July 1, 2005 or within one year after it becomes nonconforming, whichever is later. -]~~
- i. **§14-16-3-4(B)(5):** Expansion of Nonconforming structures and uses. An increase in a nonconforming use or addition to a nonconforming structure may be construed as increasing the extent of nonconformance, and may conflict with other portions of the Nonconformance Regulations. Additional changes may be warranted.
- j. **§14-16-3-4(B)(7)(a):** [- (a) -] [+ (8) +] A nonconforming use of land consisting of a mobile home shall be made to conform within five years of becoming nonconforming.

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- k. **§14-16-3-4(B)(7)(b):** [- ~~(b)~~ -] [+ (9) +] A nonconforming use of land and incidental structures consisting of a mobile home development may remain for the life of the fixtures, which shall never be more than 50 years but only if:
- l. **§14-16-3-4(C):** Nonconformance Due to Amendment. The provisions of this section apply to a structure or use which becomes nonconforming due to a change in street line, map change, text amendment, or annexation, provided that where a date or time period is specified for the removal of a nonconformance, it is to be computed from the date the amendment or annexation became effective. Additional changes may be warranted.
- m. **§14-16-3-4(D):** Nonconforming Signs. The NM Supreme Court enjoined the City from enforcing this regulation. Additional changes may be warranted.
- n. **§14-16-3-4(F):** [+ (F) Property Acquisition by Government Entities. A violation of any regulation of the Zoning Code that results from an acquisition of real property by a government entity with the power of eminent domain, shall deem the remaining property as legally nonconforming. Such nonconformance status shall continue until such time as the owner of the property applies for and obtains a change of zoning designation. +]
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K. Carrie Barkhurst
Planner

Notice of Decision cc list:

City of Albuquerque/City Council, P.O. Box 1293, Albuquerque, NM 87103

City of Albuquerque/Planning Department, 600 2nd St. NW, 3rd Floor, Albuquerque, NM 87102

Attachments

Application

Public Notification Information

Public Comment

CITY OF ALBUQUERQUE AGENCY COMMENTS

PLANNING DEPARTMENT

Code Enforcement

Code Enforcement submitted comments marked up on the Bill O-12-30. See attached.

Office of Neighborhood Coordination

City-wide. 9/11/12 – Newsletter Article in the September/October issue of the “Neighborhood News” newsletter both in print and online to all NA/HOA/Coalitions on ONC’s list and to the public – siw

Text Amendment to the Zoning Code Related to Nonconforming Structures and Uses

City Councilors Trudy Jones and Debbie O’Malley sponsored a resolution to amend the nonconformance regulations in the Zoning Code. This amendment will apply city-wide.

The intent of the amendment is to modify the section of the Zoning Code dealing with the amortization periods for nonconforming structures and uses as follows:

1. It deletes §14-16-3-4(A)(1)(a), which requires the owner of a building that became non-conforming in 1959 with the adoption of the Zoning Code to either remove or convert that structure or prove that the use existed in 1959 under the procedures that apply to Status Established Buildings;
2. It divides current nonconformance regulations into clear categories dealing with nonconforming uses, nonconforming structures, nonconforming lot size, nonconforming signs, and nonconforming landscaping.
3. It clarifies and amends current language.

The Environmental Planning Commission will consider these amendments on October 11, 2012. The hearing begins at 8:30 a.m. in the basement hearing room at Plaza del Sol, 600 2nd Street NW. The application will then be forwarded to the City Council with the Planning Commission’s recommendation. The City Council will consider the amendment at a future date.

This application can be reviewed at the City Planning Department offices in downtown Albuquerque at the Plaza del Sol building. If you would like to provide comments to the Environmental Planning Commission, contact Carrie Barkhurst at 924-3879, or kcbarkhurst@cabq.gov. Comments should be received at least 48 hours in advance of the public hearing on October 11th.

Long Range Planning – No Comments Received

Metropolitan Redevelopment

Amendments to Zoning Code. The subject ordinances do not directly affect a Redevelopment Area, and therefore Metropolitan Redevelopment Section staff have no comments on these applications.

CITY ENGINEER

Transportation Development

Reviewed, no comment.

Hydrology

Hydrology has no objection to the Zoning Code change.

DEPARTMENT of MUNICIPAL DEVELOPMENT

Transportation Planning – No Comments Received

Traffic Engineering Operations – No Comments Received

Street Maintenance – No Comments Received

**RECOMMENDED CONDITIONS FROM CITY ENGINEER, MUNICIPAL DEVELOPMENT
and NMDOT:**

Conditions of approval for the proposed Text Amendment to Zoning Code (Non-conforming) shall include: None.

WATER UTILITY AUTHORITY

Utility Services – No Comments Received

ENVIRONMENTAL HEALTH DEPARTMENT

Air Quality Division – No Comments Received

Environmental Services Division – No Comments Received

PARKS AND RECREATION

Planning and Design

Reviewed, no objection.

Open Space Division – No Comments Received

POLICE DEPARTMENT/Planning

No Crime Prevention or CPTED comments concerning the proposed Amendment to Zoning Code or Subdivision Regulatory Text request at this time.

SOLID WASTE MANAGEMENT DEPARTMENT

Refuse Division

Approved as long as they comply with SWMD Ordinance.

FIRE DEPARTMENT/Planning

No Comments.

TRANSIT DEPARTMENT

No Comments.

COMMENTS FROM OTHER AGENCIES

BERNALILLO COUNTY – No Comments Received

ALBUQUERQUE METROPOLITAN ARROYO FLOOD CONTROL AUTHORITY

Reviewed, no comment.

ALBUQUERQUE PUBLIC SCHOOLS

The City of Albuquerque proposes a City-Wide amendment to amend a section of the zoning code dealing with the amortization periods for nonconforming structures and uses. APS does not oppose this amendment.

MID-REGION COUNCIL OF GOVERNMENTS – No Comments Received

MIDDLE RIO GRANDE CONSERVANCY DISTRICT – No Comments Received

PUBLIC SERVICE COMPANY OF NEW MEXICO

PNM has no comments based on information provided to date.