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CITY OF SANTA FE, NEW MEXICO

BILL NO. 2009-38

INTRODUCED BY

AN ORDINANCE

**AMENDING CHAPTER 14 LAND DEVELOPMENT LAWS AND CHAPTER 26
AFFORDABLE HOUSING SFCC 1987 RELATING TO APPEALS.**

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF SANTA FE:

**Section 1. [NEW MATERIAL] A new Section 14-2.2(A)(3) SFCC 1987 is
ordained to read:**

- (3) The Governing Body shall hear appeals of:**
 - (a) Final actions of any Land Use Board;**
 - (b) Final actions of the Land Use Director; and**
 - (c) Final actions of other City department directors interpreting or
applying this chapter or requirements or conditions of any
approval imposed by the Governing Body pursuant to this
chapter.**

**Section 2. Section 14-2.3(C)(5) SFCC 1987 (being Ord. #2001-38, §2, as
amended) is amended to read:**

1 (5) Appeals

2 The Planning Commission [~~is the principal City administrative board~~
3 ~~reviewing and granting or denying~~] shall hear appeals [~~from decisions~~]
4 of:

5 (a) Final actions of the Summary Committee;

6 (b) [~~City staff regarding the~~] Final actions of the Land Use Director
7 interpreting or applying [~~zoning regulations~~] this chapter [~~set~~
8 ~~forth in all areas except the Historical Districts and the~~
9 ~~Archaeological Review Districts, except final actions~~
10 interpreting or applying Historic District regulations under §14-
11 3.10, §14-3.14, §14-5.2, §14-8.10(H) or Archeological Review
12 District regulations under §14-5.3 [~~, and the subdivision~~
13 ~~regulations set forth in Article 14-9~~], provided that the
14 interpretation or application [~~request~~] is made as [~~also~~] part of a
15 development plan or subdivision request requiring the Planning
16 Commission's approval;

17 (c) [~~City staff regarding~~] Final actions of the Land Use Director
18 interpreting or applying the terrain management regulations
19 (§14-8.2) and the Escarpment Overlay District regulations (§14-
20 5.6); and

21 (d) Final actions of the Floodplain Administrator [~~regarding~~
22 ~~development in special flood hazard areas (§14-3.9) and the~~
23 ~~flood regulations (§14-8.3) when it is alleged there is an error in~~
24 ~~any requirement, decision, or determination in the enforcement~~
25 ~~or administration of these sections~~].

1 **Section 3. Section 14-2.5(A) SFCC 1987 (being Ord. #2001-38, §2) is amended**

2 **to read:**

3 (A) Powers and Duties

4 The Board of Adjustment shall have the review and decision-making
5 responsibilities set forth in Table 14-2.1-1, to be carried out in accordance with
6 the terms of this chapter. In addition, the Board of Adjustment shall have the
7 following additional responsibilities under this chapter:

8 (1) ~~[Administrative Review]~~ Appeals

9 To hear ~~[and decide]~~ appeals ~~[when it is alleged that there is error in any~~
10 ~~order, requirement, decision or determination made by the administrative~~
11 ~~official in the enforcement of this chapter.]~~ of final actions of the Land
12 Use Director interpreting or applying the provisions of this chapter,
13 unless jurisdiction for such appeals is otherwise specifically reserved to
14 any other Land Use Board.

15 (2) Special Exceptions

16 To hear and decide applications for special exceptions as the Board of
17 Adjustment is specifically authorized to pass on by the terms of this
18 chapter; to decide such questions as are involved in determining whether
19 special exceptions should be granted; and to grant special exceptions
20 with such conditions and safeguards as are appropriate under this chapter
21 or to deny special exceptions when not in harmony with the intent and
22 purpose of this chapter.

23 (3) Variances

24 To authorize ~~[upon appeal]~~ in specific cases such variance from the
25 terms of this chapter as will not be contrary to the public interest where,

1 owing to special conditions, a literal enforcement of the provisions of
2 this chapter would result in unnecessary hardship.

3 ~~[(4) — Actions Concerning Appeals~~

4 ~~The Board may, in conformity with the provisions of this chapter,~~
5 ~~reverse or affirm, wholly or partly, or may modify the order,~~
6 ~~requirement, decision or determination as ought to be made and to that~~
7 ~~end shall have the powers of the administrative official from whom the~~
8 ~~appeal is taken.]~~

9 **Section 4. [NEW MATERIAL] A new Section 14-2.6(A)(9) SFCC 1987 is**
10 **ordained to read:** *(Note: §14-2.6(A) outlines the Powers and Duties of the Business-Capitol*
11 *District Design Review Committee)*

12 (9) Hearing appeals of final actions of the Land Use Director interpreting or
13 applying Business-Capitol District regulations under §14-4.3(E) and §14-
14 7.3.

15 **Section 5. Section 14-2.7(A)(2) SFCC 1987 (being Ord. #2001-38, §2 as**
16 **amended) is amended to read:** *(Note: §14-2.7(A) outlines the Powers and Duties of the*
17 *Historic Design Review Board)*

18 (2) The Historic Design Review Board shall hear appeals of final actions of
19 the Land Use Director [as set forth in §14-3.17] interpreting or applying
20 historic district regulations §14-3.10, §14-3.14, §14-5.2 or §14-8.10(H).

21 **Section 6. [NEW MATERIAL] A new Section 14-2.8(A)(9) SFCC 1987 is**
22 **ordained to read:** *(Note: §14-2.8(A) outlines the powers and duties of the Archaeological*
23 *Review Committee)*

24 (9) The Archeological Review Committee shall hear appeals of final actions
25 of the Land Use Director interpreting or applying archaeological review

1 district regulations under §14-5.3.

2 **Section 7. Section 14-3.1(H)(1)(a) SFCC 1987 (being Ord. #2001-38, §2 as**
3 **amended) is amended to read:** *(Note: §14-3.1(H)(1) outlines the requirements of notice of*
4 *public hearing before planning commission, board of adjustment, summary committee and BCD*
5 *DRC)*

6 (a) General Notice Requirements

7 The following shall apply for all applications except those
8 initiated by the City described in paragraph (b) below or appeals
9 described in §14-3.1(H)(4).

10 **Editor's Note:** Paragraphs 14-3.1(H)(1)(a)(i), (ii), (iii) and (iv) remain as is.

11 **Section 8. Section 14-3.1(H)(3)(a) SFCC 1987 (being Ord. #2005-31 as**
12 **amended) is amended to read:**

13 (a) Land Use Boards [~~For public hearings scheduled before review~~
14 ~~bodies established in this chapter~~] other than those set forth in
15 [~~paragraphs~~] §14-3.1(H) (1) and (2) above, shall give notice
16 [~~shall be given~~] as set forth in [~~these~~] the sections [~~regarding the~~
17 ~~respective review~~] establishing those bodies, except for public
18 hearings on appeals as described in §14-3.1(H)(4).

19 **Section 9. [NEW MATERIAL] A new Section 14-3.1(H)(4) SFCC 1987 is**
20 **ordained to read:**

21 (4) Appeal Hearing Notice Requirements

22 (a) The following shall apply to all public hearings on appeals to
23 Land Use Boards or the Governing Body.

24 (i) Agenda Requirements

25 The Land Use Director shall place the appeal on the

1 agenda of the body hearing the appeal, and shall publish
2 and post the agenda in accordance with the established
3 procedures for that body.

4 (ii) Mailing Requirements

5 The appellant shall give written notice of the appeal as
6 follows:

7 A. Form of notice

8 The notice shall be in a form approved by the
9 Land Use Director as being adequate to ensure
10 that the average citizen reading the notice will
11 be fairly informed of the general purpose of
12 what is to be considered;

13 B. Procedure for giving notice

14 The applicant shall provide the Land Use
15 Department with all notices required to be
16 mailed in addressed, first-class postage paid
17 envelopes at least twenty one days prior to the
18 hearing date. The Land Use Department shall
19 indicate the hearing date and time on the notices,
20 and put the notices in the mail at least fifteen
21 days prior to the hearing date.

22 C. Notice recipients

23 The following shall receive notice:

- 24 1. All parties.
25 2. Any person who has filed a written

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request for information about the project or application with the Land Use Department.

3. Any person who signed in and provided a mailing address, on a sign in sheet provided and kept for the purpose by the Land Use Department, at any prior public hearing on the application or any appeal thereof.

4. Any organized neighborhood association that is listed with the land use department if the boundaries of the association's neighborhood include any part of the subject site or any land within 200 feet of the subject site.

(b) Notice for Hearing by Hearing Examiner
Notice of hearing by a hearing examiner shall be done in accordance with 14-3.1(H)(4)(a)(ii), above.

(c) Failure to Provide Notice
If the appellant fails to provide proof of proper notice prior to the public hearing on an appeal, the appeal shall be deemed withdrawn.

Section 10. Section 14-3.9(D) SFCC 1987 (being Ord. #2008-29, §4) is amended

to read:

(D) Appeals

1 [The Planning Commission shall hear appeals as set forth in §14-2.3(C)(5)(d).]

2 An appeal of any final action of the Floodplain Administrator shall be pursuant to
3 §14-3.17.

4 **Section 11. Section 14-3.13(C)(7) SFCC 1987 (being Ord. #2001-38, §2) is**
5 **amended to read:**

6 (7) Appeals

7 [(a)] Any aggrieved person may [~~take appeals of a decision~~] appeal a
8 final action of the Archaeological Review Committee to the
9 Governing Body pursuant to §14-3.17. [~~Such an appeal shall stay~~
10 ~~all proceedings in furtherance of the action appealed from, unless~~
11 ~~the City staff certifies that a stay would cause imminent peril to~~
12 ~~life or property.~~]

13 [(b)] ~~The appeal shall be limited to challenges of decisions made by~~
14 ~~the Committee. The grounds for the appeal shall be limited to~~
15 ~~whether the procedures or standards set forth in §14-3.17 were~~
16 ~~met. Appeals shall be in writing and shall state the specific~~
17 ~~standard or procedure that is being appealed. The appeal shall be~~
18 ~~filed within seven calendar days of the meeting at which the~~
19 ~~committee made the decision being appealed. The appeal shall~~
20 ~~be made at the next regularly scheduled meeting of the~~
21 ~~Governing Body.~~]

22 **Section 12. Section 14-3.14(E) SFCC 1987 (being Ord. #2001-38, §2 as amended)**
23 **is amended to read:** *(Note: Section 14-3.14(E) refers to appeals from the Historic Design*
24 *Review Board)*

25 (E) Appeals

1 (1) ~~[Appeals on final Board decisions on demolition may be taken to the~~
2 ~~Governing Body as set forth in this Chapter.]~~ Historic Design Review
3 Board decisions on demolition of structures may be appealed to the
4 Governing Body pursuant to §3.17.

5 (2) ~~[During the appeal period,]~~ The Governing Body, with the advice and
6 assistance of the Historic Design Review Board, may take such steps as
7 it determines necessary to preserve the structure concerned, in
8 accordance with the purposes of the ~~[H-District Ordinance]~~ Historic
9 District regulations under §14-5.2. Such steps may include, but not be
10 limited to, consultations with civic groups, public agencies, and
11 interested citizens; recommendations for acquisitions of property by
12 public or private bodies or agencies; and exploration of the possibility of
13 moving one or more structures or other features.

14 **Section 13. [REPEAL] Section 14-3.17 SFCC 1987 (being Ord. #2001-38, §2**
15 **as amended) is repealed.**

16 **Section 14. [NEW MATERIAL] A new Section 14-3.17 SFCC 1987 is ordained**
17 **to read:**

18 **14-3.17 APPEALS**

19 **(A) Appealable Actions**

20 (1) Final Action

21 Only final actions may be appealed.

22 (a) Final actions of a Land Use Board include a decision made after
23 public hearing for which a written explanatory order should be
24 issued, including the approval or denial of a preliminary plat.

25 (b) Final actions of the Land Use Director include the written

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issuance or denial of a permit or other approval within the Land Use Director's jurisdiction.

- (c) Final action does not include:
 - (i) A recommendation;
 - (ii) A delay in rendering a decision;
 - (iii) A decision to postpone or remand;
 - (iv) A decision not to take enforcement action;
 - (v) An informational response to an inquiry;
 - (vi) A decision on a preliminary approval;
 - (vii) Any action for which an appeal is specifically prohibited; or
 - (viii) Any action regarding procedural matters or requirements, provision of notice, the admissibility, relevance or weight of evidence or the conduct of a public hearing, however these actions may be raised by parties as part of an otherwise-valid appeal.

(2) Reason for Appeal

An appeal may only be filed for the following reasons:

- (a) To contest noncompliance of a final action with this chapter, other City ordinances, or state or federal constitutions, laws or regulations; and
- (b) To contest an interpretation of this chapter, other City ordinances, or state or federal constitutions, laws or regulations.

(B) Standing Required to Appeal

- (1) Appeals of final actions of the Land Use Director to any Land Use

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Board, and appeals of Summary Committee final actions to the Planning Commission, may be filed by the following persons:

- (a) The applicant;
- (b) Persons to whom notice by mail of the final action from which the appeal is taken was required to be made;
- (c) Persons who own a property interest within 200 feet of the subject site, excluding public right-of-way;
- (d) Any organized neighborhood association listed with the land use department, if the boundaries of the association’s neighborhood include any part of the subject site or any land within 200 feet of the subject site, excluding public right-of-way;
- (e) Persons appealing the alteration of a contributing, significant or landmark structure, if such alteration is clearly visible from any public right-of-way within 200 feet;
- (f) Persons alleging direct injury in fact or imminent threat of economic or other injury; and
- (g) City staff members acting in their official capacity.

(2) Appeals of Land Use Board final actions to the Governing Body may be filed by the following persons:

- (a) Any party;
- (b) Any person who meets the standing requirements of §14-3.17(B)(1), and who participated in or attended the Land Use Board public hearing unless the issue on appeal includes improper notice and the appellant did not get notice of the public hearing; and

1 (c) The City Manager, on his or her own behalf or on behalf of any
2 aggrieved City department.

3 **(C) Time for Appeal**

4 (1) Time for Appeal

5 Appellants shall file an appeal within 15 days of the date of final action
6 as defined herein.

7 (2) Amended Appeals

8 An appellant may amend an appeal until the time for appeal has expired.

9 (3) Response; Cross-Appeal

10 Any party may file a response to the appeal and/or that party's own
11 appeal within 7 days of the date the appeal is filed.

12 (4) Date of Final Action

13 The date of the final action shall be deemed to be the date of filing of the
14 final written decision with the official public records of the City for
15 purposes of filing an appeal under section 39-3-1.1 NMSA 1978. The
16 date of final action shall be determined as follows:

17 (a) For final actions of the Land Use Director or the City Manager,
18 the date of issuance of any written order (including a decision,
19 letter or other document) granting or denying relief; or

20 (b) The date a Land Use Board or the Governing Body adopts a
21 written order containing findings of fact and conclusions of law.

22 **(D) Process to File an Appeal**

23 (1) Filing Appeal; Form; Verification

24 The appellant shall file two copies of the written appeal with the Land
25 Use Director. The appeal shall be filed on a form provided for that

1 purpose, and shall be verified (signed under oath and notarized) by the
2 appellant.

3 (2) Contents

4 The appeal shall include:

- 5 (a) The appellant's name, mailing address and telephone number;
6 (b) A description of the basis of the appellant's standing, including a
7 description of the harm to the Appellant that would result from
8 the final action;
9 (c) The name of the applicant, the address or location of the subject
10 site and the permit number or case number, unless the appellant
11 is unable to obtain such information after diligent search;
12 (d) A description of the final action being appealed including the
13 date on which the final action was taken, or a copy of any written
14 final action being appealed;
15 (e) The appellant's contentions regarding each issue presented in the
16 appeal, identifying the specific facts that were incorrectly
17 determined or the specific requirement, procedure or standard or
18 other law appellant contends was violated or misinterpreted; and
19 (f) A proposed written order which includes a specific remedy,
20 including an explanatory statement of the factual and legal basis
21 for the order.

22 (3) Receipt; Service of Appeal

23 The Land Use Director shall initial and enter the date and time of filing
24 on both copies of the appeal, and return one copy to the appellant. The
25 appellant shall then deliver a copy of the appeal to the applicant, if the

1 applicant is not the appellant, by certified mail, return receipt requested
2 or hand delivery within three days.

3 (4) Appeal Fee

4 (a) An appeal fee shall be paid at the time of filing an appeal,
5 including appeals of Land Use Board final actions to the
6 Governing Body, except as exempted herein.

7 (b) The Governing Body shall establish by resolution a schedule of
8 fees for appeals. The schedule shall be based on the estimated
9 cost to process and hear appeals.

10 (c) Poverty Exemption

11 In order to qualify for an exemption, the following shall apply:

12 (i) The appellant shall file an affidavit stating that the
13 appellant's household's gross annual income does not
14 exceed one hundred twenty percent (120%) of the most
15 recent federal poverty guidelines issued by the United
16 States Department of Health and Human Services.

17 (ii) The appellant shall submit documents as required by
18 City policy in order to verify income.

19 (iii) The appellant shall consent to any reasonable
20 investigation and substantiation by the City of the facts
21 stated in the affidavit.

22 (iv) The filing of a false statement or otherwise fraudulently
23 obtaining the benefits of this Section is a violation of the
24 Santa Fe City Code and is punishable pursuant to §1-3
25 SFCC 1987 and shall entitle the City to recover any

1 fraudulently exempted amount and applicable interest
2 penalties.

3 (5) Multiple Appeals

4 (a) An appellant may not file more than one appeal of any single
5 final action.

6 (b) Every appeal requires an independent basis. Final actions may
7 not be appealed solely on the basis of alleged mistakes in prior
8 stages of the same project, whether or not the prior final actions
9 were appealed.

10 (c) More than one appellant may file an appeal of a final Action, and
11 appellants may file combined appeals and share the appeal fee
12 proportionally. All appeals of any final action shall be
13 consolidated for hearing purposes. In addition, any review of a
14 Planning Commission decision under Paragraph 2.2(A)(2) shall
15 be combined with the hearing on any appeal.

16 (6) Withdrawal

17 An appellant may withdraw an appeal at any time. A withdrawal does
18 not serve to withdraw any cross-appeal. During the pendency of an
19 appeal, and applicant may correct any matters which form the basis of
20 the appeal and then seek the appellant's consent to withdrawal of the
21 appeal.

22 (7) Conformity of Appeal

23 The Land Use Director shall promptly review all appeals for
24 conformance with the requirements of §14-3.17. Upon determining that
25 an appeal does not conform to the requirements, the Land Use Director

1 shall issue a written decision rejecting the appeal. The Land Use
2 Director's action is not subject to appeal to a Land Use Board or the
3 Governing Body, and may be appealed only to the district court in
4 accordance with this Section.

5 **(8) District Court Appeals**

6 An appeal of a final action of the Governing Body, or of an action of the
7 City Manager or the Land Use Director that is only subject to appeal to
8 district court, shall be to the First Judicial District Court pursuant to
9 NMSA 1978, §39-3-1.1, Rule 1-074, NMRA or Rule 1-075, NMRA, as
10 amended, or other relevant statute or court rule.

11 **(E) Stay of Action and Suspension of Permits**

12 (1) The timely filing of an appeal shall suspend the issuance of a permit, or
13 validity of any permit already issued, pursuant to that final action, and
14 prohibit the filing of any plat or development plan issued pursuant to that
15 final action, except as provided herein.

16 (2) The timely filing of an appeal of any enforcement action, including the
17 revocation or suspension of a permit, shall not stop the enforcement
18 action, except as provided herein or when due process otherwise requires
19 a predeprivation hearing.

20 (3) In the case of a permit that has been appealed, and the appeal has been
21 denied by a Land Use Board, the permit shall not be issued until the time
22 for appeal to the Governing Body has expired.

23 (4) The filing of an appeal shall not limit the ability of an applicant to file
24 other applications or seek further approvals, whether or not such
25 approvals are based on or authorized by the final action appealed.

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(5) The filing of an appeal shall not limit the ability of any party to file an appeal of any other final action related to the same project or application.

(6) Upon determination by the Land Use Director (for decisions made by the Land Use Director) or a Land Use Board (for decisions made by that committee) that the suspension of a permit or enforcement action would cause imminent peril to life or property, a permit approving only so much of the application as is required to address the immediate danger shall be issued. When reasonably practicable, the Land Use Director shall give all parties three days notice prior to the issuance of the permit. The Land Use Director's action is not subject to appeal to any Land Use Board or the Governing Body, and may be appealed only to the district court.

(7) The filing of an appeal of any action of the Land Use Director revoking or suspending a permit in any matter involving a sexually oriented business shall stop or suspend the action before the appeal is heard, except upon determination by the Santa Fe Police Department that there is a reasonable expectation that stopping or suspending the Land Use Director's action would constitute a grave imminent danger to the public welfare, including but not limited to life or property, in which case the City may exercise its authority to restrain, prohibit, or otherwise abate the source of such danger.

(F) Mediation

The Land Use Director may refer an appeal to mediation if he or she determines that the issues raised in the appeal are reasonably susceptible to resolution by mediation among the parties. Factors the Land Use Director should consider in

1 determining whether to refer a case to mediation include the parties' relationship,
2 apparent communication problems among the parties, barriers to settlement, the
3 expressed desire of parties to attempt a compromise, incentives to compromise
4 and any expressed desire for a more private forum for the resolution of the
5 dispute. Mediation shall occur in accordance with the following procedures:

6 (1) After an appeal is filed, and before the appeal is heard, the Land Use
7 Director shall review the case for suitability for mediation. If the Land
8 Use Director determines that the case is appropriate for mediation, he or
9 she shall select a mediator from a pre-qualified pool of mediators and
10 notify the parties that the case has been referred to mediation.

11 (2) Within fifteen days of referral, the mediator shall schedule a mediation
12 session . The mediation shall occur within thirty days of referral. All
13 parties shall attend the mediation session, and shall participate in good
14 faith, unless excused for cause by the mediator. If an appellant fails to
15 attend or participate in a required mediation session without excusal by
16 the mediator, the appeal shall be deemed withdrawn. If an applicant fails
17 to attend or participate in a required mediation session without excusal
18 by the mediator, the application shall be deemed withdrawn.

19 (3) The mediation shall be conducted in accordance with any rules adopted
20 by the Land Use Director. The mediator may impose reasonable
21 procedural limitations on the mediation.

22 (4) If the mediation process is partially or wholly successful, a written
23 agreement shall be executed by the parties and then provided to the Land
24 Use Director. If the mediation process is wholly successful, the appeal
25 shall be deemed withdrawn.

1 (5) Within ten days of the mediation, the mediator shall issue a written
2 report to the Land Use Director including the names of all parties
3 participating, not participating or excused, and a statement as to whether
4 any agreement was reached and, if so, what issues have been
5 successfully mediated and what issues remain unresolved and subject to
6 determination on appeal. No other report of the content of mediation
7 shall be made.

8 (6) Any appeal not wholly settled by mediation shall be re-set for public
9 hearing as soon as practicable.

10 (7) Mediation proceedings shall be confidential, and the parties shall sign a
11 mediation agreement requiring them to maintain the confidentiality of
12 the proceedings. All communications, verbal or written, during the
13 course of the mediation shall be inadmissible in any further proceeding
14 on the appeal. All notes made during the mediation shall be destroyed at
15 the end of the mediation.

16 **(G) Scheduling a Public Hearing; Public Hearing Date**

17 The public hearing on the appeal shall be scheduled as soon as practicable.

18 (1) An appeal to any Land Use Board shall be heard at the next available
19 regularly scheduled meeting after the appeal is filed which provides
20 adequate time for notice to be provided pursuant to §14-3.1(H)(1)(c).
21 This time limit shall not apply to appeals to the Governing Body.

22 (2) For good cause, a Land Use Board hearing an appeal may postpone the
23 hearing until the next available regularly scheduled meeting (3) An
24 appeal to any Land Use Board that is not heard in accordance with the
25 time limits of this section shall be removed from the jurisdiction of the

1 Land Use Board and be placed on the agenda of the next regularly
2 scheduled meeting of the Governing Body for public hearing after notice
3 is provided under §14-3.1(H)(1)(c).

4 **(H) Communication with Members Prohibited**

5 Communication regarding an appeal is limited as follows:

6 (1) Parties

7 During the appeal period after any final action is taken, and after an
8 appeal is filed, no party may communicate with individual members of a
9 Land Use Board that may hear the appeal or the Governing Body outside
10 an appeal hearing, concerning the merits or substance of the appeal,
11 except in writing filed with the Land Use Department within the
12 prescribed time period for inclusion in the public hearing record, and
13 with copies distributed immediately to all parties and to all other
14 members of the Land Use Board or Governing Body.

15 (2) City Staff

16 City staff, other than legal counsel, may not communicate with
17 individual members of a Land Use Board or the Governing Body
18 concerning the merits or substance of an appeal other than through a staff
19 report prepared for the appeal which shall be filed with the Land Use
20 Department for inclusion in the public hearing record, and with copies
21 distributed immediately to all parties and to all members of the Land Use
22 Board or Governing Body.

23 (3) Other Persons

24 Persons other than City staff shall not communicate outside a public
25 hearing with a member of a Land Use Board or the Governing Body

1 concerning the merits or substance of an appeal to be heard by that body.

2 (4) Site Inspection

3 Members of a Land Use Board or the Governing Body may not inspect
4 the site of any subject property, except pursuant to a publicly noticed site
5 visit which affords all parties the opportunity to attend.

6 (5) Effect of Improper Communication

7 A member of a Land Use Board or the Governing Body receiving a
8 communication in violation of this provision shall disclose the substance
9 of the communication on the record, and the member shall recuse himself
10 or herself if he or she cannot be fair and impartial in hearing the appeal.

11 **(I) Appeal Hearing Procedure**

12 (1) Submittals by Parties

13 All parties shall submit any documents or written evidence on which
14 they intend to rely by the specified submittal deadline for the body
15 hearing the appeal. If there is no such specified deadline, all documents
16 and evidence shall be submitted at least 7 days prior to the public
17 hearing.

18 (2) The Record

19 The body hearing the appeal shall be provided with copies of the
20 following:

21 (a) A staff report describing the application to which the appeal is
22 related, the basis of the final action being appealed and the
23 issue(s) raised in the appeal.

24 (b) The completed appeal form including any exhibits or
25 attachments, all relevant portions of the development application

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and supporting documents relating to the appeal.

- (c) The requirement, procedure or standard or other law at issue and any other materials relied on in taking the final action.
- (d) Evidence or documents submitted by any party, including proposed explanatory orders, by the applicable deadline.
- (e) The minutes or transcript of any prior public hearing on the appeal, and all relevant portions of the minutes or transcript of any prior public hearing on the development application to which the appeal is related.
- (f) Evidence entered into the record at a hearing in front of a hearing examiner, and any hearing examiner’s recommended explanatory findings and conclusions.

(3) Land Use Board Review

- (a) The Land Use Board shall conduct a public hearing in accordance with adopted procedures, and may reverse or affirm, in whole or in part, or may modify the final action appealed in accordance with the provisions of this chapter, and shall have the powers of the Land Use Director or Land Use Board that took the final action.
- (b) The Land Use Board shall issue a written order including an explanatory statement of the factual and legal basis for the order.

(4) Burden of Proof

Unless otherwise provided by law, the appellant has the burden of proving that specific facts were incorrectly determined or that the final action violated or misinterpreted a specific City ordinance, resolution or

1 rule, or other law or constitutional provision.

2 (5) Admissibility; Evidence

3 (a) Submission of Documents and Exhibits in Advance

4 Documents or other exhibits shall be submitted to the Land Use
5 Director in advance, on numbered pages with a table of contents,
6 for inclusion in the Land Use Board or Governing Body's
7 meeting packet. All documents and exhibits shall be submitted
8 seven days in advance of the hearing, unless the Land Use
9 Director or Governing Body prescribes other specific
10 requirements.

11 (b) Land Use Board Public Hearings

12 (i) Parties may only address issues contained in the
13 appeal(s).

14 (ii) Parties may introduce any relevant testimony and may
15 rely on any documents or exhibits submitted by the
16 applicable deadline.

17 (c) Governing Body Public Hearings

18 (i) Parties may only address issues contained in the
19 appeal(s), and may only refer to testimony introduced
20 during the Land Use Board public hearing or in front of
21 a hearing examiner, if applicable, and to documents and
22 exhibits submitted by the applicable deadline.

23 (ii) If a decision during a Land Use Board public hearing
24 resulted in a party being unable to address a particular
25 issue or introduce particular testimony that party may

1 request to raise that issue or introduce that testimony in
2 front of the Governing Body.

3 (6) Witnesses to be Sworn

4 All testimony shall be given under oath or affirmation.

5 (7) Parties may Cross Examine

6 Any party may cross examine any witness on testimony, documents or
7 exhibits presented at the hearing. All cross examination shall be through
8 the presiding officer unless the presiding officer permits otherwise. The
9 presiding officer may require that cross examination questions be
10 submitted to the presiding officer in writing or impose other reasonable
11 procedural restrictions on cross examination.

12 (8) Limitation on Witnesses and Testimony

13 The presiding officer may impose reasonable limitations on the number
14 of witnesses called by a party, and on the nature and length of their
15 testimony. Any such limitations shall apply equally to all parties; except
16 that an applicant may be given equal time to respond to testimony
17 presented by multiple appellants.

18 (9) Public Comment Accepted; Sign In Sheets

19 Public hearings on appeals shall be open to comment from members of
20 the public other than the parties. The presiding officer may impose
21 reasonable limitations on the nature and length of public comment. Any
22 such limitations shall apply equally to all members of the public wishing
23 to speak. Members of the public may not cross examine other members
24 of the public, witnesses or parties. Members of the public attending or
25 speaking at a particular hearing, and those who wish further notice of the

1 appeal in question, should sign in on a sheet provided for the purpose by
2 the land use department at each public hearing.

3 (10) Final Action; Written Order

4 At the conclusion of the public hearing, the body hearing the appeal may,
5 by majority vote, grant the appeal and order the appropriate relief. The
6 body hearing the appeal shall promptly issue a written order including an
7 explanatory statement of the factual and legal basis for the order.

8 **(J) Hearing Examiner**

9 All appeals to the Governing Body shall be referred to a hearing examiner in
10 accordance with the following procedures:

11 (1) The City Manager shall select a hearing examiner giving consideration to
12 the following factors:

13 (a) The independence, neutrality and freedom from bias of the
14 hearing examiner;

15 (b) The hearing examiner's knowledge of land use statute and case
16 law, and the City's code.

17 (c) The hearing examiner's familiarity with City land use
18 procedures.

19 (d) The hearing examiner's knowledge of and experience with
20 quasi-judicial hearing procedures.

21 (2) The Land Use Director shall forward a copy of the record to the hearing
22 examiner.

23 (3) The hearing examiner shall schedule and hear the appeal within fifteen
24 days of referral and shall provide all parties written notice at least five
25 days in advance of the hearing. The hearing shall be held in accordance

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with due process requirements and any rules adopted by the Governing Body. The hearing examiner may accept new evidence and documents into the record, and may impose reasonable procedural limitations on the hearing.

(4) The hearing in front of the hearing examiner shall be a public hearing subject to applicable requirements for public notice, and any persons who may participate in front of the Governing Body may participate in front of the hearing examiner.

(5) The hearing examiner may recommend reversing the final action if the final action of the Land Use Director or Land Use Board was not in accordance with law.

(6) Within ten days of the hearing, the hearing examiner shall issue recommended explanatory findings and conclusions to the Governing Body.

(7) The Governing Body shall consider the hearing examiner's recommended findings and conclusions in a public hearing as soon as practicable. The Governing Body shall accept, reject or modify the hearing examiner's recommended findings and conclusions. If the Governing Body rejects or modifies the hearing examiner's recommended findings and conclusions, it shall do so based on a review of the record and shall issue a written order including an explanatory statement of the factual and legal basis for the order.

(8) The hearing examiner may be an employee of the City or an independent contractor. The cost of the hearing examiner's services shall be allocated as determined by resolution of the Governing Body.

1 **(K) Due Process**

2 Interpretation of this section shall be made in favor of a party's opportunity to be
3 heard at a meaningful time and in a meaningful manner. All procedures
4 employed herein shall adhere to fundamental principles of justice and procedural
5 due process.

6 **Section 15. Section 14-4.3(E)(1)(g) SFCC 1987 (being Ord. #2001-38, §2) is**
7 **amended to read:**

8 (g) Appeals

9 [(i)] ~~Any person jointly or severally aggrieved by any~~
10 ~~decision]~~ An appeal of any final action of the Business-
11 Capitol District Design Review Committee [on a major
12 project in a redevelopment subdistrict, or staff in all
13 other projects may submit to the Governing Body a
14 petition duly verified, such petition constituting an
15 appeal, setting forth that such decision is illegal in whole
16 or in part, specifying the grounds of the illegality. The
17 Design Review Committee or staff on notification of the
18 submissions shall forthwith transmit to the Governing
19 Body all the papers constituting the record on which the
20 action appealed from was taken. The Governing Body
21 shall, after notice to the public given in the manner as
22 prescribed in §14-5.4 and after notice to the interested
23 parties, hear and decide such appeal] shall be pursuant to
24 §14-3.17.

25 [(ii)] ~~Such appeal shall be taken within 30 days of the date at~~

1 which the action appealed from was taken.

2 (iii) ~~Such appeal to the Governing Body shall be deemed to~~
3 ~~constitute a stay of legal proceedings.]~~

4 **Section 16. Section 14-5.2(C)(2)(e) SFCC 1987 (being Ord. #2001-38, §2, as**
5 **amended) is amended to read:**

6 (e) Appeals

7 Decisions made by the Historic Design Review Board [regarding
8 a structure's status] may be appealed to the Governing Body as
9 set forth in [Section] §14-3.17[~~(D)(2)~~].

10 **Section 17. [NEW MATERIAL] A new Section 14-5.2(C)(3)(c) SFCC 1987 is**
11 **ordained to read:**

12 (c) No permits shall be issued until the time for appeal to the
13 Governing Body has expired.

14 **Section 18. Section 14-5.2(J)(3)(b) SFCC 1987 (being Ord. #2001-38, §2) is**
15 **amended to read:**

16 (b) The Historic Design Review Board shall act upon the final
17 application at its next regular meeting, unless the application is
18 made less than seven days before a regular meeting, in which
19 case the question may be held over until the next meeting. If the
20 exhibits are inadequate, the Historic Design Review Board may
21 postpone action until a date agreed upon by the Historic Design
22 Review Board and the applicant. Recommended final approval,
23 disapproval, or conditional approval shall be noted on the face of
24 the application and signed by the chair of the Historic Design
25 Review Board, or, in [his] the chair's absence, by the acting

1 chair. If conditional approval is given, the list of conditions shall
2 be attached to the application. If the application is disapproved,
3 the chair of the Historic Design Review Board shall state on the
4 application the sections of H ~~D~~istrict regulations with which the
5 application did not comply. If the application is disapproved for
6 failure to provide required information, the chair shall state on
7 the application the information required and not provided. No
8 building permit for work within an H~~h~~istoric ~~D~~istrict may be
9 issued without approval of the Historic Design Review Board
10 endorsed thereon, except after appeal, as provided in §14-
11 3.17[~~(D)~~].

12 **Section 19. [REPEAL] Section 14-6.2(C)(1)(n) SFCC 1987 (being Ord.**
13 **#2001-38, §2) is repealed.**

14 **Section 20. [NEW MATERIAL] A new Section 14-6.2(C)(1)(n) SFCC 1987 is**
15 **ordained to read:**

16 (n) Administrative Procedure
17 Any person aggrieved by any final action of a City official,
18 officer, or department may file an appeal contesting any final
19 action of the City relating to denial, renewal, nonrenewal,
20 revocation, or suspension of a license for a sexually oriented
21 business pursuant to §14-3.17.

22 **Section 21. Section 14-6.2(E)(6)(a) SFCC 1987 (being Ord. #2001-38, §2) is**
23 **amended to read:**

24 (a) General
25 Any tower or antenna that is not otherwise permitted or

1 administratively approved [~~or which permit or administrative~~
2 ~~approval is appealed~~] shall be brought for consideration to the
3 Board of Adjustment. Special exceptions may also require
4 review and approval by the Historic Design Review Board or
5 Planning Commission as detailed in this section. The following
6 provisions shall govern the issuance of all special exceptions for
7 towers or antennas:

8 **Editor's Note:** Paragraphs 14-6.2(E)(6)(a)(i) through (xii) remain as is.

9 **Section 22. Section 14-6.3(C)(2)(b)(v)(F) SFCC 1987 (being Ord. #2001-38 § 2 as**
10 **amended) is amended to read:**

11 F. Any person aggrieved by a [~~decision~~] final
12 action of [City staff] the Land Use Director, with
13 respect to a home occupation, may appeal that
14 [~~decision to the Board of Adjustment as per~~]
15 final action pursuant to §14-3.17.

16 **Section 23. Section 14-8.11(D) SFCC 1987 (being Ord. #2005-(30)A §16) is**
17 **amended to read:**

18 **(D) Appeals**

19 (1) Any applicant aggrieved [~~of~~] by a [decision] final action of [City staff]
20 the Land Use Director regarding the SFHP provisions [shall appeal to the
21 Governing Body] may file an appeal pursuant to §14-3.17.

22 [~~(2) The applicant may proceed with other submissions related to the~~
23 ~~development request while any appeal is being considered.]~~

24 [~~(3) Appeals shall be filed within 30 days of the action appealed.]~~

25 **Section 24. Section 14-8.12(D) SFCC 1987 (being Ord. #2001-38 §2) is amended**

1 to read:

2 (D) Appeals

3 An appeal pursuant to the granting or denial of an exemption to ~~[these]~~ the
4 Gunnison's Prairie Dog relocation regulations shall be ~~[to the Board of~~
5 Adjustment] pursuant to §14-3.17.

6 Section 25. The following definition in Section 14-12.1 SFCC 1987 (being Ord.

7 #2001-38 §2, as amended) is amended to read:

8 **APPLICANT**

9 A person who has submitted an application. As used in §14-8.14, the applicant for a
10 building permit for which an impact fee is due.

11 Section 26. **[NEW MATERIAL.]** Section 14-12.1 SFCC 1987 (being Ord.

12 #2001-38, §2, as amended) is amended to include the following new definitions:

13 **APPELLANT**

14 A person filing an appeal.

15 **APPLICATION**

16 A request for a permit or other approval within the jurisdiction of the Land Use
17 Department, or within the jurisdiction of a Land Use Board or the Governing Body for
18 approvals required by this chapter, and including the fees, forms, plans and associated
19 documents.

20 **FINAL ACTION**

21 The action taken that completes review of and decision on an application or appeal.

22 **GOVERNING BODY**

23 The City Council and Mayor of the City of Santa Fe acting in their official capacities
24 during a meeting of a quorum.

25 **LAND USE BOARD**

1 A board, commission, committee or authority, appointed by the Mayor with the approval
2 of the City Council, which has jurisdiction over any matter arising under this chapter or
3 otherwise within the jurisdiction of the Land Use Department, including but not limited
4 to the Board of Adjustment, the Planning Commission and Summary Committee, the
5 Historic Design Review Board, the Archaeological Review Committee and the Business-
6 Capitol District Design Review Committee.

7 **LAND USE DIRECTOR**

8 The director of the Land Use Department, the director's designee or any person acting
9 under the director's authority.

10 **PARTY**

11 As used in §14-3.17, an applicant, an appellant or the Land Use Director and all agents
12 and representatives of that person.

13 **PRESIDING OFFICER**

14 The person elected or appointed to direct the conduct of any public hearing. The
15 presiding officer of a committee is the chairperson. The presiding officer of the
16 Governing Body is the Mayor or Mayor Pro Tempore.

17 **Section 27. Section 26-1.12 SFCC 1987 (being Ord. #2005-30(A), §41) is**
18 **amended to read:**

19 **26-1.12 Appeals.**

20 A. Any applicant aggrieved of a decision of city staff regarding [~~the SFHP~~
21 ~~provisions]~~ Article 26-1 shall appeal to the governing body.

22 B. The applicant may proceed with other submissions related to the development
23 request while any appeal is being considered.

24 C. Appeals shall be filed within thirty (30) days of the action appealed.
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APPROVED AS TO FORM:



FRANK D. KATZ, CITY ATTORNEY