

**CITY OF SANTA FE, NEW MEXICO**

**BILL NO. 2010-32**

**INTRODUCED BY:**

**Councilor Ortiz**

**Councilor Trujillo**

**AN ORDINANCE**

**AMENDING VARIOUS SECTIONS OF CHAPTER 14 SFCC 1987 LAND  
DEVELOPMENT CODE RELATED TO APPEALS.**

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

**Section 1. Section 14-2.2(A)(2) SFCC 1987 (being Ord. #2001-38, §2) is  
amended to read:**

(2) In addition, the Governing Body shall receive duly executed copies of the minutes and any final orders or determinations of the Planning Commission if requested.

(a) If, within thirty days of any final order or determination by the Planning Commission, the Governing Body decides to review any such order or determination, notice of such proposed review shall be provided in the manner prescribed in §14-3.1(H) and such notice shall be a stay of execution of such final order of determination.

1 (b) In exercising the powers set forth herein, the Governing Body,  
2 after reviewing the minutes of the Planning Commission  
3 meeting, may reverse or affirm, wholly or partly, or may modify  
4 the order, requirement, decision or determination as ought to be  
5 made and to that end shall have, in addition to all other  
6 municipal authority, that authority of the Planning Commission.”

7 (c) Paragraphs (2)(a) and (b) shall not apply to appeals heard by the  
8 Planning Commission regarding decisions of the Land Use  
9 Director. Such decisions of the Planning Commission are final.”

10 **Section 2. Section 14-2.2(A)(3) SFCC 1987 (being Ord. # 2009-42, §1) is**

11 **amended to read:**

12 (3) [~~The Governing Body shall hear appeals of:~~

13 (a) ~~Final actions of any Land Use Board;~~

14 (b) ~~Final actions of the Land Use Director; and~~

15 (c) ~~Final actions of other City department directors interpreting or~~  
16 ~~applying this chapter or requirements or conditions of any~~  
17 ~~approval imposed by the Governing Body pursuant to this~~  
18 ~~chapter.]~~

19 Appeals.

20 (a) The Governing Body shall hear appeals of final actions of any  
21 Land Use Board except as set forth in paragraph (b) below. The  
22 Governing Body shall hold a public hearing (de novo) on the  
23 appeal after notice has been given in accordance with the notice  
24 provisions of §14-3.1(H)(4).

25 (b) The Governing Body delegates its authority for hearing appeals of

1 decision of the Land Use Director to the respective Land Use Board  
2 as set forth in this Chapter. Final actions of a Land Use Board on  
3 the appeal of a decision of the Land Use Director shall not be  
4 heard by the Governing Body. Such appeal shall be filed in  
5 district court.

6 **Section 3. Section 14-2.3(C)(5) SFCC 1987 (being Ord. #2001-38, §2, as**  
7 **amended) is amended to read:**

8 (5) Appeals

9 The Planning Commission shall hear appeals of:

10 [(a) — Final actions of the Summary Committee;]

11 [(b)](a) Final actions of the Land Use Director [interpreting or] applying  
12 this chapter [except final actions interpreting or applying  
13 Historic District regulations under §14-3.10, §14-3.14, §14-5.2,  
14 §14-8.10(H) or Archeological Review District regulations under  
15 §14-5.3,] provided that the [interpretation or] application of this  
16 chapter is made [as part of] in conjunction with a development  
17 plan or subdivision request requiring the Planning Commission's  
18 approval;

19 [(e)](b) Final actions of the Land Use Director [interpreting or] applying  
20 the terrain management regulations (§14-8.2) and the  
21 Escarpment Overlay District regulations (§14-5.6); and

22 [(d)](c) Final actions of the Floodplain Administrator.

23 **Section 4. Section 14-2.3(E)(3) SFCC 1987 (being Ord. # 2001-38, §2 as**  
24 **amended) is amended to read:**

25 (3) [Any person aggrieved by a decision of the Summary Committee may

1 ~~file an appeal within 30 days of the Summary Committee's decision to~~  
2 ~~the Planning Commission.] Appeals of a decision of the Summary~~  
3 ~~Committee shall be heard by the Governing Body as set forth in §14-~~  
4 ~~3.17.~~

5 **Section 5. Section 14-2.5(A) SFCC 1987 (being Ord. #2001-38, §2 as amended)**

6 **is amended to read:**

7 (A) Powers and Duties

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

12 (1) Appeals

13 To hear appeals of final actions of the Land Use Director [~~interpreting~~  
14 ~~or~~] applying the provisions of this chapter, unless jurisdiction for such  
15 appeals is otherwise specifically reserved to any other Land Use Board.

16 (2) Special Exceptions

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

24 (3) Variances

25 To authorize in specific cases such variance from the terms of this

1 chapter as will not be contrary to the public interest where, owing to  
2 special conditions, a literal enforcement of the provisions of this chapter  
3 would result in unnecessary hardship.

4 **Section 6. Section 14-2.6(A)(9) SFCC 1987 (being Ord. # 2009-42, §4) is**

5 **amended to read:**

6 (9) Hearing appeals of final actions of the Land Use Director [~~interpreting~~  
7 ~~or~~] applying Business-Capitol District regulations under §14-4.3(E) and  
8 §14-7.3.

9 **Section 7. Section 14-2.7(A)(2) SFCC 1987 (being Ord. #2001-38, §2 as**

10 **amended) is amended to read:**

11 (2) The Historic Design Review Board shall hear appeals of final actions of  
12 the Land Use Director [~~interpreting or~~] applying historic district  
13 regulations under §14-3.10, §14-3.14, §14-5.2 or §14-8.10(H).

14 **Section 8. Section 14-2.8(A)(9) SFCC 1987 (being Ord. # 2009-42, §6) is**

15 **amended to read:**

16 (9) The Archeological Review Committee shall hear appeals of final actions  
17 of the Land Use Director [~~interpreting or~~] applying archaeological  
18 review district regulations under §14-5.3.

19 **Section 9. Section 14-3.1(H)(4) SFCC (being Ord. # 2009-42, §9) is amended to**

20 **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 to 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.] The appellant  
22 shall give notice of the time, date and place of  
23 the public hearing by first class mail, with a  
24 certificate of mailing by the U. S. Postal Service,  
25 postmarked at least 15 days prior the public~~

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hearing. The notice shall be approved by the  
Land Use Department prior to mailing.

C. Notice recipients

The following shall receive notice:

1. All [parties] appellants and appellees.
- ~~2. Any person who has filed a written 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.]~~
2. All persons or neighborhood associations who were required to be mailed notice for the application giving rise to the final action being appealed.

1                                    ~~[(b) — Notice for Hearing by Hearing Examiner~~

2                                    ~~Notice of hearing by a hearing examiner shall be done in~~  
3                                    ~~accordance with 14-3.1(H)(4)(a)(ii), above.]~~

4                                    [(e)](b) Failure to Provide Notice

5                                    If the appellant fails to provide proof of proper notice in a form  
6                                    approved by the Land Use Department prior to the public  
7                                    hearing on an appeal, the appeal shall be deemed withdrawn and  
8                                    may not be re-filed. The Land Use director may waive this  
9                                    requirement if the appellant shows good cause. The Director's  
10                                    decision is not appealable.

11                    **Section 10.    Section 14-3.10(B)(5) SFCC 1987 (being Ord. No. 2005-36 § 1) is**  
12 **amended to read:**

13                    (5)    Posting of Building Permits

14                    A building permit shall be posted on the property for which it has been  
15                    issued within 24 hours of its issuance. It shall be prominently displayed  
16                    and visible from a public street. The permit shall remain in place until  
17                    after the completion and final inspection of all work covered by the  
18                    permit or the time period for appeal set forth in §14-3.17 has expired,  
19                    whichever is later.

20                    **Section 11.    Section 14-3.17 SFCC 1987 (being Ord. #2009-42, §14) is amended to**  
21 **read:**

22 **14-3.17 APPEALS**

23                    (A)    **Appealable Actions**

24                    (1)    Final Action

25                    Only final actions may be appealed.



1 (a) Final actions of a Land Use Board include a decision made after  
2 a public hearing [~~for which a written explanatory order should be~~  
3 ~~issued,~~] including, but not limited to, the final approval or denial  
4 of a preliminary plat or preliminary development plan.

5 (b) Final actions of the Land Use Director include the written  
6 issuance or denial of a permit or other approval within the Land  
7 Use Director's jurisdiction.

8 (c) Final action does not include:

9 (i) A recommendation;

10 (ii) A delay in rendering a decision;

11 (iii) A decision to postpone or remand;

12 (iv) A decision not to take enforcement action;

13 (v) An informational response to an inquiry;

14 [~~(vi)~~—A decision on a preliminary approval;]

15 [(~~vii~~)(vi)] Any action for which an appeal is specifically  
16 prohibited; [~~or~~]

17 [(~~viii~~)(vii)] Any action regarding procedural matters or  
18 requirements, provision of notice, the admissibility,  
19 relevance or weight of evidence or the conduct of a  
20 public hearing[~~s~~]; however, these actions may be raised  
21 by parties as part of an otherwise valid appeal.

22 (2) [~~Reason~~] Basis for Appeal

23 An appeal may only be filed for the following reasons:

24 (a) To contest noncompliance of a final action with this chapter or  
25 §§3-21-1 through 3-21-14 NMSA [~~, other City ordinances, or~~

1 state or federal constitutions, laws or regulations; and];

2 (b) To contest ~~[an interpretation]~~ the application of this chapter[;  
3 ~~other City ordinances, or state or federal constitutions, laws or~~  
4 ~~regulations.]; or~~

5 (c) To appeal a decision lacking substantial evidence to support it.

6 **(B) Standing Required to Appeal**

7 [(1)] Appeals of final actions ~~[of the Land Use Director to any Land Use~~  
8 ~~Board, and appeals of Summary Committee final actions to the Planning~~  
9 ~~Commission,]~~ may be filed by the following persons:

10 [(a)](1) The applicant when the application is denied or, if approved, the  
11 approval included conditions not accepted by the applicant;

12 [(b)](2) ~~[Persons to whom notice by mail of the final action from which~~  
13 ~~the appeal is taken was required to be made;]~~

14 All persons or neighborhood associations who were required to  
15 be mailed notice for the application giving rise to the final action  
16 being appealed;

17 [(c)] — ~~Persons who own a property interest within 200 feet of the~~  
18 ~~subject site, excluding public right of way;]~~

19 [(d)] — ~~Any organized neighborhood association listed with the land use~~  
20 ~~department, if the boundaries of the association's neighborhood~~  
21 ~~include any part of the subject site or any land within 200 feet of~~  
22 ~~the subject site, excluding public right of way;]~~

23 [(e)] — ~~Persons appealing the alteration of a contributing, significant or~~  
24 ~~landmark structure, if such alteration is clearly visible from any~~  
25 ~~public right of way within 200 feet;]~~

- 1                   ~~[(f)](3)~~ Persons ~~[including nonprofit organizations or interested~~  
2                                   ~~neighborhood associations]~~ or organizations duly organized at the  
3                                   time the decision appealed from was rendered alleging injury to  
4                                   their economic, environmental, or aesthetic interests; ~~[and]~~  
5                   ~~[(g)](4)~~ City staff members acting in their official capacity~~[-]; and~~  
6                   (5) Any person who has a recognized legal interest under New  
7                                   Mexico law.

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

10                   ~~(a) Any party;~~

11                   ~~(b) Any person who meets the standing requirements of §14-~~  
12                                   ~~3.17(B)(1), and who participated in or attended the Land Use~~  
13                                   ~~Board public hearing unless the issue on appeal includes~~  
14                                   ~~improper notice and the appellant did not get notice of the public~~  
15                                   ~~hearing; and~~

16                   ~~(c) The City Manager, on his or her own behalf or on behalf of any~~  
17                                   ~~aggrieved City department.]~~

18                   **(C) Time for Appeal**

19                   (1) Time for Appeal

20                                   Appellants shall file an appeal as follows:

21                   (a) Within 30 days for appeals of final actions, as defined herein, by  
22                                   Land Use Boards on subdivision plats and development plans; or

23                   (b) Within [30] 15 days of the date of final action, as defined herein,  
24                                   for all other appeals.

25                   (2) Amended Appeals

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

2 (3) Response[; ~~Cross Appeal~~]

3 Any party may file a response to the appeal [~~and/or that party's own~~  
4 ~~appeal within 7 days of the date the appeal is filed~~] as set forth in §14-  
5 3.17(I)(2).

6 (4) Date of Final Action

7 The date of the final action shall be deemed to be the date [~~of filing~~] of  
8 the final written decision [~~with the official public records of the City for~~  
9 ~~purposes of filing an appeal under section 39-3-1.1 NMSA 1978. The~~  
10 ~~date of final action shall be~~] and determined as follows:

11 (a) For final actions of the Land Use Director [~~or the City Manager~~],  
12 the date of issuance of any written order (including a decision,  
13 letter, permit or other document) granting or denying relief or in  
14 the case of building permits, the date of the posting of the  
15 permit; [~~however, if the written order is relied upon for a~~  
16 ~~subsequent final action by the Land Use Director or the City~~  
17 ~~Manager, the time to appeal starts at the date of the subsequent~~  
18 ~~final action;~~] or

19 (b) For final actions of a Land Use Board or the Governing Body,  
20 the date that body adopts a written [~~order~~] decision containing  
21 findings of fact and conclusions of law; provided that if such  
22 body has not adopted findings of fact and conclusions of law  
23 within 31 days of the date the vote deciding the matter was  
24 taken, then the date of final action shall be deemed to be such  
25 31st day.

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

2           (1) Filing Appeal; Form; Verification

3           The appellant shall file two copies of the written appeal with the Land  
4           Use Director. The appeal shall be filed on a form provided for that  
5           purpose, and shall be verified (signed under oath and notarized) by the  
6           appellant.

7           ~~[(2) Contents~~

8           ~~The appeal shall include:~~

9           ~~(a) The appellant's name, mailing address and telephone number;~~

10          ~~(b) A description of the basis of the appellant's standing, including a  
11          description of the harm to the Appellant that would result from  
12          the final action;~~

13          ~~(c) The name of the [applicant] appellee, the address or location of  
14          the subject site and the permit number or case number, unless the  
15          appellant is unable to obtain such information after diligent  
16          search;~~

17          ~~(d) A description of the final action being appealed including the  
18          date on which the final action was taken, or a copy of any written  
19          final action being appealed;~~

20          ~~(e) Identification of facts that were incorrectly determined or  
21          ordinances or laws that were violated or misrepresented; and~~

22          ~~(f) Relief requested.]~~

23          ~~[(3)](2) Receipt; Service of Appeal~~

24          The Land use Director shall initial and enter the date and time of filing on both  
25          copies of the appeal, and return one copy to the appellant. ~~[The appellant~~

1 shall then deliver a copy of the appeal to the applicant, if the applicant is  
2 not the appellant, by certified mail, return receipt requested or hand  
3 deliver within three days.] Within 3 days of the filing date, the appellant  
4 shall hand deliver a copy of the appeal to any appellee or deliver it by  
5 First-Class® Certified Mail™ by the U.S. Postal Service.

6 [(4)](3) Appeal Fee

7 [(e)](a) An appeal fee shall be paid at the time of filing an appeal[;  
8 including appeals of Land Use Board final actions to the  
9 Governing Body, except as exempted herein].

10 [(f)](b) The Governing Body shall establish by resolution a schedule of  
11 fees for appeals. [The schedule shall be based on the estimated  
12 cost to process and hear appeals.] The Land Use Director may  
13 waive or reduce the appeal fee if the Director determines that the  
14 appellant would qualify for the city’s utility fee poverty  
15 exemption set forth in §15-1.3 SFCC 1987.

16 [(e) Poverty Exemption

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

- 18 (i) — The appellant shall file an affidavit stating that the  
19 appellant’s household’s gross annual income does not  
20 exceed one hundred twenty percent (120%) of the most  
21 recent federal poverty guidelines issued by the United  
22 States Department of Health and Human Services.
- 23 (ii) — The appellant shall submit documents as required by  
24 City policy in order to verify income.
- 25 (iii) — The appellant shall consent to any reasonable

1 investigation and substantiation by the City of the facts  
2 stated in the affidavit.

3 ~~(iv)~~ — The filing of a false statement or otherwise fraudulently  
4 obtaining the benefits of this Section is a violation of the  
5 Santa Fe City Code and is punishable pursuant to §1-3  
6 SFCC 1987 and shall entitle the City to recover any  
7 fraudulently exempted amount and applicable interest  
8 penalties.]

9 ~~(5)~~(4) Multiple Appeals and Multiple Jurisdictions

10 (a) An appellant may not ~~[file more than one]~~ appeal ~~[of]~~ any single  
11 final action more than once.

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

16 (c) More than one appellant may file an appeal of a final action, and  
17 appellants may ~~[file combined]~~ combine their appeals and share  
18 the appeal fee proportionally. All appeals of any single final  
19 action shall be consolidated for hearing purposes. ~~[In addition,]~~

20 (d) Any review by the Governing Body of a Planning Commission  
21 decision under Paragraph 14-2.2(A)(2) shall be combined with  
22 the hearing on any appeal of that decision.

23 ~~(d)~~(e) In the case of an appeal that includes final actions that fall under  
24 the jurisdiction of more than one Land Use Board, the Land Use  
25 Director shall determine the appropriate Land Use Board to hear

1 any particular issue on appeal, except as otherwise provided  
2 herein.

3 [(6)](5) Withdrawal

4 [~~An appellant may withdraw an appeal at any time. A withdrawal does  
5 not serve to withdraw any cross appeal. During the pendency of an  
6 appeal, an applicant may correct any matters which form the basis of the  
7 appeal and then seek the appellant's consent to withdrawal of the appeal.~~]

8 An appellant may withdraw the appeal at any time. A withdrawal does  
9 not affect any related appeal. At any time after an appeal has been filed,  
10 an appellant and appellee may agree to settle any matters raised in the  
11 appeal and the appellant may withdraw the appeal; provided that such  
12 settlement complies with applicable code requirements including any  
13 conditions of approval of the final action being appealed.

14 [(7)](6) Conformity of Appeal

15 The Land Use Director shall promptly review all appeals for  
16 conformance with the requirements of §14-3.17. Upon determining that  
17 an appeal does not conform to the requirements, the Land Use Director  
18 [~~shall advise the hearing examiner, in writing, as to whether the appeal  
19 appears invalid on its face. Prior to scheduling a hearing, the hearing  
20 examiner may recommend to the Governing Body that the appeal should  
21 be dismissed.~~] shall refer the matter to the City Attorney for review.

22 (a) If the City Attorney concurs with the Land Use Director's  
23 determination, the City Attorney's written recommendation shall  
24 be forwarded to the Governing Body for discussion. The  
25 Governing Body may accept the City Attorney's written



1 recommendation. Such decision is final and may be appealed to  
2 district court. If the Governing Body does not accept the City  
3 Attorney's recommendation, the appeal shall be heard as set  
4 forth in this Chapter.

5 (b) If the City Attorney does not concur with the Land Use  
6 Director's determination, the appeal shall be heard as set forth in  
7 this Chapter.

8 [(8)](7) District Court Appeals

9 An appeal of a final action of the Governing Body or a Land Use Board,  
10 or of an action of the City Manager, the City Attorney or the Land Use  
11 Director that is only subject to appeal to district court, shall be to the  
12 First Judicial District Court pursuant to NMSA 1978, §39-3-1.1, Rule 1-  
13 074, NMRA or Rule 1-075, NMRA, as amended, or other relevant  
14 statute or court rule.

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

16 (1) The timely filing of an appeal shall suspend the issuance of a permit, or  
17 the validity of any permit already issued, [pursuant to that final action]  
18 that is the subject of such appeal, and prohibit the [filing] recordation of  
19 any plat or the filing of any development plan [issued] pursuant to that  
20 final action and prohibit the issuance of any permits pursuant to that final  
21 action, except as provided herein.

22 (2) The timely filing of an appeal of any enforcement action, including the  
23 revocation or suspension of a permit, shall not stop the enforcement  
24 action, except as provided herein or when due process otherwise requires  
25 a [predeprivation] hearing.

- 1 (3) In the case of a permit that has been appealed, and the appeal has been  
2 denied by a Land Use Board, the permit shall not be issued until the time  
3 for appeal to the Governing Body has expired.
- 4 (4) The filing of an appeal shall not limit the ability of an applicant to file  
5 other applications [~~or seek further approvals, whether or not such~~  
6 ~~approvals are based on or authorized by the final action appealed~~].
- 7 (5) The filing of an appeal shall not limit the ability of any party to file an  
8 appeal of any other final action related to the same project or application  
9 provided that there is an independent basis for such appeal.
- 10 (6) Upon determination by the Land Use Director [~~(for decisions made by~~  
11 ~~the Land Use Director) or a Land Use Board (for decisions made by that~~  
12 ~~committee)] that the suspension of a permit or enforcement action would  
13 cause imminent peril to life or property, a permit approving only so  
14 much of the application as is required to address the immediate danger  
15 shall be issued. When reasonably practicable, the Land Use Director  
16 shall give all parties [~~three days~~] such notice prior to the issuance of the  
17 permit as is possible. The Land Use Director's action related to the  
18 issuance of such permit is not subject to appeal to any Land Use Board or  
19 the Governing Body, and may be appealed only to the district court.~~
- 20 (7) The filing of an appeal of any action of the Land Use Director revoking  
21 or suspending a permit in any matter involving a sexually oriented  
22 business shall stop or suspend the action before the appeal is heard,  
23 except upon determination by the Santa Fe Police Department that there  
24 is a reasonable expectation that stopping or suspending the Land Use  
25 Director's action would constitute a grave imminent danger to the public

1 welfare, including, but not limited to, life or property, in which case the  
2 City may exercise its authority to restrain, prohibit, or otherwise abate  
3 the source of such danger.

4 (F) **[Mediation] Reserved**

5 ~~[The Land Use Director may refer an appeal to mediation if he or she determines~~  
6 ~~that the issues raised in the appeal are reasonably susceptible to resolution by~~  
7 ~~mediation among the parties. Factors the Land Use Director should consider in~~  
8 ~~determining whether to refer a case to mediation include the parties' relationship,~~  
9 ~~apparent communication problems among the parties, barriers to settlement, the~~  
10 ~~expressed desire of parties to attempt a compromise, incentives to compromise~~  
11 ~~and any expressed desire for a more private forum for the resolution of the~~  
12 ~~dispute. Mediation shall occur in accordance with the following procedures:~~

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

18 (2) ~~Within fifteen days of referral, the mediator shall schedule a mediation~~  
19 ~~session. The mediation shall occur within thirty days of referral. All~~  
20 ~~parties shall attend the mediation session, and shall participate in good~~  
21 ~~faith, unless excused for cause by the mediator. If an appellant fails to~~  
22 ~~attend or participate in a required mediation session without excusal by~~  
23 ~~the mediator, the appeal shall be deemed withdrawn. If an applicant fails~~  
24 ~~to attend or participate in a required mediation session without excusal~~  
25 ~~by the mediator, the application shall be deemed withdrawn.~~

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

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

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

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

17           ~~(7) Mediation proceedings shall be confidential, and the parties shall sign a~~  
18                           ~~mediation agreement requiring them to maintain the confidentiality of~~  
19                           ~~the proceedings. All communications, verbal or written, during the~~  
20                           ~~course of the mediation shall be inadmissible in any further proceeding~~  
21                           ~~on the appeal. All notes made during the mediation shall be destroyed at~~  
22                           ~~the end of the mediation.]~~

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

24                           The public hearing on the appeal shall be scheduled as soon as reasonably  
25                           practicable.

1 (1) An appeal to any Land Use Board or the Governing Body shall be heard  
2 at the next available regularly scheduled meeting after the appeal is filed  
3 which provides adequate time for notice to be provided pursuant to §14-  
4 3.1(H)(1)(c) and for the parties to make submittals in support of their  
5 positions for inclusion in the public hearing record. [~~This time limit shall~~  
6 ~~not apply to appeals to the Governing Body.~~] A hearing before the  
7 Governing Body shall not be conducted, until 5 days after the Land Use  
8 Board has approved the minutes adopting the findings of fact and  
9 conclusions of law for the matter being appealed.

10 (2) For good cause, a Land Use Board or the Governing Body hearing an  
11 appeal may postpone the hearing until the next available regularly  
12 scheduled meeting.

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

14 Communication regarding an appeal is limited as follows:

15 (1) Parties

16 During the appeal period after any final action is taken~~[, and]~~ or after an  
17 appeal is filed, no party may communicate with individual members of a  
18 Land Use Board that may hear the appeal or the Governing Body outside  
19 an appeal hearing, concerning the merits or substance of the appeal,  
20 except in writing filed with the Land Use Department within the  
21 prescribed time period for inclusion in the public hearing record~~[, and~~  
22 ~~with copies distributed immediately to all parties and to all other~~  
23 ~~members of the Land Use Board or Governing Body].~~

24 (2) Other Persons

25 Persons other than the City [staff] Attorney shall not communicate

1 outside a public hearing with a member of a Land Use Board or the  
2 Governing Body concerning the merits or substance of an appeal to be  
3 heard by that body.

4 (3) Site Inspection

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

8 (4) Effect of Improper Communication

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

13 **(I) Appeal Hearing Procedure**

14 (1) ~~[Rules of Order]~~ Administrative Procedures

15 Appeals shall be conducted in accordance with ~~[rules of order]~~  
16 administrative procedures to be adopted by resolution of the Governing  
17 Body. Copies shall be available to the public in the Land Use  
18 Department and the City Clerk's Office.

19 (2) Submittals by Parties

20 ~~[All parties shall]~~ Any party to an appeal may submit any documents or  
21 written evidence on which they intend to rely ~~[by the specified submittal~~  
22 ~~deadline]~~ for review by the body hearing the appeal ~~[-If there is no such~~  
23 ~~specified deadline, all documents and evidence shall be submitted at~~  
24 least] up to [7] 10 days prior to the public hearing.

25 ~~[(3) — The Record~~

1 The body hearing the appeal shall be provided with copies of the  
2 following:

- 3 (a) ~~A staff report describing the application to which the appeal is~~  
4 ~~related, the basis of the final action being appealed and the~~  
5 ~~issue(s) raised in the appeal.~~
- 6 (b) ~~The completed appeal form including any exhibits or~~  
7 ~~attachments, all relevant portions of the development application~~  
8 ~~and supporting documents relating to the appeal.~~
- 9 (c) ~~The requirement, procedure or standard or other law at issue and~~  
10 ~~any other materials relied on in taking the final action.~~
- 11 (d) ~~Evidence or documents submitted by any party, including~~  
12 ~~proposed explanatory orders, by the applicable deadline.~~
- 13 (e) ~~The minutes or transcript of any prior public hearing on the~~  
14 ~~appeal, and all relevant portions of the minutes or transcript of~~  
15 ~~any prior public hearing on the development application to~~  
16 ~~which the appeal is related.~~
- 17 (f) ~~Evidence entered into the record at a hearing in front of a hearing~~  
18 ~~examiner, and any hearing examiner's recommended~~  
19 ~~explanatory findings and conclusions.]~~

20 [(4)](3) Land Use Board Review

- 21 (a) The Land Use Board shall conduct a public hearing in  
22 accordance with adopted procedures, and may reverse or affirm,  
23 in whole or in part, or may modify the final action appealed in  
24 accordance with the provisions of this chapter, and shall have the  
25 powers of the Land Use Director [or Land Use Board that took]

1 at the time the final action was taken. The hearing shall be de  
2 novo.

3 (b) Pursuant to §10-15-1(H)(3) NMSA 1978 of the Open Meetings  
4 Act, the Land Use Board or Governing Body may deliberate in  
5 executive session, provided that the hearing and final action  
6 occur in open meeting.

7 [(b)](c) The Land Use Board shall issue a written [order] decision  
8 including an explanatory statement of the factual and legal basis  
9 for the [order] decision.

10 [(5)](4) Burden of Proof

11 Unless otherwise provided by law, the appellant has the burden of  
12 [proving that specific facts were incorrectly determined or that the final  
13 action violated or misinterpreted a specific City ordinance, resolution or  
14 rule, or other law or constitutional provision] proof under §14-  
15 3.17(A)(2).

16 [(6) — Admissibility; Evidence

17 (a) — Submission of Documents and Exhibits in Advance

18 Documents or other exhibits shall be submitted to the Land Use  
19 Director in advance, on numbered pages with a table of contents,  
20 for inclusion in the Land Use Board or Governing Body's  
21 meeting packet. All documents and exhibits shall be submitted  
22 seven days in advance of the hearing, unless the Land Use  
23 Director or Governing Body prescribes other specific  
24 requirements.

25 (b) — Land Use Board Public Hearings



1 ~~Parties may introduce any relevant testimony and may rely on~~  
2 ~~any documents or exhibits submitted by the applicable deadline.~~

3 ~~(c) — Governing Body Public Hearings~~

4 ~~Hearings in front of the Governing Body shall be *de novo*.~~

5 ~~However, the Governing Body may consider any material~~  
6 ~~contained in the record below and the parties may reference such~~  
7 ~~material rather than re-introducing it at the hearing.~~

8 ~~(7) — Witnesses to be Sworn~~

9 ~~All testimony shall be given under oath or affirmation.~~

10 ~~(8) — Parties may Cross Examine~~

11 ~~Any party may cross-examine any witness on testimony, documents or~~  
12 ~~exhibits presented at the hearing. All cross-examination shall be through~~  
13 ~~the presiding officer unless the presiding officer permits otherwise. The~~  
14 ~~presiding officer may require that cross-examination questions be~~  
15 ~~submitted to the presiding officer in writing or impose other reasonable~~  
16 ~~procedural restrictions on cross-examination.~~

17 ~~(9) — Limitation on Witnesses and Testimony~~

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

23 ~~(10) — Public Comment Accepted; Sign In Sheets~~

24 ~~Public hearings on appeals shall be open to comment from members of~~  
25 ~~the public other than the parties and from Land Use Boards, appearing~~

1 through a board member duly appointed by the board for that purpose.  
2 The presiding officer may impose reasonable limitations on the nature  
3 and length of public comment. Any such limitations shall apply equally  
4 to all members of the public wishing to speak. Members of the public  
5 may not cross-examine other members of the public, witnesses or parties.  
6 Members of the public attending or speaking at a particular hearing, and  
7 those who wish further notice of the appeal in question, should sign in on  
8 a sheet provided for the purpose by the land use department at each  
9 public hearing.

10 (11) ~~Final Action; Written Order~~

11 At the conclusion of the public hearing, the body hearing the appeal may,  
12 by majority vote, grant the appeal and order the appropriate relief. The  
13 body hearing the appeal shall promptly issue a written order including an  
14 explanatory statement of the factual and legal basis for the order.]

15 (J) **Referral to a Hearing Examiner**

16 Reserved

17 [All appeals to the Governing Body shall be referred to a hearing examiner in  
18 accordance with the following procedures:

19 (1) ~~The City Manager shall select a hearing examiner who shall be a New  
20 Mexico licensed attorney in good standing giving consideration to the  
21 following factors:~~

22 ~~\_\_\_\_\_ (a) \_\_\_\_\_ The independence, neutrality and freedom from bias of the  
23 hearing examiner;~~

24 ~~\_\_\_\_\_ (b) \_\_\_\_\_ The hearing examiner's knowledge of land use statute and case  
25 law, and the City's code.~~

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- ~~(c) The hearing examiner's familiarity with City land use procedures.~~
- ~~(d) The hearing examiner's knowledge of and experience with quasi-judicial hearing procedures.~~
- ~~(2) The Land Use Director shall forward a copy of the record to the hearing examiner.~~
- ~~(3) The hearing examiner shall schedule and hear the appeal within fifteen days of referral and shall provide all parties written notice at least five days in advance of the hearing. The hearing shall be held in accordance 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 as a discussion item on the City~~

1 Council agenda as soon as practicable. The Governing Body may either  
2 accept the hearing examiner's recommended findings and conclusions or  
3 set the matter for a public hearing.

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

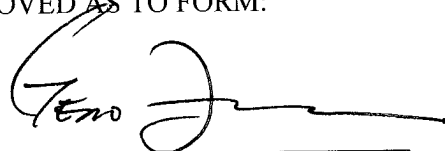
7 **(K) Due Process**

8 Interpretation of this section shall be made in favor of a party's opportunity to be  
9 heard at a meaningful time and in a meaningful manner. All procedures  
10 employed herein shall adhere to [fundamental principles of justice and]  
11 procedural due process.

12 **(L) Effective Date**

13 The revisions to §14-3.17 adopted by the Governing Body as Ordinance No.  
14 2011- are effective \_\_\_\_\_, 2011 (date of adoption of the Ordinance) except  
15 for the revisions made to §14-3.17(C)(1) which shall be in effect five days after  
16 the Ordinance has been published.

17 APPROVED AS TO FORM:

18   
19 \_\_\_\_\_

20 GENO ZAMORA, CITY ATTORNEY

**CITY OF SANTA FE, NEW MEXICO**  
**PROPOSED AMENDMENT(S) TO BILL NO. 2010 – 32**  
**(Appeals – Substitute with Option 1 Amendments Incorporated)**

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Mayor and Members of the City Council:

**I propose the following amendment(s) to Bill No. 2010 – 32 (Substitute with Option 1 Amendments Incorporated):**

1. On page 3, line 17, after “plan” insert “master plan”
2. On page 11, line 22, after “plats” insert “, master plans”

Respectfully submitted,

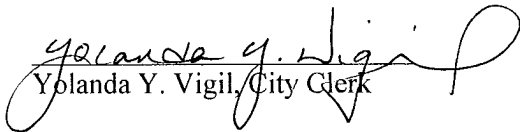


Matthew Ortiz, Councilor

ADOPTED:   X  

NOT ADOPTED: \_\_\_\_\_

DATE:   April 13, 2011  



Yolanda Y. Vigil, City Clerk