

1 **CITY OF SANTA FE, NEW MEXICO**

2 **RESOLUTION NO. 2011 - 24**

3 **INTRODUCED BY:**

4  
5 Councilor Ortiz  
6 Councilor Trujillo  
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10 **A RESOLUTION**

11 **ADOPTING ADMINISTRATIVE PROCEDURES RELATED TO APPEALS OF LAND**  
12 **USE DECISIONS.**  
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14 **WHEREAS**, the New Mexico Supreme Court has determined that municipalities shall  
15 ensure that all zoning and other adjudicative proceedings conform to legal standards of fairness,  
16 impartiality, and administrative due process; and

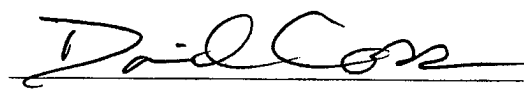
17 **WHEREAS**, on April 13, 2011, the Governing Body adopted Ordinance No. 2011-9  
18 amending various sections of Chapter 14 Land Development Code related to appeals; and

19 **WHEREAS**, in Ordinance No. 2011-9, Section 14-3.17(I) SFCC 1987 states "Appeals  
20 shall be conducted in accordance with administrative procedures to be adopted by resolution of  
21 the Governing Body."

22 **NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE**  
23 **CITY OF SANTA FE** that the administrative procedures related to appeals of land use decisions,  
24 attached as Exhibit A are adopted.

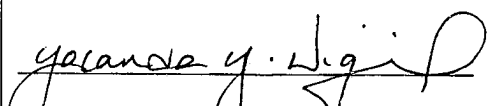
25 **PASSED, APPROVED, and ADOPTED** this 13<sup>th</sup> day of April, 2011.

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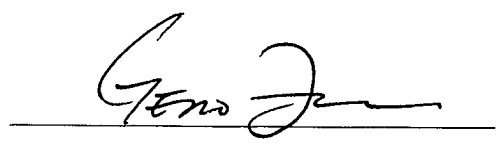


DAVID COSS, MAYOR

ATTEST:

  
YOLANDA Y. VIGIL, CITY CLERK

APPROVED AS TO FORM:



GENO ZAMORA, CITY ATTORNEY

**PROCEDURES FOR APPEALS  
UNDER SANTA FE CITY CODE (SFCC) SECTION 14-3.17**

**I. Applicability.**

- A. These procedures apply to appeals made pursuant to Section 14-3.17 SFCC 1987, which provides for appeals from:
1. Final decisions of the Land Use Department (LUD) Director
  2. Final decisions of a Land Use Board, including:
    - a. The Planning Commission
    - b. The Board of Adjustment
    - c. The Historic Design Review Board
    - d. The Business-Capital District Design Review Committee
    - e. The Archeological Review Committee
    - f. The Summary Committee
- B. These procedures do not apply to actions of the LUD Director or a Land Use Board that are not final, for example, recommendations, decisions to postpone or remand a matter, decisions not to take enforcement action and the like.
- C. Questions regarding administrative matters that are not specifically addressed in Section 14-3.17 SFCC 1987 or in these procedures shall be decided by the LUD Director.

**II. Filing of Appeals.**

- A. Appellants shall file an appeal as follows:
1. Within 30 days for appeals of final actions by Land Use Boards on subdivision plats, master plans and development plans;
  2. Within 15 days of the date of final action as defined herein for all other appeals.
- B. Appeals shall be filed with the LUD Director in accordance with the following:
1. The appeal shall be filed in the form prescribed by the LUD Director (the Appeal Form) and:
    - a. Shall be signed by the person filing the appeal (Appellant) and notarized;
    - b. Shall set forth the basis for appeal pursuant to Section 14-3.17(A)(2) SFCC 1987 sufficient to give notice of the nature of the claims.

- c. Shall specify as to the relief requested, e.g., modification of the Final Action to include conditions, reversal of the Final Action, or remand for rehearing by the Land Use Board that took the Final Action.
2. Documents relating to the appeal shall be attached to the Appeal Form and shall be clearly labeled on their face and consecutively numbered.
3. The Appellant shall submit two (2) copies of the Appeal Form with all attachments.
4. The LUD Director will give the Appellant an invoice for the appeal fee, which the Appellant will take to the City Cashier and pay. The Appellant shall submit the receipt to the LUD Director.
5. Appeals filed on the last day within which an appeal may be filed, shall be filed no later than 3:00 p.m. on that day.

Appellants may seek assistance from LUD staff regarding the procedural requirements for filing an Appeal and to review Appeal Forms for completeness prior to filing an Appeal.

- C. Upon receipt of a completed Appeal Form and the receipt showing that the applicable fee has been paid, the LUD Director shall mark in the space provided on the Appeal Forms the date and time of filing and shall return one of the Appeal Forms to the Appellant.
- D. No Appeal Form shall be marked by the LUD Director with the date and time of receipt unless and until the applicable fee has been paid.

**III. Service of Appeal Form by Appellant; Response by Applicant.**

- A. No later than three (3) days after the appeal is filed, the Appellant shall serve a copy of the Appeal Form and all attachments upon the person who is the recipient of the Final Action (the Applicant) (e.g., the person to whom a building permit has issued or whose application has been heard before a Land Use Board and has been approved):
  1. By hand-delivering a copy of the Appeal Form to the Applicant; *or*
  2. By mailing a copy of the Appeal Form to the Applicant by First-Class® Certified Mail™ at the address indicated in City records.
  3. The appellant shall provide proof of proper notice in a form approved by the Land Use Department prior to the public hearing on an appeal.
- B. The Appellant is not required to serve the Applicant if the Appellant is the Applicant (e.g., if the Appellant is appealing the denial or conditions of approval of a building permit or the denial of an application heard before a Land Use Board).
- C. The Applicant may file a written response to the appeal (the Applicant Response) with the LUD Director at any time up to ten (10) days prior to the date of the public hearing at which the Appellant's appeal is to be heard (the Appeal Hearing). The Applicant Response shall set forth any claims and any defenses that the Applicant may have relating to the subject matter of the appeal. The Applicant shall at the same time serve a copy of the Applicant Response:

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1. By hand-delivering a copy of the Applicant Response to the Appellant; *or*
  2. By mailing a copy of the Applicant Response to the Appellant by first class mail, with a certificate of mailing from the U. S. Postal Service, at the address given on the Appeal Form.
- D. Any party to an appeal may submit any documents or written evidence on which they intend to rely for review by the body hearing the appeal up to ten (10) days prior to the public hearing.

**IV. Suspension of Issuance of Permits and of the Validity of Issued Permits**

- A. Upon receipt by the Applicant of the Appeal Form served by the Appellant, the Applicant shall, as applicable:
1. Stop all work under any permit that has been issued and is the subject of the appeal.
  2. Refrain from recording or filing any plat, development plan or other similar document that has been approved and is directly related to the subject of the appeal.
- B. No permit shall be issued by the City for work that is the subject of an appeal.
- C. No permit shall be issued by the City following Final Action by any Land Use Board or by the LUD Director until the appeal period has expired, including for an appeal to the Governing Body from a denial of an appeal.
- D. If the appeal is from an enforcement action initiated by the City, the appeal shall not stop such enforcement action, unless otherwise provided under Section 14-3.17 SFCC 1987.
- E. The LUD Director may waive the suspension of any permit or enforcement action where such suspension would cause imminent peril to life or property, but only to the extent necessary to address immediate danger to public health or safety.

**V. Review of Appeal Form and Other Action by the LUD Director.**

- A. The LUD Director shall, within ten (10) days after receipt of an appeal, review the Appeal Form submitted by the Appellant to determine whether the appeal conforms with the requirements of Section 14-3.17 SFCC 1987, including, among other things, whether:
1. The appeal was filed within the required time [Section 14-3.17(C)(1) SFCC 1987];
  2. The appeal is from a Final Action [14-3.17(A)(1) SFCC 1987];
  3. There is a valid basis for the appeal [14-3.17(A)(2) SFCC 1987];
  4. The Appellant has standing to appeal [14-3.17(B) SFCC 1987]; and
  5. The Appeal Form is complete in all material respects.
- B. If the LUD Director determines that the appeal does not conform to applicable requirements, the LUD Director shall refer the matter to the City Attorney for final review. The City Attorney shall review the Appeal Form and determine whether the appeal conforms to applicable requirements and shall issue a written decision setting forth the legal and factual basis for such decision.

1. If the City Attorney concurs with the Land Use Director's determination, the City Attorney's written recommendation shall be forwarded to the Governing Body as a discussion item. The Governing Body may accept the City Attorney's written recommendation. Such decision is final and may be appealed to district court. If the Governing Body does not accept the City Attorney's recommendation, the appeal shall follow the procedures otherwise set forth in Chapter 14 SFCC 1987.
  2. If the City Attorney does not concur with the Land Use Director's determination, the appeal shall follow the procedures otherwise set forth in Chapter 14 SFCC 1987.
- C. If the appeal conforms to applicable requirements, the LUD Director shall, in the case of appeals to be heard by a Land Use Board:
1. Consolidate for a single hearing multiple appeals of the same Final Action;
  2. Determine what Land Use Board will be hearing the appeal and schedule a hearing on the appeal (the Appeal Hearing) as soon as reasonably practicable.
  3. Place the appeal on the agenda of the Land Use Board hearing the appeal and publish and post the agenda in accordance with the established procedures for that body.
- D. If the appeal conforms to applicable requirements, the LUD Director shall, in the case of appeals to be heard by the Governing Body:
1. Consolidate for a single hearing multiple appeals of the same Final Action;
  2. Schedule a hearing on the appeal (the Appeal Hearing) as soon as reasonably practicable.
  3. Place the appeal on the agenda of the Governing Body and publish and post the agenda in accordance with the established procedures.
- E. The Appellant shall provide written notice of the Appeal Hearing in a form approved by the LUD Director by mailing the same to all parties and to all persons or neighborhood associations to whom notice of the proceedings giving rise to the Final Action appealed from was required to be given. Such notice shall be mailed by first class mail, with a certificate of mailing from the U.S. Postal Service, at least fifteen (15) days prior to the Appeal Hearing [Section 14-3.1(H)(4) SFCC 1987].
- F. When a Land Use Board has adopted Findings of Fact and Conclusions of Law and that Final Action is appealed to the Governing Body, the LUD Director shall place the matter on the next available agenda of the Governing Body for a public hearing and the Appellant shall give notice of such hearing as provided above in Section V.D.
- VI. Amendment of Appeal Form; Withdrawal of Appeal.**
- A. The Appeal Form may be amended at any time prior to the expiration of the time permitted for appeal by the filing of an Appeal Form marked "Amended" prominently on its face, with the amendments clearly indicated. The amended Appeal Form is subject in all respects to the requirements applicable to the Appeal Form, including, without limitation, the requirement that it be served upon the Applicant.

- B. An appeal may be withdrawn at any time by an Appellant. If multiple appeals of the same Final Action have been filed, the withdrawal by one Appellant shall not affect the appeals of other Appellants.
- C. In the event an appeal is withdrawn by agreement of the parties, such agreement shall not be contingent upon any modification to the Final Action unless and until such modification is accepted and agreed to by the Land Use Board which took the Final Action, the LUD Director or the City Attorney, as required.

**VII. Prohibited Communications; Disclosure**

- A. No person except the City Attorney may communicate with individual members of the Land Use Board hearing an appeal or of the Governing Body concerning the merits or substance of an appeal after the appeal has been filed.
- B. Individual members of a Land Use Board hearing an appeal or of the Governing Body may not inspect the property or structure that is the subject of the appeal or conduct an independent investigation or inquiry by other means, including, without limitation, an internet search, with respect to the subject matter of the appeal or to any parties to the appeal or related to such parties or otherwise connected with the subject of the appeal.
- C. Individual members of a Land Use Board hearing an appeal or of the Governing Body who have received a prohibited communication, independently inspected the property or structure that is the subject of the appeal or otherwise independently investigated or inquired into the subject matter of the appeal or of parties to the appeal or other persons connected to the subject of the appeal, shall disclose the same and the substance of the communication at the Appeal Hearing and shall recuse themselves from hearing the matter if they cannot be fair and impartial in deciding upon the appeal.
- D. Reserved.

**VIII. Appeal Hearing Procedures**

- A. Submittals by parties.
  - 1. The parties shall submit the following information and documents to the LUD Director *no later than 12 o'clock noon on the tenth (10<sup>th</sup>) day preceding the Appeal Hearing*:
    - a. A list of witnesses expected to testify on the party's behalf, including (i) a short description of the basis of their testimony (project engineer; adjacent property owner; etc.) and (ii) a short summary of the subject matter on which they are expected to testify.
    - b. The affidavit of any person who is unable to attend the Appeal Hearing, including a statement of the reason the person cannot attend to testify in person and a clear statement of the facts they would testify to if present. (*Note: Affidavits should be introduced infrequently and only as a last resort, as the affiant is not subject to cross examination. As a result, affidavits may be given only such weight as is deemed reasonable under the circumstances, e.g., an affidavit supported by the live testimony of another person may be given more weight than an affidavit that has no such independent support, or may be disregarded.*)

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2. All submittals shall include a table of contents with page numbers and shall clearly identify on the first page the Appellant's name and the subject of the appeal, including, where applicable, the case name and number used by the City to identify the case, or the type of enforcement action appealed from, or the building permit number appealed and the address of the property that is the subject of the appeal. All submittals shall be legibly written or reproduced, with pages numbered consecutively.
3. All submittals shall be served by the submitting party upon the other party at the same time they are submitted to the LUD Director.

B. Submittals by other persons.

People who are not parties to the appeal may submit letters of support on behalf of one of the parties, or such other documents as they deem relevant to the subject matter of the appeal. Such submittals shall be made to the LUD Director ***no later than 12 o'clock noon on the tenth (10<sup>th</sup>) day preceding the Appeal Hearing.*** Such submittals shall be available for inspection by the parties in the office of the LUD Director and shall be included in the record on appeal.

C. The record on appeal.

The following shall constitute the record on appeal (the Record) and shall be provided to the Land Use Board hearing the appeal, or the Governing Body, as the case may be, sufficiently in advance of the Appeal Hearing to permit them time to review the same:

1. A copy of the Verified Appeal Petition, together with any attachments.
2. A copy of any other matter consolidated for appeal.
3. If applicable, a copy of the Findings of Fact and Conclusions of Law adopted by the Land Use Board hearing the matter appealed from.
4. The minutes or transcripts of any prior hearings on the matter.
5. A staff report setting out:
  - a. The case name and number or the building permit number.
  - b. The names of the Appellant and the Applicant.
  - c. The issues raised in the appeal.
  - d. The relief being sought.
  - e. A short analysis of the parties' claims.
  - f. A recommendation, based upon the facts available at the time, applicable Code, prior practice, and the interests of the City in consistent policy, procedures and practices.
6. Any and all materials provided to the LUD Director and/or the Land Use Board, as the case may be, for their consideration in deciding upon the matter.



7. The complete submittals of the Appellant, the Applicant, and any other persons.

A copy of the Record shall be made available to the Appellant and the Applicant at the same time it is provided to the Land Use Board or the Governing Body, as the case may be. Copies of the Record on an appeal to a Land Use Board or the Governing Body shall be available for inspection in the office of the LUD Director, in the case of an appeal to a Land Use Board or the City Clerk's office in the case of an appeal to the Governing Body.

D. Testimony at the Appeal Hearing.

1. All witnesses shall be sworn upon oath or affirmation. Attorneys representing the parties shall not be sworn to the extent they are representing their clients and not testifying as to facts. Attorneys testifying as to facts shall be sworn. City staff shall be sworn when testifying as a witness as to facts. The experience, technical competence and specialized knowledge of city staff may be utilized by the hearing body in evaluating the appeal.
2. Any party (or attorney representing a party) may cross-examine any witness as to his or her testimony, including testimony related to any submittals or to documents submitted at the Appeal Hearing. Unless otherwise permitted by the Presiding Officer, such cross-examination shall be through oral questions addressed to the Presiding Officer at the conclusion of all testimony.
3. The Presiding Officer may impose reasonable limitations on the number of witnesses called by a party, the nature and length of the witnesses' testimony, and the nature and length of any cross-examination.

E. Other evidence.

The parties, their attorneys, or their witnesses may introduce documentary evidence at the Appeal Hearing that is not included in the Record, provided that they provide legible copies of each such document to each member of the Land Use Board hearing the appeal or the Governing Body as the case may be, the Recorder at the Appeal Hearing, and at least one (1) copy for City staff.

F. Opening and closing statements.

Each party shall be permitted to make an opening statement and a closing argument at the Appeal Hearing within such time as shall be determined by the Presiding Officer.

G. Public participation.

The Appeal Hearing shall be open to public comment following the closing arguments of the parties. All members of the public commenting on the matter shall first be sworn. The Presiding Officer may impose reasonable limitations on the nature and length of public comment.

H. Order of hearing.

Subject to the reasonable requirements of the Presiding Officer, the Appeal Hearing shall proceed as follows:

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1. If requested by the Presiding Officer, City staff shall provide a summary of the staff report included in the Record.
  2. The Appellant shall make his or her opening statement, and then introduce his or her evidence through sworn testimony.
  3. The Applicant shall make his or her opening statement, and then introduce his or her evidence through sworn testimony.
  4. The Presiding Officer shall cross examine the Appellant and the Appellant's witnesses on behalf of the parties, or permit direct cross examination.
  5. The Presiding Officer shall cross examine the Applicant and the Applicant's witnesses on behalf of the parties, or permit direct cross examination.
  6. The Appellant shall address questions to staff.
  7. The Applicant shall address questions to staff.
  8. All members of the public wishing to speak shall be sworn and public comment shall be admitted.
  9. The members of the Land Use Board hearing the appeal or the Governing Body, as the case may be, may ask such questions of the Appellant and the Appellant's witnesses, of the Applicant and the Applicant's witnesses, or staff or of members of the public who testified at the public hearing, as they choose.
  10. If requested by the Presiding Officer, City staff shall respond to the Appellant's and Applicant's evidence and testimony.
  11. The Appellant shall make his or her closing argument including any objections to the testimony, witnesses, or procedural matters.
  12. The Applicant shall make his or her closing argument including any objections to the testimony, witnesses, or procedural matters.
  13. The public hearing shall be closed.
  14. The Land Use Board hearing the appeal or the Governing Body, as the case may be, may deliberate upon the matter in executive session in accordance with Section 10-15-1.H(3) NMSA 1978, provided that the decision shall be made in open session immediately following the conclusion of such deliberations.
  15. The Land Use Board hearing the appeal or the Governing Body, as the case may be, shall decide upon the matter by roll-call vote.
- I. Either party may submit to the City Attorney proposed Findings of Fact and Conclusions of Law, within ten (10) days of the public hearing at which the Land Use Board decides the appeal, for consideration by the City Attorney.

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The members of the Land Use Board hearing the appeal or the Governing Body, as the case may be, shall as soon as reasonably practicable after the Appeal Hearing is closed adopt written Findings of Fact and Conclusions of Law setting forth the legal and factual basis for the decision.

J. Decorum

The parties, their representatives and witnesses, members of the public, and all other persons in attendance at the Appeal Hearing shall at all times observe due decorum and shall not act in a disruptive or disorderly manner, nor make any personal, impertinent or slanderous statements. Failure to observe due decorum may result in expulsion from the meeting or such other lesser reasonable penalties as may be imposed by the Presiding Officer.

K. Miscellaneous.

1. All Appeal Hearings shall be recorded and the recordings preserved.
2. The rules of evidence shall not be strictly followed, in order to permit the introduction of as much relevant evidence as possible.
3. The Presiding Officer shall rule on all evidentiary and procedural matters. Irrelevant and immaterial evidence shall be excluded from consideration in deliberations and unduly repetitious evidence shall be precluded to the extent practicable. Objections by a party to any evidence offered shall be noted on the record.
4. The Appeal Hearing may be postponed in order to obtain additional testimony or other evidence, to review any such evidence, or to permit time for a party to respond to any new evidence introduced for the first time at the Appeal Hearing.
5. In the event that the Appellant or the Applicant does not appear and a postponement has not been requested, the Land Use Board hearing the appeal, or the Governing Body, as the case may be, may postpone the matter to a date certain or may decide the matter upon the evidence contained in the Record, the staff report, and testimony or other evidence introduced at the Appeal Hearing. In the event that the Appellant does not appear at the Appeal Hearing, the Land Use Board hearing the Appeal or the Governing Body, as the case may be, may dismiss the appeal with prejudice.
6. In the case of conflict or discrepancy between these Administrative Appeal Procedures and the provisions of the SFCC, the provisions of the SFCC shall govern.