

1 CITY OF SANTA FE, NEW MEXICO

2 ORDINANCE NO. 2009-42

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4
5 AN ORDINANCE

6 AMENDING CHAPTER 14 LAND DEVELOPMENT LAWS AND CHAPTER 26

7 AFFORDABLE HOUSING SFCC 1987 RELATING TO APPEALS.

8
9 BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF SANTA FE:

10 Section 1. [NEW MATERIAL] A new Section 14-2.2(A)(3) SFCC 1987 is
11 ordained 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 Section 2. Section 14-2.3(C)(5) SFCC 1987 (being Ord. #2001-38, §2, as
20 amended) is amended to read:

- 21 (5) Appeals
- 22 The Planning Commission shall hear appeals of:
- 23 (a) Final actions of the Summary Committee;
 - 24 (b) Final actions of the Land Use Director interpreting or applying
25 this chapter except final actions interpreting or applying Historic

1 District regulations under §14-3.10, §14-3.14, §14-5.2, §14-
2 8.10(H) or Archeological Review District regulations under §14-
3 5.3, provided that the interpretation or application is made as part
4 of a development plan or subdivision request requiring the
5 Planning Commission's approval;

6 (c) Final actions of the Land Use Director interpreting or applying
7 the terrain management regulations (§14-8.2) and the
8 Escarpment Overlay District regulations (§14-5.6); and

9 (d) Final actions of the Floodplain Administrator.

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

11 **to read:**

12 (A) Powers and Duties

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

17 (1) Appeals

18 To hear appeals of final actions of the Land Use Director interpreting or
19 applying the provisions of this chapter, unless jurisdiction for such
20 appeals is otherwise specifically reserved to any other Land Use Board.

21 (2) Special Exceptions

22 To hear and decide applications for special exceptions as the Board of
23 Adjustment is specifically authorized to pass on by the terms of this
24 chapter; to decide such questions as are involved in determining whether
25 special exceptions should be granted; and to grant special exceptions

1 with such conditions and safeguards as are appropriate under this chapter
2 or to deny special exceptions when not in harmony with the intent and
3 purpose of this chapter.

4 (3) Variances

5 To authorize in specific cases such variance from the terms of this
6 chapter as will not be contrary to the public interest where, owing to
7 special conditions, a literal enforcement of the provisions of this chapter
8 would result in unnecessary hardship.

9 **Section 4. [NEW MATERIAL] A new Section 14-2.6(A)(9) SFCC 1987 is**
10 **ordained to read:**

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

14 **Section 5. Section 14-2.7(A)(2) SFCC 1987 (being Ord. #2001-38, §2 as**
15 **amended) is amended to read:**

16 (2) The Historic Design Review Board shall hear appeals of final actions of
17 the Land Use Director interpreting or applying historic district
18 regulations §14-3.10, §14-3.14, §14-5.2 or §14-8.10(H).

19 **Section 6. [NEW MATERIAL] A new Section 14-2.8(A)(9) SFCC 1987 is**
20 **ordained to read:**

21 (9) The Archeological Review Committee shall hear appeals of final actions
22 of the Land Use Director interpreting or applying archaeological review
23 district regulations under §14-5.3.

24 **Section 7. Section 14-3.1(H)(1)(a) SFCC 1987 (being Ord. #2001-38, §2 as**
25 **amended) is amended to read:**

1 (a) General Notice Requirements

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

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

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

8 (a) Land Use Boards other than those set forth in §14-3.1(H) (1) and
9 (2) above, shall give notice as set forth in the sections
10 establishing those bodies, except for public hearings on appeals
11 as described in §14-3.1(H)(4).

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

14 (4) Appeal Hearing Notice Requirements

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

17 (i) Agenda Requirements

18 The Land Use Director shall place the appeal on the
19 agenda of the body hearing the appeal, and shall publish
20 and post the agenda in accordance with the established
21 procedures for that body.

22 (ii) Mailing Requirements

23 The appellant shall give written notice of the appeal as
24 follows:

25 A. Form of notice

1 The notice shall be in a form approved by the
2 Land Use Director as being adequate to ensure
3 that the average citizen reading the notice will
4 be fairly informed of the general purpose of
5 what is to be considered;

6 B. Procedure for giving notice

7 The applicant shall provide the Land Use
8 Department with all notices required to be
9 mailed in addressed, first-class postage paid
10 envelopes at least twenty one days prior to the
11 hearing date. The Land Use Department shall
12 indicate the hearing date and time on the notices,
13 and put the notices in the mail at least fifteen
14 days prior to the hearing date.

15 C. Notice recipients

16 The following shall receive notice:

- 17 1. All parties.
- 18 2. Any person who has filed a written
19 request for information about the project
20 or application with the Land Use
21 Department.
- 22 3. Any person who signed in and provided
23 a mailing address, on a sign in sheet
24 provided and kept for the purpose by the
25 Land Use Department, at any prior

1 public hearing on the application or any
2 appeal thereof.

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

9 (b) Notice for Hearing by Hearing Examiner

10 Notice of hearing by a hearing examiner shall be done in
11 accordance with 14-3.1(H)(4)(a)(ii), above.

12 (c) Failure to Provide Notice

13 If the appellant fails to provide proof of proper notice prior to the
14 public hearing on an appeal, the appeal shall be deemed
15 withdrawn.

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

17 **to read:**

18 (D) Appeals

19 An appeal of any final action of the Floodplain Administrator shall be pursuant to
20 §14-3.17.

21 **Section 11. Section 14-3.13(C)(7) SFCC 1987 (being Ord. #2001-38, §2) is**

22 **amended to read:**

23 (7) Appeals

24 Any aggrieved person may appeal a final action of the Archaeological
25 Review Committee to the Governing Body pursuant to §14-3.17.

1 **Section 12. Section 14-3.14(E) SFCC 1987 (being Ord. #2001-38, §2 as amended)**
2 **is amended to read:**

3 **(E) Appeals**

4 (1) Historic Design Review Board decisions on demolition of structures may
5 be appealed to the Governing Body pursuant to §14-3.17.

6 (2) The Governing Body, with the advice and assistance of the Historic
7 Design Review Board, may take such steps as it determines necessary to
8 preserve the structure concerned, in accordance with the purposes of the
9 Historic District regulations under §14-5.2. Such steps may include, but
10 not be 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

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

3 (c) Final action does not include:

- 4 (i) A recommendation;
- 5 (ii) A delay in rendering a decision;
- 6 (iii) A decision to postpone or remand;
- 7 (iv) A decision not to take enforcement action;
- 8 (v) An informational response to an inquiry;
- 9 (vi) A decision on a preliminary approval;
- 10 (vii) Any action for which an appeal is specifically
11 prohibited; or
- 12 (viii) Any action regarding procedural matters or
13 requirements, provision of notice, the admissibility,
14 relevance or weight of evidence or the conduct of a
15 public hearing, however these actions may be raised by
16 parties as part of an otherwise valid appeal.

17 (2) Reason for Appeal

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

- 19 (a) To contest noncompliance of a final action with this chapter,
20 other City ordinances, or state or federal constitutions, laws or
21 regulations; and
- 22 (b) To contest an interpretation of this chapter, other City
23 ordinances, or state or federal constitutions, laws or regulations.
- 24 (c) To appeal a decision lacking substantial evidence to support it.

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

1 (1) Appeals of final actions of the Land Use Director to any Land Use
2 Board, and appeals of Summary Committee final actions to the Planning
3 Commission, may be filed by the following persons:

- 4 (a) The applicant;
- 5 (b) Persons to whom notice by mail of the final action from which
6 the appeal is taken was required to be made;
- 7 (c) Persons who own a property interest within 200 feet of the
8 subject site, excluding public right-of-way;
- 9 (d) Any organized neighborhood association listed with the land use
10 department, if the boundaries of the association's neighborhood
11 include any part of the subject site or any land within 200 feet of
12 the subject site, excluding public right-of-way;
- 13 (e) Persons appealing the alteration of a contributing, significant or
14 landmark structure, if such alteration is clearly visible from any
15 public right-of-way within 200 feet;
- 16 (f) Persons including nonprofit organizations or interested
17 neighborhood associations alleging injury to their economic,
18 environmental, or aesthetic interests; and
- 19 (g) City staff members acting in their official capacity.

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

- 22 (a) Any party;
- 23 (b) Any person who meets the standing requirements of §14-
24 3.17(B)(1), and who participated in or attended the Land Use
25 Board public hearing unless the issue on appeal includes

1 improper notice and the appellant did not get notice of the public
2 hearing; and

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

5 **(C) Time for Appeal**

6 (1) Time for Appeal

7 Appellants shall file an appeal within 30 days of the date of final action
8 as defined herein.

9 (2) Amended Appeals

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

11 (3) Response; Cross-Appeal

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

14 (4) Date of Final Action

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

19 (a) For final actions of the Land Use Director or the City Manager,
20 the date of issuance of any written order (including a decision,
21 letter, permit or other document) granting or denying relief;
22 however, if the written order is relied upon for a subsequent final
23 action by the Land Use Director or the City Manager, the time to
24 appeal starts at the date of the subsequent final action; or

25 (b) For final actions of a Land Use Board or the Governing Body,

1 the date that body adopts a written order containing findings of
2 fact and conclusions of law.

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

4 (1) Filing Appeal; Form; Verification

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

9 (2) Contents

10 The appeal shall include:

- 11 (a) The appellant's name, mailing address and telephone number;
- 12 (b) A description of the basis of the appellant's standing, including a
13 description of the harm to the Appellant that would result from
14 the final action;
- 15 (c) The name of the applicant, the address or location of the subject
16 site and the permit number or case number, unless the appellant
17 is unable to obtain such information after diligent search;
- 18 (d) A description of the final action being appealed including the
19 date on which the final action was taken, or a copy of any written
20 final action being appealed;
- 21 (e) Identification of facts that were incorrectly determined or
22 ordinances or laws that were violated or misrepresented; and
- 23 (f) Relief requested.

24 (3) Receipt; Service of Appeal

25 The Land Use Director shall initial and enter the date and time of filing

1 on both copies of the appeal, and return one copy to the appellant. The
2 appellant shall then deliver a copy of the appeal to the applicant, if the
3 applicant is not the appellant, by certified mail, return receipt requested
4 or hand delivery within three days.

5 (4) Appeal Fee

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

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

12 (c) Poverty Exemption

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

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

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

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

24 (iv) The filing of a false statement or otherwise fraudulently
25 obtaining the benefits of this Section is a violation of the

1 Santa Fe City Code and is punishable pursuant to §1-3
2 SFCC 1987 and shall entitle the City to recover any
3 fraudulently exempted amount and applicable interest
4 penalties.

5 (5) Multiple Appeals and Multiple Jurisdictions

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

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

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

18 (d) In the case of an appeal that includes final actions that fall under
19 the jurisdiction of more than one Land Use Board, the Land Use
20 Director shall determine the appropriate Land Use Board to hear
21 any particular issue on appeal, except as otherwise provided
22 herein.

23 (6) Withdrawal

24 An appellant may withdraw an appeal at any time. A withdrawal does
25 not serve to withdraw any cross-appeal. During the pendency of an

1 appeal, an applicant may correct any matters which form the basis of the
2 appeal and then seek the appellant's consent to withdrawal of the appeal.

3 (7) Conformity of Appeal

4 The Land Use Director shall promptly review all appeals for
5 conformance with the requirements of §14-3.17. Upon determining that
6 an appeal does not conform to the requirements, the Land Use Director
7 shall advise the hearing examiner, in writing, as to whether the appeal
8 appears invalid on its face. Prior to scheduling a hearing, the hearing
9 examiner may recommend to the Governing Body that the appeal should
10 be dismissed.

11 (8) District Court Appeals

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

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

18 (1) The timely filing of an appeal shall suspend the issuance of a permit, or
19 validity of any permit already issued, pursuant to that final action, and
20 prohibit the filing of any plat or development plan issued pursuant to that
21 final 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 a predeprivation hearing.

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

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

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

10 (6) Upon determination by the Land Use Director (for decisions made by the
11 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 notice prior to the issuance of the permit.
17 The Land Use Director's action is not subject to appeal to any Land Use
18 Board or the Governing Body, and may be appealed only to the district
19 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**

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 practicable.

- 25 (1) An appeal to any Land Use Board shall be heard at the next available

1 regularly scheduled meeting after the appeal is filed which provides
2 adequate time for notice to be provided pursuant to §14-3.1(H)(1)(c).

3 This time limit shall not apply to appeals to the Governing Body.

- 4 (2) For good cause, a Land Use Board hearing an appeal may postpone the
5 hearing until the next available regularly scheduled meeting

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

7 Communication regarding an appeal is limited as follows:

8 (1) Parties

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

17 (2) Other Persons

18 Persons other than City staff shall not communicate outside a public
19 hearing with a member of a Land Use Board or the Governing Body
20 concerning the merits or substance of an appeal to be heard by that body.

21 (3) Site Inspection

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

25 (4) Effect of Improper Communication

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

5 **(I) Appeal Hearing Procedure**

6 **(1) Rules of Order**

7 Appeals shall be conducted in accordance with rules of order to be
8 adopted by the Governing Body.

9 **(2) Submittals by Parties**

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

15 **(3) The Record**

16 The body hearing the appeal shall be provided with copies of the
17 following:

- 18 **(a)** A staff report describing the application to which the appeal is
19 related, the basis of the final action being appealed and the
20 issue(s) raised in the appeal.
- 21 **(b)** The completed appeal form including any exhibits or
22 attachments, all relevant portions of the development application
23 and supporting documents relating to the appeal.
- 24 **(c)** The requirement, procedure or standard or other law at issue and
25 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.

(4) 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.

(5) 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 rule, or other law or constitutional provision.

(6) Admissibility; Evidence

- (a) Submission of Documents and Exhibits in Advance

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

8 (b) Land Use Board Public Hearings

9 Parties may introduce any relevant testimony and may rely on
10 any documents or exhibits submitted by the applicable deadline.

11 (c) Governing Body Public Hearings

12 Hearings in front of the Governing Body shall be *de novo*.
13 However, the Governing Body may consider any material
14 contained in the record below and the parties may reference such
15 material rather than re-introducing it at the hearing.

16 (7) Witnesses to be Sworn

17 All testimony shall be given under oath or affirmation.

18 (8) Parties may Cross Examine

19 Any party may cross examine any witness on testimony, documents or
20 exhibits presented at the hearing. All cross examination shall be through
21 the presiding officer unless the presiding officer permits otherwise. The
22 presiding officer may require that cross examination questions be
23 submitted to the presiding officer in writing or impose other reasonable
24 procedural restrictions on cross examination.

25 (9) Limitation on Witnesses and Testimony

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

6 (10) Public Comment Accepted; Sign In Sheets

7 Public hearings on appeals shall be open to comment from members of
8 the public other than the parties and from Land Use Boards, appearing
9 through a board member duly appointed by the board for that purpose.
10 The presiding officer may impose reasonable limitations on the nature
11 and length of public comment. Any such limitations shall apply equally
12 to all members of the public wishing to speak. Members of the public
13 may not cross examine other members of the public, witnesses or parties.
14 Members of the public attending or speaking at a particular hearing, and
15 those who wish further notice of the appeal in question, should sign in on
16 a sheet provided for the purpose by the land use department at each
17 public hearing.

18 (11) Final Action; Written Order

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

23 **(J) Hearing Examiner**

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

- 1 (1) The City Manager shall select a hearing examiner who shall be a New
2 Mexico-licensed attorney in good standing giving consideration to the
3 following factors:
- 4 (a) The independence, neutrality and freedom from bias of the
5 hearing examiner;
- 6 (b) The hearing examiner's knowledge of land use statute and case
7 law, and the City's code.
- 8 (c) The hearing examiner's familiarity with City land use
9 procedures.
- 10 (d) The hearing examiner's knowledge of and experience with
11 quasi-judicial hearing procedures.
- 12 (2) The Land Use Director shall forward a copy of the record to the hearing
13 examiner.
- 14 (3) The hearing examiner shall schedule and hear the appeal within fifteen
15 days of referral and shall provide all parties written notice at least five
16 days in advance of the hearing. The hearing shall be held in accordance
17 with due process requirements and any rules adopted by the Governing
18 Body. The hearing examiner may accept new evidence and documents
19 into the record, and may impose reasonable procedural limitations on the
20 hearing.
- 21 (4) The hearing in front of the hearing examiner shall be a public hearing
22 subject to applicable requirements for public notice, and any persons
23 who may participate in front of the Governing Body may participate in
24 front of the hearing examiner.
- 25 (5) The hearing examiner may recommend reversing the final action if the

1 final action of the Land Use Director or Land Use Board was not in
2 accordance with law.

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

6 (7) The Governing Body shall consider the hearing examiner's
7 recommended findings and conclusions as a discussion item on the City
8 Council agenda as soon as practicable. The Governing Body may either
9 accept the hearing examiner's recommended findings and conclusions or
10 set the matter for a public hearing.

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

14 **(K) Due Process**

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

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

21 (g) Appeals

22 An appeal of any final action of the Business-Capitol District
23 Design Review Committee shall be pursuant to §14-3.17.

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

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(e) Appeals

Decisions made by the Historic Design Review Board may be appealed to the Governing Body as set forth in §14-3.17.

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

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

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

(b) The Historic Design Review Board shall act upon the final application at its next regular meeting, unless the application is made less than seven days before a regular meeting, in which case the question may be held over until the next meeting. If the exhibits are inadequate, the Historic Design Review Board may postpone action until a date agreed upon by the Historic Design Review Board and the applicant. Recommended final approval, disapproval, or conditional approval shall be noted on the face of the application and signed by the chair of the Historic Design Review Board, or, in the chair's absence, by the acting chair. If conditional approval is given, the list of conditions shall be attached to the application. If the application is disapproved, the chair of the Historic Design Review Board shall state on the application the sections of H district regulations with which the application did not comply. If the application is disapproved for failure to provide required information, the chair shall state on

1 building permit for work within an historic district may be issued
2 without approval of the Historic Design Review Board endorsed
3 thereon, except after appeal, as provided in §14-3.17.

4 **Section 19. [REPEAL] Section 14-6.2(C)(1)(n) SFCC 1987 (being Ord.**
5 **#2001-38, §2) is repealed.**

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

8 (n) Administrative Procedure
9 Any person aggrieved by any final action of a City official,
10 officer, or department may file an appeal contesting any final
11 action of the City relating to denial, renewal, nonrenewal,
12 revocation, or suspension of a license for a sexually oriented
13 business pursuant to §14-3.17.

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

16 (a) General
17 Any tower or antenna that is not otherwise permitted or
18 administratively approved shall be brought for consideration to
19 the Board of Adjustment. Special exceptions may also require
20 review and approval by the Historic Design Review Board or
21 Planning Commission as detailed in this section. The following
22 provisions shall govern the issuance of all special exceptions for
23 towers or antennas:

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

25 **Section 22. Section 14-6.3(C)(2)(b)(v)(F) SFCC 1987 (being Ord. #2001-38 § 2 as**

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

3 F. Any person aggrieved by a final action of the
4 Land Use Director, with respect to a home
5 occupation, may appeal that final action
6 pursuant to §14-3.17.

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

9 **(I) Appeals**

10 Any applicant aggrieved by a final action of the Land Use Director regarding the
11 SFHP provisions may file an appeal pursuant to §14-3.17.

12 **Section 24. Section 14-8.12(D) SFCC 1987 (being Ord. #2001-38 §2) is amended**
13 **to read:**

14 **(D) Appeals**

15 An appeal pursuant to the granting or denial of an exemption to the Gunnison's
16 Prairie Dog relocation regulations shall be pursuant to §14-3.17.

17 **Section 25. The following definition in Section 14-12.1 SFCC 1987 (being Ord.**
18 **#2001-38 §2, as amended) is amended to read:**

19 **APPLICANT**

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

22 **Section 26. [NEW MATERIAL.] Section 14-12.1 SFCC 1987 (being Ord.**
23 **#2001-38, §2, as amended) is amended to include the following new definitions:**

24 **APPELLANT**

25 A person filing an appeal.

1 **APPLICATION**

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

6 **FINAL ACTION**

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

8 **GOVERNING BODY**

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

11 **LAND USE BOARD**

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

18 **LAND USE DIRECTOR**

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

21 **PARTY**

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

24 **PRESIDING OFFICER**

25 The person elected or appointed to direct the conduct of any public hearing. The

1 Governing Body is the Mayor or Mayor Pro Tempore.

2 **Section 27. Section 26-1.12 SFCC 1987 (being Ord. #2005-30(A), §41) is**

3 **amended to read:**

4 **26-1.12 Appeals.**

5 A. Any applicant aggrieved of a decision of city staff regarding Article 26-1 shall
6 appeal to the governing body.

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

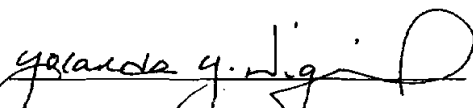
9 C. Appeals shall be filed within thirty (30) days of the action appealed.

10 PASSED, APPROVED, and ADOPTED this 14th day of October, 2009.

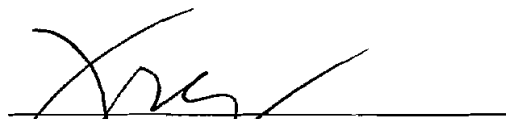
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13 DAVID COSS, MAYOR

14 ATTEST:

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17 YOLANDA Y. VIGIL, CITY CLERK

18 APPROVED AS TO FORM:

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21 FRANK D. KATZ, CITY ATTORNEY

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25 Jp/ca/jpmb/2009 ord/appeals