

1 CITY OF SANTA FE, NEW MEXICO

2 ORDINANCE NO. 2011-9

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5 AN ORDINANCE

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

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

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

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

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

21 (b) In exercising the powers set forth herein, the Governing Body,  
22 after reviewing the minutes of the Planning Commission  
23 meeting, may reverse or affirm, wholly or partly, or may modify  
24 the order, requirement, decision or determination as ought to be  
25 made and to that end shall have, in addition to all other

1 municipal authority, that authority of the Planning Commission.

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

5 **Section 2. Section 14-2.2(A)(3) SFCC 1987 (being Ord. # 2009-42, §1) is**  
6 **amended to read:**

7 (3) Appeals.

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

- 13 (b) The Governing Body delegates its authority for hearing appeals  
14 of decisions of the Land Use Director to the respective Land Use  
15 Board as set forth in this Chapter. Final actions of a Land Use  
16 Board on the appeal of a decision of the Land Use Director shall  
17 not be heard by the Governing Body. Such appeal shall be filed  
18 in district court.

19 **Section 3. 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 Land Use Director applying this Chapter  
24 provided that the application of this chapter is made in  
25 conjunction with a development plan or subdivision request

1 requiring the Planning Commission's approval;

2 (b) Final actions of the Land Use Director applying the terrain  
3 management regulations (§14-8.2) and the Escarpment Overlay  
4 District regulations (§14-5.6); and

5 (c) Final actions of the Floodplain Administrator.

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

8 (3) Appeals of a decision of the Summary Committee shall be heard by the  
9 Governing Body as set forth in §14-3.17.

10 **Section 5. Section 14-2.5(A) SFCC 1987 (being Ord. #2001-38, §2 as amended)**  
11 **is amended 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 applying the  
19 provisions of this chapter, unless jurisdiction for such appeals is  
20 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 6. Section 14-2.6(A)(9) SFCC 1987 (being Ord. # 2009-42, §4) is**

10 **amended to read:**

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

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

14 **amended) is amended to read:**

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

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

19 **amended to read:**

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

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

24 **read:**

25 (4) Appeal Hearing Notice Requirements

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

(i) Agenda Requirements

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

(ii) Mailing Requirements

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

A. Form of notice

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

B. Procedure for giving notice

The appellant shall give notice of the time, date and place of the public hearing by first class mail, with a certificate of mailing by the U. S. Postal Service, postmarked at least 15 days prior to the public hearing. The notice shall be approved by the Land Use Department prior to mailing.

C. Notice recipients

The following shall receive notice:

1. All appellants and appellees.
2. All persons or neighborhood associations who were required to be mailed notice for the application giving rise to the final action being appealed.

(b) Failure to Provide Notice

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

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

(5) Posting of Building Permits

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

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

**14-3.17 APPEALS**

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**(A) Appealable Actions**

**(1) Final Action**

Only final actions may be appealed.

(a) Final actions of a Land Use Board include a decision made after a public hearing, including, but not limited to, the final approval or denial of a preliminary plat or preliminary development plan.

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

(c) Final action does not include:

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

**(2) Basis for Appeal**

An appeal may only be filed for the following reasons:

(a) To contest noncompliance of a final action with this chapter or

1 §3-21-1 through 3-21-14 NMSA;

2 (b) To contest the application of this chapter; or

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

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

5 Appeals of final actions may be filed by the following persons:

6 (1) The applicant when the application is denied or, if approved, the  
7 approval included conditions not accepted by the applicant;

8 (2) All persons or neighborhood associations who were required to be  
9 mailed notice for the application giving rise to the final action being  
10 appealed;

11 (3) Persons or organizations duly organized at the time the decision appealed  
12 from was rendered alleging injury to their economic, environmental, or  
13 aesthetic interests;

14 (4) City staff members acting in their official capacity; and

15 (5) Any person who has a recognized legal interest under New Mexico law.

16 **(C) Time for Appeal**

17 (1) Time for Appeal

18 Appellants shall file an appeal as follows:

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

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

24 (2) Amended Appeals

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



1 (3) Response

2 Any party may file a response to the appeal as set forth in §14-3.17(I)(2).

3 (4) Date of Final Action

4 The date of the final action shall be deemed to be the date of the final  
5 written decision and determined as follows:

6 (a) For final actions of the Land Use Director, the date of issuance  
7 of any written order (including a decision, letter, permit or other  
8 document) granting or denying relief or in the case of building  
9 permits, the date of the posting of the permit; or

10 (b) For final actions of a Land Use Board or the Governing Body,  
11 the date that body adopts a written decision containing findings  
12 of fact and conclusions of law; provided that if such body has not  
13 adopted findings of fact and conclusions of law within 31 days  
14 of the date the vote deciding the matter was taken, then the date  
15 of final action shall be deemed to be such 31st day.

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

17 (1) Filing Appeal; Form; Verification

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

22 (2) Receipt; Service of Appeal

23 The Land use Director shall initial and enter the date and time of filing  
24 on both copies of the appeal, and return one copy to the appellant. Within  
25 3 days of the filing date, the appellant shall hand deliver a copy of the

1 appeal to any appellee or deliver it by First-Class® Certified Mail™ by  
2 the U.S. Postal Service.

3 (3) Appeal Fee

4 (a) An appeal fee shall be paid at the time of filing an appeal.

5 (b) The Governing Body shall establish by resolution a schedule of  
6 fees for appeals. The Land Use Director may waive or reduce the  
7 appeal fee if the Director determines that the appellant would  
8 qualify for the city's utility fee poverty exemption set forth in  
9 §15-1.3 SFCC 1987.

10 (4) Multiple Appeals and Multiple Jurisdictions

11 (a) An appellant may not appeal any single final action more than  
12 once.

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

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

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

24 (e) In the case of an appeal that includes final actions that fall under  
25 the jurisdiction of more than one Land Use Board, the Land Use

1 Director shall determine the appropriate Land Use Board to hear  
2 any particular issue on appeal, except as otherwise provided  
3 herein.

4 (5) Withdrawal

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

11 (6) Conformity of Appeal

12 The Land Use Director shall promptly review all appeals for  
13 conformance with the requirements of §14-3.17. Upon determining that  
14 an appeal does not conform to the requirements, the Land Use Director  
15 shall refer the matter to the City Attorney for review.

16 (a) If the City Attorney concurs with the Land Use Director's  
17 determination, the City Attorney's written recommendation shall  
18 be forwarded to the Governing Body for discussion. The  
19 Governing Body may accept the City Attorney's written  
20 recommendation. Such decision is final and may be appealed to  
21 district court. If the Governing Body does not accept the City  
22 Attorney's recommendation, the appeal shall be heard as set  
23 forth in this Chapter.

24 (b) If the City Attorney does not concur with the Land Use  
25 Director's determination, the appeal shall be heard as set forth in

1 this Chapter.

2 (7) District Court Appeals

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

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

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

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

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

22 (4) The filing of an appeal shall not limit the ability of an applicant to file  
23 other applications.

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

1 provided that there is an independent basis for such appeal.

2 (6) Upon determination by the Land Use Director that the suspension of a  
3 permit or enforcement action would cause imminent peril to life or  
4 property, a permit approving only so much of the application as is  
5 required to address the immediate danger shall be issued. When  
6 reasonably practicable, the Land Use Director shall give all parties such  
7 notice prior to the issuance of the permit as is possible. The Land Use  
8 Director's action related to the issuance of such permit is not subject to  
9 appeal to any Land Use Board or the Governing Body, and may be  
10 appealed only to the district court.

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

20 (F) **Reserved**

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

22 The public hearing on the appeal shall be scheduled as soon as reasonably  
23 practicable.

24 (1) An appeal to any Land Use Board or the Governing Body shall be heard  
25 at the next available regularly scheduled meeting after the appeal is filed

1 which provides adequate time for notice to be provided pursuant to §14-  
2 3.1(H)(4) and for the parties to make submittals in support of their  
3 positions for inclusion in the public hearing record. A hearing before the  
4 Governing Body shall not be conducted, until 5 days after the Land Use  
5 Board has approved the minutes adopting the findings of fact and  
6 conclusions of law for the matter being appealed.

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

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

11 Communication regarding an appeal is limited as follows:

12 (1) Parties

13 During the appeal period after any final action is taken or after an appeal  
14 is filed, no party may communicate with individual members of a Land  
15 Use Board that may hear the appeal or the Governing Body outside an  
16 appeal hearing, concerning the merits or substance of the appeal, except  
17 in writing filed with the Land Use Department within the prescribed time  
18 period for inclusion in the public hearing record.

19 (2) Other Persons

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

24 (3) Site Inspection

25 Individual members of a Land Use Board or the Governing Body may

1 not inspect the site of any subject property, except pursuant to a publicly  
2 noticed site visit which affords all parties the opportunity to attend.

3 (4) Effect of Improper Communication

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

8 (I) Appeal Hearing Procedure

9 (1) Administrative Procedures

10 Appeals shall be conducted in accordance with administrative procedures  
11 to be adopted by resolution of the Governing Body. Copies shall be  
12 available to the public in the Land Use Department and the City Clerk's  
13 Office.

14 (2) Submittals by Parties

15 Any party to an appeal may submit any documents or written evidence  
16 on which they intend to rely for review by the body hearing the appeal up  
17 to 10 days prior to the public hearing.

18 (3) Land Use Board Review

19 (a) The Land Use Board shall conduct a public hearing in  
20 accordance with adopted procedures, and may reverse or affirm,  
21 in whole or in part, or may modify the final action appealed in  
22 accordance with the provisions of this chapter, and shall have the  
23 powers of the Land Use Director at the time the final action was  
24 taken. The hearing shall be de novo.

25 (b) Pursuant to §10-15-1(H)(3) NMSA 1978 of the Open Meetings

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Act, the Land Use Board or Governing Body may deliberate in executive session, provided that the hearing and final action occur in open meeting.

(c) The Land Use Board shall issue a written decision including an explanatory statement of the factual and legal basis for the decision.

(4) Burden of Proof

Unless otherwise provided by law, the appellant has the burden of proof under §14-3.17(A)(2).

**(J) Reserved**

**(K) Due Process**

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

**(L) Effective Date**

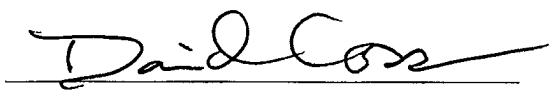
The revisions to §14-3.17 adopted by the Governing Body as Ordinance No. 2011-9 are effective April 13, 2011 (date of adoption of the Ordinance) except for the revisions made to §14-3.17(C)(1) which shall be in effect five days after the Ordinance has been published.

**Section 12. Review.** This Ordinance shall be reviewed one year from the date of adoption.

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

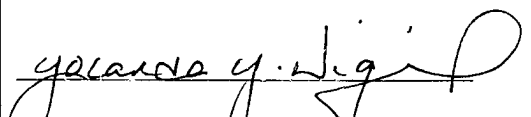


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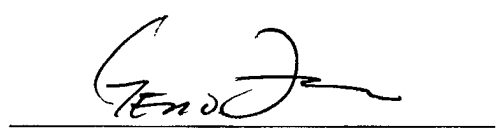


DAVID COSS, MAYOR

ATTEST:

  
YOLANDA Y. VIGIL, CITY CLERK

APPROVED AS TO FORM:



GENO ZAMORA, CITY ATTORNEY