

CITY OF ALBUQUERQUE
DEVELOPMENT HEARING OFFICER
RULES OF PROCEDURE

Effective Date: _____, 2022

ARTICLE I: INTRODUCTION

1. Governance of Meetings and Hearings. These Rules of Procedure (“Rules”) for the City of Albuquerque (“City”) Development Hearing Officer (“DHO”) shall control the conduct of business by the DHO.
2. Conflicting Authority. In the event of a conflict between these Rules, City ordinances or resolutions of the City Council, and/or state or federal laws, City ordinances, resolutions of the City Council, and/or state or federal laws shall control.
3. Conflict of Interest. The DHO shall recuse him/herself from hearing a matter if a conflict of interest exists or appears to exist, including, for example, a direct or indirect financial conflict of interest, or if circumstances exist which would impair or appear to impair the independence of judgment of the DHO. Because the DHO has a duty to hear applications presented to him/her, recusal should only occur for good reason.
4. Recusal Procedure. In the event that the DHO is recused from hearing a matter, he/she shall not be present in the hearing room when the matter is heard. Additionally, the DHO shall not draft or aid in the drafting of the Notice of Decision (“Decision”). The DHO shall issue a Notice of Recusal and Appointment of the Alternate DHO.
5. Fact Finding Investigations. The DHO shall not conduct independent fact-finding investigations of any property that is the subject of a quasi-judicial hearing before the DHO. A cursory site visit by the DHO to generally familiarize him/herself with the location and environs of such a property that does not constitute an independent fact-finding investigation and is allowed.
6. Amendment of Rules. These rules may be amended by the DHO at a public hearing, provided written notice of the proposed changes and their time of consideration pursuant to City of Albuquerque Public Boards, Commissions and Committees Ordinance, Section 2-6-1-4(C) of the Albuquerque Code of Ordinances.

ARTICLE II: HEARING PROCEDURES

1. Hearings. The DHO will hold a quasi-judicial hearing twice per month which is open to the public. The hearings will be established on an annual calendar prepared by staff. All

regular hearings will be held in the Plaza del Sol basement/garden level meeting room at 600 Second Street NW and/or through a virtual meeting. Notice of the location and time of the meeting will be posted in the lobby of the Plaza del Sol building and on the City's website. If the meeting is held virtually, notice of the meeting shall contain detailed information including web address and/or phone numbers.

2. For special hearings, the DHO will prepare the agenda and post notice in the lobby of the Plaza del Sol Building and on the City's website at least seventy-two (72) hours prior to the DHO hearing.
3. Public Notice. Notice that is published, mailed, electronically mailed, posted by sign, or posted on the City's website shall be required as shown in Integrated Development Ordinance ("IDO") Table 6-1-1 for different types of applications under the IDO.
4. Planning Staff and Agency Comments. Prior to the hearing, the Planning Director shall request City departments and other agencies that the Planning Director determines would be interested to comment on the application. City staff and commenting agencies shall review the application and forward any comments and recommendations to DHO. Comments received shall be submitted to the DHO and shall be made a part of the hearing record.
5. Appearance by Applicant. Applicants may appear on his/her own behalf or be represented by an agent with written authorization from the property owner.
6. Testimony Under Oath. All testimony at the DHO hearings shall be under oath or affirmation.
7. Record of the DHO Hearing. The Planning Director shall make a record by video and/or audio recording. Summary minutes of decisions shall be kept of all the DHO hearings and they shall be kept available for public inspection.
8. Continuance of a DHO Hearing. An advertised hearing may be continued to a time and place announced at the hearing without re-advertising, re-issuing public notice, or reposting signs. A continuance may be granted for good cause shown. A case will be heard by the same hearing officer and will be scheduled at the normal meeting times. In the event that the initial hearing officer is not available to finish the case or that all parties agree to proceed expeditiously to the next available hearing date, the other hearing officer can listen to the recording in order to hear the entire record, conduct the remainder of the hearing, and issue a decision.

9. In the event that both hearing officers have a conflict of interest, the matter will be referred to the ZHE who will conduct the DHO hearing and render the decision as the DHO *pro tempore*.
10. DHO Order of Proceedings. The order of considering an application shall be as follows:
 - a. Applicant's presentation
 - b. Testimony by members of the public or other concerned parties
 - c. Development Facilitation Team ("DFT") staff comments and recommendations
 - d. Applicant's response and cross-examination, if any
 - e. Members of the public or other concerned party's cross-examination, if any
 - f. Staff response, if any
 - g. Closing of the floor and comments
 - h. Finding of Facts and Decision

The DHO may choose to limit the time allowed to all witnesses for their presentation and testimony. Repetitive or irrelevant testimony is discouraged. Neighborhood groups and other parties are encouraged to select one or more spokespersons to express common view points. The DHO shall determine appropriate time limits under such circumstances and may grant additional time to any speaker as is appropriate.

ARTICLE III: DECISION

1. Final Decision. An approval or denial is a final decision of the DHO.
2. Notices of Decision. The DHO shall act on an application at the conclusion of the hearing. The DHO shall issue a written decision, which includes key findings of fact. This Decision shall be made a part of the record. Each material finding shall be supported by substantial evidence.
3. Signature of Approval. Upon approval of a preliminary and final plat, each member of the DFT shall sign the plat. City staff and agencies shall also sign the plat to certify that all requirements have been met for each area of discipline pursuant to the Development Process Manual. The City Engineer will be the final signature on the plat.
 - a. Transportation
 - b. Hydrology
 - c. ABCWUA
 - d. Parks and Recreation
 - e. Code Enforcement
 - f. Planning
 - g. City Engineer

4. Delegation of Approval. City staff and agencies may accept delegation of approval for a plat if it would not result in any redesign of the project. To accept delegation, the relevant DFT member shall include a deadline to have all unresolved issues completed. If the unresolved issues are not resolved prior to the deadline, the matter may be placed on the DHO agenda. When the delegated issues are resolved, it will be the responsibility of the applicant to notify the DTF staff to obtain the final DFT signatures. The conditions for a final sign off and the Notice of Decision shall appear in the record.
5. Deferrals. Applicants may make a written request for a deferral of their application any time prior to the hearing by contacting DHO staff by email. If the applicant has not requested a deferral in writing prior to the hearing, the applicant is expected to attend the DHO meeting. The DHO may defer the agenda item to a later date.
 - a. Deferrals shall not be for more than a year from the date of the first scheduled meeting.
 - b. A deferral at the request of the applicant or the DHO is not a final decision.
6. Failure to Appear; Failure to Request Deferral. In the absence of an applicant or any personal appearance on behalf of an Applicant, the DHO may defer or continue to another date. If the applicant failed to appear and pursue the application for two scheduled DHO hearings, the DHO may deny the application as a final decision.
7. Denial. If an application fails to comply with the requirements in the IDO and DPM, the DHO shall deny the application. Other grounds for denial include incomplete submissions or providing inaccurate, false or misleading information.
8. Appeal of Decision. An appeal may be filled within 15 days of the final decision. Appeal procedures are governed by IDO Subsection 14-16-6-4(V).