



**Environmental  
Planning  
Commission**

*Agenda Number: 2  
Project Number: 1001620  
Case #: 12EPC 40073  
December 13, 2012*

**Staff Report**

<b>Agent</b>	City of Albuquerque Planning Department
<b>Applicant</b>	City of Albuquerque
<b>Request</b>	<b>Text Amendment to the Zoning Code</b>
<b>Location</b>	City-wide
<b>Current Zoning</b>	N/A
<b>Proposed Zoning</b>	N/A

**Staff Recommendation**

*That a recommendation of APPROVAL of 12EPC 40073 be forwarded to the City Council, based on the Findings on page 8, and subject to the Condition of Approval on page 9.*

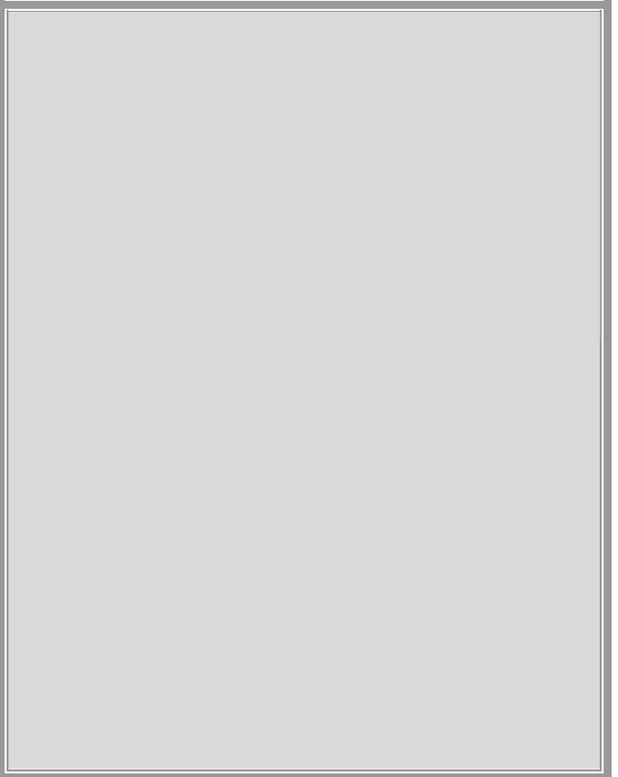
**Staff Planner**  
*Randall Falkner, Planner*

**Summary of Analysis**

This is a request to amend the Zoning Code by adding a new section 14-16-3-23 ROA 1994 to the General Regulations section of the Zoning Code, in order to make the launching and landing of hot air balloons a permissive use in all zoning districts.

Staff generally agrees with the request in that hot air balloon launchings and landings shall be allowed in all zoning sections; however, instead of adding a new section (proposed 14-16-3-23) to the General Regulations section of the Zoning Code, the formatting of the proposal needs to be changed to specifically list hot air balloon launching and landing as an allowed activity in each separate zone.

There is no known opposition to the request. The request meets the intent of the City Charter and the City Zoning Code, while furthering a preponderance of applicable Comprehensive Plan policies. Planning Staff recommends that the EPC forward a recommendation of approval of this request to the City Council.



City Departments and other interested agencies reviewed this application from 10/29/2012 to 11/9/2012. Agency comments used in the preparation of this report begin on Page 10.

## ***I. INTRODUCTION***

### ***Request***

This is a request to amend the Zoning Code by adding a new section 14-16-3-23 ROA 1994 to the General Regulations section of the Zoning Code, in order to make the launching and landing of hot air balloons a permissive use in all zoning districts.

### ***Environmental Planning Commission (EPC) Role***

The EPC is a recommending body with review authority. The EPC's task is to make a recommendation to the City Council regarding the proposed text amendments. The City Council is the City's Zoning Authority and will make the final decision. This is a legislative matter.

### ***Background***

The text amendment (Bill No. O-12-39) was introduced by the City Council on October 1, 2012 by Councilor Cook. Hot air ballooning has been a popular pastime in the City for a number of years, and hot air balloons are a common sight to residents. Albuquerque is home to the Albuquerque International Balloon Fiesta, which is held for nine days in early October. The event is the largest hot air balloon festival in the world, attracts tourists from all over the state, nation, and the world, and constitutes a major source of income for the City and local businesses.

### ***Context***

The request would be City-wide and would make the launching and landing of hot air balloons a permissive use in all zoning districts. There is currently no mention of hot air balloons in the Zoning Code as either a permissive or conditional use. According to the Zoning Code, if the use is not listed as permissive or conditional it is not allowed (per Section 14-16-1-3 (B)). As a result, since hot air balloons are not mentioned in the Zoning Code they are currently prohibited throughout the City.

The request would add a new section to the General Regulations (Part 3) of the Zoning Code. Among the General Regulations are those for off-street parking, shopping center, nonconforming structures and uses, lighting, landscaping, signs, wireless telecommunications, community residential programs, and form based zones. The zoning of hot air balloons would be a new section (14-16-3-23) in the General Regulations of the Zoning Code, and is proposed to be placed immediately after form based zones (Section 14-16-3-22).

### ***Purpose/Intent***

The purpose is to allow the launching and landing of hot air balloons as a permissive use in all zoning districts. Allowing this request would remove any question about whether hot air balloons are allowed to launch or land in specific areas throughout the City.

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## II. ANALYSIS OF PROPOSED TEXT AMENDMENT

New language is [+underlined and bracketed+]. Deleted language is [~~underlined, bracketed and struck through~~]. Planning Staff's explanation is in ***Bolded Italics***.

City Council suggests that the request be amended as follows:

[+ **Section 14-16-3-23: ZONING OF HOT AIR BALLOONS**

- (A) The launching and landing of hot air balloons shall be a permissive use within all zoning districts within the City of Albuquerque.
- (B) This section shall not preclude any sector development plan from prohibiting the launching and landing of hot air balloons if that prohibition is specific.
- (C) This section does not supersede other limitations on the launching or landing of hot air balloons including but not limited to prohibitions on trespass and limitations on noise, advertising and/or nuisance. +]

***Staff is generally in agreement with City Council's recommendations. However, launching hot air balloons from a residential zone could create problems for nearby residences. Setting up and filling up hot air balloons creates a fair amount of noise. The noise initially comes from the fan that partially inflates the balloon with cold air. Additional noise comes from the propane burners that are used for final inflation and the launch. Hot air balloons usually launch early in the morning when many people are still sleeping. The noise of the fans and burners can also upset dogs, livestock, horses, and other animals. The noise from the set up of hot air balloons can carry across an extensive area, and could affect residential areas. The noise and early launch times of hot air balloons may not be conducive to a residential area and could result in land use/noise conflicts.***

***The request proposes to make an entirely new zoning section (Section 14-16-3-23) in the General Regulations section of the Zoning Code to allow the launching and landing of hot air balloons as a permissive use in all zoning districts. There is currently no mention of hot air balloons in the Zoning Code as either a permissive or conditional use. According to the Zoning Code, if the use is not listed as permissive or conditional it is not allowed (per Section 14-16-1-3 (B)). As a result, hot air balloon launches and landings are currently prohibited. Zoning Enforcement has stated that in order to be consistent with the existing layout of the Zoning Code the formatting of the proposal should be changed to specifically list hot air balloon launching and landing as an allowed activity in each separate zone. Zoning has also stated that listing this use within the General Regulations section as currently proposed would be inconsistent with the organization of the code and could create enforcement problems. Various other uses are listed as allowed activities in separate zoning districts of the Zoning Code. The request needs to follow this format in order to be consistent with the existing layout of the Zoning Code.***

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### III. ANALYSIS OF APPLICABLE ORDINANCES, PLANS AND POLICIES

Note: Policy citations are in regular text; *Staff analysis is in bold italics.*

#### *Charter of the City of Albuquerque*

The Citizens of Albuquerque adopted the City Charter in 1971. Applicable articles include:

##### Article I, Incorporation and Powers

“The municipal corporation now existing and known as the City of Albuquerque shall remain and continue to be a body corporate and may exercise all legislative powers and perform all functions not expressly denied by general law or charter. Unless otherwise provided in this Charter, the power of the city to legislate is permissive and not mandatory. If the city does not legislate, it may nevertheless act in the manner provided by law. *The purpose of this Charter is to provide for maximum local self government.* A liberal construction shall be given to the powers granted by this Charter.” (emphasis added)

##### Article IX, Environmental Protection

“The Council (City Commission) in the interest of the public in general shall protect and preserve environmental features such as water, air and other natural endowments, ensure the proper use and development of land, and promote and maintain an aesthetic and humane urban environment. To affect these ends the Council shall take whatever action is necessary and shall enact ordinances and shall establish appropriate Commissions, Boards or Committees with jurisdiction, authority and staff sufficient to effectively administer city policy in this area.”

***Amending the text of the City Zoning Code falls within the City’s powers (Article I) and will help to ensure the proper use and development of land. The request meets the intent of the City Charter.***

#### *Albuquerque Comprehensive Zoning Code*

Authority and Purpose (summarized): The Zoning Code is Article 16 within Chapter 14 of the Revised Code of Ordinances of Albuquerque, New Mexico, 1994 (often cited as ROA 1994). The administration and enforcement of the Zoning Code is within the City’s general police power authority for the purposes of promoting the health, safety, and general welfare of the public. As such, the Zoning Code is a regulatory instrument for controlling land use activities for general public benefit.

Amendment Process (summarized): The City Council is the zoning authority for the City of Albuquerque and has sole authority to amend the Zoning Code. Through the City Charter, the City Council has delegated broad planning and zoning authorities to the Environmental Planning Commission (EPC). The EPC is advisory to the City Council regarding proposed text amendments to the Zoning Code.

Zoning Code Section 14-16-1-3, Intent states:

(A) This article is intended to help achieve Article IX of the Charter of the City of Albuquerque and the city's master plan; in particular the master plan documents which comprise the

Albuquerque/Bernalillo County Comprehensive Plan. This article is intended to create orderly, harmonious, and economically sound development in order to promote the health, safety, convenience, and general welfare of the citizens of the city. These regulations are necessary to provide adequate open spaces for light and air including solar access; to avoid undue concentration of population, to secure safety from fire, panic, and other dangers; to help control congestion in the streets and public ways; to control and abate unsightly use of buildings or land; to facilitate adequate provisions for community utilities and facilities such as transportation, water, sewer, schools, and parks; to encourage the most appropriate use of land; to properly channel flood water runoff; to conserve and stabilize the value of property; and to enhance the appearance of the landscape.

*The proposed text amendment meets the intent of the Zoning Code (Section 14-16-1-3) by allowing orderly, harmonious, and economically sound development while promoting the health, safety, convenience, and general welfare of the citizens of the City. The request will conserve and stabilize the value of property and enhance the appearance of the landscape. The request furthers the intent of the Zoning Code.*

#### ***Albuquerque/Bernalillo County Comprehensive Plan***

Policy Citations are in Regular Text; *Staff Analysis is in Bold Italics*

The Comprehensive Plan, the Rank I planning document for the City, contains goals and policies that provide a framework for development and service provision. The Plan's goals and policies serve as a means to evaluate development proposals and requests for text amendments such as this. Applicable policies include:

##### *Developing and Established Urban Areas*

The Goal is to create a quality urban environment which perpetuates the tradition of identifiable, individual but integrated communities within the metropolitan area and which offers variety and maximum choice in housing, transportation, work areas, and life styles, while creating a visually pleasing built environment.

Policy II.B.5d: The location, intensity and design of new development shall respect existing neighborhood values, natural environmental conditions and carrying capacities, scenic resources, and resources of other social, cultural, or recreational concern.

*The request generally respects existing neighborhood values, natural environmental conditions, scenic resources, and resources of other social, cultural and recreational concern. Hot air balloons are a familiar and generally welcome sight in Albuquerque and contribute to the scenic landscape and to the economy. However, the noise produced by hot air balloons early in the morning could create noise/land use conflicts for residential areas. The request partially furthers Policy II.B.5d.*

### Noise

The Goal is to protect the public health and welfare and enhance the quality of life by reducing noise and by preventing new land use/noise conflicts.

Policy II.C.4a: Noise considerations shall be integrated into the planning process so that future noise/land use conflicts are prevented.

***The request to make the launching and landing of hot air balloons a permissive use in all zoning districts has the potential to create land use/noise conflicts. Setting up and filling up hot air balloons can be noisy. Fans and burners that are used to inflate the balloon create considerable noise. In addition, hot air balloons normally launch early in the morning when most people are sleeping. The noises associated with the inflation of hot air balloons can upset both people and animals. The launching of hot air balloons in a residential zone may not be a desirable/and or compatible use because of the noise factor. However, any potential noise/land use conflicts would be limited in frequency and locations depending on the time of the year. The current request does not fully further Policy II.C.4a.***

### Developed Landscape

The Goal is to maintain and improve the natural and the developed landscapes' quality.

Policy II.C.8a: The natural and visual environment, particularly features unique to Albuquerque, shall be respected as a significant determinant in development decisions.

***The request to make the launching and landing of hot air balloons a permissive use in all zoning districts generally maintains the natural and developed landscapes' quality. Hot air balloons are a feature fairly unique to Albuquerque because of the International Balloon Fiesta, the many hot air balloon related businesses in the City, and the frequency of hot air balloon flights throughout the City. Hot air balloons do not adversely effect the natural and visual environment. Hot air balloons are a familiar and generally welcome sight to residents and contribute to the unique visual environment of Albuquerque. The request furthers Policy II.C.8a.***

### Community Identity and Urban Design

The Goal is to preserve and enhance the natural and built characteristics, social, cultural and historical features that identify Albuquerque and Bernalillo County sub-areas as distinct communities and collections of neighborhoods.

Policy II.C.9b: In each Community Area, strategic planning, neighborhood planning, development and redevelopment shall be evaluated in light of its relationship to and effect upon the following:

- 1) The natural environment
  - Views

- 3) Local history
  - Current and historic significance to Albuquerque
- 4) Culture and traditions
  - Community celebrations and events

*The request generally enhances views, complements recent local history, and allows community celebrations and events to continue, while adding to the unique culture and traditions of Albuquerque. The Albuquerque International Balloon Fiesta has been a tradition in Albuquerque since 1972 and has developed into the largest hot air balloon festival in the world. Hot air balloons are a common and generally welcome sight in the City throughout the year. The request furthers Policy II.C.9b.*

#### *Economic Development*

The Goal is to achieve steady and diversified economic development balanced with other important social, cultural, and environmental goals.

Policy II.D.6b: Development of local business enterprises as well as the recruitment of outside firms shall be emphasized.

Policy II.D.6d: Tourism shall be promoted.

*The request allows the development of local business enterprises and promotes tourism. The Albuquerque International Balloon Fiesta is a major event for the City of Albuquerque, bringing thousands of tourists to the City in early October. The request allows local hot air balloon related businesses to provide jobs throughout the City and promotes tourism. The request furthers Policies II.D.6b and 6c.*

#### **IV. CONCERNS OF REVIEWING AGENCIES / PRE-HEARING DISCUSSION**

Comments were received from Zoning Enforcement, which can be found on page 10. Zoning has stated that in order to be consistent with the existing layout of the Zoning Code that the formatting of the proposal should be changed to specifically list hot air balloon launching and landing as an allowed activity in each separate zone. Zoning also states that listing this use within the general regulations section as currently proposed would be inconsistent with the organization of the code and could create enforcement problems. The Open Space Division had no adverse comments, but stated that they will, at a later date, publish a policy regarding balloon launches and landings on Open Space via Administrative Instruction.

#### **V. NEIGHBORHOOD/PUBLIC CONCERNS**

A newsletter article in the November/December issue of the "Neighborhood News" newsletter was provided both in print and online to all N.A./H.O.A./Coalitions on the Office of

Neighborhood Coordination's list and to the public. There is no known opposition to the request.

## **VI. CONCLUSION**

This is a request to amend the Zoning Code by adding a new section 14-16-3-23 ROA 1994 to the General Regulations section of the Zoning Code, in order to make the launching and landing of hot air balloons a permissive use in all zoning districts.

Staff generally agrees with the request in that hot air balloon landings shall be allowed in all zoning sections; however, instead of adding a new section (proposed 14-16-3-23) to the General Regulations section of the Zoning Code, the formatting of the proposal should be changed to specifically list hot air balloon launching and landing as an allowed activity in each separate zone.

Noise/land use conflicts associated with balloon launches remain a concern for residential areas; however, the request meets the intent of the City Charter and the City Zoning Code, while furthering a preponderance of applicable Comprehensive Plan policies. There is no known opposition to the request. Planning Staff recommends that the EPC forward a recommendation of approval of this request to the City Council.

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***FINDINGS – 12EPC 40073, December 13, 2012, Text Amendment to the Zoning Code***

1. The City of Albuquerque City Council proposes to amend the Zoning Code by adding a new section 14-16-3-23 ROA 1994 to the General Regulations section of the Zoning Code, in order to make the launching and landing of hot air balloons a permissive use in all zoning districts.
2. The text amendment (Bill No. O-12-39) was introduced by the City Council on October 1, 2012.
3. The EPC is charged with reviewing the request and forwarding a recommendation to the City Council. This is a legislative matter.
4. The Charter of the City of Albuquerque, the Albuquerque/Bernalillo County Comprehensive Plan, and the City of Albuquerque Zoning Code are incorporated herein by reference and made part of the record for all purposes.
5. The request meets the intent of the City Charter. Amending the text of the City Zoning Code falls within the City's powers (Article 1) and will help to ensure the proper use and development of land.
6. The proposed text amendment meets the intent of the Zoning Code (Section 14-16-1-3) by allowing orderly, harmonious, and economically sound development while promoting the health, safety, convenience, and general welfare of the citizens of the City. The request will help to conserve and stabilize the value of property and enhance the appearance of the landscape.
7. The request furthers the following goals and policies of the Comprehensive Plan:
  - a. Policy II.C.8e – The request to make the launching and landing of hot air balloons a permissive use in all zoning districts generally maintains the natural and developed landscapes' quality. Hot air balloons are a familiar and generally welcome sight to residents and contribute to the unique visual environment of Albuquerque.
  - b. Policy II.C.9b – The request generally enhances views, complements recent local history, and allows community celebrations and events to continue, while adding to the unique culture and traditions of Albuquerque. The Albuquerque International Balloon Fiesta has been a tradition in Albuquerque since 1972 and has developed into the largest hot air balloon festival in the world. Hot air balloons are a common and generally welcome sight in the City throughout the year.
  - c. Policies II.D.6b & 6c – The request allows the development of local business enterprises and promotes tourism. The Albuquerque International Balloon Fiesta is a major event for the City of Albuquerque, bringing thousands of tourists to the City in early October. The

request allows local hot air balloon related businesses to provide jobs throughout the City.

8. There is no known opposition to the request.

***RECOMMENDATION - 12EPC 40073, DECEMBER 13, 2012, TEXT AMENDMENT TO THE ZONING CODE***

**That a Recommendation of APPROVAL of case 12EPC 40073, a Text Amendment to the Zoning Code, be forwarded to the City Council, based on the preceding Findings and subject to the following Condition of Approval.**

***RECOMMENDED CONDITION OF APPROVAL – 12EPC 40073, DECEMBER 13, 2012, TEXT AMENDMENT TO THE ZONING CODE***

1. The formatting of the proposal should be changed to specifically list hot air balloon launching and landing as an allowed activity in each separate applicable zone.
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***Randall Falkner  
Planner***

**Notice of Decision cc list:**

City of Albuquerque/City Council, P.O. Box 1293, Albuquerque, NM 87103  
City of Albuquerque/Planning Dept., 600 2<sup>nd</sup> St. NW, 3<sup>rd</sup> Floor, Albuquerque, NM 87102

***Attachments***

## ***CITY OF ALBUQUERQUE AGENCY COMMENTS***

### ***PLANNING DEPARTMENT***

#### ***Zoning Enforcement***

In order to be consistent with the existing layout of the zoning code, the formatting of the proposal should be changed to specifically list hot air balloon launching and landing as an allowed activity in each separate zone. Listing this use within the general regulations section as currently proposed would be inconsistent with the organization of the code and could create enforcement problems. It is also recommended that EPC/City Council ensure that effected stakeholders are aware of common complaints received by the Code Enforcement Division pertaining to certain commercial activities conducted from residential zones (increased traffic, noise, perceived compatibility with existing development patterns, etc.).

#### ***Office of Neighborhood Coordination***

11/7/12 – Newsletter article in the November/December issue of the “Neighborhood News” newsletter which will be published by 11/16/12 - siw

#### ***Long Range Planning***

### ***CITY ENGINEER***

#### ***Transportation Development Services***

#### ***Traffic Engineering Operations***

#### ***Hydrology***

### ***DEPARTMENT OF MUNICIPAL DEVELOPMENT***

#### ***Transportation Planning***

### ***WATER UTILITY AUTHORITY***

#### ***Utility Services***

### ***ENVIRONMENTAL HEALTH DEPARTMENT***

#### ***Air Quality Division***

**Environmental Services Division**

**PARKS AND RECREATION**

**Planning and Design**

The Parks & Recreation Department has no adverse comments regarding the proposed Amendment to the Zoning Code regarding ballooning and supports this activity in our community. The Department will evaluate the need to develop specific guidelines for balloon launches and landings on public Parks, Golf Courses and Major Public Open Space at a later date. We support comments from the Open Space Division.

**Open Space Division**

Open Space Division has no adverse comment regarding the proposed textual amendment to the zone code regarding ballooning. The Division will, at a later date, publish a policy regarding balloon launches and landings on Open Space via Administrative Instruction.

**City Forester**

**POLICE DEPARTMENT/PLANNING**

**SOLID WASTE MANAGEMENT DEPARTMENT**

**Refuse Division**

**FIRE DEPARTMENT/PLANNING**

**TRANSIT DEPARTMENT**

**COMMENTS FROM OTHER AGENCIES**

**BERNALILLO COUNTY**

**ALBUQUERQUE METROPOLITAN ARROYO FLOOD CONTROL AUTHORITY**

***ALBUQUERQUE PUBLIC SCHOOLS***

***MID-REGION COUNCIL OF GOVERNMENTS***

***MIDDLE RIO GRANDE CONSERVANCY DISTRICT***

***PUBLIC SERVICE COMPANY OF NEW MEXICO***