

Public Participation Ordinance



City of Las Cruces
Community Development
Memorandum

To: Robert Garza, City Manager

From:  Vincent M. Banegas, Community Development Deputy Director

Subject: Public Notification/Participation Work Session Discussion

Date: March 19, 2012

File No.: M-12-068

As per the stated agenda item to be discussed at the March 26, 2012, City Council Work Session, staff has researched and developed a spreadsheet that illustrates public notification strategies required by the NM State Statutes, the City of Las Cruces and by seven communities in and around New Mexico. This is to facilitate the identification of alternative methods that could be implemented for informing the public about development taking place in Las Cruces. Often, research similar to this seeks to find "best practices" in order to gauge how our efforts should be adjusted for better handling of related matters. However, based on staff research conducted to date, staff has not found reference to any notification/participation "best practice", but feels that each community has implemented a practice of notifying the public regarding development matters that seemingly works best for that community.

In summarizing the research, there are some methods that seemingly could improve our current methods of providing notice to the general public. Some of these items talk to amending the variety of notification timeframes in our current development codes to just one timeframe regardless of case type, using the highest timeframe of 15 days as the single threshold or 21 days as the Planning and Zoning Commission recommended, and re-implementing in some fashion the department's use of the City website as a source of information for new case submittals and updating said information throughout the review/approval processes. If you recall, the latter item was used extensively in the previous website, but was temporarily discontinued due to formatting and other reasons related to the new website the City has launched. Other items up for discussion could include requiring neighborhood engagement via a neighborhood meeting and establishing minimum notice requirements for this effort prior to the first public hearing. Also, increasing notification distance thresholds from the current 200 foot distance can be considered. These and other options can be addressed at the work session.

As discussion takes place on this matter, it is very important to note the impacts that will result not only to the general public, but also to the developer/applicant and the City. Generally speaking, a typical zone change case today can take approximately 3 to 4 months from submittal through to approval by the City Council. This assumes that

comments are addressed promptly by the applicant and that no delays such as a postponement takes place to further off-set the timeframe identified. In essence, increasing notice timeframes will at minimum push back consideration of each case by the respective bodies or require pushing up the deadline for submittal to a time frame that allows set procedures to take place. Monetary impacts regarding the timing of case consideration will be realized by the applicant. Other impacts involving monetary implications may be realized if notification thresholds are increased beyond the 200 foot threshold. This will become an issue particularly for zoning related matters where certified notification is a requirement. At \$5.75 per letter, the cost for mailed notices would certainly increase on a per case basis particularly when these cases take place in more densely developed parts of the City. Options exist on how to defray costs for the City, but ultimately, somebody bears these costs and as such this should be an issue considered as improvement in our notification procedures.

At the work session, staff will be prepared to walk the Council through our development types that require notice and public engagement and the research conducted regarding notification practices in New Mexico and in other states. A powerpoint presentation will be available to facilitate this discussion. In the interim, should you have any questions regarding this matter, please advise.

cc: David Weir, Community Development Director *DW*
Brian Denmark, Assistant City Manager/COO *B*
Mark Winson, Assistant City Manager/CAO

NM State Statutes

CLC

Subdivision

Agenda Posting Deadline	Reasonable notice defined by body	6 days
Mail Deadline (before public hearing)	5 days	9 days
Mail Notification Distance	None	200' excl ROW
Mail Notification Parties	Applicant/Owners	Applicant/Owners
Newspaper Publication Deadline	None	9 days
Sign Posting Deadline	None	9 days
Sign Size Requirements	None	None; use 18"X24"
Sign Location Requirements	None	Conspicuous locations
Other Notification Requirements; misc	Regular Mail	Regular Mail

Zoning

Agenda Posting Deadline	Reasonable notice defined by body	6 calendar days
Mail Deadline	None	10 calendar days
Mail Notification Distance	100' excl ROW	200' excl ROW
Mail Notification Parties	Property Owners	Property Owners
Newspaper Publication Deadline	15 days	15 calendar days
Sign Posting Deadline	None	10 calendar days
Sign Size Requirements	None	None; use 18"X24"
Sign Location Requirements	None	Conspicuous locations
Other Notification Requirements; misc	1 block or less, certified mail; if greater than 1 block, 1st class mail	Mail notification requires 15 min prop. Owners. Regular mail for P&Z and certified for CC.

Variance

Agenda Posting Deadline	Reasonable notice defined by body	6 calendar days
Mail Deadline	None	10 calendar days
Mail Notification Distance	None	200' excl ROW
Mail Notification Parties	None	Property Owners
Newspaper Publication Deadline	None	15 calendar days
Sign Posting Deadline	None	10 calendar days
Sign Size Requirements	None	None; use 18"X24"
Sign Location Requirements	None	Conspicuous locations
Other Notification Requirements; misc	None	mail notification requires 15 min prop. Owners. Regular mail for P&Z and certified for CC.

City of Albuquerque, NM

City of Santa Fe, NM

City of Colorado Springs, CO.

Population - 418K

None specified
 15 days
 None specified
 Neighborhood Assoc.
 None specified
 None specified
 None specified
 None specified
 Certified mail to NA rep.

15 calendar days
 15 calendar days
 300'
 Property Owner and NA
 15 calendar days
 15 calendar days
 None specified
 None specified
 Tenant mailing if owner address different than physical address.
 Process same for all land dev. Cases.

None specified
 10 days
 150', 500', 1,000' determined by Manager
 Prop. Owners and NA
 NLT 10 days; NMT 30 days
 min. 10 days after preapp, formal submittal, and P&Z or CC
 None specified
 None specified
 Nhd. mtgs. may occur at pre-app, internal rev., or final stage. All public notice is case by case based on impact.

None specified
 15 days
 100'
 Property owners; NA
 15 days
 15 days
 None specified
 Director specified
 Notification lot size dependent. Some notice by City, some by Appl.

None specified
 10 days
 150', 500', 1,000' determined by Manager
 Prop. Owners and NA
 NLT 10 days; NMT 30 days
 min. 10 days after preapp, formal submittal, and P&Z or CC
 None specified
 None specified
 Nhd mtgs. may occur at pre-app, internal rev., or final stage. All public notice is case by case based on impact.

None specified
 10 days
 150', 500', 1,000' determined by Manager
 Prop. Owners and NA
 NLT 10 days; NMT 30 days
 min. 10 days after preapp, formal submittal, and P&Z or CC
 None specified
 None specified
 Nhd mtgs. may occur at pre-app, internal rev., or final stage. All public notice is case by case based on impact.

None specified
 15 days
 100'
 Property owners; NA
 15 days
 15 days
 None specified
 Director specified
 Notification lot size dependent. Some notice by City, some by Appl.

None specified
 10 days
 150', 500', 1,000' determined by Manager
 Prop. Owners and NA
 NLT 10 days; NMT 30 days
 min. 10 days after preapp, formal submittal, and P&Z or CC
 None specified
 None specified
 Nhd mtgs. may occur at pre-app, internal rev., or final stage. All public notice is case by case based on impact.

None specified
 10 days
 150', 500', 1,000' determined by Manager
 Prop. Owners and NA
 NLT 10 days; NMT 30 days
 min. 10 days after preapp, formal submittal, and P&Z or CC
 None specified
 None specified
 Nhd mtgs. may occur at pre-app, internal rev., or final stage. All public notice is case by case based on impact.

Planning and Zoning Commission meeting 2/28/12 excerpt

I. OTHER BUSINESS – NONE

Scholz: That concludes our regular business but we have another piece of business. Commissioner Shipley, you brought something to me at the beginning of the meeting, actually before we started the meeting. Would you please introduce that?

Shipley: Mr. Kyle gave us a notice in here regarding a question we had at the last meeting regarding the...actually it was basically two things; was that the notification period for notices and the mailing period for notices...in other words, currently it's either nine or ten days. And the second part of that was, was there a requirement of about 200-feet that people who lived within or businesses that were within 200-feet were considered sent notices or required to be noticed? And I felt like that since you got this feedback and a recommendation that the feedback was that the staff would like to hold off amending our current procedures until direction is obtained from this work session as it may result in additional changes in code amendments brought forth, which is the work session we are talking about is with the City Council. And I felt like that we ought to talk about this tonight, give our recommendations to the Council, so that when they are doing their work session they can see what basically we have come up with and, therefore, maybe some of the things that we think are important they might feel that same way. So I thought this would be a good topic for, I guess, under Other Business at this time.

Kyle: Very well. Mr. Chairman, Commission, as we got to the Staff Announcements I was going to ask for exactly that. If the Commission does want to make a formal statement as a Commission certainly we can do that tonight or you can provide a response to staff which we would forward to the City Council as staff makes their presentation at the March 26th work session. I was also going to advise the Commission that if the Commission membership wants to attend that session they would certainly be allowed to that. I just need to know if four or more of you were going to attend to please let me have notice so that we could do a potential quorum notice so we're covered that way. Otherwise, yes, I think it's completely appropriate for the Commission to discuss the issue and to have a recommendation or issue they would like to see forwarded or at least provided to City Council we will be happy to do that.

Scholz: All right. Commissioner Shipley?

Shipley: Well, again, I kind of went back and looked at the thing and there was a great disparity between that. One example was tonight that we had notice

for the child care center and the notice was published in the newspaper eleven days prior to today's meeting and the notices were mailed to the homeowners adjacent living within the 200-feet the same time. It would seem that everything that we do is done pretty much a month, month-and-a-half in advance. In other words, the agenda for the next meeting has been pretty much set up and you know what's coming next month and the next month after that. There may be some additions or something else that's minor that's added to that but it would seem that the 21-day notice period would be plenty of time for mail. In other words, it takes three to five days to put it out. If it goes locally it's generally three to five days before you get a piece of mail out here and then that gives the people that are getting that mail, you know, fifteen or sixteen days' time, and it's not all work days, that's just calendar days, it gives them time to be able to respond or to go investigate or call Community Development or whatever they need to do. And, in my opinion, their 21-day period for notification is more than adequate. I initially looked at fifteen days but if you're given five days, you know...let's say the worst case is five days for mail to get to somebody, especially if they don't live in this area and there are a lot of homeowners that have investment properties here that may be affected that may live someplace else and so they've got to make time to make arrangements and time to get information and then to write a letter or write a letter or do whatever they need to do. So, my thought was 21-days. If somebody else would like to discuss that and that was it.

I also looked at the 200-feet and, again, it says 200-feet but there was a clause in there that says there must be a minimum of...what? Fifteen people that have to be notified within...so if there are only five people that live within 200-feet then they have to go out to 300-feet to get ten more people or 400-feet or 500-feet or whatever that is. So I don't think that is as big a problem as the mailing time.

Kyle: Mr. Chairman, if I may, I would also point out that that 200-feet excludes all public rights-of-way, channels, etc. so very often our mailing boundaries are beyond that 200-feet, especially when you get into compact neighborhood like the variance we were in, lots of streets involved and so you tend to move that. But you are correct: there needs to be fifteen property owners minimum. So, you know, certain cases, especially when you are on the periphery of town, etc. you can end up with quite a large notification boundary.

Scholz: So, Commissioner Shipley, are you suggesting that we make this recommendation to City Council or a...go ahead...

Shipley: What I was suggesting it's been...that's my thoughts. If anybody has any thoughts more or less, whatever, would be a good time to discuss it and then I...but I so think we need to tell them what we think works best and I know that one of goals of the City Council has always been, you know,

participation from the people, the residents of the city...

Scholz: Certainly.

ShIPLEY: ...and, in my opinion, you must give them enough time so that they can participate and be informed. So I just thought it would be a good topic of discussion and then maybe we could decide tonight if everybody's in agreement or...because it's coming up pretty quick.

Scholz: All right. Other discussion? Yes, Commissioner Stowe.

Stowe: I see the need for more time for notification and I think 21-days is good. Thank you.

Scholz: Okay. I keep thinking that this problem will diminish simply because of the electronic notification. I don't know if that's true or not. I keep hoping that it will be true. I tell my students, for instance, that I've posted things on the web and so they can retrieve them; but they don't always do that, you know, and they're the younger, supposedly hipper group who are going to be more attuned to electronic things. Yes, Commissioner Crane.

Crane: Are you saying, Mr. Chairman, that the public should look on the City web site to see what's there that might be regarding their neighborhood?

Scholz: Well, that's certainly a possibility and I have had two City Councillors who have web distribution lists or I should say, email distribution lists, in which they distribute things like the minutes of the Council, the Manager's newsletter, you know, things like that; and so I get direct messages from these folks. Perhaps we could ask for email addresses...I don't know how we could do that, though, get email addresses of people in the surrounding areas to send them a message saying that...

Crane: I see that as quite a problem.

Scholz: Yeah, I think it would be.

Crane: I think the City has to be proactive in this. We cannot reasonably expect the people in a neighborhood to keep abreast of these developments on a routine basis.

Scholz: No, probably not and I know people don't see the signs either. We've had a number of people complain that, you know, "I never saw a sign," and I drive by and the sign's posted right there. They can't miss it.

Crane: I didn't see one at 1309 Arizona today.

Scholz: Oh, yeah. It was there.

Crane: Yellow sign?

Scholz: I'm pretty sure it was there.

Crane: I didn't see it.

Beard: I saw the Arizona one but I didn't see the other one.

Scholz: Oh, well, I saw both of them this morning, but any way. *C'est la vie*. Yes Commissioner Shipley.

Shipley: I would just say that the mail is the excepted form of communication on, especially, legal matters; and you can't assume that everybody has email access because the majority of the citizens of this community have, you know, the median income is less than \$30,000. So they may have a computer but they're not watching the government channel. They're other things with that and I would think that, you know, when you get a letter as a property owner then they take notice and a lot of them just throw those away as well.

Scholz: Oh, I'm not suggesting that we discard the mail thing I'm just saying that I think eventually this problem may solve itself...but not today. All right, any other discussion on this? Well, gentlemen, do you want to recommend then to the City Council or to the Community Development Department that we make this 21 days? Is that going to be our recommendation? All those in favor say aye.

All: Aye.

Scholz: Okay, those opposed same sign. That'll be our recommendation. Thank you, Mr. Shipley, for bringing it up. Mr. Kyle?

Kyle: Mr. Chairman, Commission, just for clarification: that would be applicable to subdivisions as well as zone requests, etc. that require notice...

Shipley: I think 21-days is just...make it a blanket 21-days and then there's no question and everybody on the staff knows that they've got to mail and your papers' got to be out 21-days in advance with that so people can have time to respond. And that's the real goal is to say, you know, "We want you to have the opportunity to participate so we're going to make the effort to get it out that time."

Scholz: What?

Kyle: And again, just based on something you just said: you're saying 21-days notice for mailing or publishing as well?

Shiple: Do the same.

Kyle: Both?

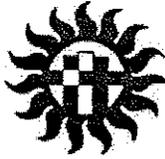
Shiple: Publish as well. Yeah.

Scholz: Okay. Anything else?

Shiple: I think the fact that you asked effective when but I think that's what the City Council is going to decide and we're basically recommending to the City Council that that be the time frame that we're talking about as far as notification, both mail and newspaper, etc.

Scholz: Right.

DRAFT



City of Las Cruces

Identified Neighborhood Association Information and Notification Policy

BACKGROUND

Providing information and notification of proposed development to Las Cruces neighborhood associations promotes improved communications between neighborhood associations and city government.

Early identification and resolution of potential conflicts involving neighborhoods and the private sector can be of utmost value to all concerned.

Due to the potential impact of new development and redevelopment, it may be useful if developers coordinate major proposals and plans with neighborhood associations as early as practical in the application process.

The purpose of this policy is to meet the needs specified above, while not limiting the rights of any other person, including non-registered neighborhood groups, to input directly into the city's decision-making processes.

DEFINITIONS

Identified Neighborhood Association - any organized group of fifteen or more dwelling units, business entities, or combination thereof that own or occupy real property within a specified geographic area of the City. An identified neighborhood association shall have at least three officers, adopted by-laws, and membership open to all residents, land owners, and business owners within their boundaries. Being a Neighborhood Association does not in itself require that the group secure a business registration or license.

Geographic Area - the land area within association boundaries.

Development Application - a submittal package for a zone change, variance, special use permit, master plan, preliminary plat, or annexation.

CRITERIA FOR DESIGNATION AS AN IDENTIFIED NEIGHBORHOOD ASSOCIATION

In order to be designated as an Identified Neighborhood Association:

- A. The Identified Neighborhood Association shall complete an application form. The City shall be furnished with names, addresses and available phone numbers of current neighborhood association officers and/or board members and with a description of the association's geographic boundaries. The boundaries of the neighborhood association shall be reasonable; boundaries are recommended to include an area of the city not more than one square mile and not less than 15 acres or 4 blocks. No new neighborhood association shall be designated which has within its boundaries a geographic area already defined within the boundaries of an existing, previously recognized Identified Neighborhood Association.
- B. The association shall file with the City a current copy of their bylaws. Bylaws shall not discriminate on the basis of race, color, religion, sex, familial status, or national origin. Bylaws shall additionally and otherwise conform to the Constitution and laws of the United States and State of New Mexico. Any stated purpose or primary objective of the association shall be reasonably related to land use and development and/or community and neighborhood issues.

RESPONSIBILITIES OF IDENTIFIED NEIGHBORHOOD ASSOCIATIONS

Make full membership open to all persons residing within its boundaries and to all persons and legal entities owning property or having a place of business within its boundaries.

Hold at least one meeting per year for which it makes a reasonable attempt to give written notice to every land owner, household and place of business within the association's boundaries; mail, delivered handbills, or a number of prominent signs are examples of adequate notice. No election shall be held at a meeting of an association unless the meeting is so advertised.

By interaction with their members, residents, and the city, strive to uphold good planning, protect the environment, and promote the community welfare. Communication should be fostered between the Identified Neighborhood Association and city government on plans, proposals, and activities affecting their area.

Attempt to inform members and other eligible participants in their neighborhood of issues for discussion. Strive to provide actual or constructive notice to members and other eligible participants in their neighborhood of planning and land use issues that they receive notice of, and that will affect their area.

Establish an orderly and democratic means for making representative decisions.

Establish and follow a clear method for accurately reporting the neighborhood's position to the City. When a neighborhood association presents its official position on an issue to the city, it shall identify whether the decision was reached by the board, a poll of the general membership, or by a vote at a general membership meeting, and shall report the vote for and against the position.

Comply with its bylaw provisions.

Notify the City of general membership meetings at least two weeks in advance, when possible.

Officers of Identified Neighborhood Associations shall update the City regarding membership, contact information for all board members, association boundaries, and other information annually or as may be necessary.

RESPONSIBILITIES OF THE CITY

Mail notice of development applications which would cover areas within, contiguous to, or within 300 feet of an association's boundaries to Identified Neighborhood Associations; notification shall be made when the application is filed. Identified Neighborhood Associations shall be notified of new plans and plan amendments upon initiation of such a project by city departments and within five business days of application filed by others. The City shall mail such associations notice concerning all subsequent public hearings concerning such proposals, except hearings which have been deferred to a specific time announced at the prior hearing.

Supply all Identified Neighborhood Associations with a current list of all city government agencies, their department heads, and corresponding phone numbers and contacts.

Supply the public and city officials with the names and addresses of the two designated recipients of notices, as most recently specified by each Identified Neighborhood Association.

Designate a liaison between each Identified Neighborhood Association and the city.

Provide for the sharing of information with Identified Neighborhood Associations by furnishing, upon request, available pertinent information.

Response within seven days of receipt of any correspondence received from an Identified Neighborhood Association that requests an answer, definition, or status of any city project within their boundaries.

Encourage individuals to cooperate with their existing neighborhood association but shall not restrict individual communications.

RESPONSIBILITIES OF DEVELOPMENT AND REDEVELOPMENT APPLICANTS

Applicants for development approval, within 5 days of filing the application, shall make a reasonable attempt to give written or personal notification of their proposal to any Identified Neighborhood Association which covers, abuts, or is within 300 feet of the site of their plans. Such notice shall contain the following information:

1. A detailed description what is being applied for;
2. A method by which the applicant can be contacted;
3. A statement as to the application's projected impact on the land comprising the geographic boundary of the neighborhood.

Certified letters, return receipt requested, mailed to the two designated neighborhood association representatives on file with the City constitutes a reasonable attempt to notify an association. Failure by an applicant to show proof of either notification in person or a reasonable attempt to give written notification of its proposal to such designated association representatives shall be grounds for an Identified Neighborhood Association to request deferral of a hearing.