



City of Las Cruces[®]

PEOPLE HELPING PEOPLE

COUNCIL WORK SESSION SUMMARY ROUTING SLIP

Meeting Date February 8, 2016

TITLE: PLANNING, ZONING, APPEALS AND PROCESSES.

- Are there attachments to the Council Work Session Summary? Yes No
- Will there be a Video Presentation for this item? Yes No
- Will there be a PowerPoint Presentation for this item? Yes No
- If "yes", will a copy of the PowerPoint Presentation be included on the Council Work Session Agenda? Yes No

DEPARTMENT / ORGANIZATION	SIGNATURE	PHONE NO.	DATE
Drafter/Staff Contact		528-3049	1-29-16
Department Director		528-3067	1-29-16
Other			
Assistant City Manager/CAO (if applicable)			
Assistant City Manager/COO (if applicable)			
City Manager			



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Council Work Session Summary

Meeting Date February 8, 2016

TITLE: PLANNING, ZONING, APPEALS AND PROCESSES

PURPOSE(S) OF DISCUSSION:

- Inform/Update
- Direction/Guidance
- Legislative Development/Policy

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

Staff has prepared a presentation to explain general planning terms and concepts; outline the City's development application types, processes, and decision authority; and discuss the appeals process and procedure. The work session provides an educational opportunity for both new and existing City Council members regarding this sometimes complex subject. The Planning and Zoning Commission (P&Z) is also invited to participate in this informative forum as both a courtesy and to encourage open dialogue and understanding between City Council and their appointed P&Z members.

SUPPORT INFORMATION:

1. Attachment "A", Las Cruces Municipal Code, Chapter 38, Article II, Section 38-10 to 38-19.

ARTICLE II. ADMINISTRATION OF THE ZONING CODE

Sec. 38-10. Planning and Zoning Commission

- A. CREATED. A Planning and Zoning Commission is created by the City Council with the adoption of this Code. The Planning and Zoning Commission shall review the planning, zoning and platting of the City, investigate any related problems and make recommendations to the City Council.

- B. DUTIES.
 - 1. FINAL ACTION. The Planning and Zoning Commission shall take final action on the following:
 - a. All Special Use Permits, Master Plans (except as part of an annexation request), Subdivisions (except Alternate Summary Plats and Final Plats as defined in the City's Subdivision Code and subdivisions requesting three or more waivers to planning-related issues), and Final Site Plans of Planned Unit Developments (unless the Final Site Plan is submitted with the Concept Plan),
 - b. Within the Infill Areas, all Infill development proposals, and associated variances,
 - c. All variances on property whether stand alone or that require a Special Use Permit or where a Planned Unit Development is proposed,
 - d. All challenges to administrative decisions or interpretations of the Zoning Code, Sign Code, or Landscape provisions of the City Design Standards,
 - e. Appeals of design-related interpretation disagreements between the City staff and the University Avenue Corridor Citizens' Design Review Committee,
 - f. Appeals of City staff decisions on matters associated with the Avenida de Mesilla Gateway Overlay Zone District,
 - g. Appeals of City staff decisions on matters associated with the Lohman Avenue Overlay District, and
 - h. All matters submitted pursuant to Section 3-19-11 NMSA.

Any decision of the Planning and Zoning Commission may be appealed to the City Council in accord with Section 38-13.

- 2. RECOMMENDATION TO CITY COUNCIL.
 - a. The Planning and Zoning Commission, with the assistance of City staff and interested persons, shall recommend the Comprehensive Plan to the City Council. In discharging this duty, the Commission shall consult with and coordinate the planning activities of departments and agencies of the City to assist in the development of the Comprehensive Plan. In its planning activities, the Commission shall take due cognizance of the planning activities of adjacent units of government and other affected

public agencies. The Commission shall periodically review the plan and recommend amendments whenever necessary. The Plan may be prepared and adopted in sections, each of which relates to a major subject of the Plan or to a major geographical section of the City. Before adopting the Comprehensive Plan or any section of amendment of the Plan, the Commission shall hold at least one public hearing. The Comprehensive Plan or any section thereof shall be adopted by a majority of all members of the Commission. A copy of the Plan or of any section or amendment thereof adopted by the Commission shall be sent to the City Council for consideration. Until adopted by the City Council, the Plan shall constitute only the recommendation of the Planning and Zoning Commission.

- b. The Planning and Zoning Commission shall recommend to the City Council approval, denial or modification of all requests for Zoning Code amendments, Sign Code amendments, zone changes, annexations (a master plan that is part of an annexation request), initial zonings, the Concept Plan (and Final Site Plans if submitted with the Concept Plan) of Planned Unit Developments, and associated variances. As noted in Sec. 38-10B.1.b, the Planning and Zoning Commission shall take final action on all requests regarding Infill Parcels.
- c. When the Planning and Zoning Commission recommends denial of any matter on which the City Council takes final action, an appeal to City Council is not required.
- d. Community Development Department staff may make a recommendation, if applicable, on any matter to come before the Planning and Zoning Commission.

C. PRE-APPLICATION PROCEDURES.

- 1. Development Proposal- Initial Discussion (Annexations, Zone Changes, Variances, Planned Unit Developments and Special Use Permits). Any proposed development related action (as listed herein) causing need for public notification, review and approval by a recognized board, committee, commission or council (excludes design or building permit submittals that may require design review committee consideration) shall first be required to have said proposal reviewed at a pre-application meeting scheduled and held by the Community Development staff. A representative for the proposed development action shall attend the pre-application meeting and discuss the proposal in general terms, providing enough specifics to allow attending staff an opportunity to gauge and determine neighborhood and/or community impacts. In that this represents an initial and informal discussion, information provided to the representative regarding procedural nuances or other regulatory related information shall be considered preliminary feedback based on information received, and shall not represent a complete disclosure of all regulatory measures that may apply upon formal review. In no circumstances should related discussion by staff represent a final disposition on the preliminary proposal at hand.
 - (a) Neighborhood group and/or noticed area (property owners within the notification distance) notification determination. Staff upon consideration

of the information received during the pre-application meeting, will instruct as to whether early notification of the subject proposal by the applicant to a neighborhood group(s) (recognized group(s)) and/or noticed area shall be necessary prior to formal application and submittal of the development proposal to the city. The criteria used by staff to determine notice need may include, but not be limited to the following:

- (i) Development that is likely to cause significant traffic impacts due to limited roadway access or potentially a decrease in level of service based on the subject roadway's design.
 - (ii) Potential land use conflicts resulting from proposed land use distribution adjacent to existing development of a differing land use classification such as proposed commercial uses adjacent to low density residential.
 - (iii) Known neighborhood concerns on tangible and reasonable development issues that could be mitigated through design alternatives. An example of a concern congruent to this criterion is development consistency with surrounding development styles as they may relate to setback standards, architectural style, etc. An example of a concern not congruent to the criterion is disapproving development on vacant property due to the elimination of "open space" said vacant property provides or development of vacant property because one's view may be compromised.
- (b) Early Notification exception. Staff determination of early notice need which shall include an open invitation to discuss the proposal at a meeting, shall not pre-empt the Planning and Zoning Commission, City Council or other reviewing bodies with approval (recommending or final action) authority from thereafter requiring an additional meeting(s). Criteria used by the applicable reviewing body shall be at their discretion and may or may not follow the criteria identified in the preceding provision. Significant deviation of plan proposal post neighborhood group/noticed area meeting may subject the applicant from thereafter participating in another meeting to inform and discuss revisions. Changes addressing concerns raised at said meeting shall not necessarily subject the applicant to another meeting; however, an omission in the proposal that is added post meeting and deemed significant by Community Development staff is a candidate for reconsideration by the notified neighborhood entities prior to consideration by any formal reviewing body.
- (c) Early notification recipients. Notification recipients shall include registered neighborhood groups, and/or associations, identified on the applicable Community Development Department's web page. In the event an identified association or group does not exist or cover an adequate area surrounding the proposal, both the neighborhood group/association and the property owners within 500 feet shall be notified. If no association or group exists within the notification boundary, notification to property owners shall take place using the same distance threshold. Measurement shall be made radially from the outermost property boundary where the subject proposal is located. Any association/group boundary or property

boundary that falls either partially or entirely within said radius based on the qualifying standards of this subsection shall receive notification. Contact and mailing information for associations, groups and property owners to be notified shall be provided by the Community Development Department. Mailing preparation, expenses and materials are the responsibility of the developer, applicant and/or representative. Early notification shall take place no later than fifteen (15) calendar days prior to the date of submittal. Any party requesting a meeting pursuant to item (d) that follows, may cause delay with the proposal's submittal in order to accommodate the agreed upon meeting schedule and other factors necessary to meet submittal content.

- (d) Early notification form and content. All required early notification shall be sent via regular, non-certified, first class mail and the content of the notice shall include at minimum:
 - (i) A detailed description of what is being pursued in terms of development.
 - (ii) Information as to how the developer, applicant, or representative for the development action may be contacted.
 - (iii) A statement as to how the proposal may impact the neighborhood(s) surrounding the subject property where the development is to occur.
 - (iv) An open offer to participate in a meeting with the association(s)/group(s) and/or property owners at a mutually agreed upon date, time and location in order to discuss the proposal more fully.
 - (v) A need to provide a WRITTEN meeting request (if desired) to the development representative, copying Community Development staff either in a letter or email format within the stated fifteen (15) calendar day threshold. Requests for a meeting within the fifteen (15) calendar day period shall render the meeting need mandatory prior to submittal whether or not the meeting takes place inside or beyond this fifteen (15) calendar day period. Requests that come in after said period do not compel the applicant to entertain a meeting prior to submittal; however, a meeting with those requesting one is advisable prior to formal review of the proposal by a recommending or decision making body.
 - (vi) Community Development staff contact information for any related correspondence or general inquiry.

- 2. Neighborhood group/noticed area meeting. It shall be the responsibility of the applicant or representative for the proposal to conduct the meeting and supply any and all materials necessary to convey development parameters as applicable. Additionally, the representative shall be responsible for minute transcription (summary or verbatim) which clearly indicates the date, time and location of the meeting and the general nature of conversation that took place regarding the proposal. Information shall at minimum identify key points that convey support for or the lack thereof for the proposal as presented.

D. APPLICATION PROCEDURES.

Planning and Zoning Commission. Application for all zoning district changes, annexations, initial zonings, special use permits, planned unit developments, Sec. 38-10 variances, and Zoning Code and Sign Code text amendments shall be submitted to the Community Development Department. The submittal requirements for the above-listed requests include, but are not limited to the following:

- a. Zoning District Changes, Annexations (Refer to Chapter 37, Article IX: Annexations, of the Subdivision Code), Initial Zoning and Sec. 38-10 variances:
 - 1) Official Zoning application and Development Statement.
 - 2) Submittal fee.
 - 3) Notarized affidavit.
 - 4) Copy of property's survey and legal description:
An accurate and complete boundary survey shall be made of the land to be developed. Property lines shall be shown giving the bearings in degrees, minutes and seconds. Distances shall be shown in feet and hundredths. Curved boundaries or lines on the survey shall provide sufficient data to enable the re-establishment of curves on the property. The location and description of all monuments set or found shall be included where applicable.
 - 5) Copy of site plan, if applicable:
The site plan shall be at a scale that adequately represents the information as determined by the Community Development Director or designee. The plans shall be prepared on sheets of paper that are at least 8 1/2" x 11" in size. Copies provided shall be legible and of a good quality, with no limit to the number of sheets used. The plans shall indicate the following:
 - a) Title of site plan.
 - b) Total acreage of site.
 - c) Date of preparation, north arrow, written and graphic scale.
 - d) Identification of site by lot, block, subdivision, if applicable.
 - e) Name and address of property owner.
 - f) Name and address of applicant, if applicable.
 - g) Name and address of consulting firm or representative, if applicable.
 - h) Location and type of all land uses.
 - i) All site improvements with all setbacks indicated.
 - j) Dimensions of all buildings.
 - k) Existing and proposed vehicular circulation systems, including parking areas, storage areas, service areas, loading areas, and major points of access, including street pavement width and right-of-way.
 - l) A landscaping plan, to include the location, size, common name, and biological name of all landscaping materials.
 - m) Where applicable, pedestrian and bicycle circulation system, and its relation to surrounding circulation.
 - n) Where applicable, location and arrangement of all open space, common recreational space, and private open space.

- d. Infill Development proposals excluding building permit development pursuant to Section 38-48. Also refer to C.a.9. above as applicable.
- e. University District proposals excluding building permit development pursuant to Section 38-44. Also refer to C.a.9. above as applicable.
- f. Avenida de Mesilla Gateway Zone Overlay District excluding building permit development pursuant to Section 38-44. Also refer to C.a.9. above as applicable.
- g. Airport Overlay Zone District excluding building permit development pursuant to Section 38-46. Also refer to C.a.9. above as applicable.
- h. Lohman Avenue Overlay Zone District excluding building permit development pursuant to Section 38-47. Also refer to C.a.9. above as applicable.
- i. North Mesquite Neighborhood Overlay Zone District excluding building permit development pursuant to Section 38-49.1. Also refer to C.a.9. above as applicable.
- j. South Mesquite Neighborhood Overlay Zone District excluding building permit development pursuant to Section 38-49.2. Also refer to C.a.9. above as applicable.
- k. Alameda Depot Neighborhood Overlay Zone District excluding building permit development pursuant to Section 38-49.3. Also refer to C.a.9. above as applicable.
- l. Zoning Code and Sign Code Text Amendments: Submit fee and a draft of the proposed code text amendment to the Community Development Department. The Community Development Director or designee may require that a proposed text amendment to the Comprehensive Plan, affected Plan element or other affected plans be submitted with the code text amendment.

Submittal requirements may be waived by the Community Development Director or designee. The staff may require more information before processing a request. The Planning and Zoning Commission and/or the City Council may require additional information and/or require a neighborhood group and/or noticed area meeting at any point in the consideration of the proposal before the affected body before acting on a request and/or appeal.

E. PUBLIC HEARING AND NOTICE REQUIREMENTS.

1. Public Hearing - The Planning and Zoning Commission shall conduct a public hearing at a regular or special meeting on the following:
 - a. Proposed amendment to the Comprehensive Plan, Plan element, other plans required to be reviewed,
 - b. Proposed amendment to the Zoning Code and Sign Code,
 - c. Zoning district change, with or without conditions,
 - d. Special Use Permit,
 - e. Planned Unit Development,
 - f. Annexation and Initial zoning,
 - h. Variances (See Sec. 38-10G), and
 - i. Infill Development Proposals.

2. Agenda - The agenda for Planning and Zoning Commission meetings shall be available no later than fifteen (15) calendar days prior to any meeting.
3. Posting - Notice of the public hearing about a request shall be posted in conspicuous places on the property by the property owner, applicant or representative at least fifteen (15) calendar days prior to the Planning and Zoning Commission meeting. A sign measuring four (4) feet by four (4) feet shall be used and secured with appropriate supporting hardware made available by Community Development staff. When the property has multiple street frontages, one sign per frontage shall be posted. Large properties may require a greater number of signs which shall be determined by Community Development staff. It shall be the responsibility of the property owner, applicant or representative to ensure continuous posting throughout the public hearing processes. Processes for purposes of this provision shall start with the initial reviewing entity and cease when a final determination is made on the proposal regardless of the number of reviewing entities involved. In that multiple reviewing entities may be involved, Community Development staff will inform the property owner, applicant or representative of necessary changes needed on the sign to reflect the appropriate reviewing entities, meeting dates and venues.
4. Notice –
 - a. Notice of the Planning and Zoning Commission public hearing shall be mailed to all property owners as further described below when one city block or less is under consideration for the activities listed, (except zone change-related cases that are recommended to City Council and subdivision related cases, see Section 38-10B2b. Notice shall be sent by certified, first class mail, to all property owners as shown by the records of the County Assessor, within at least one hundred (100) feet of the subject property of the proposed request, excluding streets, alleys, channels, canals, railroads, and all other public rights-of-way. Thereafter, regular, non-certified, first class mail shall be sent to those properties that fall within a distance greater than one hundred (100) feet and no less than five hundred (500) feet of the subject property. The secondary distance of ($\geq 100'$ - $\leq 500'$) may include streets, alleys, channels, canals, railroads, and all other public rights-of-way. When an area larger than one city block is under consideration, regular non-certified, first class mail shall be used for all mailed notification and is not subject to right-of-way provisions as outlined above. Regular, non-certified, first class mail shall also be sent to all recognized neighborhood groups within five hundred (500) feet of the subject property. Notice shall be mailed at least fifteen (15) calendar days prior to the required public hearing. Notice of the time and place of the public hearing shall be published at least fifteen (15) calendar days prior to the public hearing in a newspaper of general circulation in the City.
 - b. Notice of the City Council public hearing regarding zone change-related cases see Section 38-10B2b, shall be sent by certified and/or regular, first class, non-certified mail as outlined in paragraph E4a.

F. SPECIAL NOTIFICATION. The Community Development Department shall provide notification, by certified mail, to the Town of Mesilla of all cases presented to the

Planning and Zoning Commission. Notification shall be required for only those cases south and west of Interstate Highway 10, north of Union Avenue and east of Motel Boulevard (N.M. State Highway 292). For notification area, see Figure 1: Town of Mesilla Special Notification Area Map at the end of this Article.

- G. ANNEXATION AND INITIAL ZONING. A petition for annexation shall include an annexation plat, master plan and initial zoning request. Annexation plat, master plan and initial zoning shall be heard as one case, but separate action shall be taken on the annexation plat, master plan and initial zoning. The City Council shall take final action on the annexation plat, master plan and the initial zoning request after the Planning and Zoning Commission provides a timely recommendation. For detailed information about annexation, refer to Chapter 37, Article IX: Annexations, of the Subdivision Code.
- H. ZONING DISTRICT CHANGES WITHOUT CONDITIONS (Unconditional Zoning). A zoning district change or rezoning is a change in classification of property. When approved by the City Council and the thirty (30) calendar day appeal period has expired, the zoning district change shall be recorded and shown on the appropriate zoning district map within the "Official Zoning District Atlas." Approved initial zoning shall be shown on the appropriate zoning district map within the Official Zoning District Atlas. Special Use Permits shall not be considered a zoning district change. No condition that restricts the use of land beyond that otherwise provided by district provisions shall be concurrently imposed with the approval of a zoning district change, except as outlined in Sec. 38-10H. However, a variance may be recommended by the Planning and Zoning Commission and granted by the City Council as part of a zoning district change request.
- I. ZONING DISTRICT CHANGES WITH CONDITIONS (Conditional Zoning).
1. **AUTHORIZATION.** Zoning district changes may be approved subject to one or more conditions that restrict the use of land beyond that otherwise provided by the district. Variances may be recommended by the Planning and Zoning Commission and granted by the City Council as part of conditional zoning consideration.
 2. **PURPOSE AND INTENT.** A rezoning subject to a condition is to be used only in circumstances where the proposed change of district is appropriate to allow certain uses which are in accordance with the Comprehensive Plan, and which are not incompatible with the surrounding neighborhood.
 3. **SCOPE.** It shall be unlawful to utilize, sell, or lease property rezoned with conditions without first providing to any prospective buyer or lessee a disclosure statement stipulating the conditions and the time limitation prescribed, if any, and without filing a copy of said disclosure with the office of the Doña Ana County Clerk. A condition attached to a zoning district change shall be consistent with the goals, objectives and policies of the Comprehensive Plan, Plan elements or other plans adopted by the City Council and may
 - a. Limit the use of property affected so that one or more of the uses which would otherwise be permitted in the district being adopted shall not be permitted in the specific district as conditioned, and/or

- b. Require compliance with such design standards or time limitations relating to the construction, placement and size of buildings, landscaping, streets, roadways, pathways, utilities, drainage ways, and other site design features as may be necessary to protect the community from the impact of future development.
4. **LIMITATION ON USING CONDITIONAL ZONING.** Any use or structure that requires a Special Use Permit under Sec. 38-54 shall not be permitted by using conditional zoning.
5. **INITIATION OF CONDITIONAL ZONING.** Conditional Zoning may be initiated by the Community Development Director or designee, the Planning and Zoning Commission, City Council, or by the applicant. Requests shall specify those uses, site design features, time limitations, or other conditions for the conditional zoning.
6. **PLANNING AND ZONING COMMISSION ACTIONS.** The Planning and Zoning Commission shall follow procedures specified in this Section when acting on proposed zoning district changes with conditions. The Planning and Zoning Commission may consider and take action on all aspects of the proposed conditions and limitations. The substance of all proposals, site plans, and other pertinent information with regard to conditional zoning shall be made a permanent part of the action recommending approval of said conditional zoning.
7. **AMENDMENT OF OFFICIAL ZONING DISTRICT ATLAS.** The Official Zoning District Atlas shall be amended as necessary to reflect the existence of zoning changes with conditions. Areas affected by conditions shall be identified by the use of the suffix "C" and shall be clearly distinguished from areas in like zoning district that are not subject to special limiting conditions. The action creating a district subject to conditions and a copy of all conditions shall be available in the Community Development Department as a supplement to the Official Zoning District Atlas.
8. **CONDITIONAL ZONING CONTROL.** Conditions attached to a zoning district change shall govern over any less restrictive zoning regulations unless specifically provided otherwise. All other regulations not specifically affected by a condition shall apply in the same manner as if the property were not subject to conditions.
9. **REVOCATION OF CONDITIONAL ZONING DESIGNATION.** A conditional zoning designation shall be revoked and revert to the previous zoning district designation if the designated property is not used or developed in accordance with the conditions and all other applicable regulations within two (2) years from the date of City Council approval. Upon a formal request from the property owner, the Community Development Director or designee may grant a one (1) time, one (1) year extension as deemed appropriate. When the only conditions placed upon a zoning designation are prohibitions (such as No billboards allowed or No medical offices allowed), the conditions shall run with the land and shall not be subject to the two (2) year development window previously stated. Furthermore, these prohibitive conditions shall only be removed if a re-zoning action causes the condition to be removed. If compliance with the "non-prohibitive" conditions are not made whole, the property shall revert back to the prior designation unless the Community Development Director or designee certifies in writing that remedial action can bring about compliance with approved conditions in a timely fashion.

Reversion shall cause the use of the property to follow appropriate zoning requirements as applicable. When conditions speak to performance criteria (i.e. requirement for opaque screen along north property line or height limitations established, etc.) upon development, conversion of property or expectation thereof, the two (2) year revocation period shall apply.

J. VARIANCES. The Planning and Zoning Commission and the Public Works Director or designee (See Sec. 38-10I.1) are authorized to grant variances.

1. A variance shall be defined as a variation in the numerical requirements of this Code, the Sign Code, or the Design Standards (landscaping). Numerical variances to the clear sight triangle requirements shall be considered, reviewed, denied, or approved by the Public Works Director or designee, as per Article III of Chapter 26.
2. A variance proposal to be acted on by the Planning and Zoning Commission may either be part of a request for rezoning, initial zoning, special use permit or planned unit development, or be submitted independent of such proposals and heard based on the individual merits of the request. Use variances, which are non-numerical, as well as numerical variances to the provisions of this Code, may be granted by the Planning and Zoning Commission only in accordance with the Infill Development Process (IDP), Sec. 38-48. Administrative decisions on or interpretations of the Zoning Code or the Sign Code by staff may be affirmed, reversed, or modified pursuant to this section and appealed to the City Council in accord with Sec. 38-13, except as provided in Sec. 38-4D.
3. In the event of a denial decision by the Planning and Zoning Commission and/or City Council, there shall be no reapplication for the exact same variance, which was properly advertised and acted on, for a period of one (1) year after the date of the decision of the Planning and Zoning Commission and/or City Council. A modified variance request processed through the IDP, Sec. 38-48, may be resubmitted at any time following action by the Planning and Zoning Commission.
4. A variance shall be automatically revoked if a building permit, sign permit or business registration/license for the approved variance has not been obtained within one (1) year. Upon a formal request from the property owner, the Community Development Director or designee may grant a one (1) time, one (1) year extension as deemed appropriate.

K. CRITERIA FOR DECISIONS. The Planning and Zoning Commission shall review each request in relation to the goals, objectives and policies of the Comprehensive Plan, Plan elements, other applicable plans, and the purpose and intent of this Code, Sec. 38-2 and 36-1 of the Sign Code, when appropriate, and determine whether the request is consistent or inconsistent with stated criteria. Members of the Planning and Zoning Commission shall state the factual basis and the findings for their vote.

Furthermore, granting any variance shall not merely serve as a convenience to the applicant, but the variance shall be the minimum necessary for relief in order to accomplish the stated objective(s) of the applicant's request or demonstrable hardship.

Hardships are not considered personal or monetary. In addition to criteria already referenced, decisions may consider:

1. A physical hardship relative to the property (i.e., topographic constraints or right-of-way takes resulting reduced development flexibility, etc.) in question.
2. The potential for spurring economic development at a neighborhood or city-wide level if requested allowances are granted.
3. Monetary considerations not as a whole, but relative to options available to meet the applicant's stated objectives when such options cause considerable monetary hardship under strict application of code provisions.

L. NOTICE OF DECISION. Upon making a recommendation to the City Council or taking final action on matters for which the Planning and Zoning Commission has been granted final authority, the Community Development Department shall promptly:

1. Prepare a written decision that includes an order stating the factual basis and the findings of the Planning and Zoning Commission which support the order.
 - a. Recommending the granting or denying of relief, or
 - b. Granting or denying relief;
2. File the written decision with the City Clerk's Office;
3. Send by certified mail a document with appropriate signatures that includes a copy of the written decision of the Planning and Zoning Commission to all parties whose rights are adjudged by the decision and that contains the requirements for filing an appeal;
4. Send by regular mail, or otherwise provide, a copy of the document that includes a copy of the written decision of the Planning and Zoning Commission to every person who has filed a written request with the Community Development Department for notice of the decision.

M. APPEAL TO CITY COUNCIL. Decisions of the Planning and Zoning Commission may be appealed to the City Council in accord with the provisions of Sec. 38-13.

N. RESUBMITTAL OF REQUEST. A request denied by the Planning and Zoning Commission and/or the City Council shall not be resubmitted or reconsidered for a period of one (1) year. However, after meeting with Community Development Department staff, a different request on the same property may be submitted no less than six (6) months after such denial decision. Special use permits or planned unit developments processed through the IDP that are denied by the Planning and Zoning Commission may be modified and resubmitted at any time following any action by the Planning and Zoning Commission.

Sec. 38-11. Reserved

Sec. 38-12. Reserved

Sec. 38-13. City Council

- A. FINAL ACTION. After recommendation from Community Development Department staff, if applicable, and the Planning and Zoning Commission, the City Council shall take final action on the following:
1. Comprehensive Plan, Plan elements, other plans sent from the Planning and Zoning Commission and all amendments,
 2. Zoning district change requests,
 3. Initial zoning requests,
 4. Concept Plan and Final Site Plans submitted with the Concept Plan of Planned Unit Developments (subdivisions requesting three or more waivers to planning-related issues become planned unit developments),
 5. Associated variances with A.2 through A.4 above,
 6. Zoning Code and Sign Code amendments, and
 7. Appeals of decisions of the Planning and Zoning Commission.
- B. CHANGING AND RECONSIDERATION OF PETITIONED ZONING PROPOSALS.
A zoning district change or initial zoning request may be amended by the City Council to be more restrictive. Such amendment and reconsideration shall not require readvertisement or notice to surrounding property owners if considered by the City Council at the original (first) Public Hearing. Subsequent public hearings shall require readvertisement and notice to surrounding property owners unless the hearing is continued or the request is postponed to a specific date.
- C. GROUND FOR APPEAL TO CITY COUNCIL. Any person, or any department, commission, board or bureau of the City that is affected by a decision of an administrative official, commission, committee, or board in the administration or enforcement of this Code, or any other resolution, rule or regulation adopted pursuant to Sections 3-21-1 through 3-21-12 and 3-21A New Mexico State Statutes Annotated, 1978 Compilation, may appeal such decision to the City Council. Such appeal must be initiated in writing within fifteen (15) calendar days after the decision and after all other procedures established by this Code have been exhausted. Any person that is a party to an appeal may request a “Battershell” due process proceeding in place of the automatic standard due process.
- D. STAY OF PROCEEDINGS. An appeal shall stay all proceedings in furtherance of the action appealed unless the officer, official, commission, committee, or board from whom the appeal is taken certifies that by reason of facts a stay would cause imminent peril of life and property. Upon certification, the proceedings shall not be stayed except by order of District Court after notice to the official, commission, committee, or board from whom the appeal is taken.
- E. APPELLANT RESPONSIBILITY IN APPEALS. All appellants under this Section are required to submit to the Community Development Department a detailed written statement of the grounds of their appeal, including findings, no later than fifteen (15) calendar days after the decision is filed with the City Clerk’s Office. The appeal shall state all issues to be considered. Only the issues stated shall be considered during the applicable proceeding.

F. APPEAL NOTICE. Notice on all appeals, except Zoning and Sign Code amendments and interpretations, on decisions of the Planning and Zoning Commission shall be sent in complete accordance with Section 38-10, E. 4. a. With the exception of subdivision related matters, the specified exclusion referencing Section 38-10 B. 2. b. shall not apply for appeals under this section. Notice of the time and place of the appeal shall be posted in conspicuous places on the property by Community Development Department staff at least fifteen (15) calendar days prior to the appeal public hearing.

G. AUTHORITY OF THE CITY COUNCIL. When an appeal alleges that there is error in any order, requirement, decision or determination by an administrative official, commission, committee, or board in the enforcement of this ordinance, or any other resolution, rule or regulation adopted pursuant to the above stated State Statutes, the City Council, by a majority vote of all its members may, after all other procedures established by the provisions of this Code have been exhausted, reverse or affirm any order, requirement, decision or determination of an administrative official, commission, committee or board; or make any change in an order, requirement, decision, or determination of an administrative official, commission, board, or committee.

Members of the Planning and Zoning Commission shall not participate in any way in an appeal before the City Council of any decision of their Commission. The minutes of each Commission meeting are the public record that indicates each Commission member's participation. This restriction applies to members of other groups or committees, e.g., University Avenue Corridor Citizens' Design Review Committee, when the group or committee is required to make a recommendation to the Planning and Zoning Commission.

H. NOTICE OF DECISION. Upon City Council making any final decision, the Community Development Department shall promptly

1. Prepare a written decision that includes an order stating the factual basis and the findings of the City Council which support the order;
2. File the written decision with the City Clerk's Office;
3. Send by certified mail a document with appropriate signatures that includes a copy of the written decision of the City Council to all parties to the appeal submitted to the City Council, including persons who had filed a formal protest as an aggrieved person, and that contains the requirements for filing an appeal;
4. Send by regular mail, or otherwise provide, a copy of the document that includes a copy of the written decision of the City Council to every person who has filed a written request with the City Clerk for notice of the decision.

I. AMENDMENT, REPEAL, AND REVIEW OF THE ZONING CODE.

1. The City Council, after a public hearing and after a recommendation from the Planning and Zoning Commission, may amend, supplement, or repeal any portion or all of this Code.
2. There shall be a continuous evaluation of the provisions of this Code, and amendments shall be submitted to the City Council as deemed necessary.

Sec. 38-14. Appeal to District Court

Any person dissatisfied with an order or determination of the Planning and Zoning Commission, after review of the order or determination by City Council; may commence an appeal in District Court pursuant to the provisions of Section 12-8A-1 NMSA 1978, as amended, and Section 39-3-1.1 NMSA 1998, as amended.

Any person aggrieved by a determination of the City Council may appeal to the District Court within thirty (30) calendar days after the final decision of the City Council has been filed with the City Clerk's Office.

Sec. 38-15. Violations of the Zoning Code

- A. VIOLATIONS. It shall be a violation of this Code for any person, firm, or corporation to neglect, refuse to comply with, or resist the enforcement of any provision of this Code or any requirement pursuant thereto, or in any way use, change, or construct a building or structure in non-conformance with zoning approval. Each day that such violation exists shall constitute a separate offense. Any violation herein described is governed by the provisions of the Las Cruces Municipal Code and its subsequent amendments.
- B. PENALTIES. The Las Cruces Municipal Court shall impose the penalties for each day the violation of this Code exists. In addition to fines, the Las Cruces Municipal Court may grant injunctive relief in accordance with the provisions of the Las Cruces Municipal Code and its amendments.
- C. OTHER REMEDIES. Nothing herein shall limit the City from seeking other remedies at law or equity to enforce the Zoning Code. Violations of this Code shall be brought into compliance, abated, removed, and/or pursued in the applicable court of law. In all such cases that the Court rules to allow non-conformance with this Code, there shall be a pro forma action by the Planning and Zoning Commission permitting such non-conformance. Such action shall be consistent with the Court's ruling, and thereafter said non-conformance shall be considered legal non-conforming and be subject to the provisions thereof.

Sec. 38-16. Enforcement Provisions

- A. DUTY TO ENFORCE. The official(s) designated by the City Manager shall enforce this Code.
- B. BUILDING PERMITS AND PLANS. No building or structure, except those exempted by the City's Building Code, shall be erected, enlarged, or structurally altered until a building permit has been issued and zoning approval of all plans has been granted by the Community Development Director or designee.
- C. CERTIFICATE OF OCCUPANCY. Certificate of Occupancy approving a structure or use of land shall be required for all of the following prior to occupancy:
 - 1. Occupancy and use of a building hereafter erected or structurally altered;

2. Change in use of an existing building to a use of a different classification;
3. Occupancy and use of vacant land;
4. Change in the use of land to use of a different zoning district classification;
5. Change in the use of a non-conforming use, including the alteration or expansion of a non-conforming use or structure.

D. LEGAL DOCUMENTS TO INSURE COMPLIANCE. The Community Development Director or designee may require affidavits, disclosure statements, deed restrictions, or other legal documents to assure compliance with the provisions of this Code. Such documents may be approved for use in specific cases by the City Attorney.

Sec. 38-17. Fees

All fees relating to this Code shall be adopted by resolution of the City Council.

Sec. 38-18 -- 38-19. Reserved.

Figure 1: Town of Mesilla Special Notification Area, see page 17