



City of Albuquerque
PLANNING DEPARTMENT

Richard J. Berry, Mayor

Interoffice Memorandum

October 31, 2011

To: Don Harris, President, City Council

From: Deborah L. Stover, Planning Department Director

Subject: Bill No. O-11-66 - Project #1001620/11EPC 40053 - The Environmental Planning Commission (EPC) recommends APPROVAL to the City Council to amend Zoning Code Section 14-16-2-16, the G-1 Neighborhood Commercial Zone, to make the sale of gasoline, oil and liquefied petroleum gas a conditional use. City-wide. Catalina Lehner, Staff Planner

At its October 13, 2011 hearing, the Environmental Planning Commission (EPC) voted to forward a recommendation of Approval to the City Council regarding proposed text amendments to Zoning Code §14-16-2-16(A)(8) and 14-16-2-16(B) ROA 1994, portions of the G-1 Neighborhood Commercial Zone of the Comprehensive Zoning Code, and to §14-16-1-5(B), Definitions.

Request & Scope

The proposed text amendments, applicable City-wide, would make "gasoline, oil, liquefied petroleum, including outside sales" ("retail petroleum sales") a conditional use in the G-1 zone. Other zones would not be affected. Existing facilities that engage in retail petroleum sales, or those for which a building permit has already been obtained, would not be affected except that they would become non-conforming uses subject to §14-16-3-4, the Nonconformance Regulations.

The proposed text amendments address: 1) changes in retail petroleum sales, particularly gasoline sales, that have developed over time; and 2) neighborhood concerns regarding impacts of retail petroleum sales facilities on adjacent residential areas (Record, p. 25).

Purpose

Currently, "gasoline, oil, liquefied petroleum, including outside sales" ("retail petroleum sales") is a permissive use in the G-1 zone; a public process is not required. The proposed text amendments would make retail petroleum sales a conditional use in the G-1 zone; a conditional use permit would have to be obtained through the Zoning Hearing Examiner (ZHE) process. This process requires notification and a public hearing, where neighbors would have the opportunity to express their concerns.

Background

Retail petroleum sales, particularly gasoline sales, have changed over time. Service stations of the past provided repair service; employees pumped gas, cleaned windshields, etc. Typically, there were 2 to 4 pumps. Today customers pump gas themselves (in most states), often at large, multi-pump facilities. Auto repair services are found in separate locations. The separation of uses has, in part, made it possible for gas stations to become larger and serve more customers simultaneously.

Larger facilities are often associated with potential adverse impacts to residential areas, many of which are adjacent to properties zoned C-1, Neighborhood Commercial. Impacts can include increased traffic, pedestrian/vehicle conflict, environmental hazards and safety concerns. This adjacency was less of a concern when small-scale service stations were the norm, but times have changed.

Considerations

The Special Exception Process:

A Conditional Use is a type of Special Exception. Zoning Code §14-16-4-2(C)(1) specifies that a conditional use shall be approved only when the proposed use is found to “not be injurious to the adjacent property, the neighborhood, or the community” and “will not be significantly damaged by surrounding structures or activities.”

The Zoning Hearing Examiner (ZHE) can “impose conditions necessary to meet the stated criteria for granting special exceptions” [ref: §14-16-4-2(B)(12)]. However, neighborhood concern about site specific issues, such as access, pedestrian pathways, etc., may not be addressable through this process to the extent desired. Though the ZHE process provides notification and a public hearing, site development plan review is not the task of the ZHE.

Non-Conforming Use Status:

The proposed text amendments would not affect existing facilities in the C-1 zone that engage in retail petroleum sales or facilities that have already obtained a building permit. Such facilities would become non-conforming uses subject to the Nonconformance Regulations, Zoning Code §14-16-3-4. Subsection (A)(1) regarding a building or structure would apply, which means that existing facilities would have sixty (60) years to either be removed or converted to a conforming structure, or approved to remain non-conforming as a status established building.

Terminology:

The Zoning Code has a definition for “Petroleum products retail facility (fueling plaza).” This definition needs to be revised to: 1) make it consistent with how the use “gasoline, oil, liquefied petroleum, including outside sales” is worded; and 2) provide examples of such facilities. A separate definition for “Fueling Plaza”, which is one type of petroleum products retail facility, is recommended.

Conclusion

The Environmental Planning Commission (EPC) voted 4-2 to recommend that an Approval recommendation be forwarded to the City Council (Record, p. 69). The proposed text amendments generally further applicable Goals and policies of the Comprehensive Plan, and the overarching intent of the City Charter and the Zoning Code. The suggested conditions for recommendation of approval are needed to improve clarity and ensure internal consistency in the Zoning Code.

The Planning Department supports the EPC's recommendation to the City Council.

APPROVED:



Carmen Marrone, Manager
Current Planning Section

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**Environmental
Planning
Commission**

**Agenda Number: 6
Project Number: 1001620
Case Number: 11EPC-40053
October 13, 2011**

Staff Report

Agent City of Albuquerque Planning Department

Applicant City of Albuquerque City Council

Request Text Amendments to Zoning Code: §14-16-2-16 ROA 1994, the C-1 Neighborhood Commercial Zone, to make retail sales of "gasoline, oil, liquefied petroleum gas, including outside sales" a conditional use.

Location City-wide

Staff Recommendation

That a recommendation of APPROVAL of 11EPC-40053, be forwarded to the City Council based on the Findings beginning on Page 14, and subject to the Conditions for Recommendation of Approval beginning on Page 16.

Staff Planner

Catalina Lehner, AICP-Senior Planner

Summary of Analysis

This request, initiated by the City Council, is for text amendments to §14-16-2-16 ROA 1994, the C-1 Neighborhood Commercial Zone of the Zoning Code. The EPC's role is to make a recommendation to the City Council.

Currently, "gasoline, oil, liquefied petroleum, including outside sales" is a permissive use in the C-1 zone. The proposed text amendments would make this a conditional use in the C-1 zone. Conditional use requests are decided by the Zoning Hearing Examiner (ZHE) and require public notification and a public hearing.

Overall, the request generally furthers the intent of the City Charter, the Zoning Code and applicable Comprehensive Plan Goals and policies.

This request was announced in the neighborhood news, e-mailed to neighborhood representatives and posted on the City's website. A few inquiries and comments were received.

The proposed conditions are needed to clarify and create internal consistency in the Zoning Code. Staff recommends that an Approval recommendation be forwarded to the City Council.

City-wide

City Departments and other interested agencies reviewed this application from 08/29/2011 to 09/09/2011. Agency comments used in the preparation of this report begin on Page 19.

I. INTRODUCTION

Request

This is a City Council request for text amendments to §14-16-2-16(A)(8) and §14-16-2-16(B) ROA 1994, portions of the C-1 Neighborhood Commercial Zone of the City's Comprehensive Zoning Code. The purpose of the proposed text amendments is to make "gasoline, oil, liquefied petroleum, including outside sales" ("retail petroleum sales") a conditional use in the C-1 zone. Existing facilities that engage in retail petroleum sales would not be affected.

Currently, retail petroleum sales are a permissive use in the C-1 zone. A public process is not required for a permissive use in a given zone; a permissive use is allowed by right. By making retail petroleum sales a conditional use in the C-1 zone, the proposed text amendments would trigger a public review process. This is because, for conditional uses, a conditional use permit would have to be obtained pursuant to Zoning Code §14-16-4-2, Special Exceptions. Conditional use cases are considered by the Zoning Hearing Examiner (ZHE) at a public hearing, for which notice is given.

Scope

As written, the request is for text amendments to portions of the C-1 Neighborhood Commercial Zone §14-16-2-16 ROA 1994 of the City's Comprehensive Zoning Code, which are ordinances of general application. Staff recommends associated revisions to §14-16-1-5(B) ROA 1994, Definitions. The proposed text amendments would apply City-wide. This request is considered legislative in nature.

II. OVERVIEW

Environmental Planning Commission (EPC) Role

The proposed text amendments (also referred to as the "proposed legislation") are contained in Council Bill No. O-11-66, which was introduced at the City Council meeting on August 15, 2011 and subsequently referred to the Environmental Planning Commission (EPC).

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

Context & Background

The proposed legislation intends to address: 1) changes in retail petroleum sales, particularly gasoline sales, that have developed over time; and 2) neighborhood concerns regarding impacts of retail petroleum sales facilities on adjacent residential areas, which are often zoned C-1.

Retail gasoline sales have changed over time. Service stations used to provide repair service and employees would pump gas, clean windshields, etc. There were few pumps (often 2 to 4). Today, the service station era is largely a bygone. Customers pump gas themselves (in most states), often at large facilities with several rows of pumps, and auto repair/care services are found in separate locations.

In this self-service era, the separation of these uses has, in part, made it possible for gas stations to become larger in order to serve more customers simultaneously. Larger facilities are often associated with potential adverse impacts to adjacent residential areas, such as increased traffic, pedestrian/vehicle conflict, environmental hazards and safety issues.

Many residential areas are located next to properties that are zoned C-1, Neighborhood Commercial, in which retail petroleum sales are a permissive use. This adjacency was probably appropriate when service stations, and even small gas stations, were the norm but circumstances have changed over time. In making retail petroleum sales a conditional use in the C-1 zone, the proposed text amendments would require notification and a public hearing in which neighbors would have the opportunity to express their concerns.

History

The C-1 Neighborhood Commercial Zone, presently Zoning Code §14-16-2-16, was included in the City of Albuquerque's 1959 Zoning Ordinance (Ordinance No. 1493), which the City Commission adopted on March 10, 1959 and became effective upon publication on March 27, 1959. Prior to that, the City's original zoning regulations were adopted on November 17, 1953, published on December 11, 1953 and became effective on January 11, 1953. (Source: Comprehensive Zoning Ordinance, City of Albuquerque, 1959).

The C-1 Neighborhood Commercial Zone (then Section 10) was included with the 1959 Zoning Ordinance (Staff was unable to locate the 1953 version). Subsection (B) lists permissive retail and service uses. (B)(21), service station for automobiles, includes the "sale of liquefied petroleum gas for consumption but not for resale". Historically consistent with the 1950s, retail gas sales were part of the service station use. Subsection (B)(21) of the C-1 zone (Section 10) was not revised when the Comprehensive Zoning Ordinance of 1962 (Commission Ordinance No. 1493) was adopted; "service station" still included gasoline sales.

The 1974 version of the Comprehensive City Zoning Code (Article 14, Chapter 7 ROA 1974) lists the C-1 Neighborhood Commercial Zone as Section 21 and includes current language regarding the C-1 zone's purpose: "this zone provides suitable sites for office, service, institutional, and limited commercial uses to satisfy the day-to-day needs of residential areas." Today's wording of gasoline sales "gasoline, oil, liquefied petroleum gas, including outside sales" appears and is included as a permissive use. Though this wording may have existed earlier, it was definitely present in 1974 (Source: Comprehensive City Zoning Code, 1974).

Definitions (Zoning Code §14-16-1-5(B))

Zoning Code §14-16-1-5(B) contains definitions that apply City-wide and establish a common understanding for a given term. The following definitions are relevant to this request:

CONDITIONAL USE. One of those uses enumerated as conditional uses in a given zone. Such uses require individual approval on a given lot.

NONCONFORMING. A structure or use of structure or land which does not conform to this article and which was in conformity with any zoning ordinance in effect at the time it was created.

PETROLEUM PRODUCTS RETAIL FACILITY (FUELING PLAZA). A facility for outdoor sales of gasoline, petroleum or liquefied gas.

ZONING HEARING EXAMINER (ZHE). One or more city employees appointed by the Mayor, who have duties and powers specified for the Zoning Hearing Examiner by the Zoning Code and zoning powers delegated by rule by the Planning Commission or the Landmarks and Urban Conservation Commission.

As written, the proposed text amendments would not establish any new definitions. However, for the sake of clarity, Staff believes that the definition of "Petroleum Products Retail Facility (Fueling Plaza)" can serve as a starting point since it's already in the Zoning Code, but that it should be expanded upon. New definitions for related terms such as "retail gas sales" should also be included (see Section V of this report).

III. ZONING

"Retail Petroleum Sales" as a Use

Several zones allow "gasoline, oil, liquefied petroleum gas, including outside sales" ("retail petroleum sales") as a use, permissively or conditionally (see tables below).

Note: Staff is not proposing to revise the wording of "gasoline, oil, liquefied petroleum gas, including outside sales" in the Zoning Code. This is an established use in several zones; the proposed text amendments are only to the C-1 zone. For simplicity and internal consistency in the Zoning Code, the wording should not be changed. Only for purposes of this report is "retail petroleum sales" used.

Retail petroleum sales are *allowed permissively* in the following zones:

Zone	Allowed?	References
Neighborhood Commercial Zone (C-1) (§14-16-2-16)	Yes	-
Community Commercial Zone (C-2) (§14-16-2-17)	Yes	-
Heavy Commercial Zone (C-3) (§14-16-2-18)	Yes	G-2
Industrial Park (IP) Zone (§14-16-2-19)	Yes	-
Light Manufacturing Zone (M-1)	Yes	C-3, IP
Heavy Manufacturing Zone (M-2)	Yes	M-1
Special Use Zone (SU-1)	Yes (depends upon the associated site devel. plan)	-
Special Neighborhood Zone (SU-2)	*	R-C, sector development plans
Special Center Zone (SU-3)	*	sector development plans
Planned Community Zone (PC)	*	sector development plans

Retail petroleum sales are *allowed conditionally* in the following zones:

Zone	Allowed?	References
Residential Commercial (R-C) (§14-16-2-13)	Yes	R-T, R-1, C-1
Residential and Related Uses Zone, Developing Area (R-D)	Yes	R-T, R-1, R-3, C-1
MH Residential Zone (MH)	Yes	-

* The SU-2, SU-3 and the PC zones are tied to a specific sector development plan or master plan; retail gas sales would be addressed in the context of the applicable plan.

Retail petroleum sales are *not allowed* (permissively or conditionally) in the following zones:

Zone	Allowed?	References
Rural and Open Zone (RO-1)	No	-
Rural and Open Zone (RO-20)	No	RO-1
Residential Agricultural Zone, Semi-Urban Area (RA-1)	No	R-1
Residential Agricultural Zone (RA-2)	No	RA-1, R-1
Residential Zone (R-1)	No	-
Residential Zone (R-LT)	No	R-1
Residential Zone (R-T)	No	R-1
Residential Zone (R-G)	No	R-T, R-1
Residential Zone (R-2)	No	R-T, R-1
Residential Zone (R-3)	No	R-2
Office and Institution (O-1) zone (§14-16-2-15)	No	-
Historic Old Town (H-1) zone (§14-16-2-25)	No	-
Parking Zone (P)	No	-
Parking Reserve Zone (PR)	No	P

IV. ANALYSIS

Citations are in regular text; *Staff analysis is in bold italics.*

A) 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."

Revising a portion of the ROA 1994, the C-1 Neighborhood Commercial Zone, is an exercise in local self government (City Charter, Article I). Making retail petroleum sales a conditional use, with required notification and public hearing, generally expresses the Council's desire to ensure the proper use and development of land, and promote and maintain a humane urban environment (City Charter, Article IX).

B) COMPREHENSIVE CITY ZONING CODE

Preface & Intent

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.

Role of Land Use Boards (aka Amendment Procedure, 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.

The application for proposed text amendments to Zoning Code §14-16-2-16, the C-1 Neighborhood Commercial Zone, was filed in accordance with Zoning Code requirements. The proposed text amendments generally further the Zoning Code goal of promoting the health, safety and welfare of the citizens. Requiring notification and a public hearing for retail petroleum sales in the neighborhood commercial zone would allow public participation and an opportunity to work towards addressing issues that might adversely affect the general health, safety and welfare.

C) ALBUQUERQUE/BERNALILLO COUNTY COMPREHENSIVE PLAN

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 text amendments requests. Applicable goals and policies include:

Land Use

Section II.B.5- Developing and Established Urban Areas, Goal: 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."

The proposed text amendments would contribute to creating a quality urban environment. The public hearing would provide an opportunity for neighbors to express concerns, which could result in a quality built environment that is pleasing and that generally supports variety and choice in housing, transportation, work areas, and life styles. The request generally furthers the Developing and Established Urban Area Goal.

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, recreational concern.

The required hearing would help ensure that the public has the opportunity to participate and make their concerns known. However, some concerns (such as site layout and design) may not be able to be addressed through the special exception process to the extent that neighbors might want. The concerns must be found to be "injurious" to adjacent property, the neighborhood or the community and addressed through conditions of approval. The request partially furthers Policy II.B.5d-neighborhood/ environmental/resources.

Policy II.B.5e: New growth shall be accommodated through development in areas where vacant land is contiguous to existing or programmed urban facilities and services and where the integrity of existing neighborhoods can be ensured.

The request partially furthers Policy II.B.5e-programmed facilities/neighborhood integrity. The proposed legislation would only apply to new retail petroleum sales facilities. The integrity of existing neighborhoods could be affected, depending upon the specifics of a given case and the extent to which neighborhood concerns can be addressed.

Policy II.B.5i: Employment and service uses shall be located to complement residential areas and shall be sited to minimize adverse effects of noise, lighting, pollution, and traffic on residential environments.

The Zoning Code general regulations help ensure that the effects of noise, lighting, pollution and traffic are minimized. By requiring a public hearing, the proposed legislation would allow neighbors to voice their concerns regarding the effects of a retail petroleum sales facility. However, siting issues may not all be addressable through the special exception process, depending upon the specifics of a given case. The request partially furthers Policy II.B.5i-employment/service use location.

Community Resource Management

Policy II.D.4g (Transportation & Transit): Pedestrian opportunities shall be promoted and integrated into development to create safe and pleasant non-motorized travel conditions.

Policy II.D.4g is partially furthered. The proposed legislation would require a public hearing process so neighbors would have the opportunity to express concerns, some of which could be related to traffic and safety issues such as pedestrian/bicycle conflicts with vehicles. If found to be injurious, such issues can be addressed through the ZHE process. However, there is no guarantee that this process could address all such concerns.

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

The proposed text amendments would require a public hearing, which would help ensure that at least a certain type of economic development (retail petroleum sales facilities) would be more likely to be balanced with social, cultural and environmental goals that neighbors consider important. The request generally furthers the Economic Development Goal.

V. ISSUES & IMPLEMENTATION

Staff believes that the following issues are worthy of further discussion: the evolution of gasoline sales, terminology and definitions, the Special Exception process and unintended consequences of the proposed legislation as written.

Evolution of Retail Gas Sales & Terminology

The proposed text amendments are based upon the fact that retail gas sales have changed over time, resulting in what is prevalent today: 1) retail gas sales (gas stations) as a stand-alone use, and 2) self-service, often at large, high-volume facilities.

The Zoning Code has a definition for "Petroleum products retail facility (fueling plaza)", which refers to "a facility for outdoor sales of gasoline, petroleum or liquefied gas." No other existing definitions relate to retail gas sales. The use is listed as "gasoline, oil, liquefied petroleum gas, including outside sales" in various zones (see Section III of this report). For purposes of this report, Staff collectively terms these "retail petroleum sales" which is consistent with the existing definition. Note that Staff is not proposing to revise the wording of the use "gasoline, oil, liquefied petroleum gas, including outside sales" in the Zoning Code.

Existing Retail Gas Sales & More Terminology

The proposed legislation states in Lines 17-19 that "service stations already in existence in C-1 zones, or for which building permits have been received prior to adoption of this ordinance, are not affected." The intention is that existing retail petroleum sales facilities, or such facilities which have already received building permits in the C-1 zone, would not be affected. Nor are other zones affected since the proposed legislation applies only to the C-1 zone.

The idea to not apply the proposed legislation retroactively is clear. However, the terminology used in this phrase ("service station") could potentially create confusion regarding exactly what the proposed legislation would apply to, apart from the retroactive question (which is addressed).

To begin with, "service station" is not defined in the Zoning Code. People can argue that it means different things. Typically, "service station" is understood to mean an auto repair/care facility that also sells gasoline (ex. 1950s and 60s). Service stations are not as common today as they once were due to the more recent practice of separating auto repair/care facilities and facilities that only sell gasoline.

Furthermore, the use of the term "service station" is somewhat inconsistent with what Staff understands to be the intent of the proposed legislation- to apply to new facilities that engage in a certain use- retail sales of gasoline, oil and liquefied petroleum gas- particularly the larger facilities. With the proposed legislation as written, large gas stations without a service component might be able to claim non-applicability because such facilities do not have a service component and therefore are not "service stations."

Staff suggests precise wording in the proposed legislation, combined with supporting definitions based on what's already in the Zoning Code. Staff believes that "service station" is a subset of the broader term "petroleum products retail facility", which Staff proposes to define.

The Special Exception Process

A Conditional Use is a type of Special Exception. Regulations pertaining to Special Exceptions to the Zoning Code are found in §14-16-4-2 (see attachment). Requests for Special Exceptions are heard by the Zoning Hearing Examiner (ZHE) at a public hearing. The ZHE office provides notification via legal ad 15 days prior to the hearing. The Office of Neighborhood Coordination (ONC) provides a list of affected neighborhood organizations; the ZHE office provides the agenda to them. Property owners within 100 feet of the subject properties are also notified.

Interested members of the public are provided the opportunity to present evidence and argument, which the ZHE can take into account in preparing the written notice of decision. Criteria for decision for granting a conditional use are found in §14-16-4-2 (C)(1). A conditional use shall be approved only when the proposed use, given the circumstances of the case and the conditions imposed, "will not be injurious to the adjacent property, the neighborhood, or the community" and "will not be significantly damaged by surrounding structures or activities."

Unintended Consequences

A) Scope of the Special Exception Process

The Zoning Hearing Examiner (ZHE) is allowed to "impose conditions necessary to meet the stated criteria for granting special exceptions" [ref: §14-16-4-2(B)(12)]. The criteria for granting a conditional use are stated above. The ZHE is required to find that a given use is non-injurious or injurious to adjacent property, the neighborhood or the community. The ZHE can impose conditions that support a finding of non-injury.

The intent of the proposed legislation is to require public notification and a hearing so neighbors can express concerns about issues such as, but not limited to, traffic, safety, pedestrian conflicts and environmental hazards. The ZHE can take testimony into account and place conditions upon the use to make it less "injurious" and therefore approvable. The conditions are highly case-specific and depend upon the collective combination of factors particular to a given case, so generalizing is difficult and could be potentially misleading.

Staff discussed the hearing process and scope with ZHE Staff, who confirms that conditions are highly case-specific and basically agrees that some neighborhood issues regarding, for example traffic, safety and pedestrians, may not be able to be addressed through the ZHE process.

The ZHE hearing is not considered a forum for site development plan review. If neighbors are concerned about site specific issues, such as access, pedestrian pathways, etc., they may not be able to get them addressed to the extent that they would like. For instance, if there is concern about traffic, could the ZHE require a trip generation comparison or traffic impact analysis? If so, would it be appropriate? How would the results factor into the determination of "injurious"? It is unclear, though the specifics of a given case would come into play.

Staff is particularly concerned about requests that address such issues and then get appealed. Findings from the ZHE office would have to demonstrate how the concern relates specifically to the determination of "injurious". Appealed ZHE cases are heard by the Board of Appeals (B of A) and then go to the Land Use Hearing Officer (LUHO), the City Council and ultimately to District Court. It is important to ensure that any conditions imposed to address traffic, pedestrian, safety and environmental concerns are within the scope and authority of the ZHE process, or the City will be found to be in error.

B) Propane Sales

Code Enforcement Staff points out that liquefied petroleum gas means propane (ex. tanks for BBQ grills); the proposed text amendments would make propane a conditional use. So, if a business located on a C-1 zoned property wants to start selling propane, a conditional use for "gasoline, oil, liquefied petroleum gas, including outside sales" would have to be obtained. This situation is probably not common, since most businesses that want to sell propane probably already do. Adding propane sales to a business wouldn't cause the types of impacts mentioned in the proposed text amendments, but the conditional use would still be required. Staff suggests that liquefied petroleum gas (propane), in containers 5 gallons or less in size, be excluded from the request.

With the proposed text amendments, existing businesses that don't yet engage in retail petroleum sales, but want to, would need to obtain a conditional use. With retail petroleum sales as a permissive use, such business could start retailing gas without obtaining a conditional use. Most businesses that sell petroleum products (such as gasoline) probably already do so; only businesses that want to change their operations would be affected and these are probably few. It is unclear what would happen in the case of such a business that is moving locations to a C-1 zoned property. Again, these instances are likely to be relatively few compared to new development of retail facilities that sell petroleum products (such as gasoline).

VI. ANALYSIS- SUGGESTED REVISIONS TO THE PROPOSED TEXT AMENDMENTS

The proposed text amendments are to §14-16-3-5(A), (C) and (D) ROA 1994, General Sign Regulations, and to §14-16-1-5(B), Definitions, of the Zoning Code. New language is [+underlined and bracketed+]. Deleted language is [underlined, bracketed and struck through].

Planning Staff's suggested additions and deletions are indicated by grey highlighting. Explanations are in ***bold italics***. Page references are to the proposed legislation (see attachment).

A) Albuquerque Code of Ordinances, Chapter 14- Zoning, Planning & Building, Article 16- Zoning Code, Section 1, Part 5(B), DEFINITIONS

1. Page 1, Insert at Line 3:

AMENDING [+SUBSECTIONS 14-16-1-5(B), DEFINITIONS, AND 14-16-2-16+]
[CHAPTER 14, ARTICLE 16, SECTION 2, PART 16 OF] ROA 1994, A PORTION OF THE
ZONING CODE REGARDING THE C-1 NEIGHBORHOOD COMMERCIAL ZONE, TO
MAKE [THE SALE OF GASOLINE, OIL AND LIQUEFIED PETROLEUM GAS] [+THE
RETAILING OF GASOLINE, OIL, LIQUIFIED PETROLEUM GAS, INCLUDING
OUTSIDE SALES,+] A CONDITIONAL USE.

The Definitions subsection is proposed to be included. Minor revisions make the proposed legislation's wording similar to that of other Ordinances. The use should read as it does in the Zoning Code, for consistency.

2. Page 1, Insert at Line 8:

[+SECTION 1: Subsection 14-16-1-5(B), the Definitions section of the Zoning Code, is amended to add the following definition:+]

[+FUELING PLAZA. A type of petroleum products retail facility that focuses on outdoor retail gasoline sales and typically is a large scale, high volume operation. A fueling plaza may be associated with another use, such as a truck stop, convenience or grocery store, or may stand alone.+]

See explanation under 3, below.

3. Page 1, Insert after the end of Section 1:

[+SECTION 2: The definition for "Petroleum Products Retail Facility (Fueling Plaza)", in Subsection 14-16-1-5(B), the Definitions section of the Zoning Code, is amended to read as follows:+]

PETROLEUM PRODUCTS RETAIL FACILITY [(FUELING PLAZA)]. A facility [for outdoor sales of] [+that sells+] gasoline, [petroleum] [+oil+] or liquefied [+petroleum+] gas

[+(ex. propane). Such a facility can be, but is not limited to, a gas station, a vehicle service station, and/or a truck stop. Facilities such as grocery stores and convenience stores, for which retail gas sales is not the primary focus, may also be considered petroleum products retail facilities.]

These revisions clarify that a fueling plaza is not the only type of petroleum products retail facility. Doing so eliminates the need for separate definitions of service station and gas station, which are also types of petroleum products retail facilities. Fueling plaza, however, should have its own definition because larger facilities such as this are more likely to contribute to adverse impacts on adjacent residential areas. Also, fueling plaza is already a part of the Code and should remain.

B) Albuquerque Code of Ordinances, Chapter 14- Zoning, Planning & Building, Article 16- Zoning Code, Section 2, Part 16, C-1 NEIGHBORHOOD COMMERCIAL ZONE.

4. Page 1, Lines 8-11 (will be renumbered):

SECTION 1. The amendment herein revises the ~~[comprehensive zoning code]~~ [+Comprehensive Zoning Code+] to make ~~[the sale of gasoline, oil and liquefied petroleum gas]~~ [+the retailing of gasoline, oil and liquefied petroleum gas, including outside sales+], a conditional use, rather than a permissive use, in the C-1 Neighborhood Commercial Zone.

The wording of the use reads exactly as it does in the Zoning Code, for consistency's sake, since the proposed text amendments apply only to the C-1 zone and not the other zones in which the use is mentioned.

5. Page 1, Lines 11-17 (will be renumbered):

The City Council is concerned about ~~[the]~~ negative impacts, such as exposure to environmental hazards ~~[+]~~ [+and the] generation of additional traffic ~~[+]~~ and safety issues, such as the creation of conflict points in areas of increased pedestrian and bicycle activity, ~~[that service stations built immediately adjacent to established residential areas have]~~ [+which are commonly associated with facilities that sell gasoline, oil and liquefied petroleum gas.+] The purpose of this amendment is to require a public notification process and comment period before the construction of new ~~[service stations]~~ [+such facilities+].

The term "facilities that sell gasoline, oil and liquefied petroleum gas" aligns more closely with the proposed legislation's intent than the term "service station" (see Section V of this report).

6. Page 1, Lines 17-19 (will be renumbered):

~~[Service stations already in existence]~~ [+SECTION 2. Facilities that sell gasoline, oil and/or liquefied petroleum gas, which already exist+] in C-1 zones ~~[+]~~ or for which building permits have been received prior to ~~[adoption]~~ [+the effective date+] of this ordinance, are not affected.

The statement about the applicability of the proposed legislation should be a stand-alone section, especially since it should be codified (unlike the rest of Section 1). The term "service station" is replaced (see above). Facilities that sell any one of the products (hence the "or" clause) would be unaffected. The Ordinance will apply as of its effective date.

7. Page 6, Line 5 (to be renumbered):

~~[(21) Retail sales of gasoline, oil, liquefied petroleum gas, including outside sales.]~~

~~[(+21) Retail sales of gasoline, oil, liquefied petroleum gas, including outside sales, except for liquefied petroleum gas in containers five (5) gallons or less in size. +]~~

Small containers of propane (5 gallons or less in size) are typically used for BBQ grills, camping and soldering, for example. In consultation with Code Enforcement, Staff believes that a business that wants to sell such containers, and is located in a C-1 zone, should not have to obtain a conditional use to do so. Additionally, the intent of the proposed legislation is to focus on large facilities that specialize in gasoline sales.

8. Page 6, Line 14 (to be renumbered):

SECTION ~~[§]~~ ~~[+8.+] COMPILATION.~~ This ordinance shall be incorporated in and made part of the Revised Ordinances of Albuquerque, New Mexico, 1994. ~~[+Section 1 shall not be codified. +]~~

Section 1 contains reasons for the proposed legislation. This type of information is typically not codified if the text amendments are to an existing Part of the Zoning Code, but would be typically codified if they comprised a new Part.

MINOR REVISIONS

9. Page 1, Line 20 (will be renumbered):

~~[SECTION 2]~~ ~~[+SECTION 5+]~~ and subsequent renumbering of Sections 3, 4, 5 and 6 as Sections 6, 7, 8 and 9, respectively.

Renumbering of these Sections will be needed.

10. Page 2, Line 16 (to be renumbered):

....pursuant to [§ ~~14-16-3-12(A)(11)ROA~~ 1994] ~~[+, the Community Residential Program Regulations. +]~~

Remove underlining from the text and add subsection name.

11. Page 2, Lines 18 & 20 (will be renumbered):

~~[(k)] [Gasoline, oil, liquefied petroleum gas, including outside sales.]~~

~~(+)~~ ~~[+k+]~~ Hardware, building materials, provided it is in a completely enclosed building.

VII. COMMENTS

CONCERNS OF REVIEWING AGENCIES / PRE-HEARING DISCUSSION

Few agency comments were received. Code Enforcement Staff commented that the proposed text amendment would make propane sales (ex. tanks for barbeque grills) a conditional use (see Section V. of this report). Long Range Planning Staff noted that the proposed text amendment will allow the public to comment. Staff contacted ZHE Staff, who commented that they have no adverse comment. The pre-hearing discussion meeting was held on September 14, 2011. Agency comments begin on p. 19.

NEIGHBORHOOD CONCERNS

The proposed text amendments were announced in the Neighborhood News and posted on the Planning Department's web page. The Office of Neighborhood Coordination (ONC) sent an e-mail notification to neighborhood organization contact persons (see attachments). As of this writing, Staff has received a couple of phone inquiries and one e-mail comment that a neighborhood approves of the proposed text amendments (see attachments).

VIII. CONCLUSION

The proposed text amendments are to §14-16-2-16 ROA 1994, the C-1 Neighborhood Commercial Zone, and are suggested to be to §14-16-1-5(B), the Definitions Section, of the Zoning Code. They would apply City-wide. The EPC's role is to make a recommendation to the City Council.

The purpose of the proposed text amendments is to make "gasoline, oil, liquefied petroleum, including outside sales" ("retail petroleum sales") a conditional use in the C-1 zone. Existing facilities that engage in retail petroleum sales would not be affected.

The proposed text amendments were announced in the Neighborhood News, e-mailed to neighborhood representatives and posted to the Planning Department's web page. A couple of inquiries and a comment have been received as of this writing.

Overall, Staff finds that the proposed text amendments generally further the intent of the City Charter, the Zoning Code and applicable Comprehensive Plan Goals and policies. Suggested conditions for recommendation of approval will help clarify the proposed legislation and avoid creating internal inconsistencies. Staff recommends that an approval recommendation, with conditions, be forwarded to the City Council.

RECOMMENDED FINDINGS- 11EPC-40053, October 13, 2011- Zoning Code Text Amendments

1. The request is for text amendments to §14-16-2-16(A)(8) and §14-16-2-16(B) ROA 1994, portions of the C-1 Neighborhood Commercial Zone. The purpose of the proposed text amendments is to make "gasoline, oil, liquefied petroleum, including outside sales" ("retail petroleum sales") a conditional use in the C-1 zone. Existing facilities that engage in retail petroleum sales would not be affected.
2. The proposed legislation was developed to address neighborhood concerns regarding impacts of retail petroleum sales facilities, particularly gas stations, on adjacent residential areas. Residential areas are often zoned C-1. Also addressed are changes in retail gasoline sales that have occurred over time.
3. Retail petroleum sales are a permissive use in the C-1 zone. A public process is not required for permissive uses, which are allowed by right. The proposed text amendments would make retail petroleum sales a conditional use. A conditional use permit would have to be obtained pursuant to Zoning Code §14-16-4-2, Special Exceptions, through the Zoning Hearing Examiner (ZHE) process. Notification and a public hearing would be required.
4. 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. The EPC is a recommending body.
5. The Albuquerque/Bernalillo County Comprehensive Plan and the City of Albuquerque Comprehensive Zoning code are incorporated herein by reference and made part of the record for all purposes.
6. Intent of the City Charter:

Revising a portion of the ROA 1994, the C-1 Neighborhood Commercial Zone, is an exercise in local self government (City Charter, Article 1). Making retail petroleum sales a conditional use, with required notification and public hearing, generally expresses the Council's desire to ensure the proper use and development of land, and promote and maintain a humane urban environment (City Charter, Article IX).
7. Intent of the Zoning Code (§14-16-1-3):

The application was filed in accordance with Zoning Code requirements. The proposed text amendments generally further the Zoning Code goal of promoting the health, safety and welfare of

the citizens. Requiring notification and a public hearing would allow public participation and an opportunity to work towards addressing issues that might adversely affect the general health, safety and welfare. As the City's zoning authority, the City Council will make the final determination.

8. The request generally furthers the following, applicable Comprehensive Plan Goals:
 - A. Section II.B.5- Developing and Established Urban Areas. The proposed text amendments would help create a quality urban environment. Neighbors would have an opportunity to express concerns, which could result in a pleasing built environment that generally supports variety and choice in housing, work areas and transportation.
 - B. Economic Development. The required public hearing would help ensure that a certain type of economic development (retail petroleum sales) would be more likely to be balanced with social, cultural and environmental goals that neighbors consider important.
9. The request partially furthers the following, applicable Comprehensive Plan policies:
 - A. Policy II.B.5d-neighborhood/environmental/resources. The public would have an opportunity to express concerns. However, some concerns (such as site layout and design) may not be able to be addressed through the special exception process to the extent that neighbors might want.
 - B. Policy II.B.5e-programmed facilities/neighborhood integrity. The proposed legislation would only apply to new retail petroleum sales facilities. The integrity of existing neighborhoods could be affected, depending upon the specifics of a given case and the extent to which neighborhood concerns can be addressed.
 - C. Policy II.B.5i-employment/service use location. By requiring notification and a hearing, the proposed legislation would allow neighbors to express concerns regarding the effects of a retail petroleum sales facility. However, not all issues may be addressed through the special exception process.
10. The request partially furthers Transportation & Transit Policy II.D.4g. The public hearing process would give neighbors an opportunity to express concerns, some of which could be traffic and safety issues such as pedestrian/bicycle conflicts with vehicles. These issues could be addressed through the ZHE process if found to be injurious and within the ZHE's purview. However, it is possible that such concerns may not be addressable through this process.
11. The proposed Conditions for Recommendation of Approval will provide clarification, ensure internal consistency in the Zoning Code and remedy minor errors. Staff suggests that §14-16-1-5(B), the Definitions Section of the Zoning Code, be correspondingly amended.

12. The proposed text amendments were announced in the Neighborhood News and posted on the Planning Department's web page. The Office of Neighborhood Coordination (ONC) sent an e-mail notification to neighborhood organization contact persons. As of this writing, Staff has received a couple of phone inquiries and one e-mail comment. There is no known opposition to the request.

RECOMMENDATION

That a recommendation of APPROVAL of Text Amendments to Zoning Code §14-16-2-16, the C-1 Neighborhood Commercial Zone, and to §14-16-1-5(B), the Definitions section, be forwarded to the City Council based on the preceding Findings and subject to the following Conditions for Recommendation of Approval.

CONDITIONS FOR RECOMMENDATION OF APPROVAL- 11EPC-40053, October 13, 2011- Zoning Code Text Amendments

Note: New language is [underlined and bracketed]. Deleted language is [underlined, bracketed and struck through]. Planning Staff's suggested additions and deletions are indicated by grey highlighting.

1. Definitions:

A. Page 1, Insert at Line 3:

AMENDING [+SUBSECTIONS 14-16-1-5(B), DEFINITIONS, AND 14-16-2-16+]
[CHAPTER 14, ARTICLE 16, SECTION 2, PART 16 OF] ROA 1994, A PORTION OF THE
ZONING CODE REGARDING THE C-1 NEIGHBORHOOD COMMERCIAL ZONE, TO
MAKE [THE SALE OF GASOLINE, OIL AND LIQUEFIED PETROLEUM GAS] [+THE
RETAILING OF GASOLINE, OIL, LIQUEFIED PETROLEUM GAS, INCLUDING
OUTSIDE SALES,+] A CONDITIONAL USE.

B. Page 1, Insert at Line 8:

[+SECTION 1: Subsection 14-16-1-5(B), the Definitions section of the Zoning Code, is
amended to add the following definition:+]

[+FUELING PLAZA: A type of petroleum products retail facility that focuses on outdoor retail
gasoline sales and typically is a large scale, high volume operation. A fueling plaza may be
associated with another use, such as a truck stop, convenience or grocery store, or may stand
alone.+]

C. Page 1, Insert after the end of Section 1:

[+SECTION 2: The definition for "Petroleum Products Retail Facility (Fueling Plaza)", in
Subsection 14-16-1-5(B), the Definitions section of the Zoning Code, is amended to read as
follows:+]

PETROLEUM PRODUCTS RETAIL FACILITY ~~[(FUELLING PLAZA)]~~. A facility ~~[for outdoor sales of]~~ ~~[+that sells+]~~ gasoline, ~~[petroleum]~~ ~~[+oil+]~~ or liquefied ~~[+petroleum+]~~ gas ~~[+ (ex. propane)]~~. Such a facility can be, but is not limited to, a gas station, a vehicle service station, and/or a truck stop. Facilities such as grocery stores and convenience stores, for which retail gas sales is not the primary focus, may also be considered petroleum products retail facilities. ~~[+]~~

2. Body of the Legislation:

A. Page 1, Lines 8-11 (will be renumbered):

SECTION 1. The amendment herein revises the ~~[comprehensive zoning code]~~ ~~[+Comprehensive Zoning Code+]~~ to make ~~[the sale of gasoline, oil and liquefied petroleum gas]~~ ~~[+the retailing of gasoline, oil and liquefied petroleum gas, including outside sales+]~~, a conditional use, rather than a permissive use, in the C-1 Neighborhood Commercial Zone.

B. Page 1, Lines 11-17 (will be renumbered):

The City Council is concerned about ~~[the]~~ negative impacts, such as exposure to environmental hazards ~~[+ , +]~~ ~~[and the]~~ generation of additional traffic ~~[,]~~ and safety issues, such as the creation of conflict points in areas of increased pedestrian and bicycle activity, ~~[that service stations built immediately adjacent to established residential areas have]~~ ~~[+which are commonly associated with facilities that sell gasoline, oil and liquefied petroleum gas+]~~ The purpose of this amendment is to require a public notification process and comment period before the construction of new ~~[service stations]~~ ~~[+ , such facilities+]~~.

C. Page 1, Lines 17-19 (will be renumbered):

~~[Service stations already in existence]~~ ~~[+SECTION 2. Facilities that sell gasoline, oil and/or liquefied petroleum gas, which already exist+]~~ in C-1 zones ~~[,]~~ or for which building permits have been received prior to ~~[adoption]~~ ~~[+the effective date+]~~ of this ordinance, are not affected.

D. Page 6, Line 5 (to be renumbered):

~~[(21) Retail sales of gasoline, oil, liquefied petroleum gas, including outside sales.]~~

~~[+(21) Retail sales of gasoline, oil, liquefied petroleum gas, including outside sales, except for liquefied petroleum gas in containers five (5) gallons or less in size.+]~~

E. Page 6, Line 14 (to be renumbered):

SECTION ~~[5]~~ ~~[+8.+]~~. COMPILATION. This ordinance shall be incorporated in and made part of the Revised Ordinances of Albuquerque, New Mexico, 1994. ~~[+Section 1 shall not be codified.+]~~

3. Minor Revisions

A. Page 1, Line 20 (will be renumbered):

~~[SECTION 2]~~ ~~[SECTION 5]~~ and subsequent renumbering of Sections 3, 4, 5 and 6 as Sections 6, 7, 8 and 9, respectively.

B. Page 2, Line 16 (to be renumbered):

....pursuant to [~~§ 14-16-3-12(A)(11)ROA 1994~~] ~~[+, the Community Residential Program Regulations. +]~~

C. Page 2, Lines 18 & 20 (will be renumbered):

~~[(k)] [Gasoline, oil, liquefied petroleum gas, including outside sales.]~~
~~(+)~~ ~~[+k+]~~ Hardware, building materials, provided it is in a completely enclosed building.

Catalina Lehner

Catalina Lehner, AICP
Senior Planner

cc for Notice of Decision:

City of Albuquerque, City Council, Attn: Diane Dolan, P.O. Box 1293, Albuquerque, NM 87102
City of Albuquerque, Planning Department, P.O. Box 1293, Albuquerque, NM 87102

CITY OF ALBUQUERQUE AGENCY COMMENTS

PLANNING DEPARTMENT

Code Enforcement

Reviewed: If approved, the text amendment would also make propane sales (e.g. tanks for barbeque grills) a conditional use.

Office of Neighborhood Coordination (ONC)

9/6/11 – Article to be in the September/October 2011 issue of the “Neighborhood News” newsletter –siw. 9/8/11 - e-mail sent to NH Reps – siw

The following was published in the Neighborhood News and e-mailed to all neighborhood representatives with e-mail addresses listed with the ONC:

Project #1001620, 11EPC-40053: Proposed Text Amendments to the Zoning Code – The Environmental Planning Commission (EPC) will consider text amendments to the C-1 Neighborhood Commercial Zone (Zoning Code Section 14-16-2-16) at its regularly scheduled public hearing on October 13, 2011.

Currently, the sale of gasoline, oil and liquefied petroleum gas (“retail gas sales”) is a permissive use in the C-1 zone. No public hearing is required for permissive uses. The proposed text amendments would make retail gas sales in the C-1 zone a conditional use, for which a conditional use permit would have to be obtained. Conditional use cases are considered by the Zoning Hearing Examiner (ZHE) at a public hearing. Existing gas stations would not be affected. The proposed text amendments would apply City-wide.

Please contact Catalina Lehner-AICP, Senior Planner, at (505) 924-3935 for more information.

Long Range Planning

The proposed amendment will allow the public to comment on new gas stations proposed in the C-1 zone. As the C-1 zone is sometimes mapped adjacent to residential uses this will provide a way for the public to express any concerns they may have about proposed gas station projects. The use itself has been considered “neighborhood commercial” for decades.

Metropolitan Redevelopment

Metropolitan Redevelopment Agency staff have no comments on this proposal.

OFFICE OF ADMINISTRATIVE HEARINGS

Zoning Hearing Examiner (ZHE)

We have no adverse comments to the proposed amendment.

CITY ENGINEER

Transportation Development Services

- Reviewed, no comment.

Hydrology

- Reviewed. No objection to the Text Amendment of the Zoning Code.

DEPARTMENT of MUNICIPAL DEVELOPMENT

Transportation Planning

- Reviewed, and no comments regarding on-street bikeways, off-street trails or roadway system facilities.

Traffic Engineering Operations (Department of Municipal Development):

- No comments received.

Street Maintenance (Department of Municipal Development):

- No comments received.

New Mexico Department of Transportation (NMDOT):

- No comments received.

**RECOMMENDED CONDITIONS FROM CITY ENGINEER, MUNICIPAL DEVELOPMENT
and NMDOT:**

Conditions of approval for the proposed Zone Map Amendment shall include: None.

WATER UTILITY AUTHORITY

Utility Services

ENVIRONMENTAL HEALTH DEPARTMENT

Air Quality Division

Environmental Services Division

PARKS AND RECREATION

Planning and Design

Open Space Division

Open Space has no adverse comments.

City Forester

POLICE DEPARTMENT/Planning

No Crime Prevention or CPTED comments concerning the proposed Amendment to Zoning Code Text at this time.

SOLID WASTE MANAGEMENT DEPARTMENT

Refuse Division

Approved and must comply with the SWMD ordinance.

FIRE DEPARTMENT/Planning

TRANSIT DEPARTMENT

Adjacent and nearby routes	None
Adjacent bus stops	None
Site plan requirements	None.
Large site TDM suggestions	N/A
Other information	None.

COMMENTS FROM OTHER AGENCIES

BERNALILLO COUNTY

ALBUQUERQUE METROPOLITAN ARROYO FLOOD CONTROL AUTHORITY

Reviewed, no comment.

ALBUQUERQUE PUBLIC SCHOOLS

Project #1001620 11EPC-40053 TEXT AMNDT TO ZONING CODE	The City of Albuquerque proposes an Amendment to the Zoning Code to make the sale of gasoline, oil and liquefied gas a conditional use in the C-1 Zone. This will have no adverse impacts to the APS district.
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MID-REGION COUNCIL OF GOVERNMENTS

MRMPO staff has no adverse comments.

MIDDLE RIO GRANDE CONSERVANCY DISTRICT

PUBLIC SERVICE COMPANY OF NEW MEXICO

PNM has no comment based on information provided to date.

PROPOSED LEGISLATION

O-11-66

CITY OF ALBUQUERQUE

CITY COUNCIL

INTEROFFICE MEMORANDUM

TO: Debbie Stover, Director, Planning Department
FROM: Laura Mason, Director, Council Services *LM*
SUBJECT: Bill No. O-11-66
DATE: August 17, 2011

The attached ordinance was introduced by the City Council on August 15, 2011. We are requesting that you submit this Zoning Code amendment to the Environmental Planning Commission for a hearing as soon as possible. The amendment is intended to make the sale of gasoline, oil and liquefied gas a conditional use in the C-1 Zone.

Please submit the Environmental Planning Commission's comments and recommendations, including the transcript from the meeting, back to the City Council within 75 days of the date of this memo. Thank you.

cc: Russell Brito, Planning Department
Carmen Marrone, Planning Department
File O-11-66

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CITY of ALBUQUERQUE

NINETEENTH COUNCIL

COUNCIL BILL NO. O-11-66 ENACTMENT NO. _____

SPONSORED BY: Isaac Benton

1 **ORDINANCE**

2 **AMENDING CHAPTER 14, ARTICLE 16, SECTION 2, PART 16 OF ROA 1994, A**
3 **PORTION THE ZONING CODE REGARDING THE C-1 NEIGHBORHOOD**
4 **COMMERCIAL ZONE, TO MAKE THE SALE OF GASOLINE, OIL AND**
5 **LIQUEFIED PETROLEUM GAS A CONDITIONAL USE.**

6 **BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF**
7 **ALBUQUERQUE:**

8 **SECTION 1. The amendment herein revises the comprehensive zoning**
9 **code to make the sale of gasoline, oil and liquefied petroleum gas a**
10 **conditional use, rather than a permissive use, in the C-1 Neighborhood**
11 **Commercial Zone. The City Council is concerned about the negative impacts,**
12 **such as exposure to environmental hazards and the generation of additional**
13 **traffic, and safety issues, such as the creation of conflict points in areas of**
14 **increased pedestrian and bicycle activity, that service stations built**
15 **immediately adjacent to established residential areas have. The purpose of**
16 **this amendment is to require a public notification process and comment**
17 **period before the construction of new service stations. Service stations**
18 **already in existence in C-1 zones, or for which building permits have been**
19 **received prior to adoption of this ordinance, are not affected.**

20 **SECTION 2. Section 14-16-2-16 (A) (8) is amended to read:**

21 **"(8) Retail sales of the following goods, plus incidental retailing of**
22 **related goods and incidental service or repair:**

23 **(a) Arts and crafts objects, supplies, plus their incidental**
24 **creation provided there is little or no reproduction of substantially identical**
25 **objects.**

26 **(b) Auto parts and supply.**

1 (c) Books, magazines, newspapers, stationery, provided that no
2 such material is advertised to be forbidden to be sold to minors.

3 (d) Christmas trees, including outside sales, provided the use is
4 limited to 45 days in one calendar year.

5 (e) Clothing, shoes, dry goods.

6 (f) Cosmetics, notions, hobby supplies.

7 (g) Drugs, medical supplies.

8 (h) Flowers and plants, including minor and incidental outdoor
9 sales.

10 (i) Food and drink for consumption on premises, provided:

11 1. There shall be no drive-in restaurant, and

12 2. Alcoholic drink may be sold only under a restaurant
13 license for sale of beer and wine, as provided by Section 60-6A-4 NMSA 1978.
14 The sale of beer and wine under a restaurant license, however, is prohibited
15 within 500 feet of a community residential program or hospital for treatment of
16 substance abusers pursuant to § 14-16-3-12(A)(11) ROA 1994.

17 (j) Furniture, household furnishings, and appliances.

18 (k) ~~[Gasoline, oil, liquefied petroleum gas, including outside~~
19 ~~sales.]~~

20 (l) Hardware, building materials, provided it is in a completely
21 enclosed building.

22 (m) ~~[(l)]~~ Jewelry.

23 (n) ~~[(m)]~~ Musical instruments and supplies.

24 (o) ~~[(n)]~~ Pets, provided there is no outside pen. One outside
25 exercise run is permitted, provided it is enclosed with a solid wall or fence at
26 least six feet high, and no more than one animal is permitted in the run at any
27 one time.

28 (p) ~~[(o)]~~ Photograph equipment.

29 (q) ~~[(p)]~~ Sporting goods.

30 SECTION 3. Section 14-16-2-16 (B) is amended as follows:

31 (B) *Conditional Uses.*

32 (1) Antenna, over 65 feet in height.

1 (2) Community Residential Program except not either Community
2 Residential corrections program or Community residential program for
3 substance abusers: up to 18 client residents, provided that the standards of
4 § 14-16-3-12 of this Zoning Code are met.

5 (3) Auto, trailer, and truck rental, service, storage, provided at least
6 the following is complied with:

7 (a) The lot is graded and surfaced as follows:

8 1. Blacktop or equal. Two inches of asphaltic concrete on a
9 prime coat and a four inch compacted subgrade, or a surface of equal or
10 superior performance characteristics.

11 2. Such paving shall be maintained level and serviceable.

12 (b) 1. A fence or wall which prevents vehicles from extending
13 beyond the property line shall be erected. However, if the wall or fence plus
14 retaining wall would have an effective height of over eight feet on the
15 residential side, the Zoning Hearing Examiner shall decide the required height;
16 such decision shall be made by the same process and criteria required for a
17 conditional use.

18 2. In a parking structure there shall be a six foot high solid
19 wall on every parking level, where the structure is within 19 feet of privately
20 owned land in a residential zone.

21 (c) Trucks and trailers parked outdoors for rental or storage,
22 provided:

23 1. Such vehicles shall not exceed 35 feet in length, 12 feet in
24 height, or a registered gross vehicle weight capacity of 26,000 lbs. The body
25 of trailers shall not be over 14 feet long unless it is a recreational vehicle.

26 2. No such vehicles shall be truck tractors or road tractors.

27 3. Parked or stored vehicles shall not cover more than 25% of
28 the premises.

29 4. Special restrictions on types and number of such vehicles
30 as well as screening and location of parking shall be imposed if appropriate
31 and necessary to protect the neighborhood.

32 (d) Vehicle repairing, done within a completely enclosed
33 building and at least 20 feet from any residential zone.

1 (4) Bicycle and motorized bicycle (moped) sales and rental,
2 provided that outdoor display is permitted only 50 feet or more from any
3 residential zone.

4 (5) Drive-up service window, except where listed as permissive in
5 this zone, provided that the vehicle movement plan is approved by the Traffic
6 Engineer, and further provided that the service window and any associated
7 order board are located at least 75 feet from any residential zone. Drive-up
8 service windows in existence upon the effective date of this Zoning Code shall
9 be considered as approved conditional uses.

10 (6) Fireworks sales, provided the use is limited to 45 days in one
11 calendar year.

12 (7) Games within a completely enclosed building, operated for
13 profit, and not permissive in this zone.

14 (8) Kennel, provided:

15 (a) It is in a completely enclosed building.

16 (b) It is no closer than 30 feet from any residential zone.

17 (c) The noise from the kennel does not exceed the ambient
18 noise level as defined in § 9-9-2, Noise Control, when measured 30 feet from
19 any exterior wall of the kennel.

20 (9) Mortuary.

21 (10) One mobile home for a watchman or caretaker on the same
22 premises developed with a commercial building or use provided that the
23 mobile home shall not be within 100 feet of a lot in a residential zone or a
24 dwelling unit in any zone.

25 (11) Outdoor storage or activity except as specifically listed as a
26 permissive or conditional use in this section and as further provided below:

27 (a) The outdoor storage or activity is part of a use on the same
28 premises, which use is a permissive only within a building in this zone.

29 (b) Outdoor uses which would impact their environs with
30 appearance, light, noise, odor, or similar environmental problems likely to be
31 unpleasant to neighboring premises and uses shall not be approved.

32 (c) Outdoor conditional uses may justify special buffering to
33 prevent the activity from negatively impacting adjacent land.

1 (d) Outdoor restaurant seating located within 75 feet of a
2 residential zone.

3 (12) Park-and-ride joint-use facilities, if it is determined that under
4 the conditions imposed there will not be a shortage of on-site parking for the
5 activities on the site; in such situations, no parking variance is required.

6 (13) Photo direct off-set printing, perforating, scoring, cutting, and
7 other light duty printing services provided:

8 (a) The number of persons engaged in the business is limited to
9 five excluding secretarial, clerical, and delivery personnel; and

10 (b) Activities or products are not objectionable due to noise,
11 vibration or other cause.

12 (14) Public utility structure which is not permissive.

13 (15) Recycling bin as an accessory use on the site, as provided in
14 § 14-16-3-15 of this Zoning Code.

15 (16) Schools, other than public.

16 (17) Storage of household goods, office records, equipment or
17 material reasonable to neighborhood function provided:

18 (a) All activities are conducted within a completely enclosed
19 building, the scale and style of which fits its location;

20 (b) Individual storage cubicles, units, or facilities are not each
21 directly accessible from outside the enclosed building; and

22 (c) Direct access to the premises from an arterial or collector
23 street is available.

24 (18) Uses or activities in a tent. If the uses or activities are listed
25 elsewhere in this section, provided there is sufficient paved off-street parking
26 available on the premises to meet parking requirements for all uses on the
27 premises, including the activity in the tent, and provided that the City Fire
28 Marshal [i.e., the Chief of the Fire Prevention Bureau] or his authorized
29 representative gives prior approval of the tent as meeting the requirements
30 of Chapter 14, Article 2, Fire Code.

31 (19) Restaurant serving liquor, provided that the restaurant is
32 located within a shopping center site for which a site development plan has
33 been approved.

1 **(20) Wireless Telecommunications Facility, Roof-Mounted, up to 20**
2 **feet above the parapet of the building on which it is located, provided that the**
3 **requirements of § 14-16-3-17 of this Zoning Code are met.**

4 **[(21) Retail sales of gasoline, oil, liquefied petroleum gas, including**
5 **outside sales.]**

6 **SECTION 4. SEVERABILITY CLAUSE. If any section, paragraph, sentence,**
7 **clause, word or phrase of this ordinance is for any reason held to be invalid or**
8 **unenforceable by any court of competent jurisdiction, such decision shall not**
9 **affect the validity of the remaining provisions of this ordinance. The Council**
10 **hereby declares that it would have passed this ordinance and each section,**
11 **paragraph, sentence, clause, word or phrase thereof irrespective of any**
12 **provision being declared unconstitutional or otherwise invalid.**

13 **SECTION 5. COMPILATION. This ordinance shall be incorporated in and**
14 **made part of the Revised Ordinances of Albuquerque, New Mexico, 1994.**

15 **SECTION 6. EFFECTIVE DATE. This ordinance shall take effect five days**
16 **after publication by title and general summary.**

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ZONING CODE

§ 14-16-2-16 C-1 NEIGHBORHOOD COMMERCIAL ZONE.

This zone provides suitable sites for office, service, institutional, and limited commercial uses to satisfy the day-to-day needs of residential areas.

(A) **Permissive Uses.** Permissive uses, provided there is no outdoor storage or activity except parking and as specifically allowed below:

- (1) Antenna, up to 65 feet in height.
- (2) Institution:
 - (a) Church or other place of worship, including incidental recreational and educational facilities. Incidental uses allowed include but are not limited to an emergency shelter operated by the church on the church's principal premises which is used regularly for public worship, notwithstanding special limitations elsewhere in this Zoning Code.
 - (b) Club, provided there is no liquor license.
 - (c) Library.
 - (d) Museum.
 - (e) Schools, including a private school which serves to provide basic education to children as is provided in public schools in grades K through 12, and excluding all other private schools.
- (3) Office.
- (4) Office machines and equipment sales and repair.
- (5) Park-and-ride temporary facilities.
- (6) Public utility structure, provided its location is in accord with an adopted facility plan and a site development plan for building permit purposes has been approved by the Planning Commission.
- (7) Residential uses permissive in the R-3 Zone with the following exceptions:
 - (a) Houses are not allowed;
 - (b) No less than 20% and no more than 60% of the gross floor area of the structures on the site shall be developed with residential uses;
 - (c) Residential uses shall be part of a vertical mix of uses (e.g. residential over commercial or residential over office).
 - (d) Where residential uses are proposed, the following regulations shall apply:
 1. Area: minimum of 5 acres.
 2. Height: Pursuant to the R-3 Zone.

3. Density: The total square footage of all buildings shall achieve a minimum floor area ratio of 0.3.
 4. Usable open space: Pursuant to the R-3 Zone. At least 50% of the required open space shall be provided in the form of shared or aggregate open space.
 5. Shared parking: As provided in § 14-16-3-1(E)(6)(b) except that parking for residential uses is eligible for a shared parking exception.
 6. Approval process: Site development plan approval by the Environmental Planning Commission.
- (8) Retail sales of the following goods, plus incidental retailing of related goods and incidental service or repair:
- (a) Arts and crafts objects, supplies, plus their incidental creation provided there is little or no reproduction of substantially identical objects.
 - (b) Auto parts and supply.
 - (c) Books, magazines, newspapers, stationery, provided that no such material is advertised to be forbidden to be sold to minors.
 - (d) Christmas trees, including outside sales, provided the use is limited to 45 days in one calendar year.
 - (e) Clothing, shoes, dry goods.
 - (f) Cosmetics, notions, hobby supplies.
 - (g) Drugs, medical supplies.
 - (h) Flowers and plants, including minor and incidental outdoor sales.
 - (i) Food and drink for consumption on premises or off, provided:
 1. There shall be no drive-in restaurant, and
 2. Alcoholic drink may be sold only under a restaurant license for sale of beer and wine, as provided by Section 60-6A-4 NMSA 1978 except the retailing of alcoholic drink, for on or off premise consumption, within 500 feet of a community residential program or hospital for treatment of substance abusers, is prohibited pursuant to § 14-16-3-12(A)(11) ROA 1994.
 - (j) Furniture, household furnishings, and appliances.
 - (k) Gasoline, oil, liquified petroleum gas, including outside sales.
 - (l) Hardware, building materials, provided it is in a completely enclosed building.
 - (m) Jewelry.
 - (n) Musical instruments and supplies.

- (o) Pets, provided there is no outside pen. One outside exercise run is permitted, provided it is enclosed with a solid wall or fence at least six feet high, and no more than one animal is permitted in the run at any one time.
- (p) Photograph equipment.
- (q) Sporting goods.
- (9) Radio and television station.
- (10) Services:
 - (a) Automobile, bicycle and motorized bicycle (moped) repairing, but no body work. Repairing shall be done within a completely enclosed building at least 20 feet from any residential zone.
 - (b) Banking, loaning money, including pawn. Drive-in facilities permitted on the condition the vehicle movement plan is approved by the Traffic Engineer.
 - (c) Barber, beauty.
 - (d) Car washing.
 - (e) Day care center.
 - (f) Dry cleaning, laundry, clothes pressing, provided:
 - 1. Only nonflammable or noncombustible materials are used in the cleaning process.
 - 2. The number of persons employed in the establishment is limited to three, excluding pressers, office, clerical, or delivery personnel.
 - 3. That portion of the structure in which any cleaning process is done is at least 50 feet from any residential zone.
 - (g) Games, electronic and pinball, provided:
 - 1. They are within a completely enclosed building; and
 - 2. If the games are within 100 feet of a residential zone there shall be no more than four game machines per business.
 - (h) Health Gymsnasiums.
 - (i) Instruction in music, dance, fine arts, crafts, modeling; training of dogs which are not boarded on the premises.
 - (j) Interior decorating.
 - (k) Medical or dental laboratory.
 - (l) Parking lot, as regulated in the O-1 zone.

- (m) Pet grooming.
 - (n) Photography, photocopy, except adult photo studio.
 - (o) Repair of shoes, household equipment.
 - (p) Small animal clinic.
 - (q) Tailoring, dressmaking.
 - (r) Taxidermy.
- (11) Sign, off-premise, as in § 14-16-3-5 of this Zoning Code, and further provided:
- (a) Location.
 - 1. Only wall signs and free-standing signs are permitted in the Established or Redeveloping Areas.
 - 2. Only wall signs are permitted in the Developing or Semi-Urban Areas.
 - 3. No sign shall be nearer than 300 feet to any other off-premise sign.
 - 4. No free-standing sign erected after January 1, 1976, shall be nearer than 100 feet to any preexisting on-premise sign.
 - 5. No sign shall be nearer than 12 feet to any public street right-of-way.
 - 6. No sign shall be nearer than 150 feet to any conforming residential property.
 - (b) Size. Sign area of any sign shall not exceed 72 square feet. An additional add-on sign area of six square feet is permitted.
 - (c) Height. Sign height shall not exceed 15 feet, except the height of an add-on sign may be up to but shall not exceed 18 feet.
 - (d) Illumination. No sign shall be illuminated.
 - (e) Motion. Signs or sign parts shall not move.
- (12) Sign, on-premise, as provided in § 14-16-3-5 of this Zoning Code, and further provided:
- (a) Location.
 - 1. A sign shall not overhang into the public right-of-way, except wall signs may protrude up to one foot into the public right-of-way.
 - 2. Building-mounted signs extending above the roof shall be permitted only if they are a continuation of the plane of a facade or of a projecting sign.
 - 3. Projecting signs shall not project horizontally more than four feet.
 - (b) Number.
 - 1. No limit on number of wall signs.

2. In the Established or Redeveloped Areas, one free-standing sign or projecting sign shall be permitted for each street frontage of each premises, or joint sign premises, provided the street frontage is at least 100 feet wide. A portable sign may also be permitted pursuant to the General Signage Regulations.
 3. In the Developing Semi-Urban, or Rural and Open Areas:
 - a. Projecting signs as in division 2. above.
 - b. No free-standing signs on premises of under five acres, except a portable sign may also be permitted pursuant to the General Signage Regulations.
 - c. One free-standing sign shall be permitted on premises of five acres or more, provided the street frontage is at least 100 feet wide.
 4. One canopy sign per entrance or exit shall be permitted.
- (c) Size.
1. Size of Free-Standing or Projecting Signs. Sign area for a free-standing or projecting sign shall not exceed the following area:
 - a. 75 square feet if the most important street abutting the lot is a local street.
 - b. 100 square feet if the most important street abutting the lot is a collector street, arterial street, or freeway.
 2. Size, Building-Mounted Signs, Except Projecting Signs:
 - a. A building-mounted sign on premises or joint sign premises where there is no free-standing on- or off-premise sign shall not exceed the following:
 - i. Twenty percent of the area of the facade to which it is applied, if the sign is not wholly visible from an abutting arterial or collector street or freeway; or
 - ii. Twenty-five percent of the area of the facade to which it is applied, if the sign is wholly visible from an abutting arterial or collector street or freeway.
 - b. A building-mounted sign, on a premises or joint sign premises where there is a free-standing or projecting on-premise sign or any off-premise sign, shall not exceed one-half the percentage of facade area listed in division a. above.
- (d) Height.

1. Height of a free-standing sign shall not exceed 26 feet, except a sign that is within 200 feet of a moving through lane of an Interstate Highway, excluding interchange ramps, may be up to but shall not exceed 26 feet above the freeway at its closest point.
2. Height of a building-mounted sign shall not exceed five feet above the height of the building, or it shall not exceed 30 feet, whichever is lower.

- (e) Illumination, Motion, Lettering. No regulations, apart from the general sign regulations.
- (f) Exceptions.
 - 1. Permitted building-mounted sign area from the front and sides of the principal building of the business may be transferred from the building to a customer service area of the same business on the same premises, provided the height of such signs shall not exceed 15 feet and setback shall be at least ten feet; such signing shall not be considered free-standing.
 - 2. Any exceptions allowed for shopping centers, in order to provide adequate signing in special situations, shall be as provided under § 14-16-3-2 of this Zoning Code. Such a sign exception must be specifically defined in the Planning Commission resolution. Shopping centers approved prior to the effective date of this Zoning Code shall comply with sign regulations in this article, unless an exception is specifically defined in a Planning Commission resolution.
- (13) Storage structure or yard for equipment, material, or activity incidental to a specific construction project, provided it is of a temporary nature and is moved after the specific construction project is completed, or work on the project has been dormant for a period of six or more months, and further provided that it is limited to a period of one year unless the time is extended by the Planning Director.
- (14) Uses or activities in a tent, if the uses or activities are listed elsewhere in this subsection, provided:
 - (a) The tent may not be erected for more than seven days at a time and may not be erected more than two times a year on a given premises; and
 - (b) There is sufficient paved off-street parking available on the premises to meet the parking requirements for all uses on the premises, including the activity in the tent. The Zoning Enforcement Officer shall approve the site plan for the tent, which shall demonstrate adequate parking and vehicle circulation, prior to erection of the tent; and
 - (c) There are toilet facilities on the premises available to the users of the tent; and
 - (d) The City Fire Marshal or his authorized representative gives prior approval of the tent as meeting the requirements of Chapter 14, Article 2, Fire Code.
- (15) Wireless Telecommunications Facility, provided that the requirements of § 14-16-3-17 of this Zoning Code are met, and as specifically allowed below:
 - (a) A concealed wireless telecommunications facility, up to 65 feet in height.
 - (b) A collocated free-standing wireless telecommunications facility, up to 75 feet in height.
 - (c) A face-mounted wireless telecommunications facility.
 - (d) A roof-mounted free-standing wireless telecommunications facility, up to 20 feet above the parapet of the building on which it is placed.
 - (e) A wireless telecommunications facility, the antennas of which are all mounted on an existing vertical structure.

(B) Conditional Uses.

- (1) Antenna, over 65 feet in height.
- (2) Community Residential Program except not either Community Residential corrections program or Community residential program for substance abusers: up to 18 client residents, provided that the standards of § 14-16-3-12 of this Zoning Code are met.
- (3) Auto, trailer, and truck rental, service, storage, provided at least the following is complied with:
 - (a) The lot is graded and surfaced as follows:
 1. Blacktop or equal. Two inches of asphaltic concrete on a prime coat and a four inch compacted subgrade, or a surface of equal or superior performance characteristics.
 2. Such paving shall be maintained level and serviceable.
 - (b)
 1. A fence or wall which prevents vehicles from extending beyond the property line shall be erected. However, if the wall or fence plus retaining wall would have an effective height of over eight feet on the residential side, the Zoning Hearing Examiner shall decide the required height; such decision shall be made by the same process and criteria required for a conditional use.
 2. In a parking structure there shall be a six foot high solid wall on every parking level, where the structure is within 19 feet of privately owned land in a residential zone.
 - (c) Trucks and trailers parked outdoors for rental or storage, provided:
 1. Such vehicles shall not exceed 35 feet in length, 12 feet in height, or a registered gross vehicle weight capacity of 26,000 lbs. The body of trailers shall not be over 14 feet long unless it is a recreational vehicle.
 2. No such vehicles shall be truck tractors or road tractors.
 3. Parked or stored vehicles shall not cover more than 25% of the premises.
 4. Special restrictions on types and number of such vehicles as well as screening and location of parking shall be imposed if appropriate and necessary to protect the neighborhood.
 - (d) Vehicle repairing, done within a completely enclosed building and at least 20 feet from any residential zone.
- (4) Bicycle and motorized bicycle (moped) sales and rental, provided that outdoor display is permitted only 50 feet or more from any residential zone.
- (5) Drive-up service window, except where listed as permissive in this zone, provided that the vehicle movement plan is approved by the Traffic Engineer, and further provided that the service window and any associated order board are located at least 75 feet from any residential zone. Drive-up service windows in existence upon the effective date of this Zoning Code shall be considered as approved conditional uses.

- (6) Fireworks sales, provided the use is limited to 45 days in one calendar year.
- (7) Games within a completely enclosed building, operated for profit, and not permissive in this zone.
- (8) Kennel, provided:
 - (a) It is in a completely enclosed building.
 - (b) It is no closer than 30 feet from any residential zone.
 - (c) The noise from the kennel does not exceed the ambient noise level as defined in § 9-9-2, Noise Control, when measured 30 feet from any exterior wall of the kennel.
- (9) Mortuary.
- (10) One mobile home for a watchman or caretaker on the same premises developed with a commercial building or use provided that the mobile home shall not be within 100 feet of a lot in a residential zone or a dwelling unit in any zone.
- (11) Outdoor storage or activity except as specifically listed as a permissive or conditional use in this section and as further provided below:
 - (a) The outdoor storage or activity is part of a use on the same premises, which use is a permissive only within a building in this zone.
 - (b) Outdoor uses which would impact their environs with appearance, light, noise, odor, or similar environmental problems likely to be unpleasant to neighboring premises and uses shall not be approved.
 - (c) Outdoor conditional uses may justify special buffering to prevent the activity from negatively impacting adjacent land.
 - (d) Outdoor restaurant seating located within 75 feet of a residential zone.
- (12) Park-and-ride joint-use facilities, if it is determined that under the conditions imposed there will not be a shortage of on-site parking for the activities on the site; in such situations, no parking variance is required.
- (13) Photo direct off-set printing, perforating, scoring, cutting, and other light duty printing services provided:
 - (a) The number of persons engaged in the business is limited to five excluding secretarial, clerical, and delivery personnel; and
 - (b) Activities or products are not objectionable due to noise, vibration or other cause.
- (14) Public utility structure which is not permissive.
- (15) Recycling bin as an accessory use on the site, as provided in § 14-16-3-15 of this Zoning Code.
- (16) Schools, other than public.

- (17) Storage of household goods, office records, equipment or material reasonable to neighborhood function provided:
- (a) All activities are conducted within a completely enclosed building, the scale and style of which fits its location;
 - (b) Individual storage cubicles, units, or facilities are not each directly accessible from outside the enclosed building; and
 - (c) Direct access to the premises from an arterial or collector street is available.
- (18) Uses or activities in a tent. If the uses or activities are listed elsewhere in this section, provided there is sufficient paved off-street parking available on the premises to meet parking requirements for all uses on the premises, including the activity in the tent, and provided that the City Fire Marshal [i.e., the Chief of the Fire Prevention Bureau] or his authorized representative gives prior approval of the tent as meeting the requirements of Chapter 14, Article 2, Fire Code.
- (19) Restaurant serving liquor, provided that the restaurant is located within a shopping center site for which a site development plan has been approved.
- (20) Wireless Telecommunications Facility, Roof-Mounted, up to 20 feet above the parapet of the building on which it is located, provided that the requirements of § 14-16-3-17 of this Zoning Code are met.
- (C) **Height.** Structures shall not exceed 26 feet except as provided in § 14-16-3-3 of this Zoning Code, and for sign and antenna height, in division (A) of this section.
- (D) **Lot Size.** No requirements.
- (E) **Setback.** Setback shall be as provided in the O-1 zone.
- (F) **Off-Street Parking.** Off-street parking shall be as provided in § 14-16-3-1 of this Zoning Code.
- (G) **Shopping Center Regulations.** Any site in this zone classified as a Shopping Center site, as defined in § 14-16-1-5 of this Zoning Code, is subject to special site development regulations. The Shopping Center Regulations are provided in § 14-16-3-2 of this Zoning Code.

('74 Code, § 7-14-21) (Ord. 80-1975; Am. Ord. 40-1976; Am. Ord. 87-1976; Am. Ord. 88-1976; Am. Ord. 1-1977; Am. Ord. 13-1977; Am. Ord. 26-1977; Am. Ord. 74-1977; Am. Ord. 30-1978; Am. Ord. 31-1978; Am. Ord. 38-1978; Am. Ord. 61-1980; Am. Ord. 74-1980; Am. Ord. 66-1981; Am. Ord. 94-1981; Am. Ord. 39-1983; Am. Ord. 40-1983; Am. Ord. 54-1983; Am. Ord. 101-1983; Am. Ord. 102-1983; Am. Ord. 74-1985; Am. Ord. 63-1986; Am. Ord. 41-1987; Am. Ord. 12-1990; Am. Ord. 30-1990; Am. Ord. 47-1990; Am. Ord. 63-1990; Am. Ord. 69-1990; Am. Ord. 26-1991; Am. Ord. 43-1991; Am. Ord. 2-1994; Am. Ord. 58-1995; Am. Ord. 9-1999; Am. Ord. 10-2004; Am. Ord. 4-2005; Am. Ord. 43-2005; Am. Ord. 7-2006; Am. Ord. 23-2007; Am. Ord. 5-2008; Am. Ord. 6-2009; Am. Ord. 19-2010)

§ 14-16-4-2 SPECIAL EXCEPTIONS.**(A) Application and Fee.**

- (1) Special exceptions to this Zoning Code which may be applied for are:
 - (a) Conditional use;
 - (b) Variance; and
 - (c) Expansion of nonconforming use.
- (2) Request for special exceptions is initiated by application to the city on prescribed forms. Each application shall be accompanied by at least one copy of an accurate site plan, building development plan, sketch or other related information, as required by the Zoning Hearing Examiner.
- (3) An application for the same special exception on the same site may not be considered within 12 months of the date of final city action on a prior application.
- (4) An application fee of \$100 shall accompany each application. When an application is withdrawn after it has been advertised for public hearing, the application fee shall not be refunded. When an application is withdrawn before such advertisement, all but \$20 of the fee shall be refunded. Where the city is the applicant or agent, the application fee is waived.

(B) Hearing and Decision.

- (1) A duly filed application for a special exception to the regular zoning provisions shall be decided upon the record after a hearing by the Zoning Hearing Examiner.
- (2) At least 15 days in advance of a hearing, the Planning Director shall publish notice of the hearing in a newspaper of general circulation in the city, and at least 15 days in advance of a hearing shall mail notice individually to the following:
 - (a) The applicant;
 - (b) The applicant's agent;
 - (c) The owners, as shown by the records of the County Assessor, of lots comprising the application site and lots within 100 feet, excluding public right-of-way, of the application site;
 - (d) Any neighborhood association which has filed its articles of incorporation, bylaws, or other document indicating its existence which includes key contact people, organizational structure, current boundaries and preferred mailing address with the Office of Neighborhood Coordination, if the boundaries of the organization include any part of the parcel of the requested special exception, or any land within 100 feet thereof, excluding public right-of-way; and
 - (e) Any other person, agency, or organization that has filed with the Planning Director a request to receive notices of hearings and has paid a reasonable fee therefor.
- (3) The notice shall:

- (a) Give the time and place of hearing;
 - (b) Contain a statement describing location of the property and the subject matter of the hearing; and
 - (c) Specify how additional information can be obtained.
- (4) The applicant shall post and maintain one or more signs, as provided and where instructed by the Planning Director, at least 15 days before the date of the hearing. The applicant is responsible for removing such sign within five days after the hearing is completed. Failure to properly post signs is grounds for deferral.
- (5) Prior to hearing, the Planning Director shall request city departments and other agencies which he judges would be interested to comment on the application. Comments received shall be submitted to the Zoning Hearing Examiner and shall be part of the hearing record.
- (6) A written statement giving the name and address of the person making the appearance, signed by him or by his agent, and filed with or maintained by the Zoning Hearing Examiner prior to the Hearing Examiner's terminating public comment on the case, constitutes appearance of record. The parties to a hearing shall be any of the following persons who have entered an appearance of record:
- (a) A person entitled to notice under divisions (2)(a) through (d) above;
 - (b) The representatives of any department or agency of the city or another unit of local government in the metropolitan area which may be affected by the application; or
 - (c) A person who satisfied the Zoning Hearing Examiner that he has a significant personal, pecuniary, or property right or interest in the subject matter of the hearing.
- (7) A party shall be afforded an opportunity to present evidence and argument and to question witnesses on all relevant issues, but the Zoning Hearing Examiner may impose reasonable limitations on the number of witnesses heard, and on the nature and length of their testimony and questioning. The Zoning Hearing Examiner may call witnesses and introduce papers on his own volition during the public hearing. All testimony at the hearing shall be under oath or affirmation. Nothing in this Zoning Code shall prohibit interested members of the public from testifying at hearings.
- (8) The Planning Director shall make a full record of the hearing by sound recording; any person shall have the opportunity to listen to, copy, or transcribe the recording at any reasonable time at the office of the Planning Director. Summary minutes shall be kept of all Zoning Hearing Examiner's hearings, and they shall be kept available for public inspection.
- (9) Prior to making a decision, the Zoning Hearing Examiner shall neither:
- (a) Communicate, directly or indirectly, with any party or his representatives in connection with the merits of any issue involved, except upon notice and opportunity for all parties to participate;
 - (b) Use nor rely upon any communication, reports, staff memoranda, or other materials prepared in connection with the particular case unless made a part of the record; nor
 - (c) Inspect the site with any party or his representative unless all parties are given opportunity to be present.

- (10) An advertised hearing may be continued to a time and place announced at the hearing without readvertising or reposting of signs.
 - (11) The Zoning Hearing Examiner shall act on an application within 15 days of the conclusion of the hearing. He shall prepare a written decision, which includes the key findings of fact. This report shall be made part of the record. Each material finding shall be supported by substantial evidence or, if it is noted on the record, by the personal knowledge of or inspection of the Zoning Hearing Examiner.
 - (12) The Zoning Hearing Examiner may, when approving a special exception, impose conditions necessary to meet the stated criteria for granting special exceptions.
 - (13) Notification. When any special exception is approved, approved with conditions, or denied, as provided in this section, written notification of the action listing any conditions imposed shall be sent within one day of the action to every party and to any other person who has entered an appearance and also requested a copy of the decision; however, when the decision is made in the public hearing, notice shall be mailed only to the applicant and other persons who have entered an appearance and who have requested to be so informed.
- (C) **Criteria for Decision.** The city shall approve a special exception if the evidence presented to the record shows that the following criteria are met. Although others may submit evidence, it is the burden of the applicant to ensure that there is such evidence in the record.
- (1) A conditional use shall be approved if and only if, in the circumstances of the particular case and under conditions imposed, the use proposed:
 - (a) Will not be injurious to the adjacent property, the neighborhood, or the community;
 - (b) Will not be significantly damaged by surrounding structures or activities.
 - (2) Variance. A variance shall be approved if and only if the following tests are met:
 - (a) The property is exceptional:
 - 1. The parcel is exceptional as compared with other land in the vicinity subject to the same regulations by reason of the physical characteristics of the land, which physical characteristics existed at the time of the adoption of the regulation or were created by natural forces or by governmental action for which no compensation was paid.
 - 2. The parcel is exceptional as compared with other land in the vicinity subject to the same regulations by reason of the conditions or use of the parcel or other land in the vicinity which condition or use existed at the time of adoption of the regulations; or
 - 3. The parcel is irregular, unusually narrow or shallow in shape, and the conditions existed at the time of the adoption of the regulation or were created by natural forces or governmental action for which no compensation was paid; and
 - (b) As a result of the exceptional aspect of the property, the regulations produce unnecessary hardship; an unnecessary hardship is one that either:
 - 1. Creates an exceptional, substantial, and unjustified limitation of the property owner's reasonable use of his property; or

2. Deprives the owner of a reasonable return on the property under any use permitted by its existing zone.
- (c) A particular variance is appropriate to prevent the unnecessary hardship. The decision on whether to grant a particular variance depends upon a comparison of the special circumstances shown by the applicant (i.e., as per divisions (a) and (b) above) and the public interest. To be justified, a variance must permit only development which meets the following criteria:
 1. It differs from development which would be permitted under existing regular zoning regulations no more than is necessary to overcome the unnecessary hardship;
 2. The variance will not significantly interfere with the enjoyment of other land in the vicinity; and
 3. It is consistent with the spirit of this Zoning Code, substantial justice, and the general public interest.
- (d) Financial gain or loss shall not be the sole determining factor in deciding a variance.
- (3) The expansion of a nonconforming use, including the expansion of a building to accommodate such expanded nonconforming use, shall be approved if and only if, in the circumstances of the particular case and under conditions imposed:
 - (a) The expanded use will not significantly interfere with the enjoyment of other land in the vicinity;
 - (b) The expanded use will not be significantly damaged by surrounding structures or activities;
 - (c) The expanded use is consistent with the spirit of this Zoning Code, substantial justice, and the general public interest;
 - (d) The owner will experience unnecessary hardship and in addition will be denied a continued reasonable use of the property if the expansion is not approved;
 - (e) The expansion does not exceed 25% of the floor or ground area in nonconforming uses on the site at the time it became nonconforming; and
 - (f) The owner covenants that the use of the entire premises will be ceased or made conforming at the time specified by this Zoning Code for termination of the original nonconforming use on the premises.

(D) Voiding of Special Exceptions.

- (1) An approved special exception shall be void one year after the date approval vested if the rights and privileges granted thereby have not been utilized.
- (2) An approved special exception shall be void if it is utilized in a way materially in violation of the terms of approval for a continuous period of one year or more. Such voidance is in addition to and not instead of other remedies available to the city at any time for violation of this Zoning Code.

- (3) An approved conditional use shall be void if, after the use has begun, it ceases on the approved site for a continuous period of one year or more.
- (E) A person who acquires a property interest in a site which was previously granted a special exception has the responsibility to learn the terms of such approval. The existence of an activity or structure which is not in compliance with regular zoning provisions constitutes constructive notice that there may be a special exception, the terms of which must be met.

('74 Code, § 7-14-42) (Ord. 80-1975; Am. Ord. 78-1980; Am. Ord. 49-1987; Am. Ord. 58-1987; Am. Ord. 45-1990; Am. Ord. 13-1991; Am. Ord. 8-1995; Am. Ord. 32-1995; Am. Ord. 23-2001; Am. Ord. 30-2002)

APPLICATION INFORMATION

City of Albuquerque



DEVELOPMENT/ PLAN REVIEW APPLICATION

SUBDIVISION

- ☐ Major subdivision action
☐ Minor subdivision action
☐ Vacation
☐ Variance (Non-Zoning)

SITE DEVELOPMENT PLAN

- ☐ for Subdivision
☐ for Building Permit
☐ Administrative Amendment/Approval (AA)
☐ IP Master Development Plan
☐ Cert. of Appropriateness (LUCC)

STORM DRAINAGE (Form D)

- ☐ Storm Drainage Cost Allocation Plan

Supplemental Form (SF)

S Z

ZONING & PLANNING

- ☐ Annexation
☐ Zone Map Amendment (Establish or Change Zoning, includes Zoning within Sector Development Plan boundaries)
☐ Sector Plan (Phase I, II, III)
☐ Amendment to Sector, Area, Facility or Comprehensive Plan
☒ Text Amendment (Zoning Code/Sub Regs)
☐ Street Name Change (Local & Collector)

L A APPEAL / PROTEST of...

- ☐ Decision by: DRB, EPC, LUCC, Planning Director or Staff, ZHE, Board of Appeals

PRINT OR TYPE IN BLACK INK ONLY. The applicant or agent must submit the completed application in person to the Planning Department Development Services Center, 600 2nd Street NW, Albuquerque, NM 87102. Fees must be paid at the time of application. Refer to supplemental forms for submittal requirements.

APPLICATION INFORMATION:

Professional/Agent (if any): Planning Dept. PHONE: 924-3860
 ADDRESS: 600 2nd St. NW, 3rd Floor FAX: 924-3339
 CITY: Albug. STATE NM ZIP 87102 E-MAIL: cmarrone@cabq.gov
 APPLICANT: City of Albug. PHONE: 924-3860
 ADDRESS: same as above FAX: 924-3339
 CITY: _____ STATE _____ ZIP _____ E-MAIL: cmarrone@cabq.gov
 Proprietary interest in site: NA List all owners: _____

DESCRIPTION OF REQUEST: amend § 14-16-2-16, C-1 zone, to make the sale of gasoline, oil, etc. a Conditional Use

Is the applicant seeking incentives pursuant to the Family Housing Development Program? ☐ Yes. ☒ No.

SITE INFORMATION: ACCURACY OF THE EXISTING LEGAL DESCRIPTION IS CRUCIAL! ATTACH A SEPARATE SHEET IF NECESSARY.

Lot or Tract No. city-wide Block: _____ Unit: _____
 Subdiv/Addn/TBKA: _____
 Existing Zoning: _____ Proposed zoning: _____ MRGCD Map No. _____
 Zone Atlas page(s): _____ UPC Code: _____

CASE HISTORY:

List any current or prior case number that may be relevant to your application (Proj., App., DRB-, AX_Z-, V-, S-, etc.): 1001620

CASE INFORMATION:

Within city limits? ☒ Yes Within 1000FT of a landfill? ☐
 No. of existing lots: _____ No. of proposed lots: _____ Total site area (acres): _____
 LOCATION OF PROPERTY BY STREETS: On or Near: city-wide
 Between: _____ and _____

Check if project was previously reviewed by: Sketch Plat/Plan ☐ or Pre-application Review Team(PRT) ☐ Review Date: _____

SIGNATURE CMarrone DATE 8/23/11
 (Print Name) Carmen Marrone Applicant: ☐ Agent: ☒

FOR OFFICIAL USE ONLY

<input checked="" type="checkbox"/> INTERNAL ROUTING <input checked="" type="checkbox"/> All checklists are complete <input checked="" type="checkbox"/> All fees have been collected <input checked="" type="checkbox"/> All case #'s are assigned <input type="checkbox"/> AGIS copy has been sent <input type="checkbox"/> Case history #'s are listed <input type="checkbox"/> Site is within 1000ft of a landfill <input type="checkbox"/> F.H.D.P. density bonus <input type="checkbox"/> F.H.D.P. fee rebate	Application case numbers <u>11EPC 40053</u>	Action _____ _____ _____ _____ _____	S.F. _____ _____ _____ _____ _____	Fees \$ <u>0</u> \$ _____ \$ _____ \$ _____ \$ _____ \$ _____ Total \$ <u>0</u>
---	--	---	---	---

Hearing date Oct. 13, 2011

8-23-11
 Staff signature & Date

Project # 1001620

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FORM Z: ZONE CODE TEXT & MAP AMENDMENTS, PLAN APPROVALS & AMENDMENTS

☐ ANNEXATION (EPC08)

- ☐ Application for zone map amendment including those submittal requirements (see below).
Annexation and establishment of zoning must be applied for simultaneously.
 - ☐ Petition for Annexation Form and necessary attachments
 - ☐ Zone Atlas map with the entire property(ies) clearly outlined and indicated
NOTE: The Zone Atlas must show that the site is in County jurisdiction, but is contiguous to City limits.
 - ☐ Letter describing, explaining, and justifying the request
NOTE: Justifications must adhere to the policies contained in "Resolution 54-1990"
 - ☐ Letter of authorization from the property owner if application is submitted by an agent
 - ☐ Board of County Commissioners (BCC) Notice of Decision
 - ☐ Office of Neighborhood Coordination (ONC) inquiry response form, notification letter(s), certified mail receipts
 - ☐ Sign Posting Agreement form
 - ☐ Traffic Impact Study (TIS) form
 - ☐ List any original and/or related file numbers on the cover application
- EPC hearings are approximately 7 weeks after the filing deadline.*

Your attendance is required.

- ☐ SDP PHASE I - DRB CONCEPTUAL PLAN REVIEW (DRBPH1) (Unadvertised)
- ☐ SDP PHASE II - EPC FINAL REVIEW & APPROVAL (EPC14) (Public Hearing)
- ☐ SDP PHASE II - DRB FINAL SIGN-OFF (DRBPH2) (Unadvertised)

- ☐ Copy of findings from required pre-application meeting (needed for the DRB conceptual plan review only)
- ☐ Proposed Sector Plan (30 copies for EPC, 6 copies for DRB)
- ☐ Zone Atlas map with the entire plan area clearly outlined and indicated
- ☐ Letter describing, explaining, and justifying the request
- ☐ Office of Neighborhood Coordination (ONC) inquiry response form, notification letter(s), certified mail receipts
(for EPC public hearing only)
- ☐ Traffic Impact Study (TIS) form (for EPC public hearing only)
- ☐ Fee for EPC final approval only (see schedule)
- ☐ List any original and/or related file numbers on the cover application

Refer to the schedules for the dates, times and places of DRB and EPC hearings.

Your attendance is required.

☐ AMENDMENT TO ZONE MAP - ESTABLISHMENT OF ZONING OR ZONE CHANGE (EPC05)

- ☐ Zone Atlas map with the entire property clearly outlined and indicated
- ☐ Letter describing, explaining, and justifying the request pursuant to Resolution 270-1980.
- ☐ Letter of authorization from the property owner if application is submitted by an agent
- ☐ Office of Neighborhood Coordination (ONC) inquiry response form, notification letter(s), certified mail receipts
- ☐ Sign Posting Agreement form
- ☐ Traffic Impact Study (TIS) form
- ☐ Fee (see schedule)
- ☐ List any original and/or related file numbers on the cover application

EPC hearings are approximately 7 weeks after the filing deadline.

Your attendance is required.

☐ AMENDED TO SECTOR DEVELOPMENT MAP (EPC03)

☐ AMENDMENT SECTOR DEVELOPMENT, AREA, FACILITY, OR COMPREHENSIVE PLAN (EPC04)

- ☐ Proposed Amendment referenced to the materials in the Plan being amended (text and/or map)
- ☐ Plan to be amended with materials to be changed noted and marked
- ☐ Zone Atlas map with the entire plan/amendment area clearly outlined
- ☐ Letter of authorization from the property owner if application is submitted by an agent (map change only)
- ☐ Letter describing, explaining, and justifying the request pursuant to Resolution 270-1980 (Sector Plan map change only)
- ☐ Letter briefly describing, explaining, and justifying the request
- ☐ Office of Neighborhood Coordination (ONC) inquiry response form, notification letter(s), certified mail receipts
(for sector plans only)
- ☐ Traffic Impact Study (TIS) form
- ☐ Sign Posting Agreement
- ☐ Fee (see schedule)
- ☐ List any original and/or related file numbers on the cover application

EPC hearings are approximately 7 weeks after the filing deadline.

Your attendance is required.

☒ AMENDMENT TO ZONING CODE OR SUBDIVISION REGULATORY TEXT (EPC07)

- ☒ Amendment referenced to the sections of the Zone Code/Subdivision Regulations being amended
- ☒ Sections of the Zone Code/Subdivision Regulations to be amended with text to be changed noted and marked
- ☒ Letter describing, explaining, and justifying the request
- ☒ Fee (see schedule)
- ☒ List any original and/or related file numbers on the cover application

EPC hearings are approximately 7 weeks after the filing deadline.

Your attendance is required.

I, the applicant, acknowledge that any information required but not submitted with this application will likely result in deferral of actions.

Carmen Marrone

Applicant name (print)

CMarrone

8/23/11

Applicant signature & Date

Revised: June 2011

- ☒ Checklists complete
- ☒ Fees collected
- ☒ Case #s assigned
- ☒ Related #s listed

Application case numbers

11EPC - 40053

[Signature]



Staff signature & Date

Project # 1001620

NOTIFICATION


Lehner, Catalina L.

From: Winklepleck, Stephani I.

Sent: Thursday, September 08, 2011 9:35 AM

Subject: Project #1001620/11EPC-40053 -AND- Project #1001620/11EPC-40062 - Proposed Text Amendments to the Zoning Code

Any questions in regards to these Proposed Text Amendments, please direct them to the assigned staff planner.

Project #1001620, 11EPC-40053: Proposed Text Amendments to the Zoning Code – The Environmental Planning Commission (EPC) will consider text amendments to the C-1 Neighborhood Commercial Zone (Zoning Code Section 14-16-2-16) at its regularly scheduled Public Hearing on Thursday, October 13, 2011. 

Currently, the sale of gasoline, oil and liquefied petroleum gas ("retail gas sales") is a permissive use in the C-1 zone. No public hearing is required for permissive uses. The proposed text amendments would make retail gas sales in the C-1 zone a conditional use, for which a conditional use permit would have to be obtained. Conditional use cases are considered by the Zoning Hearing Examiner (ZHE) at a Public Hearing. Existing gas stations would not be affected. The proposed text amendments would apply citywide.

Please contact Catalina Lehner-AICP, Senior Planner at **505-924-3935**, e-mail: [<clehner@cabq.gov>](mailto:clehner@cabq.gov) for more information.

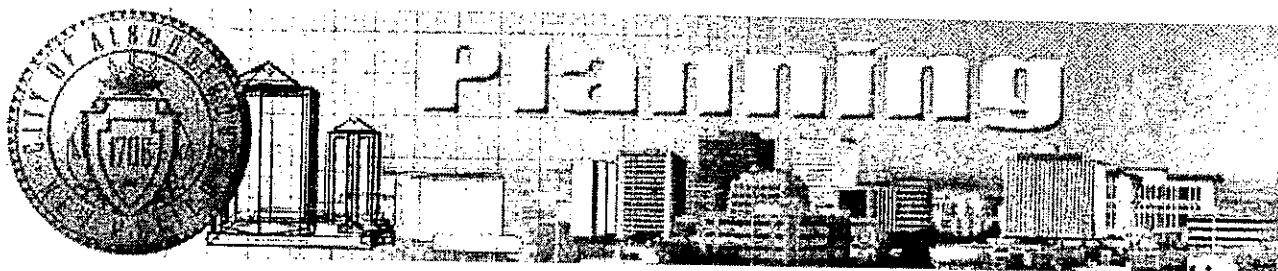
Project #1001620, 11EPC-40062: Proposed Text Amendment to the Zoning Code – The Environmental Planning Commission (EPC) will consider a text amendment to the General Sign Regulations (Zoning Code Section 14-16-3-5 (B)(4)(b)(4)) at its regularly scheduled Public Hearing on Thursday, October 13, 2011.

The changes would allow for two signs for the first ten lots plus one additional sign for each additional, full ten lots, not to exceed six signs total. Sign face area would not exceed 32 square feet in area. Height of signs would be a maximum of four feet above the top of the tallest wall on the lot where it is placed. If walls do not exist on the lot where the sign is placed, then the sign height could not exceed eight feet. Identification signs would not be allowed in common areas or in the public right-of-way and could not violate the clear site triangle at any street intersection. Signs would not be displayed prior to the date of recording of the plat and would be removed upon completion of the project. A permit would be required and each sign would be eligible for a two-year permit and after that a yearly renewal. Artificial illumination would not be allowed.

Please contact Randall Falkner, Staff Planner at **505-924-3933**, e-mail: [<rfalkner@cabq.gov>](mailto:rfalkner@cabq.gov) for more information.

Albuquerque - Official City Website

Planning Department



The Albuquerque Planning Department provides a full range of services from the processing of building permits to the development of long-range, regional plans and policies. The department also houses several quasi-judicial boards and commissions. The Department is comprised of several divisions, all of which are located in the Plaza del Sol Building, 600 Second Street NW. Business hours are **Monday - Friday, 8:00 a.m. to 5:00 p.m.** Our mailing address is P.O. Box 1293, Albuquerque, New Mexico 87103, **505-924-3860**.

Notice

To view the **Pre-Application Facilitated Meeting Report** for **PA#11-074** (proposed Wal-Mart) - Tierra West, LLC, click [here](#) [pdf, 154KB].

- >> **Pre-Application Facilitated Meeting Schedule Clarification** for **PA#11-074** [pdf, 67.1KB]
- >> **Pre-Application Facilitated Meeting Sign-In Sheet** for **PA#11-074** [pdf 1.18MB]

Project #1001620, 11EPC-40053: Proposed Text Amendments to the Zoning Code ←

The Environmental Planning Commission (EPC) will consider text amendments to the **C-1 Neighborhood Commercial Zone (Zoning Code Section 14-16-2-16)** at its regularly scheduled public hearing on **Wednesday, October 13, 2011**.

Currently, the sale of gasoline, oil and liquefied petroleum gas ("retail gas sales") is a permissive use in the C-1 zone. No public hearing is required for permissive uses. The proposed text amendments would make retail gas sales in the C-1 zone a conditional use, for which a conditional use permit would have to be obtained. Conditional use cases are considered by the Zoning Hearing Examiner (ZHE) at a public hearing. Existing gas stations would not be affected. The proposed text amendments would apply City-wide.

Please contact **Catalina Lehner**, AICP, Senior Planner, at **505-924-3935** for more information.

Project #1001620, 11EPC-40062: Proposed Text Amendment to the Zoning Code.

Lehner, Catalina L.

From: Berent Groth [berentgroth@mac.com]

Sent: Thursday, September 08, 2011 10:49 AM

To: Lehner, Catalina L.

Subject: Project #1001620, 11EPC-40053: Proposed Text Amendments to the Zoning Code

Catalina,

Vista Grande Neighborhood Association approves of the proposed Zone Code text amendment. Thanks.

Berent Groth
President,
Vista Grande Neighborhood Association

9/14/2011

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Agenda Item #6- Project #1001620/11EPC-40053

Proposed legislation re: retail petroleum sales in the C-1 zone

***CONDITIONS FOR RECOMMENDATION OF APPROVAL- 11EPC-40053, October 13, 2011-
Zoning Code Text Amendments***

Note: New language is [+underlined and bracketed+]. Deleted language is [underlined, bracketed and struck through]. Planning Staff's suggested additions and deletions are indicated by grey highlighting.

⇒ Changes not included in the Staff report are in **bold, underlined** text. Reasoning is provided below, in plain text.

1. Definitions: [minor changes to 1A and 1C]

A. Page 1, Insert at Line 3:

AMENDING ~~[SUBSECTIONS 14-16-1-5(B), DEFINITIONS, AND 14-16-2-16+]~~
~~[CHAPTER 14, ARTICLE 16, SECTION 2, PART 16 OF]~~ ROA 1994, A PORTION OF THE
ZONING CODE REGARDING THE C-1 NEIGHBORHOOD COMMERCIAL ZONE, TO
MAKE ~~[THE SALE OF GASOLINE, OIL AND LIQUEFIED PETROLEUM GAS]~~ ~~[THE~~
~~RETAILING OF GASOLINE, OIL, AND/OR LIQUIFIED PETROLEUM GAS,~~
~~INCLUDING OUTSIDE SALES,+] A CONDITIONAL USE.~~

⇒ See explanation below under proposed Condition 2A.

B. Page 1, Insert at Line 8:

~~[SECTION 1. Subsection 14-16-1-5(B), the Definitions section of the Zoning Code, is~~
~~amended to add the following definition:+]]~~

~~[FUELING PLAZA. A type of petroleum products retail facility that focuses on outdoor retail~~
~~gasoline sales and typically is a large scale, high volume operation. A fueling plaza may be~~
~~associated with another use, such as a truck stop, convenience or grocery store, or may stand~~
~~alone.+]]~~

C. Page 1, Insert after the end of Section 1:

~~[SECTION 2] [5]. The definition for "Petroleum Products Retail Facility (Fueling Plaza)", in~~
~~Subsection 14-16-1-5(B), the Definitions section of the Zoning Code, is amended to read as~~
~~follows:+]]~~

PETROLEUM PRODUCTS RETAIL FACILITY ~~[(FUELING PLAZA)]~~. A facility ~~[for~~
~~outdoor sales of]~~ ~~[that sells+]~~ gasoline, ~~[petroleum]~~ ~~[+oil+]~~ or liquefied ~~[+petroleum+]~~ gas
~~[+(ex. propane). Such a facility can be, but is not limited to, a gas station, a vehicle service~~
~~station, a fueling plaza and/or a truck stop. Facilities such as grocery stores and convenience~~
~~stores, for which retail gas sales is not the primary focus, may also be considered petroleum~~
~~products retail facilities.+]]~~

⇒ Section 2 needs to be renumbered to 5 (See also proposed condition 3A). "Fueling plaza" is one type of petroleum products retail facility and should be mentioned here, especially since it is proposed to be defined separately.

2. Body of the Legislation: [substantive changes to 2A, 2C and 2D].

A. Page 1, Lines 8-11 (will be renumbered):

SECTION 1. The amendment herein revises the ~~[comprehensive zoning code]~~ [+Comprehensive Zoning Code+] to make ~~the sale of gasoline, oil and liquefied petroleum gas~~ [+the retailing of gasoline, oil and liquefied petroleum gas, including outside sales+], a conditional use, rather than a permissive use, in the C-1 Neighborhood Commercial Zone.

⇒ "Oil" is proposed to be removed from the use because, if it becomes conditional, businesses that sell any kind of oil (motor, cooking, etc.) would have to obtain a conditional use to do so, which is not the intent of the proposed legislation. Oil sales would still be allowed in the C-1 zone under (A)(8)(b)- Auto parts and supply, and (A)(8)(i)- Food and drink for consumption on premises or off (ex. grocery stores are allowed permissively in the C-1 zone). Note that "oil" is also removed from proposed conditions 2B, C and D.

B. Page 1, Lines 11-17 (will be renumbered):

The City Council is concerned about ~~the~~ negative impacts, such as exposure to environmental hazards ~~[]~~ [] and the generation of additional traffic ~~[]~~ [] and safety issues, such as the creation of conflict points in areas of increased pedestrian and bicycle activity, ~~[that service stations built immediately adjacent to established residential areas have]~~ [+which are commonly associated with facilities that sell gasoline, oil and liquefied petroleum gas+] The purpose of this amendment is to require a public notification process and comment period before the construction of new ~~[service stations]~~ [+such facilities+].

C. Page 1, Lines 17-19 (will be renumbered):

~~[Service stations already in existence]~~ [+SECTION 2. Facilities that sell gasoline, oil and/or liquefied petroleum gas, which already exist+] in C-1 zones ~~[]~~ [] or for which building permits have been received prior to ~~[adoption]~~ [+the effective date+] of this ordinance, are not affected. [+Such facilities shall become non-conforming uses subject to §14-16-3-4, the Nonconformance Regulations, regarding nonconforming building or structure.+]

⇒ This language is needed to clarify that existing facilities would become non-conforming uses, subject to the Nonconformance Regulations. Non-conforming buildings or structures are given 60 years to either be removed or converted to a conforming structure or approved to remain nonconforming by becoming a status established building.

D. Page 6, Line 5 (to be renumbered):

~~[(21) Retail sales of gasoline, oil, liquefied petroleum gas, including outside sales.]~~

[+(21) Retail sales of gasoline, oil, and/or liquefied petroleum gas, including outside sales, except for liquefied petroleum gas in containers five (5) gallons or less in size.+]

[+(a) Facilities that sell gasoline and/or liquefied petroleum gas, which already exist in C-1 zones, or for which building permits have been received prior to the effective date of Ordinance O-11-66, are not affected.]

(b)Such facilities shall become non-conforming uses subject to §14-16-3-4, the Nonconformance Regulations, regarding nonconforming building or structure.

(c) A conditional use shall be required for remodel or replacement of 50% or more of above-grade structures (Level 3 EIBC), except for fuel pumps.+]

⇒ More importantly, the above language is also added to the use itself. That way, the language will clearly become part of the C-1 zone in the Zoning Code and won't exist solely in the Ordinance. Item (c) is proposed because this type of remodel/replacement could result in changes to the site which could be of concerns to neighbors.

E. Page 6, Line 14 (to be renumbered):

SECTION ~~[5]~~ ~~[+8+]~~. COMPILATION. This ordinance shall be incorporated in and made part of the Revised Ordinances of Albuquerque, New Mexico, 1994. ~~[+Section 1 shall not be codified.+]~~

3. Minor Revisions [no changes]

A. Page 1, Line 20 (will be renumbered):

~~[SECTION 2]~~ ~~[+SECTION 5+]~~ and subsequent renumbering of Sections 3, 4, 5 and 6 as Sections 6, 7, 8 and 9, respectively.

B. Page 2, Line 16 (to be renumbered):

....pursuant to [§ ~~14-16-3-12~~(A)(11)ROA 1994] ~~[+ the Community Residential Program Regulations.+]~~

C. Page 2, Lines 18 & 20 (will be renumbered):

~~[(k)] [Gasoline, oil, liquefied petroleum gas, including outside sales.]~~

~~(+)~~ ~~[+k+]~~ Hardware, building materials, provided it is in a completely enclosed building.

§ 14-16-3-4 NONCONFORMANCE REGULATIONS.**(A) Nonconforming Building or Structure.****(1) Removal Schedule for Buildings and Structures Which Did Not Violate Applicable Zoning Regulations When Erected.****(a) Buildings.**

1. A building which is non-conforming as to use must be removed or converted to a conforming structure, or approved to maintain its nonconforming use as a status established building, in the following periods for types of buildings as defined in the 1959 edition of the city's Building Code, except as qualified by division 2. below:

- a. Types I and II, 60 years;
- b. Types III and IV, 53 years;
- c. Type V, 53 years.

2. Any adult amusement establishment or adult store that was in conformance with the Zoning Code on March 1, 2004, that becomes a nonconforming use as a result of the 2004 adult use amendments to the Zoning Code shall be allowed to continue to exist as a nonconforming use for the life of the use. Any adult amusement establishment or adult store that was nonconforming as of March 1, 2004 under the Zoning Code must cease the adult activity within five years from the effective date of this amendment or by January 1, 2010, whichever is later.

(b) A sign which on December 31, 1975 was legally nonconforming to the provisions of Commission Ordinance No. 2726, as amended, shall:

1. Be made to conform to this Zoning Code or be removed within five years after it became nonconforming; or
2. Conform to this Zoning Code by January 1, 1979, whichever is a longer time period.

(c) A sign which first became nonconforming through passage of this Zoning Code, including a sign approved under the SU-1 zone which does not conform to C-2 sign regulations and § 14-16-3-5 of this Zoning Code, shall be made to conform within five years of the effective date of this Zoning Code, except:

1. Any sign which violates the brightness regulations of this Zoning Code shall be made to conform as to brightness within one year of the effective date of this Zoning Code.
2. For five years after the effective date of this Zoning Code, any signs on wheels, in use in the city on the effective date of this Zoning Code, may be moved to a new site in a C-2, C-3, M-1, or M-2 zone, even though it violates the sign regulations listed in that zone. Such sign shall comply with all parts of this section. Five years after the effective date of this Zoning Code, such sign shall

conform to all parts of this Zoning Code. Such sign shall bear a special seal of compliance, as set forth in § 14-16-3-5(A)(4) of this Zoning Code.

3. Signs erected contrary to zoning regulations in force at the time of erection and signs identified in § 14-16-3-5(B)(1) of this Zoning Code are subject to immediate removal under the terms of § 14-16-4-11 of this Zoning Code.
 4. Previously erected signs which become nonconforming by virtue of the passage of this Zoning Code may remain for the life of the existing structure if the sign's degree of nonconformance does not exceed 10% nonconformance for each of setback or overhang, size, or separation and does not exceed 20% nonconformance of height.
- (d) Signs installed under variances from former zoning regulations which were less strict than those in this Zoning Code shall be made to conform within five years of the effective date of this Zoning Code.
- (e) A wall or fence which is legally nonconforming to this Zoning Code because it is not a solid wall or fence shall be made to conform within five years of the effective date of this Zoning Code (January 1, 1981). A wall or fence existent on the effective date of this Zoning Code and nonconforming by virtue of being in the clear sight triangle may remain so long as the Traffic Engineer gives and does not withdraw a written opinion that the wall or fence is not a traffic hazard. Other nonconforming walls and fences may remain for the life of the structure.
- (2) A nonconforming structure may be maintained, repaired, or altered, provided that the structure nonconforming as to use is not structurally altered except as required by law.
 - (3) A structure or lot nonconforming as to use cannot be added to or enlarged unless the structure afterward is converted to a conforming use; provided, however, that a maximum expansion of 25% may be permitted by the Zoning Hearing Examiner.
 - (4) A sign nonconforming as to size or number shall not be enlarged.
 - (5) A structure nonconforming only as to height regulations cannot be added to or enlarged unless the addition or enlargement conforms to all the regulations of the zone in which it is located.
 - (6) A structure nonconforming only as to setback regulations cannot be added to or enlarged unless the addition conforms to all the regulations of the zone in which the structure is located.
 - (7) A nonconforming structure may be moved in whole or in part to another location on the lot, provided that the moving will make it nonconforming to a lesser extent.
 - (8) A nonconforming structure which is damaged may be restored, provided the restoration is started within six months of the damage and is prosecuted diligently to completion.
 - (9) A structure or portion thereof which has been nonconforming as to use, including a status established building, and which hereafter becomes vacant and remains vacant or is not used for a continuous period of one year or more is not to be occupied thereafter except by a conforming use as specified in the regulations of the zone in which such structure is located. Neither the intention of the owner nor that of anybody else to use such a structure or part thereof for any nonconforming use, nor the fact that said structure or part thereof may have

been used by a makeshift or pretended nonconforming use shall be taken into consideration in interpreting and construing the word "vacant" as used in this division (9).

- (10) The nonconforming use may be changed to another use equally or more restrictive than the immediately preceding nonconforming use provided, however, that this subsection shall apply to the use of a status established building only after the equal or more restrictive use has been approved in accordance with the Status Established Building Review Procedures set forth in Part 4 (§§ 14-16-4-1 et seq.) herein.
- (11) Helipads, law enforcement helipads and medical helipads, which constitute nonconforming uses, must be removed from the premises they are located on within twelve months after they become nonconforming. A helipad, law enforcement helipad or medical helipad which is located in an SU-1 zone and has a site development plan depicting such a helipad approved by the Environmental Planning Commission prior to the adoption of this ordinance shall be deemed conforming.
- (12) An establishment that sells alcoholic drink for consumption off premises in the following packages within 500 feet of a pre-elementary, elementary or secondary school, a religious institution, a residential zone, a designated Metropolitan Redevelopment Area (as defined in the State Metropolitan Redevelopment Code), a city owned park or city owned major public open space:
 - (a) distilled spirits, as defined in the New Mexico Liquor Control Act, in any package that contains less than 750 milliliters;
 - (b) beer, as defined in the New Mexico Liquor Control Act, in any single container labeled as containing 16 or fewer ounces; and
 - (c) fortified wines with a volume of alcohol of more than 13.5 percent, must vacate the premises, be removed or convert to a conforming use by no later than July 1, 2005 or within one year after it becomes nonconforming, whichever is later.

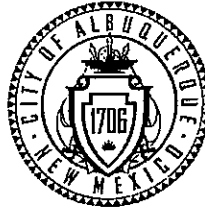
(B) Nonconforming Use of Land - Removal Schedule.

- (1) A legally nonconforming use of land, except a legally nonconforming mobile home, shall be made to conform within:
 - (a) One year of the effective date of this amendment; or
 - (b) One year after the activity becomes nonconforming, whichever comes later.
- (2) A legally nonconforming use of land consisting of a mobile home shall be made to conform within five years of the effective date of this Zoning Code.
- (3) A nonconforming use of land and incidental structures consisting of a mobile home development may remain for the life of the fixtures, which shall never be more than 50 years, to the extent that the development conformed to zoning regulations which were in effect when the development was built or regulations which were subsequently adopted, so long as the mobile home development does not cease operation for a continuous period of one year or more; however, such continuation is permitted only if:
 - (a) Any private street system servicing the mobile homes is paved at least to a standard approved by the Planning Director and the Traffic Engineer according to the standards

of § 14-14-4-6, Subdivision Regulations (even though there may be no new subdivision); and

- (b) 1. Mobile homes are skirted with materials compatible with the siding of the mobile home or the unit is situated at ground level within two years (June 1, 1983).
2. Additions to previously built mobile home developments shall conform to the current provisions of the Zoning Code.
- (4) Land used in whole or in part for nonconforming purposes according to the provisions of this Zoning Code, which hereafter becomes and remains vacant for a continuous period of six months or more shall not again be used except in conformity with the regulations of the zone in which such land is situated. Neither the intention of the owner nor that of anybody else to use a lot or part thereof for any nonconforming use, nor the fact that said lot or part thereof may have been used by a makeshift or pretended nonconforming use shall be taken into consideration in interpreting and construing the word "vacant" as used in this division (4).
- (C) **Nonconformance Due to Amendment.** The provisions of this section apply to a structure or use which becomes nonconforming due to a change in street line, map change, text amendment, or annexation, provided that where a date or time period is specified for the removal of a nonconformance, it is to be computed from the date the amendment or annexation became effective.
- (D) **Nonconforming Lot Size.** A lot which has less area or width than required by the zone applied to the lot may be used without a variance as a separate lot occupied by a use permitted in that zone if:
- (1) The lot was legally created and placed on the records of the County, complying with any zoning and subdivision standards and procedures then applicable; and
- (2) The use and structure are permitted or are legally nonconforming, or if it is a new use or new use or new construction which is the use which most nearly meets lot area and width requirements.
- (3) Animal keeping which requires special lot size is not permitted on lots smaller than the size specified.
- (E) **Nonconforming Landscaping.** Premises which, when they were developed, were not required to be developed according to a landscaping plan approved by the city shall be made to conform to such a plan within two years of the time they were required to so conform due to amendment of the map or text of this Zoning Code.
- Enrichment P.
P. 14-16-3-4
7-25-07*

('74 Code, § 7-14-40D) (Am. Ord. 26-1999; Am. Ord. 8-2000; Am. Ord. 15-2000; Am. Ord. 44-2000; Am. Ord. 11-2001; Am. Ord. 11-2002; Am. Ord. 15-2002; Am. Ord. 44-2002; Am. Ord. 42-2004; Am. Ord. 16-2005; Am. Ord. 68-2005; Am. Ord. 37-2007)



City of Albuquerque
Planning Department
Urban Design & Development Division
P.O. Box 1293
Albuquerque, New Mexico 87103

Date: October 17, 2011

OFFICIAL NOTIFICATION OF DECISION

FILE: Project # 1001620
11EPC-40053 Text Amendment to Zoning Code

City of Albuquerque
PO Box 1293
Albuquerque, NM 87102

LEGAL DESCRIPTION:

The City of Albuquerque Planning Department, agent for the City of Albuquerque, requests the above action(s) to amend Zoning Code Section 14-16-2-16, the C-1 Neighborhood Commercial Zone, to make the sale of gasoline, oil and liquefied petroleum gas a conditional use.
City-wide. Catalina Lehner, Staff Planner

On October 13, 2011, the Environmental Planning Commission (EPC) voted that a Recommendation of Approval be forwarded to City Council regarding Project 1001620 / 11EPC-40053, a request for Text Amendments to the Zoning Code, based on the following recommended Findings and subject to the following Conditions for recommendation of approval:

FINDINGS:

1. The request is for text amendments to §14-16-2-16(A)(8) and §14-16-2-16(B) ROA 1994, portions of the C-1 Neighborhood Commercial Zone. The purpose of the proposed text amendments is to make "gasoline, oil, liquefied petroleum, including outside sales" ("retail petroleum sales") a conditional use in the C-1 zone. Existing facilities that engage in retail petroleum sales would not be affected.
2. The proposed legislation was developed to address neighborhood concerns regarding impacts of retail petroleum sales facilities, particularly gas stations, on adjacent residential areas. Residential areas are often zoned C-1. Also addressed are changes in retail gasoline sales that have occurred over time.
3. Retail petroleum sales are a permissive use in the C-1 zone. A public process is not required for permissive uses, which are allowed by right. The proposed text amendments would make retail petroleum sales a conditional use. A conditional use permit would have to be obtained pursuant to Zoning Code §14-16-4-2, Special Exceptions, through the Zoning Hearing Examiner (ZHE) process. Notification and a public hearing would be required.

OFFICIAL NOTICE OF DECISION

Project #1001620/11EPC-40053

October 13, 2011

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4. 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. The EPC is a recommending body.
5. The Albuquerque/Bernalillo County Comprehensive Plan and the City of Albuquerque Comprehensive Zoning code are incorporated herein by reference and made part of the record for all purposes.
6. Intent of the City Charter:

Revising a portion of the ROA 1994, the C-1 Neighborhood Commercial Zone, is an exercise in local self government (City Charter, Article 1). Making retail petroleum sales a conditional use, with required notification and public hearing, generally expresses the Council's desire to ensure the proper use and development of land, and promote and maintain a humane urban environment (City Charter, Article IX).

7. Intent of the Zoning Code (§14-16-1-3):

The application was filed in accordance with Zoning Code requirements. The proposed text amendments generally further the Zoning Code goal of promoting the health, safety and welfare of the citizens. Requiring notification and a public hearing would allow public participation and an opportunity to work towards addressing issues that might adversely affect the general health, safety and welfare. As the City's zoning authority, the City Council will make the final determination.

8. The request generally furthers the following, applicable Comprehensive Plan Goals:

- A. Section II.B.5- Developing and Established Urban Areas. The proposed text amendments would help create a quality urban environment. Neighbors would have an opportunity to express concerns, which could result in a pleasing built environment that generally supports variety and choice in housing, work areas and transportation.
- B. Economic Development. The required public hearing would help ensure that a certain type of economic development (retail petroleum sales) would be more likely to be balanced with social, cultural and environmental goals that neighbors consider important.

9. The request partially furthers the following, applicable Comprehensive Plan policies:

- A. Policy II.B.5d-neighborhood/environmental/resources. The public would have an opportunity to express concerns. However, some concerns (such as site layout and design) may not be able to be addressed through the special exception process to the extent that neighbors might want.
- B. Policy II.B.5e-programmed facilities/neighborhood integrity. The proposed legislation would only apply to new retail petroleum sales facilities. The integrity of existing neighborhoods could be affected, depending upon the specifics of a given case and the extent to which neighborhood concerns can be addressed.

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- C. Policy II.B.5i-employment/service use location. By requiring notification and a hearing, the proposed legislation would allow neighbors to express concerns regarding the effects of a retail petroleum sales facility. However, not all issues may be addressed through the special exception process.
10. The request partially furthers Transportation & Transit Policy II.D.4g. The public hearing process would give neighbors an opportunity to express concerns, some of which could be traffic and safety issues such as pedestrian/bicycle conflicts with vehicles. These issues could be addressed through the ZHE process if found to be injurious and within the ZHE's purview. However, it is possible that such concerns may not be addressable through this process.
11. The proposed Conditions for Recommendation of Approval will provide clarification, ensure internal consistency in the Zoning Code and remedy minor errors. Staff suggests that §14-16-1-5(B), the Definitions Section of the Zoning Code, be correspondingly amended.
12. The proposed text amendments were announced in the Neighborhood News and posted on the Planning Department's web page. The Office of Neighborhood Coordination (ONC) sent an e-mail notification to neighborhood organization contact persons. As of this writing, Staff has received a couple of phone inquiries and one e-mail comment. There is no known opposition to the request.

CONDITIONS:

1. Definitions:

A. Page 1, Insert at Line 3:

AMENDING ~~[-SUBSECTIONS 14-16-1-5(B) DEFINITIONS, AND 14-16-2-16-]~~ ~~CHAPTER 14, ARTICLE 16, SECTION 2, PART 16 OF~~ ROA 1994, A PORTION OF THE ZONING CODE REGARDING THE C-1 NEIGHBORHOOD COMMERCIAL ZONE, TO MAKE ~~[THE SALE OF GASOLINE, OIL AND LIQUEFIED PETROLEUM GAS]~~ ~~[-THE RETAILING OF GASOLINE, OIL, AND/OR LIQUEFIED PETROLEUM GAS, INCLUDING OUTSIDE SALES,]~~ A CONDITIONAL USE.

B. Page 1, Insert at Line 8:

~~[-SECTION 1, Subsection 14-16-1-5(B), the Definitions section of the Zoning Code, is amended to add the following definition: -]~~

~~[-FUELING PLAZA. A type of petroleum products retail facility that focuses on outdoor retail gasoline sales and typically is a large scale, high volume operation. A fueling plaza may be associated with another use, such as a truck stop, convenience or grocery store, or may stand alone.-]~~

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C. Page 1, Insert after the end of Section 1:

~~[+SECTION 2] [5]. The definition for "Petroleum Products Retail Facility (Fueling Plaza)", in Subsection 14-16-1-5(B), the Definitions section of the Zoning Code, is amended to read as follows: +]~~

~~PETROLEUM PRODUCTS RETAIL FACILITY (FUELING PLAZA). A facility [for outdoor sales of] [+that sells+] gasoline, [petroleum] [+oil+] or liquefied [+petroleum+] gas [(ex. propane, vehicle fuels). Such a facility can be, but is not limited to, a gas station, a vehicle service station, a fueling plaza and/or a truck stop. Facilities such as grocery stores and convenience stores, for which retail gas sales is not the primary focus, may also be considered petroleum products retail facilities. +]~~

2. Body of the Legislation:

A. Page 1, Lines 8-11 (will be renumbered):

~~SECTION 1. The amendment herein revises the [comprehensive zoning code] [+Comprehensive Zoning Code+] to make [the sale of gasoline, oil and liquefied petroleum gas] [+the retailing of gasoline, oil and liquefied petroleum gas, including outside sales+] , a conditional use, rather than a permissive use, in the C-1 Neighborhood Commercial Zone.~~

B. Page 1, Lines 11-17 (will be renumbered):

~~The City Council is concerned about [the] negative impacts, such as exposure to environmental hazards [+], and the generation of additional traffic [] and safety issues, such as the creation of conflict points in areas of increased pedestrian and bicycle activity, [that service stations built immediately adjacent to established residential areas have] [+which are commonly associated with facilities that sell gasoline, oil and liquefied petroleum gas. +]. The purpose of this amendment is to require a public notification process and comment period before the construction of new [service stations] [+ , such facilities+].~~

C. Page 1, Lines 17-19 (will be renumbered):

~~[Service stations already in existence] [+SECTION 2. Facilities that sell gasoline, oil and/or liquefied petroleum gas, which already exist+] in C-1 zones [] or for which building permits have been received prior to [adoption] [+the effective date+] of this ordinance, are not affected. [+Such facilities shall become non-conforming uses subject to §14-16-3-4, the Nonconformance Regulations regarding nonconforming building or structure. +]~~

D. Page 6, Line 5 (to be renumbered):

~~[(21) Retail sales of gasoline, oil, liquefied petroleum gas, including outside sales.]~~
~~[+(21) Retail sales of gasoline, oil, and/or liquefied petroleum gas, including outside sales, except for liquefied petroleum gas in containers five (5) gallons or less in size. +]~~

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~~+(a) Facilities that sell gasoline and/or liquefied petroleum gas, which already exist in C-1 zones, or for which building permits have been received prior to the effective date of Ordinance O-11-66, are not affected.~~

~~(b) Such facilities shall become non-conforming uses, subject to §14-16-3-4, the Nonconformance Regulations, regarding nonconforming building or structure.~~

~~(c) A conditional use shall be required for remodel or replacement of 50% or more of above-grade structures (Level 3 EIBC), except for fuel pumps.~~

E. Page 6, Line 14 (to be renumbered):

SECTION ~~§~~ ~~14-8-1~~ COMPILATION. This ordinance shall be incorporated in and made part of the Revised Ordinances of Albuquerque, New Mexico, 1994. ~~Section 1 shall not be codified.~~

3. Minor Revisions

A. Page 1, Line 20 (will be renumbered):

~~SECTION 2~~ ~~SECTION 5~~ and subsequent renumbering of Sections 3, 4, 5 and 6 as Sections 6, 7, 8 and 9, respectively.

B. Page 2, Line 16 (to be renumbered):

....pursuant to [§ ~~14-16-3-12~~(A)(11)ROA 1994] ~~the Community Residential Program Regulations.~~

C. Page 2, Lines 18 & 20 (will be renumbered):

~~(c) Gasoline, oil, liquefied petroleum gas, including outside sales.~~

~~(1) Hardware, building materials, provided it is in a completely enclosed building.~~

PROTEST: IT IS NOT POSSIBLE TO APPEAL EPC RECOMMENDATIONS TO CITY COUNCIL; RATHER, A FORMAL PROTEST OF THE EPC's RECOMMENDATION CAN BE FILED WITHIN THE 15 DAY PERIOD FOLLOWING THE EPC's DECISION, WHICH IS BY **OCTOBER 28, 2011**.

APPEAL: IF YOU WISH TO APPEAL A FINAL DECISION, YOU MUST DO SO BY **OCTOBER 28, 2011**, IN THE MANNER DESCRIBED BELOW. A NON-REFUNDABLE FILING FEE WILL BE CALCULATED AT THE LAND DEVELOPMENT COORDINATION COUNTER AND IS REQUIRED AT THE TIME THE APPEAL IS FILED.

Appeal to the City Council: Persons aggrieved with any determination of the Environmental Planning Commission acting under this ordinance and who have legal standing as defined in Section 14-16-4-4.B.2 of the City of Albuquerque Comprehensive Zoning Code may file an appeal to the City Council by submitting written application on the Planning Department form to the Planning Department within 15 days of the Planning Commission's decision. The

date the determination in question is issued is not included in the 15-day period for filing an appeal, and if the fifteenth day falls on a Saturday, Sunday or holiday as listed in the Merit System Ordinance, the next working day is considered as the deadline for filing the appeal. The City Council may decline to hear the appeal if it finds that all City plans, policies and ordinances have been properly followed. If they decide that all City plans, policies and ordinances have not been properly followed, they shall hear the appeal. Such appeal, if heard, shall be heard within 45 days of its filing.

YOU WILL RECEIVE NOTIFICATION IF ANY PERSON FILES AN APPEAL. IF THERE IS NO APPEAL, YOU CAN RECEIVE BUILDING PERMITS AT ANY TIME AFTER THE APPEAL DEADLINE QUOTED ABOVE, PROVIDED ALL CONDITIONS IMPOSED AT THE TIME OF APPROVAL HAVE BEEN MET. SUCCESSFUL APPLICANTS ARE REMINDED THAT OTHER REGULATIONS OF THE CITY MUST BE COMPLIED WITH, EVEN AFTER APPROVAL OF THE REFERENCED APPLICATION(S).

Successful applicants should be aware of the termination provisions for Site Development Plans specified in Section 14-16-3-11 of the Comprehensive Zoning Code. Generally plan approval is terminated 7 years after approval by the EPC.

Sincerely,



for Deborah Stover
Planning Director

DS/CL/mc

cc: City of Albuquerque, City Council, Attn: Bruce Thompson, P.O. Box 1293, Albuquerque, NM 87103
City of Albuquerque, Planning Department, 600 Second St. NW, Albuquerque, NM 87102

MOVED BY COMMISSIONER SIEGEL
SECONDED BY COMMISSIONER YARDUMIAN

MOTION PASSED 5-1
(COMMISSIONER GARCIA
VOTED NO)

6. Project# 1001620
11EPC-40053 Text Amendments to Zoning
Code

The City of Albuquerque Planning Department, agent for the City of Albuquerque, requests the above action(s) to amend Zoning Code Section 14-16-2-16, the C-1 Neighborhood Commercial Zone, to make the sale of gasoline, oil and liquefied petroleum gas a conditional use. City-wide.
Catalina Lehner, Staff Planner

STAFF PRESENTING CASE:

Catalina Lehner, Staff Planner

PERSONS PRESENT TO SPEAK IN REFERENCE TO THIS REQUEST:

NONE

CHAIR PETERSON: We are hereby recording and turning it over to Ms. Lehner.

MS. LEHNER: Good afternoon, Mr. Chair, members of the Commission. This is agenda item number six. It is project number 1001620, 11EPC-40053. This request is for a recommendation to the City Council regarding Bill number O-1166, text amendments to the C-1 Neighborhood Commercial Zone. The proposed text amendments would make retail sales of gasoline, oil, liquefied petroleum gas, including outside sales, a condition use rather than a permissive use, which it is currently. A conditional use is a type of special exception request, which is heard by the Zoning Hearing Examiner, the ZHE. Public notification and a public hearing are required with the ZHE process.

The purpose of the proposed text amendment is to provide a public process regarding new retail petroleum sales facilities in the C-1 zone. The C-1 Neighborhood Commercial Zone is often located adjacent to residential areas. Neighbors may have concerns, such as traffic and pedestrian conflicts, for example, when new facilities develop. With a conditional use, there would be a form for expressing such concerns. Note that the proposed text amendments would not apply to other zones, just the C-1 zone and that existing facilities would not be affected. Although existing facilities would become a non-conforming use subject to the non-conformance regulations, 14-16-3-4 of the Zoning Code, which staff would like to include in the record but inadvertently left out of the staff report.

Overall, the proposed text amendments further the intent of the Zoning Code and applicable Comprehensive Plan goals and policies. The proposed conditions for a recommendation of approval are needed to clarify language and definitions and to create internal consistency in the Zoning Code. This request was advertised in the Neighborhood News and posted on the Planning Department's page. The Office of Neighborhood Coordination notified neighborhood representatives by email. Staff has received one comment of general

support from a neighborhood association, which is provided as an attachment and also has had a couple of phone inquiries.

Regarding project number 1001620, 11EPC-40053, staff recommends that an approval recommendation be forwarded to the City Council. The conditions for a recommendation of approval can name suggested provisions that will clarify and strengthen the proposed legislation. After publication of the staff report, some issues were brought to staff's attention; most noteworthy is a non-conformance issue. Staff has created language to address this as well as a couple of additional issues raised by Commissioners.

To that end, staff has revised a proposed condition for recommendation of approval from those in the staff report to the ones that you have received this afternoon and they differ somewhat from what is contained in your staff report and you'll note the changes are in bold. If it's the pleasure of the Commissioner, I can walk you through those changes at this time. With that, I stand for questions.

CHAIR PETERSON: Thank you. I think we can read through them. Commissioners, any questions for Ms. Lehner? Go ahead, Commissioner Moye, please?

COMMISSIONER MOYE: Thank you. So Ms. Lehner, there have been a plethora of these fueling stations built around town in the last two years and are you saying that all of those that were built appropriately on C-1 property are now non-conforming and are now going to have to come back in to get some sort of conforming use? I'm a little concerned about that.

MS. LEHNER: Mr. Chair, Commissioner Moye, it is correct to state that the existing facilities would not be effected by the proposed legislation except for the non-conformance issue, which actually comes up pretty when new legislation has passed. With respect to this particular issue, there is an explanation on the second page of the revised proposed conditions and it explains that existing facilities would become non-conforming uses and it would be subject to the non-conformance regulations. In consultation with Code Enforcement staff, we have decided to refer to the non-conforming building or structure portion of the non-conformance regulations specifically, which would mean that such a structure would have sixty years to either be removed or converted to a conforming structure or it would have to go through the process to becoming a status established building, it would have sixty years to do so, one or the other.

CHAIR PETERSON: You still have the floor, Commissioner.

COMMISSIONER MOYE: Thank you. So all that this thing does, this text amendment does, my understanding of it, is require people who are putting in one of these facilities to have a neighborhood meeting? So if the facility that is in place today had a neighborhood meeting, then they would be conforming. It's not that their structure or their building is non-conforming; it's the fact that there is an allegation that they did not have a neighborhood meeting and that's what concerns me about the non-conforming language in here.

CHAIR PETERSON: I'll let staff answer but that's not how I understand it. New facilities, we'll call them gas stations, I'll call them gas stations, in C-1 zones from now on will be a conditional use, which is something that goes through the Zoning Hearing Examiner so I don't think anything in the past would qualify for that but Ms. Lehner, you want to take that?

MS. LEHNER: Mr. Chair, thank you. Commissioner Moye, that would be correct. With respect to the existing structures, they will become non-conforming and I think that whether or not they had a meeting regarding them is not necessarily germane to this. The idea is that the new facilities that when they develop, because they would

go through the Zoning Hearing Examiner process, there would be public notification and a public meeting involved at that time and it would not effect any of the existing gas station facilities.

CHAIR PETERSON: Commissioner Siegel, go ahead, please? Oh, I'm sorry. Commissioner Moye, you are looking like you want to say something else?

COMMISSIONER SIEGEL: She has further questions.

COMMISSIONER MOYE: I'm complete.

CHAIR PETERSON: Okay Commissioner Siegel, go ahead, please?

COMMISSIONER SIEGEL: Thank you very much, Mr. Chairman. Staff, I had asked you to consider whether we should add other fueling types, for example, today's fueling plaza is where we go get gas for our car. Tomorrow's fueling plaza may be where I would go to swap batteries for my electric car, buy compressed hydrogen or some other zappy fuel that I don't even know about. Why not add in a clause where pertinent that says 'where other fuels for motorized vehicles' so that these types of vehicle fueling stations are covered from now and into the future.

MS. LEHNER: Mr. Chair, Commissioner Siegel, it seems to me that it would be forward thinking to address other types of fuel and that if the Commission would like to do so in the context of this bill, I think that would be fine. However, I think it's also important to remember that the scope of this particular proposed legislation is only the C-1 zone and the reason why for instance, I did not want to change the way the use reads is because in doing so, it would only effect the C-1 zone, it would not effect the way the use reads in any of the other zones. For instance and adding other fuels, well that may be a good idea perhaps; it would be best done through definitions.

COMMISSIONER SIEGEL: And I assume that I still have the floor, then I think I may be reading it wrong, that your condition C before us today talks about a definition which says 'petroleum products refill facility' and just there I would suggest that for clarification, that we add after the words 'parense example propane' add the words 'or other fuels for motorized vehicles' and then there it is in definitions, here and for everyone.

MS. LEHNER: Mr. Chair, Commissioner Siegel, my suggestion would be, I think this would be a more effective place to put it because then it would apply to other zones as well and apply generally in the City. My suggestion is that the wording be perhaps 'vehicle fuels' or something of the sort, that may or may not be motorized.

COMMISSIONER SIEGEL: That's perfectly fine with me.

CHAIR PETERSON: Commissioner Yardumian, go ahead please?

COMMISSIONER YARDUMIAN: Thank you, Mr. Chair. The question that Commissioner Moye had raised on the non-conforming business, I thought I had it all straight but now I'm very confused. What does the outcome of the question that Commissioner Moye raised?

CHAIR PETERSON: Ms. Lehner, would you like to reiterate that, please?

MS. LEHNER: Yes, Mr. Chair Commissioner Yardumian. With respect to existing gas station facilities, they would become when this legislation is effective, a non-conforming use. That doesn't have anything to do with a meeting. It has to do with the fact that within 60 years, they would need to either become a conforming use or apply for a status of established building.

COMMISSIONER YARDUMIAN: That's the part I missed. Thank you.

CHAIR PETERSON: Anything further from Ms. Lehner at this time? Is there anyone signed up to speak? Ms. Lehner, your closing statement, please?

MS. LEHNER: Mr. Chair, Commissioners, my recommendation is with the change of Commissioner Siegel's suggested language is to forward these conditions to the City Council with a recommendation of approval and that these be added to their bill for their consideration. With that, I have nothing further. Thank you.

CHAIR PETERSON: Thank you. We do hereby close the floor. Is there any discussion? Commissioner Moyer?

COMMISSIONER MOYE: Thank you very much. I do not support this particular amendment. I would support it if there was language in it about environmental health and that there were environmental health regulations that were stated to be more onerous, where there was more measurements, where there was more smell or noise or something, where that really impacts the neighborhood. I don't see any of that kind of language in here and I simply cannot support this amendment without that type of environmental health language in here. I don't believe that increased traffic or pedestrian interface is the real issue. I think it has more to do with environmental health.

CHAIR PETERSON: Anything further, Commissioners? Is there anyone that would like to make a motion regarding this? Commissioner Siegel, go ahead please?

COMMISSIONER SIEGEL: Thank you. And I want to thank Commissioner Moyer for the comments she just made, which I think would be excellent additions to the Council when it arrives at their doorstep. At this time, I would like to make a motion to recommend approval of 11EPC-40053, project number 1001620 and that a recommendation of approval be forwarded to City Council based on the findings starting on page 14 and subject to the conditions for the recommendation of approval as handed out by staff and as slightly amended by myself and by staff during the course of this hearing.

CHAIR PETERSON: Is there a second? Seconded by Commissioner Garcia. Is there any further discussion? All those in favor, please say 'AYE' and raise your hand? 'AYE'. All those opposed, please say 'NO'.

COMMISSIONER MOYE: No.

CHAIR PETERSON: That passes by a vote of 4 to 2 with Commissioner's Moyer and Dickson voting against.

FINAL ACTION TAKEN:

NOW, THEREFORE, BE IT RESOLVED THAT that a RECOMMENDATION OF APPROVAL be forwarded to City Council regarding Project 1001620 / 11EPC-40053, a request for Text Amendments to the Zoning Code, based on the following Findings and subject to the following Conditions:

FINDINGS:

1. The request is for text amendments to §14-16-2-16(A)(8) and §14-16-2-16(B) ROA 1994, portions of the C-1 Neighborhood Commercial Zone. The purpose of the proposed text amendments is to make "gasoline, oil, liquefied petroleum, including outside sales" ("retail petroleum sales") a conditional use in the C-1 zone. Existing facilities that engage in retail petroleum sales would not be affected.
2. The proposed legislation was developed to address neighborhood concerns regarding impacts of retail petroleum sales facilities, particularly gas stations, on adjacent residential areas. Residential areas are often zoned C-1. Also addressed are changes in retail gasoline sales that have occurred over time.
3. Retail petroleum sales are a permissive use in the C-1 zone. A public process is not required for permissive uses, which are allowed by right. The proposed text amendments would make retail petroleum sales a conditional use. A conditional use permit would have to be obtained pursuant to Zoning Code §14-16-4-2, Special Exceptions, through the Zoning Hearing Examiner (ZHE) process. Notification and a public hearing would be required.
4. 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. The EPC is a recommending body.
5. The Albuquerque/Bernalillo County Comprehensive Plan and the City of Albuquerque Comprehensive Zoning code are incorporated herein by reference and made part of the record for all purposes.
6. Intent of the City Charter:

Revising a portion of the ROA 1994, the C-1 Neighborhood Commercial Zone, is an exercise in local self government (City Charter, Article 1). Making retail petroleum sales a conditional use, with required notification and public hearing, generally expresses the Council's desire to ensure the proper use and development of land, and promote and maintain a humane urban environment (City Charter, Article IX).
7. Intent of the Zoning Code (§14-16-1-3):

The application was filed in accordance with Zoning Code requirements. The proposed text amendments generally further the Zoning Code goal of promoting the health, safety and welfare of the citizens. Requiring notification and a public hearing would allow public participation and an opportunity to work towards addressing issues that might adversely affect the general health, safety and welfare. As the City's zoning authority, the City Council will make the final determination.
8. The request generally furthers the following, applicable Comprehensive Plan Goals:
 - A. Section II.B.5- Developing and Established Urban Areas. The proposed text amendments would help create a quality urban environment. Neighbors would have an opportunity to express concerns, which could result in a pleasing built environment that generally supports variety and choice in housing, work areas and transportation.
 - B. Economic Development. The required public hearing would help ensure that a certain type of economic development (retail petroleum sales) would be more likely to be balanced with social, cultural and environmental goals that neighbors consider important.

9. The request partially furthers the following, applicable Comprehensive Plan policies:

- A. Policy II.B.5d-neighborhood/environmental/resources. The public would have an opportunity to express concerns. However, some concerns (such as site layout and design) may not be able to be addressed through the special exception process to the extent that neighbors might want.
 - B. Policy II.B.5e-programmed facilities/neighborhood integrity. The proposed legislation would only apply to new retail petroleum sales facilities. The integrity of existing neighborhoods could be affected, depending upon the specifics of a given case and the extent to which neighborhood concerns can be addressed.
 - C. Policy II.B.5i-employment/service use location. By requiring notification and a hearing, the proposed legislation would allow neighbors to express concerns regarding the effects of a retail petroleum sales facility. However, not all issues may be addressed through the special exception process.
10. The request partially furthers Transportation & Transit Policy II.D.4g. The public hearing process would give neighbors an opportunity to express concerns, some of which could be traffic and safety issues such as pedestrian/bicycle conflicts with vehicles. These issues could be addressed through the ZHE process if found to be injurious and within the ZHE's purview. However, it is possible that such concerns may not be addressable through this process.
11. The proposed Conditions for Recommendation of Approval will provide clarification, ensure internal consistency in the Zoning Code and remedy minor errors. Staff suggests that §14-16-1-5(B), the Definitions Section of the Zoning Code, be correspondingly amended.
12. The proposed text amendments were announced in the Neighborhood News and posted on the Planning Department's web page. The Office of Neighborhood Coordination (ONC) sent an e-mail notification to neighborhood organization contact persons. As of this writing, Staff has received a couple of phone inquiries and one e-mail comment. There is no known opposition to the request.

CONDITIONS:

1. Definitions:

A. Page 1, Insert at Line 3:

AMENDING ~~[SUBSECTIONS 14-16-1-5(B), DEFINITIONS, AND 14-16-2-16.] [CHAPTER 14, ARTICLE 16, SECTION 2, PART 16 OF]~~ ROA 1994, A PORTION OF THE ZONING CODE REGARDING THE C-1 NEIGHBORHOOD COMMERCIAL ZONE, TO MAKE ~~[THE SALE OF GASOLINE, OIL AND LIQUEFIED PETROLEUM GAS] [+THE RETAILING OF GASOLINE, OIL AND/OR LIQUIFIED PETROLEUM GAS, INCLUDING OUTSIDE SALES,+]~~ A CONDITIONAL USE.

B. Page 1, Insert at Line 8:

~~SECTION 1. Subsection 14-16-1.5(B), the Definitions section of the Zoning Code, is amended to add the following definition:~~

~~FUELING PLAZA: A type of petroleum product retail facility that focuses on outdoor retail gasoline sales and typically is a large-scale, high-volume operation. A fueling plaza may be associated with another use, such as a truck stop, convenience or grocery store, or may stand alone.~~

C. Page 1, Insert after the end of Section 1:

~~SECTION 2. The definition for "Petroleum Products Retail Facility (Fueling Plaza)" in Subsection 14-16-1.5(B), the Definitions section of the Zoning Code, is amended to read as follows:~~

~~PETROLEUM PRODUCTS RETAIL FACILITY (FUELING PLAZA). A facility for outdoor sale of gasoline, petroleum, or liquefied petroleum gas (LPG) propane vehicle fuels. Such a facility can be, but is not limited to, a gas station, a vehicle service station, a fueling plaza, and/or a truck stop. Facilities such as grocery stores and convenience stores, for which retail gas sale is not the primary focus, may also be considered petroleum products retail facilities.~~

2. Body of the Legislation:

A. Page 1, Lines 8-11 (will be renumbered):

~~SECTION 1. The amendment herein revises the [comprehensive zoning code] Comprehensive Zoning Code, to make the sale of gasoline, oil and liquefied petroleum gas, the retail sale of gasoline, oil and liquefied petroleum gas, including outside sales, a conditional use, rather than a permissive use, in the C-1 Neighborhood Commercial Zone.~~

B. Page 1, Lines 11-17 (will be renumbered):

~~The City Council is concerned about the negative impacts, such as exposure to environmental hazards and the generation of additional traffic and safety issues, such as the creation of conflict points in areas of increased pedestrian and bicycle activity, that service stations built immediately adjacent to established residential areas have, which are commonly associated with facilities that sell gasoline, oil and liquefied petroleum gas. The purpose of this amendment is to require a public notification process and comment period before the construction of new service stations, such facilities.~~

C. Page 1, Lines 17-19 (will be renumbered):

~~[Service stations already in existence] SECTION 2. Facilities that sell gasoline, oil and/or liquefied petroleum gas, which already exist, in C-1 zones or for which building permits have been received prior to adoption of this ordinance, are not affected. Such facilities shall become non-conforming uses subject to §14-16-3.4, the Nonconformance Regulations, regarding nonconforming building or structure.~~

D. Page 6, Line 5 (to be renumbered):

~~(21) Retail sales of gasoline, oil, liquefied petroleum gas, including outside sales.~~

~~[(21) Retail sales of gasoline, oil, and/or liquefied petroleum gas, including outside sales, except for liquefied petroleum gas in containers five (5) gallons or less in size.]~~

~~[(a) Facilities that sell gasoline and/or liquefied petroleum gas, which already exist in C-1 zones, or for which building permits have been received prior to the effective date of Ordinance O-11-66, are not affected.]~~

~~[(b) Such facilities shall become non-conforming uses subject to §14-16-3-4, the Nonconformance Regulations, regarding nonconforming building or structure.]~~

~~[(c) A conditional use shall be required for remodel or replacement of 50% or more of above-grade structures, Level 3 EIBC, except for fuel pumps.]~~

E. Page 6, Line 14 (to be renumbered):

SECTION ~~5~~ ~~14-16-3-4~~. COMPILATION. This ordinance shall be incorporated in and made part of the Revised Ordinances of Albuquerque, New Mexico, 1994. ~~[Section 1 shall not be required.]~~

3. Minor Revisions

A. Page 1, Line 20 (will be renumbered):

~~[SECTION 2]~~ ~~[SECTION 5]~~ and subsequent renumbering of Sections 3, 4, 5 and 6 as Sections 6, 7, 8 and 9, respectively.

B. Page 2, Line 16 (to be renumbered):

....pursuant to [§ ~~14-16-3-4~~ (A)(11)ROA 1994] ~~in the Community Residential Properties Regulations.~~

C. Page 2, Lines 18 & 20 (will be renumbered):

~~[(c)] [Gasoline, oil, liquefied petroleum gas, including outside sales.]~~

~~[(1)] ~~[c]~~ Hardware, building materials, provided it is in a completely enclosed building.~~

MOVED BY COMMISSIONER SIEGEL
SECONDED BY COMMISSIONER GARCIA

MOTION PASSED 4-2
(COMMISSIONER DICKSON &
COMMISSIONER MOYE VOTED NO)



ENVIRONMENTAL PLANNING COMMISSION ACTIONSHEET

Thursday, October 13, 2011
Plaza Del Sol Hearing Room
Lower Level
2nd Street NW

MEMBERS PRESENT:

Doug Peterson, Chair
Laurie Moye, Vice-Chair
Jonathan Siegel
Joe Yardumian
Michael Dickson
Ron Garcia
Hugh Floyd

RECORDING SECRETARY:

Madeline Carruthers

1. Call to Order: 8:32 a.m.

- A. Announcement of Changes and/or Additions to the Agenda
- B. Approval of the Amended Agenda
- C. Swearing in of City Staff

2. Project# 1008952

11EPC-40057 Sector Plan Map Amendment
(zone change)
11EPC-40059 Site Development Plan for
Building Permit

Consensus Planning, agent for Guardian Storage VI, LLC, requests the above actions for Lot 25 & the eastern ½ of Lot 26, Block A, Unit A, North Albuquerque Acres, zoned SU-2/O-1 to SU-2/SU-1/O-1 and Storage, located on Palomas Ave. between Wyoming Blvd. and Barstow St. containing approximately 1.6 acres. (D-19) Carrie Barkhurst, Staff Planner (APPROVED WITH FINDINGS AND CONDITIONS)

3. Project# 1008042 *

11EPC-40060 Zone Map Amendment (zone change)
11EPC-40061 Site Development Plan for
Building Permit

Myers, Oliver & Price, P.C. agent for The Tanager Company, LLC requests the above actions for all or a portion of lots 6, 7, 8, 9, and 10, block 17, Paris Addition, zoned M-2 to SU-1/M-2 Uses and Events Center located on 1st Street between Kinney and the vacated Constitution Avenue alignment containing approximately 0.59 acres. (J-14) Chris Hyer, Staff Planner (APPROVED WITH FINDINGS AND CONDITIONS)

4. Project# 1001620 *

11EPC-40062 Amendment to Zoning Code

COA Planning Department, agent for City of Albuquerque, requests the above action to amend Section 14-16-3-5(B)(4)(b)(4), General Sign Regulations. City-wide. Randall Falkner, Staff Planner (**RECOMMENDATION OF DENIAL TO CITY COUNCIL**)

5. Project# 1008957

11EPC-40054 EPC Review of proposed use, per Downtown 2010 SDP

Consensus Planning, Inc., agent for Gold Avenue Realty, LLC, requests the above action for all or a portion of Lots 13-23, Block 19, New Mexico Original Townsite zoned SU-3 Arts & Entertainment, located on Gold between 5th and 6th containing approximately 1 acre. (K-14) Carrie Barkhurst, Staff Planner (**APPROVED WITH FINDINGS AND CONDITIONS**)

6. Project# 1001620

11EPC-40053 Text Amendments to Zoning Code

The City of Albuquerque Planning Department, agent for the City of Albuquerque, requests the above action(s) to amend Zoning Code Section 14-16-2-16, the C-1 Neighborhood Commercial Zone, to make the sale of gasoline, oil and liquefied petroleum gas a conditional use. City-wide. Catalina Lehner, Staff Planner (**RECOMMENDATION OF APPROVAL TO CITY COUNCIL**)

7. Project# 1008786

11EPC-40029 Zone Map Amendment
11EPC-40031 Site Development Plan for Building Permit

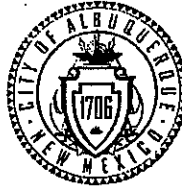
Dekker Perich Sabatini, agent for UNM and for the City Of Albuquerque-DMD/CIP, requests the above actions for all or a portion of Lots 4 and 5, Gibson Tracts, Lot A, 40/25 Associates, and Lot B, EverReady Oil Company, zoned SU-1 for C-2 to SU-1 for Fire Station, located on Gibson Blvd SE between University Blvd SE and I-25, containing approximately 1.3 acres. (L-15) Randall Falkner, Staff Planner (**APPROVED WITH FINDINGS AND CONDITIONS**)

8. Project# 1008887

11EPC-40051 Amendment to Facility Plan

The City of Albuquerque Department of Municipal Development, Engineering Division, requests text amendments and updates to the Bikeways and Trails Master Plan, applicable City-wide. This plan consolidates and replaces the On-Street Bikeways Facility Plan and the Trails and Bikeways Facility Plan. Carrie Barkhurst, Staff Planner (**DEFERRED TO NOVEMBER 10, 2011**)

9. **OTHER MATTERS**
Approval of September 8, 2011 Minutes – Approved
10. **ADJOURNED AT 3:47 P.M.**



ENVIRONMENTAL PLANNING COMMISSION

A G E N D A

Thursday, October 13, 2011

8:30 a.m.

Plaza Del Sol Hearing Room, Lower Level
600 2nd Street NW

MEMBERS

Doug Peterson, Chair

Laurie Moye, Vice Chair

Jonathan Siegel

Michael Dickson

Ron Garcia

Joe Yardumian

Hugh Floyd

NOTE: A LUNCH BREAK AND/OR DINNER BREAK WILL BE ANNOUNCED AS NECESSARY

Agenda items will be heard in the order specified unless changes are approved by the EPC at the beginning of the hearing; deferral and withdrawal requests (by applicants) are also reviewed at the beginning of the hearing. Applications with no known opposition that are supported by the Planning Department are scheduled at the beginning of the agenda; these cases are noted with an asterisk (*). Applications deferred from a previous hearing are normally scheduled at the end of the agenda.

There is no set time for cases to be heard. However, interested parties can monitor the progress of the hearing by calling the Planning Department at 924-3860. All parties wishing to address the Commission must sign-in with the Commission Secretary at the front table prior to the case being heard. Please be prepared to provide brief and concise testimony to the Commission if you intend to speak. **In the interest of time, presentation times are limited as follows, unless otherwise granted by the Commission Chair: Staff - 5 minutes; Applicant - 10 minutes; Public speakers - 2 minutes each.** An authorized representative of a recognized neighborhood association or other organization may be granted additional time if requested. Applicants and members of the public with legal standing have a right to cross-examine other persons speaking per Rule B.12 of the EPC Rules of Conduct.

All written materials - including petitions, legal analysis and other documents - should ordinarily be submitted at least 10 days prior to the public hearing, ensuring presentation at the EPC Study Session. The EPC strongly discourages submission of written material at the public hearing. Except in extraordinary circumstances, the EPC will not consider written materials submitted at the hearing. In the event the EPC believes that newly submitted material may influence its final decision, the application may be deferred to a subsequent hearing.

NOTE: ANY AGENDA ITEMS NOT HEARD BY 8:30 P.M. MAY BE DEFERRED TO ANOTHER HEARING DATE AS DETERMINED BY THE PLANNING COMMISSION.

1. Call to Order

- A. Announcement of Changes and/or Additions to the Agenda
- B. Approval of the Amended Agenda
- C. Staff Swearing In

2. Project# 1008952

11EPC-40057 Sector Plan Map Amendment
(zone change)
11EPC-40059 Site Development Plan for
Building Permit

Consensus Planning, agent for Guardian Storage VI, LLC, requests the above actions for Lot 25 & the eastern ½ of Lot 26, Block A, Unit A, North Albuquerque Acres, zoned SU-2/O-1 to SU-2/SU-1/O-1 and Storage, located on Palomas Ave. between Wyoming Blvd. and Barstow St. containing approximately 1.6 acres. (D-19) Carrie Barkhurst, Staff Planner

3. Project# 1008042 *

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change)
11EPC-40061 Site Development Plan for
Building Permit

Myers, Oliver & Price, P.C. agent for The Tanager Company, LLC requests the above actions for all or a portion of lots 6, 7, 8, 9, and 10, block 17, Paris Addition, zoned M-2 to SU-1/M-2 Uses and Events Center located on 1st Street between Kinney and the vacated Constitution Avenue alignment containing approximately 0.59 acres. (J-14) Chris Hyer, Staff Planner

4. Project# 1001620 *

11EPC-40062 Amendment to Zoning Code

COA Planning Department, agent for City of Albuquerque, requests the above action to amend Section 14-16-3-5(B)(4)(b)(4), General Sign Regulations. City-wide. Randall Falkner, Staff Planner

5. Project# 1008957

11EPC-40054 EPC Review of proposed use,
per Downtown 2010 SDP

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6. Project# 1001620

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The City of Albuquerque Planning Department, agent for the City of Albuquerque, requests the above action(s) to amend Zoning Code Section 14-16-2-16, the C-1 Neighborhood Commercial Zone, to make the sale of gasoline, oil and liquefied petroleum gas a conditional use. City-wide. Catalina Lehner, Staff Planner

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11EPC-40031 Site Development Plan for Building Permit

Dekker Perich Sabatini, agent for UNM and for the City Of Albuquerque-DMD/CIP, requests the above actions for all or a portion of Lots 4 and 5, Gibson Tracts, Lot A, 40/25 Associates, and Lot B, EverReady Oil Company, zoned SU-1 for C-2 to SU-1 for Fire Station, located on Gibson Blvd SE between University Blvd SE and I-25, containing approximately 1.3 acres. (L-15) Randall Falkner, Staff Planner (Deferred from June 9th, July 14th, and September 8th)

8. Project# 1008887

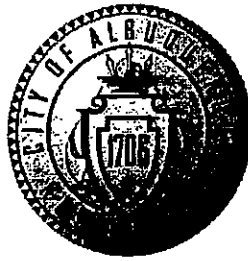
11EPC-40051 Amendment to Facility Plan

The City of Albuquerque Department of Municipal Development, Engineering Division, requests text amendments and updates to the Bikeways and Trails Master Plan, applicable City-wide. This plan consolidates and replaces the On-Street Bikeways Facility Plan and the Trails and Bikeways Facility Plan. Carrie Barkhurst, Staff Planner (Deferred from August 11th)

9. OTHER MATTERS

Approval of September 8, 2011 Minutes

10. ADJOURN



NOTICE OF PUBLIC HEARING

Notice is hereby given that the City of Albuquerque Environmental Planning Commission (EPC) will hold a **Public Hearing on Thursday, October 13, 2011 at 8:30 a.m.**, in the Plaza del Sol Hearing Room, Lower Level, Plaza del Sol building, 600 2nd St. NW, Albuquerque, NM to consider the items described below.

Distribution of the Planning Department's staff reports regarding the following items will occur at a **Study Session on Thursday, October 6, 2011 at 3:00 p.m.**, in the Plaza del Sol Hearing Room, Lower Level, Plaza del Sol building, 600 2nd St. NW, Albuquerque, NM.

Project# 1001620

11EPC-40053 Text Amendment(s) to Zoning Code

The City of Albuquerque Planning Department, agent for the City of Albuquerque, requests the above action(s) to amend Zoning Code Section 14-16-2-16, the C-1 Neighborhood Commercial Zone, to make the sale of gasoline, oil and liquefied petroleum gas a conditional use. City-wide. Catalina Lehner, Staff Planner

Project# 1008952

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11EPC-40059 Site Development Plan for Building Permit

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Project# 1008042

11EPC-40060 Zone Map Amendment (zone change)
11EPC-40061 Site Development Plan for Building Permit

Myers, Oliver & Price, P.C. agent for The Tanager Company, LLC requests the above actions for all or a portion of lots 6, 7, 8, 9, and 10, block 17, Paris Addition, zoned M-2 to SU-1/M-2 Uses and Events Center located on 1st Street between Kinney and the vacated Constitution Avenue alignment containing approximately 0.59 acres. (J-14) Chris Hyer, Staff Planner

Project# 1008957
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per Downtown 2010 SDP

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Project# 1001620
11EPC-40062 Amendment to Zoning Code

COA Planning Department, agent for City of Albuquerque, requests the above action to amend Section 14-16-3-5(B)(4)(b)(4), General Sign Regulations. City-wide. Randall Falkner, Staff Planner

Details of these applications may be examined at the Current Planning Division of the Planning Department, 3rd Level, Plaza Del Sol Building, 600 Second Street NW, between 8:00 a.m. and 5:00 p.m., Monday through Friday, or you may call 924-3860. **INDIVIDUALS WITH DISABILITIES** who need special assistance to participate at the public hearing should call 924-3860.

Doug Peterson, Chair
Environmental Planning Commission

TO BE PUBLISHED IN THE ALBUQUERQUE JOURNAL SEPTEMBER 21, 2011.

APPROVED



Carmen Marrone, Manager
Planning Department

***** Proof *****
Albuquerque Publishing Company
7777 Jefferson NE
Albuquerque, NM 87109
(505)823-7777

Account Information

Phone: (505) 924-3359
Name: CITY OF ALB-PLANNING DEPT
Account #: C80583
Address: ATTN: VICKY CALA
P O BOX 1293
ALBUQUERQUE, NM 87103
Client:
Email:
Placed by: MADELINE CARRUTHERS
Fax #:

Ad Information

Classification: 0000-Legals - **Size:** 1 x 166.190
Government
Start date: 09-21-11 **Billed size:** 166.00 5.14 agate
lines
Stop date: 09-21-11 **Ad #:** 7006545
Insertions: 1 **Ad type:** In-Column Display
Ad
Description: NOTICE OF PUB-
LIC HEARING
No-
tice

Rate code: Gov't Legal Display
Publications: Journal Daily (AM)

Ad Cost: \$ 104.58
Tax @ 7.0000%: \$ 7.32
Tax @ 7.4375%: \$
Tax @ 8.1875%: \$
Total: \$ 111.90

Ad Copy:



NOTICE OF PUBLIC HEARING

Notice is hereby given that the City of Albuquerque Environmental Planning Commission (EPC) will hold a Public Hearing on Thursday, October 13, 2011 at 8:30 a.m., in the Plaza del Sol Hearing Room, Lower Level, Plaza del Sol building, 600 2nd St. NW, Albuquerque, NM to consider the items described below.

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Project# 1001620
11EPC-40053 Text Amendment(s)
to Zoning Code
The City of Albuquerque Planning Department, agent for the City of Albuquerque, requests the above action(s) to amend Zoning Code

Albuquerque Publishing Company
7777 Jefferson NE
Albuquerque, NM 87109
(505)823-7777

Section 14-18-2-16, the C-1 Neighborhood Commercial Zone, to make the sale of gasoline, oil and liquefied petroleum gas a conditional use. City-wide. Catalina Lehner, Staff Planner

Project# 1008952
11EPC-40057 Sector Plan Map Amendment (zone change)
11EPC-40059 Site Development Plan for Building Permit
Consensus Planning, agent for Guardian Storage VI, LLC, requests the above actions for Lot 25 & the eastern 1/2 of Lot 26, Block A, Unit A, North Albuquerque Acres, zoned SU-2/O-1 to SU-2/SU-1/O-1 and Storage, located on Palomas Ave. between Wyoming Blvd. and Barstow St. containing approximately 1.8 acres. (D-19) Carrie Barkhurst, Staff Planner

Project# 1008042
11EPC-40080 Zone Map Amendment (zone change)
11EPC-40081 Site Development Plan for Building Permit
Myers, Oliver & Price, P.C. agent for The Tanager Company, LLC requests the above actions for all or a portion of lots 6, 7, 8, 9, and 10, block 17, Paris Addition, zoned M-2 to SU-1/ M-2 Uses and Events Center located on 1st Street between Kinney and the vacated Constitution Avenue alignment containing approximately 0.59 acres. (J-14) Chris Hyer, Staff Planner

Project# 1008957
11EPC-40054 EPC Review of proposed use, per Downtown 2010 SDP
Consensus Planning, Inc., agent for Gold Avenue Realty, LLC, requests the above action for all or a portion of Lots 13-23, Block 19, New Mexico Original Townsite zoned SU-3 Arts & Entertainment, located on Gold between 5th and 6th containing approximately 1 acre. (K-14) Carrie Barkhurst, Staff Planner

Project# 1001620
11EPC-40082 Amendment to Zoning Code
COA Planning Department, agent for City of Albuquerque, requests the above action to amend Section 14-18-3-5(B)(4)(b)(4), General Sign Regulations. City-wide.
Randall Falkner, Staff Planner

Details of these applications may be examined at the Current Planning Division of the Planning Department, 3rd Level, Plaza Del Sol Building, 600 Second Street NW, between 8:00 a.m. and 5:00 p.m., Monday through Friday, or you may call 924-3860. INDIVIDUALS WITH DISABILITIES who need special assistance to participate at the public hearing should call 924-3860.

Doug Paterson, Chair
Environmental Planning Commission

APPROVED
Carmen Marrone, Manager
Planning Department
Journal: September 21, 2011



**CITY OF ALBUQUERQUE
PLANNING DEPARTMENT**

INTER - OFFICE MEMORANDUM

TO: ENVIRONMENTAL HEALTH/Suzanne Busch
LEGAL DEPARTMENT/Shannon Beaucaire, Anita Miller, Kevin Curran
PARKS & RECREATION:
PARK DESIGN/Christina Sandoval
OPEN SPACE DIVISION/James Lewis
CITY FORESTER/Nicholas Kuhn
PLANNING:
ADVANCE PLANNING & URBAN DESIGN/Maggie Gould
METROPOLITAN REDEVELOPMENT AGENCY/John G. Rivera
ZONING/Juanita Garcia
NEIGHBORHOOD COORDINATION/Stephani Winklepleck
TRANSPORTATION DEV. SERVICES/Tony Loyd
HYDROLOGY/Brad Bingham
ABC WATER UTILITY AGENCY/Allan Porter
POLICE DEPARTMENT/Steve Sink
FIRE DEPARTMENT/Richard C. Suazo
SOLID WASTE MANAGEMENT DEPARTMENT/Lee Whistle
TRANSPORTATION PLANNING/Debbie Bauman
TRANSIT DEPARTMENT/Shabih Rizvi
ALBUQUERQUE PUBLIC SCHOOLS/April Winters
AMAFCA/Lynn Mazur
BERNALILLO COUNTY/Sandy Fish
MID-REGION COUNCIL OF GOVERNMENTS/Steven Montiel
MIDDLE RIO GRANDE CONSERVANCY DISTRICT/Ray A. Gomez
NM DEPARTMENT OF TRANSPORTATION/Tony Abbo
PETROGLYPH NATIONAL MONUMENT/Diane Souder
PUBLIC SERVICE COMPANY OF NEW MEXICO/Elizabeth Culpepper

FROM: Carmen Marrone, Manager, Current Planning Section, Urban Design & Development Division

SUBJECT: ENVIRONMENTAL PLANNING COMMISSION (EPC) CASE DISTRIBUTION

Attached are the legal descriptions, applications, and related materials for the cases scheduled for public hearing before the Environmental Planning Commission (EPC) on **October 13, 2011**.

The first staff review session is on **August 29, 2011 at 10:00 a.m.**, on the 3rd Floor, Planning Department Conference Room, Plaza del Sol Building, 600 Second Street, NW. At that time, the case packet will be distributed.

Please remember that all agency comments are due NO LATER THAN September 9, 2011.

COMMENTS TO: Catalina Lehner (clehner@cabq.gov)
Randall Falkner (rfalkner@cabq.gov)

Chris Hyer (chyer@cabq.gov)
Carrie Barkhurst (kcbarkhurst@cabq.gov)

Project# 1001620
11EPC-40053 TEXT AMNDT TO ZONING
CODE

PLANNING DEPT. agent for CITY OF ALBUQUERQUE.
requests Text Amendments to Section 14-16-2-16, C-1 Zone
(CITY WIDE) Catalina Lehner, Staff Planner

Project# 1005586
11EPC-40057 AMEND SECTOR
DEVELOPMENT PLAN ZONE MAP

11EPC-40059 SITE DEVELOPMENT -
BUILDG PRMT

CONSENSUS PLANNING agent(s) for GUARDIAN
STORAGE VI, LLC request(s) the above action(s) for all or
a portion of lot(s) 25 & 26 1/2, block(s) A, NORTH
ALBUQUERQUE ACRES Unit(s) A zoned SU-2/O-1 to
SU-2/SU-1/O-1 AND STORAGE located on PALOMAS
BETWEEN WYOMING AND BARSTOW containing
approximately 1.6 acre(s). (D-19) Carrie Barkhurst, Staff
Planner

Project# 1008042
11EPC-40060 AMNDT TO ZONE MAP
(ZONE CHG)

11EPC-40061 SITE DEVELOPMENT -
BUILDG PRMT

MYERS, OLIVER & PRICE, P.C. agent(s) for THE
TANAGER COMPANY, LLC request(s) the above action(s)
for all or a portion of lot(s) 6, 7, 8, 9, AND 10, block(s) 17,
PARIS ADDITION zoned M-2 to SU-1 FOR USES
PERMITTED AND REGULATED UNDER M-2 AND
EVENTS CENTER located on FIRST ST BETWEEN
KINNEY AND VACATED CONSTITUTION containing
approximately .59 acre(s). (J-14) Chris Hyer, Staff Planner

Project# 1008957
11EPC-40054 EPC REVIEW OF LAND USE
IN DOWNTOWN 2010 SECTOR PLAN

CONSENSUS PLANNING agent(s) for GOLD AVENUE
REALTY, LLC request(s) the above action(s) for all or a
portion of lot(s) 13-23, block(s) 19, NEW MEXICO
ORIGINAL TOWNSITE zoned SU-3 ARTS & ENT.
located on GOLD BETWEEN 5TH AND 6TH containing
approximately 1 acre(s). (K-14) Carrie Barkhurst, Staff
Planner

Project# 1008786
11EPC-40029 AMNDT TO ZONE MAP
(ZONE CHG)

11EPC-40031 SITE DEVELOPMENT -
BUILDG PRMT

Dekker Perich Sabatini, agent for City Of Albuquerque-
DMD/CIP requests the above actions for all or a portion of
Lots 4 and 5, Gibson Tracts, Lot A, 40/25 Associates, and
Lot B, EverReady Oil Company, zoned SU-1 FOR C-2 to
SU-1 for Fire Station, located on Gibson Blvd SE between
University Blvd SE and I-25, containing approximately 1.35
acres. (L-15) Randall Falkner, Staff Planner

Project# 1001620
11EPC-40062 AMNDT TO ZONING CODE

COA PLANNING DEPARTMENT agent(s) for CITY OF
ALBUQUERQUE request(s) the above action(s) (CITY
WIDE) Randall Falkner, Staff Planner

CITY OF ALBUQUERQUE

CITY COUNCIL

INTEROFFICE MEMORANDUM

TO: Debbie Stover, Director, Planning Department
FROM: Laura Mason, Director, Council Services *LM*
SUBJECT: Bill No. O-11-66
DATE: August 17, 2011

The attached ordinance was introduced by the City Council on August 15, 2011. We are requesting that you submit this Zoning Code amendment to the Environmental Planning Commission for a hearing as soon as possible. The amendment is intended to make the sale of gasoline, oil and liquefied gas a conditional use in the C-1 Zone.

Please submit the Environmental Planning Commission's comments and recommendations, including the transcript from the meeting, back to the City Council within 75 days of the date of this memo. Thank you.

cc: Russell Brito, Planning Department
Carmen Marrone, Planning Department
File O-11-66

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CITY of ALBUQUERQUE

NINETEENTH COUNCIL

COUNCIL BILL NO. O-11-66 ENACTMENT NO. _____

SPONSORED BY: Isaac Benton

ORDINANCE

1

2 **AMENDING CHAPTER 14, ARTICLE 16, SECTION 2, PART 16 OF ROA 1994, A**
3 **PORTION THE ZONING CODE REGARDING THE C-1 NEIGHBORHOOD**
4 **COMMERCIAL ZONE, TO MAKE THE SALE OF GASOLINE, OIL AND**
5 **LIQUEFIED PETROLEUM GAS A CONDITIONAL USE.**
6 **BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF**
7 **ALBUQUERQUE:**

8 **SECTION 1. The amendment herein revises the comprehensive zoning**
9 **code to make the sale of gasoline, oil and liquefied petroleum gas a**
10 **conditional use, rather than a permissive use, in the C-1 Neighborhood**
11 **Commercial Zone. The City Council is concerned about the negative impacts,**
12 **such as exposure to environmental hazards and the generation of additional**
13 **traffic, and safety issues, such as the creation of conflict points in areas of**
14 **increased pedestrian and bicycle activity, that service stations built**
15 **immediately adjacent to established residential areas have. The purpose of**
16 **this amendment is to require a public notification process and comment**
17 **period before the construction of new service stations. Service stations**
18 **already in existence in C-1 zones, or for which building permits have been**
19 **received prior to adoption of this ordinance, are not affected.**

20 **SECTION 2. Section 14-16-2-16 (A) (8) is amended to read:**

21 **"(8) Retail sales of the following goods, plus incidental retailing of**
22 **related goods and incidental service or repair:**

23 **(a) Arts and crafts objects, supplies, plus their incidental**
24 **creation provided there is little or no reproduction of substantially identical**
25 **objects.**

26 **(b) Auto parts and supply.**

(c) Books, magazines, newspapers, stationery, provided that no such material is advertised to be forbidden to be sold to minors.

(d) Christmas trees, including outside sales, provided the use is limited to 45 days in one calendar year.

(e) Clothing, shoes, dry goods.

(f) Cosmetics, notions, hobby supplies.

(g) Drugs, medical supplies.

(h) Flowers and plants, including minor and incidental outdoor sales.

(i) Food and drink for consumption on premises, provided:

1. There shall be no drive-in restaurant, and

2. Alcoholic drink may be sold only under a restaurant license for sale of beer and wine, as provided by Section 60-6A-4 NMSA 1978. The sale of beer and wine under a restaurant license, however, is prohibited within 500 feet of a community residential program or hospital for treatment of substance abusers pursuant to § 14-16-3-12(A)(11) ROA 1994.

(j) Furniture, household furnishings, and appliances.

(k) ~~[Gasoline, oil, liquefied petroleum gas, including outside sales.]~~

~~(l)~~ Hardware, building materials, provided it is in a completely enclosed building.

~~(m)~~ ~~[(l)]~~ Jewelry.

~~(n)~~ ~~[(m)]~~ Musical instruments and supplies.

~~(o)~~ ~~[(n)]~~ Pets, provided there is no outside pen. One outside exercise run is permitted, provided it is enclosed with a solid wall or fence at least six feet high, and no more than one animal is permitted in the run at any one time.

~~(p)~~ ~~[(o)]~~ Photograph equipment.

~~(q)~~ ~~[(p)]~~ Sporting goods.

SECTION 3. Section 14-16-2-16 (B) is amended as follows:

(B) *Conditional Uses.*

(1) Antenna, over 65 feet in height.

1 (2) Community Residential Program except not either Community
2 Residential corrections program or Community residential program for
3 substance abusers: up to 18 client residents, provided that the standards of
4 § 14-16-3-12 of this Zoning Code are met.

5 (3) Auto, trailer, and truck rental, service, storage, provided at least
6 the following is complied with:

7 (a) The lot is graded and surfaced as follows:

8 1. Blacktop or equal. Two inches of asphaltic concrete on a
9 prime coat and a four inch compacted subgrade, or a surface of equal or
10 superior performance characteristics.

11 2. Such paving shall be maintained level and serviceable.

12 (b) 1. A fence or wall which prevents vehicles from extending
13 beyond the property line shall be erected. However, if the wall or fence plus
14 retaining wall would have an effective height of over eight feet on the
15 residential side, the Zoning Hearing Examiner shall decide the required height;
16 such decision shall be made by the same process and criteria required for a
17 conditional use.

18 2. In a parking structure there shall be a six foot high solid
19 wall on every parking level, where the structure is within 19 feet of privately
20 owned land in a residential zone.

21 (c) Trucks and trailers parked outdoors for rental or storage,
22 provided:

23 1. Such vehicles shall not exceed 35 feet in length, 12 feet in
24 height, or a registered gross vehicle weight capacity of 26,000 lbs. The body
25 of trailers shall not be over 14 feet long unless it is a recreational vehicle.

26 2. No such vehicles shall be truck tractors or road tractors.

27 3. Parked or stored vehicles shall not cover more than 25% of
28 the premises.

29 4. Special restrictions on types and number of such vehicles
30 as well as screening and location of parking shall be imposed if appropriate
31 and necessary to protect the neighborhood.

32 (d) Vehicle repairing, done within a completely enclosed
33 building and at least 20 feet from any residential zone.

- 1 (4) Bicycle and motorized bicycle (moped) sales and rental,
2 provided that outdoor display is permitted only 50 feet or more from any
3 residential zone.
- 4 (5) Drive-up service window, except where listed as permissive in
5 this zone, provided that the vehicle movement plan is approved by the Traffic
6 Engineer, and further provided that the service window and any associated
7 order board are located at least 75 feet from any residential zone. Drive-up
8 service windows in existence upon the effective date of this Zoning Code shall
9 be considered as approved conditional uses.
- 10 (6) Fireworks sales, provided the use is limited to 45 days in one
11 calendar year.
- 12 (7) Games within a completely enclosed building, operated for
13 profit, and not permissive in this zone.
- 14 (8) Kennel, provided:
- 15 (a) It is in a completely enclosed building.
- 16 (b) It is no closer than 30 feet from any residential zone.
- 17 (c) The noise from the kennel does not exceed the ambient
18 noise level as defined in § 9-9-2, Noise Control, when measured 30 feet from
19 any exterior wall of the kennel.
- 20 (9) Mortuary.
- 21 (10) One mobile home for a watchman or caretaker on the same
22 premises developed with a commercial building or use provided that the
23 mobile home shall not be within 100 feet of a lot in a residential zone or a
24 dwelling unit in any zone.
- 25 (11) Outdoor storage or activity except as specifically listed as a
26 permissive or conditional use in this section and as further provided below:
- 27 (a) The outdoor storage or activity is part of a use on the same
28 premises, which use is a permissive only within a building in this zone.
- 29 (b) Outdoor uses which would impact their environs with
30 appearance, light, noise, odor, or similar environmental problems likely to be
31 unpleasant to neighboring premises and uses shall not be approved.
- 32 (c) Outdoor conditional uses may justify special buffering to
33 prevent the activity from negatively impacting adjacent land.

1 (d) Outdoor restaurant seating located within 75 feet of a
2 residential zone.

3 (12) Park-and-ride joint-use facilities, if it is determined that under
4 the conditions imposed there will not be a shortage of on-site parking for the
5 activities on the site; in such situations, no parking variance is required.

6 (13) Photo direct off-set printing, perforating, scoring, cutting, and
7 other light duty printing services provided:

8 (a) The number of persons engaged in the business is limited to
9 five excluding secretarial, clerical, and delivery personnel; and

10 (b) Activities or products are not objectionable due to noise,
11 vibration or other cause.

12 (14) Public utility structure which is not permissive.

13 (15) Recycling bin as an accessory use on the site, as provided in
14 § 14-16-3-15 of this Zoning Code.

15 (16) Schools, other than public.

16 (17) Storage of household goods, office records, equipment or
17 material reasonable to neighborhood function provided:

18 (a) All activities are conducted within a completely enclosed
19 building, the scale and style of which fits its location;

20 (b) Individual storage cubicles, units, or facilities are not each
21 directly accessible from outside the enclosed building; and

22 (c) Direct access to the premises from an arterial or collector
23 street is available.

24 (18) Uses or activities in a tent. If the uses or activities are listed
25 elsewhere in this section, provided there is sufficient paved off-street parking
26 available on the premises to meet parking requirements for all uses on the
27 premises, including the activity in the tent, and provided that the City Fire
28 Marshal [i.e., the Chief of the Fire Prevention Bureau] or his authorized
29 representative gives prior approval of the tent as meeting the requirements
30 of Chapter 14, Article 2, Fire Code.

31 (19) Restaurant serving liquor, provided that the restaurant is
32 located within a shopping center site for which a site development plan has
33 been approved.

1 (20) Wireless Telecommunications Facility, Roof-Mounted, up to 20
2 feet above the parapet of the building on which it is located, provided that the
3 requirements of § 14-16-3-17 of this Zoning Code are met.

4 [(21) Retail sales of gasoline, oil, liquefied petroleum gas, including
5 outside sales.]

6 SECTION 4. SEVERABILITY CLAUSE. If any section, paragraph, sentence,
7 clause, word or phrase of this ordinance is for any reason held to be invalid or
8 unenforceable by any court of competent jurisdiction, such decision shall not
9 affect the validity of the remaining provisions of this ordinance. The Council
10 hereby declares that it would have passed this ordinance and each section,
11 paragraph, sentence, clause, word or phrase thereof irrespective of any
12 provision being declared unconstitutional or otherwise invalid.

13 SECTION 5. COMPILATION. This ordinance shall be incorporated in and
14 made part of the Revised Ordinances of Albuquerque, New Mexico, 1994.

15 SECTION 6. EFFECTIVE DATE. This ordinance shall take effect five days
16 after publication by title and general summary.

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