

**Notice of Decision  
City Council  
City of Albuquerque  
May 22, 2019**

**AC-19-5** Project #2018-001840 RZ-2019-00053: University Heights Association, appeal the decision of the Environmental Planning Commission (EPC) to Approve a Zone Map Amendment for all or a portion of Lot 13, Block 25, University Heights, zoned RM-L to MX-T, located at 123 Girard Blvd. SE on the northwest corner of Girard Blvd. and Silver Ave. SE, containing approximately 0.2 acre. (K-16)

**Decision**

On May 20, 2019, by a vote of 7 FOR, 2 AGAINST, the City Council voted to deny the appeal by accepting and adopting the recommendation and findings of the Land Use Hearing Officer.

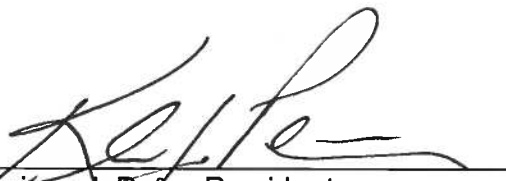
Against: Davis, Peña


**IT IS THEREFORE ORDERED THAT THE APPEAL IS DENIED, THE EPC IS AFFIRMED,  
AND THE ZONE MAP AMENDMENT IS APPROVED**

**Attachments**

1. Land Use Hearing Officer's Recommendation
2. Action Summary from the May 20, 2019 City Council Meeting

A person aggrieved by this decision may appeal the decision to the Second Judicial District Court by filing in the Court a notice of appeal within thirty (30) days from the date this decision is filed with the City Clerk.

 Date: 5-30-19  
Klarissa J. Peña, President  
City Council

Received by:  Date: 5/30/19  
City Clerk's Office

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2019 MAY 30 AM 11:06

**BEFORE THE CITY OF ALBUQUERQUE  
LAND USE HEARING OFFICER**

**APPEAL NO. AC-19-5**

**Project: 2018-001840; RZ-2019-00053**

**UNIVERSITY HEIGHTS ASSOCIATION, Appellants,**

**and,**

**JEANETTE MARTINEZ, Party Opponent.**

1           This is an appeal of a decision from the Environmental Planning Commission (EPC) to  
2       change a zone district from RM-L to MX-T under the Integrated Development Ordinance (IDO).  
3       The Appellants are the University Heights Association (UHA). After reviewing the full record,  
4       hearing arguments and testimony of the parties and City Planning Staff, I find that the Appellants  
5       have not met their burdens of proof for the issues appealed. As detailed below, I therefore  
6       recommend that the appeal be denied.

7  
8       **I.     BRIEF HISTORY**

9           This zone-change began with a City Staff Pre-application Review Team Meeting (PRT)  
10       with Ms. Martinez (the applicant) on October 15, 2018 [R. 49]. At the PRT meeting, the applicant  
11       informed Staff about her plans to open a “*wellness clinic with nurse practitioner, acupuncture,*  
12       *message, nutritional and herbal therapies*” in a 4,300 sq. ft. residential building located at the  
13       Northwest corner of Girard Blvd. and Silver Ave., SE [R. 26, 49]. The record shows that the

14 building currently encompasses a total of 7 individual residential dwelling units that sits on a  
15 .16-acre lot [R. 46]. As stated above, the requested zone-change is from the RM-L zone to a MX-  
16 T zone [R. 14]. During the PRT meeting the City's Traffic Engineer determined that a traffic  
17 impact study would not be necessary because thresholds automobile counts for the proposed use  
18 were not met under the City's Development Process Manual [R. 53]. After the PRT meeting, on  
19 November 26, 2018, the applicant applied for the zone change [R. 46]. There is no dispute that  
20 the required neighborhood association notices or that a facilitated meeting were not  
21 accomplished. On February 14, 2019, the EPC took up the zone-change application, and after a  
22 public hearing at which the applicant and representatives of the UHA testified, the EPC granted  
23 the zone-change [117, 14].

24 In this appeal, Appellants first contend that because the building structure does not satisfy  
25 current rear setback requirements for the RM-L zone or for the proposed MX-T zone, the zone-  
26 change should not have been granted [R. 9]. Appellants generally contend that because the rear  
27 setback cannot be met, it will cause harm to the neighborhood. The Appellants next raise several  
28 issues having to do with what they consider to be an existing parking ("deficit") problem in the  
29 area and specifically at the location of the proposed zone-change [R. 10-13]. They contend that  
30 the zone-change not only will exacerbate the problem, but the EPC erred because it did not  
31 confront the issue with any particularity in granting the zone-change.

32 A review of an appeal is a whole record review to determine whether the EPC acted  
33 fraudulently, arbitrarily, or capriciously; or whether the EPC's decision is not supported by  
34 substantial evidence; or if the EPC erred in applying the requirements of the IDO, a plan, policy,  
35 or regulation [IDO, § 14-16-6-4(U)(4)]. At the appeal level of review, the decision and record  
36 must be supported by substantial evidence to be upheld. The LUHO may recommend to the City

Council that an appeal be affirmed in whole or in part or reversed in whole or in part. The LUHO has authority to remand an appeal in whole or in part [IDO, § 14-16-6-4(U)(1)(d)].

## II. DISCUSSION

### *A. The Nonconforming Building Setback is Not an Impediment to a Zone-change or to Changing the Use. Nor is it Evidence of Harm*

I find that the EPC did not err regarding the non-conforming rear setback of the building. Planning Staff are correct in pointing out that the IDO allows nonconforming buildings that do not meet setbacks to continue being used, even change uses without violating the IDO [IDO, § 14-16-6(D)(4)]. There is no evidence or suggestion in the record that the applicant is physically “expanding” the building envelope, therefore under the IDO the structure’s use can change and remain a nonconforming building [IDO. § 14-16-6(D)(2)].

Appellants’ contention that the nonconforming setback of the building is harmful to the neighborhood is without merit because Appellants did not support the contention with any facts other than the mere allegation. Appellants claim generally that the harm is to the “neighborhood’s character.” Contrary to Appellants’ contention though, the building nonconformity does not alter the “established character” of the neighborhood. What is important is that the nonconforming building and setback does not change with the zone-change. The setback remains just as nonconforming with or without the zone-change. Thus, there is no additional or new harm to the neighborhood with the zone-change. And although the EPC did not make any findings regarding the nonconformity, as indicated above, because the nonconformity does not hinder the EPC in approving the zone-change under the IDO, such a finding would have no impact on the application one way or the other. I also note for the City Council that during the EPC hearing Planning Staff and EPC members discussed these very

issues [R. 123]. Thus, the EPC was well-aware that the building is a nonconforming structure.

***B. Contrary to Appellants' Contentions, the EPC Satisfied the Analysis of § 14-16-6-7(F)(3)(b) of the IDO***

Appellants next argue that the EPC erred because it “made no finding that specifically addresses the established character of the surrounding RM-L zoning.” In this regard, Appellants claim that the EPC did not demonstrate “that the zone-change would reinforce or strengthen that established character” of the neighborhood [R. 10]. To show that the EPC erred, Appellants point to § 14-16-6-7(F)(3)(b) of the IDO and contend that it was not met.

Section 14-16-6-7(F)(3)(b) of the IDO is one of multiple zone-change review and decision criteria that must be met. This section is implicated because the zone-change site is within a designated area of consistency under the Comprehensive Plan. In addition to the zone-change criteria under § 14-16-6-7(F), when a zone-change site is in a designated area of consistency, an applicant must also show:

that the new zone would *clearly reinforce or strengthen* the established character of the surrounding Area of Consistency and would not permit development that is *significantly different* from that character. The applicant must also demonstrate that the existing zoning is inappropriate because it meets any of the following criteria:

1. There was typographical or clerical error when the existing zone district was applied to the property.

2. There has been a significant change in neighborhood or community conditions affecting the site.

3. A different zone district *is more advantageous* to the community *as articulated by the ABC Com Plan*, as amended (including implementation of patterns of land use, development density and intensity, and connectivity), and other applicable adopted City plan(s) (Emphasis added.) [IDO, § 14-16-6-7(F)(3)(b)].

There is no dispute that the zone-change site is within a designated area of consistency, therefore

Appellants are correct that the above section is applicable. However, Appellants are wrong that

the EPC did not make findings regarding it or regarding the character of the neighborhood—it did.

First, the “established character” of a neighborhood is defined by the existing development (land uses) in that area [Comp. Plan, 4-13 and 5-23]. The record includes an abundance of descriptions and analysis of the exiting land uses in the immediate area around the zone-change site [R. 26-44, and 15-18, EPC Findings 6 and 7]. Appellants may not agree with the descriptions or the EPC findings regarding those descriptions, but they are there. It is clear from the record that because the zone-change site is adjacent to the Central Ave. Main Street Corridor, is on a major collector street (Girard Blvd.), and there are a number of mixed-uses in the immediate area, including office uses, residential uses, and larger commercial uses nearby, the EPC’s finding that the proposed use is not inconsistent with the neighborhood character is supported by substantial evidence. Moreover, there is substantial evidence in the record establishing that the proposed MX-T zone is similarly not inconsistent with the area because there exists an MX-T and an MX-L zone to the East and West of the site respectively [R. 30]. Again, Appellants may disagree with the EPC’s assessments and conclusions, but that is not the standard to reverse an EPC decision. The question is not whether substantial evidence exists to support the opposite result, but rather whether the evidence in the record supports the result reached. There is sufficient evidence in the record to support that the MX-T zone is consistent with the established character of the area.

And although Appellants loosely claim that the applicant did not demonstrate the “more advantageous” requirement of § 14-16-6-7(F)(3)(b)(3), I find that there is substantial evidence in the record to support the EPC’s numerous findings regarding how the proposed zone-change meets a preponderance of the policy goals of the Comprehensive Plan. Appellants have not shown otherwise. Thus, the applicant and the EPC did comply with § 14-16-6-7(F)(3)(b).

**C. The EPC did Not Err Because It Made No Express Findings Regarding Parking at the Zone-Change Site**

Appellants first claim that there is a parking “deficit” for off-street and on-street parking on Silver Ave. around the zone-change site and that this alleged deficit is harmful to the neighborhood. They also claim that because of the parking deficit, the EPC should have explored whether the proposed use at the zone-change site will increase or further “perpetuate” the deficit. Finally, Appellants contend that the EPC erred because it did not explore this issue or make any findings regarding parking [R. 10].

A close review of the record, however, demonstrates that the record includes substantial evidence regarding how the zone-change site will affect parking on Silver Ave., and although the EPC did not make express findings regarding parking, unless a use triggers an activity requiring mitigation under § 14-16-4-3 as prescribed by § 14-16-6-7(F)(3)(d) of the IDO, the EPC was not required to make such findings at the zone-change stage of review.<sup>1</sup> Notwithstanding however, in the City Staff Report to the EPC, Planning Staff evaluated parking at the site and determined that under the applicant’s proposal, the site will have sufficient parking onsite and offsite for the proposed use [R. 32]. The EPC presumably read the Staff Report and therefore was fully apprised of the parking issues.

Staff also evaluated the various uses that are also allowed in the MX-T zone and concluded that the physical site limitations and the IDO’s development standards make other more intense allowed uses in the MX-T zone prohibitive at the site.<sup>2</sup> The EPC made a similar Finding regarding

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1. I note for the Council that at the PRT meeting with the applicant, because the use will be within 500 feet of a residential zone, Planning Staff did advise the applicant that the activity of dispensing syringes and or methadone at the proposed wellness clinic will be prohibited under § 14-16-4-3(D)(25) [R. 50]. Note that Section 14-16-4-3 is mis-cited in § 14-16-6-7(F)(3)(d) of the IDO.

2. Note that the Bates numbered record does not include all pages of the Staff Report. The full Staff Report is a supplement to the appeal record. See page 16 of the supplemented Staff Report.

the site limitations for other MX-T uses [R. 17, EPC Finding 7.f and g]. And although the EPC was not technically charged with addressing parking, or harm outside of the context of the Comprehensive Plan or outside of the use specific standards of § 14-16-4-3, I find that the EPC had substantial evidence regarding parking; and I find that there is insufficient evidence to support Appellants' contentions that the zone-change and proposed use will perpetuate a parking deficit. There is clearly adequate parking for the proposed use. And although not necessary, there is sufficient evidence in the record to support a finding that the zone-change, and the site limitations required for uses under the MX-T zone in the IDO do not impair parking or traffic at the site any more than the existing multiple residential uses do at the site without the zone-change. This is so because City Staff determined that the number of parking spaces necessary with the zone-change will be satisfied under the IDO for the proposed use.

**D. Appellants' Contention that the Zone-Change Will Increase Vehicular Traffic and Impair the Bike Boulevard is Unsubstantiated**

Appellants next claim that simply because the zone-change is for commercial uses, automobile traffic will increase, and it will adversely impact the Bike Boulevard in Silver Ave. Yet, they have not supported the claim with any evidence. Instead they argue that it is rational to conclude that any zone-change from residential to commercial always leads to increases in traffic. Appellants' leap of faith may or may not be true, but the claim still must be supported by enough evidence to support the appeal. There is evidence in the record that mixed-uses serve many Comprehensive Plan Goals regarding pedestrian and bike uses, and the Planning Staff advised the EPC that the proposed zone-change facilitates those goals. Planning Staff provided the following relevant testimony to the EPC:

Staff notes that parking and traffic is a concern. The general City Planning



position is that the IDO encourages mixed-use zones, and one of the advantages is the opportunity to share parking responsibilities between different uses. There is a potential for the office to use the property during the day and residents to use the property at night....

Staff found that the proposal furthered comprehensive policies regarding Community Identity, Land Use, Transportation, Economic Development, and Heritage Conservation as described in the staff report, so staff recommends approval [R. 117].

Moreover, the fact that Silver Ave. is also a designated bike boulevard is not presumptive evidence that this zone-change and the uses allowed therein are harmful to bicycle and pedestrian traffic. As indicated above, Planning Staff opined that mixed-uses facilitate and encourage multi-modal transportation networks and tend to make alternative transportation options more viable. This opinion is supported in the Comprehensive Plan.

In the Comprehensive Plan, bike boulevards are anticipated to be “located in commercial or mixed-use corridors” [Comp. Plan, 6-18]. Because bike boulevards are enhanced with design features to encourage bicycle use and discourage excessive through trips by motor vehicles is a factor that tends to reduce automobile traffic regardless of the uses along the road. It is undisputed that there is a permeable median diverter at the intersection of Girard Blvd. and Silver Ave. which is designed to restrict automobile access to Silver Ave. and to the zone-change site [R. 31]. This evidence tends to support the general proposition as Staff described to the EPC, that the MX-T zone, mixed uses, and the median diverter, all serve to assuage automobile traffic in furtherance of the Comprehensive Plan goals.

Appellants also suggest that automobile users along Girard Blvd. are undermining the median diverter and making dangerous U-turns to get on Silver Ave. They further argue that the zone-change will only encourage this bad behavior and therefore the EPC should have explored the matter further or not approved the zone-change. The EPC did not err. There was no evidence

for it to consider, only an unsupported allegation. Appellants have never offered evidence to support their theory *linking* the illegal U-turns to the zone-change and without competent evidence, it cannot be considered as a basis to deny the zone-change or reverse the EPC's decision in the appeal. The fact the illegal U-turns are occurring without the zone-change supports a conclusion that there is no connection between the illegal behavior and the zone-change.

Appellants also contend that certain findings of the EPC regarding the structure are factually inaccurate. Specifically, Appellants argue that EPC findings 6.a, 6.b, 6.c, 6.g., 6.q, and 6.r, are factually incorrect because the EPC found that the building at the zone-change site is "historic" [R. 11]. Yet, it is undisputed that the building is not a legally designated historic building. It is also undisputed that the building is not listed on the National Register of Historic Places or in the State's Register of Cultural Properties, nor is it designated under the IDO for historic preservation or protection. It is true that the building was constructed before 1965, but as Appellants claim, so too are many other buildings in Albuquerque. The fact that the building was built before 1965 does not give it "historic" significance or status under the IDO or elsewhere. Yet, in four of its Findings, the EPC described the building as "historic" [See Findings 6.a, 6.b, 6.o, and 6.r, R. 21-22].

Notwithstanding these factual inaccuracies, I find that the errors do not rise to reversible error or necessitate a remand. After reviewing the substance of the Findings with the referenced Comprehensive Plan policies cited therein, I find that despite the factual errors, the Comprehensive Plan policies referenced in the Findings are still applicable. In short, there is substantial evidence in the record that that support a finding that the referenced policies in Findings 6.a, 6.b., 6.c, and 6.r, are facilitated. The factual errors that exists in the findings are therefore harmless because the

212 policy bases for the findings were not erroneous.<sup>3</sup>

213 In conclusion, I find that the EPC's decision is supported with substantial evidence in the  
214 record. Although it has some irregularities regarding the facts, the decision is well supported by  
215 the record and the EPC satisfied the zone-change requirements under the IDO. The decision should  
216 be upheld. I also find that the UHA did not meet its heavy burdens of proof under the IDO in its  
217 appeal and therefore, the appeal should be denied.



Steven M. Chavez, Esq.  
Land Use Hearing Officer

May 3, 2019

Copies to:

Appellants  
Party Opponents  
City Staff

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3. And although the EPC defined the building as "historic," it appears that based on the totality of the evidence in the record, the EPC was cognizant that the building does not meet the standards for historic preservation under Federal, State, or under the IDO because it also found that the building is "*not within the boundaries of a Character Protection Overlay (CPO), a Historic Protection Overlay (HPO), or a View Protection Overlay (VPO)*" [R. 20, Finding 4].



# City of Albuquerque

Albuquerque/Bernalillo  
County  
Government Center  
One Civic Plaza  
Albuquerque, NM 87102

## Action Summary

### City Council

*Council President, Klarissa J. Peña, District 3*

*Vice-President, Cynthia D. Borrego, District 5*

*Ken Sanchez, District 1; Isaac Benton, District 2*

*Brad Winter, District 4; Patrick Davis, District 6*

*Diane G. Gibson, District 7; Trudy E. Jones, District 8*

*Don Harris, District 9*

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Monday, May 20, 2019

5:00 PM

Vincent E. Griego Chambers

One Civic Plaza NW

Albuquerque/Bernalillo County Government Center

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### TWENTY-THIRD COUNCIL - THIRTY-SIXTH MEETING

#### 1. ROLL CALL

**Present** 9 - Klarissa Peña, Cynthia Borrego, Ken Sanchez, Isaac Benton, Brad Winter, Patrick Davis, Diane Gibson, Trudy Jones, and Don Harris

#### 2. MOMENT OF SILENCE

**Pledge of Allegiance - Klarissa J. Peña, President, District 3**

#### 3. PROCLAMATIONS & PRESENTATIONS

#### 4. ECONOMIC DEVELOPMENT DISCUSSION

#### 5. ADMINISTRATION QUESTION & ANSWER PERIOD

#### 6. APPROVAL OF JOURNAL

**May 6, 2019**

#### 14. FINAL ACTIONS:

##### c. RA-19-4

Amending The City Council Rules Of Procedure: Article II, Sections 1 And 2, Dealing With The Timing Of The Election Of The President And Vice President; Article II, Section 3 Relating To Powers And Duties Of The President; Article I Section 8(H), And Article III Section 4(B) To Adjust Cross References; Article III Section 3 Relating To Votes Required For Rule Suspensions; Article III, Section 6(A) Relating To Bill

Submission And Voting Requirements; Article III, Section 6(C) Relating To Bill Titles; Article III, Section 8 Relating To Approvals; Article III, Section 11 Relating to Voting by Phone; Article III, Section 21 Relating to Contractors for the Council; And Article III, Section 24 Prescribing Land Use Hearing Officer Procedures (Borrego, Sanchez)

**A motion was made by President Peña that this matter be Amended. President Peña moved Floor Amendment No. 1. The motion carried by the following vote:**

**For:** 8 - Peña, Borrego, Benton, Winter, Davis, Gibson, Jones, and Harris

**Excused:** 1 - Sanchez

**A motion was made by President Peña that this matter be Amended. President Peña moved Floor Amendment No. 2. The motion carried by the following vote:**

**For:** 5 - Peña, Borrego, Benton, Davis, and Harris

**Against:** 3 - Winter, Gibson, and Jones

**Excused:** 1 - Sanchez

**A motion was made by President Peña that this matter be Amended. President Peña moved Floor Amendment No. 3. The motion carried by the following vote:**

**For:** 6 - Peña, Borrego, Benton, Davis, Gibson, and Harris

**Against:** 2 - Winter, and Jones

**Excused:** 1 - Sanchez

**A motion was made by Vice-President Borrego that this matter be Amended. Vice-President Borrego moved Floor Amendment No. 4. The motion carried by the following vote:**

**For:** 8 - Peña, Borrego, Benton, Winter, Davis, Gibson, Jones, and Harris

**Excused:** 1 - Sanchez

**A motion was made by Vice-President Borrego that this matter be Passed as Amended. The motion carried by the following vote:**

**For:** 8 - Peña, Borrego, Benton, Winter, Davis, Gibson, Jones, and Harris

**Excused:** 1 - Sanchez

## **7. COMMUNICATIONS AND INTRODUCTIONS**

## **8. REPORTS OF COMMITTEES**

**Land Use, Planning and Zoning Committee - May 15, 2019**

**Committee of the Whole - May 16, 2019**

**Deferrals/Withdrawals**

- a. [R-18-78](#) A Nuisance, Substandard Dwelling Or Structure In Need Of Abatement At 115 Charleston St SE 87108 Within The City Limits Of Albuquerque, New Mexico Is So Ruined, Damaged And Dilapidated As To Be A Menace To The Public Comfort, Health, Peace Or Safety And That It Is To Be Required To Be Removed (Davis, by request)
- A motion was made by Councilor Davis that this matter be Postponed to August 19, 2019. The motion carried by the following vote:**
- For: 9 - Peña, Borrego, Sanchez, Benton, Winter, Davis, Gibson, Jones, and Harris
- \*h. [R-19-146](#) Amending The Boundary Of The East Gateway Metropolitan Redevelopment Area To Designate An Additional Area For Inclusion Within The MRA, Making Certain Findings And Determinations Pursuant To The Metropolitan Redevelopment Code, And Authorizing And Directing The Metropolitan Redevelopment Agency To Update The Metropolitan Redevelopment Plan For The East Gateway Metropolitan Redevelopment Area Consistent With This Resolution (Harris)
- A motion was made by Councilor Harris that this matter be Postponed to June 17, 2019. The motion carried by the following vote:**
- For: 9 - Peña, Borrego, Sanchez, Benton, Winter, Davis, Gibson, Jones, and Harris
- \*g. [R-18-102](#) Amending The Boundary Of The West Central Metropolitan Redevelopment Area To Designate An Additional Area For Inclusion Within The Mra, Making Certain Findings And Determinations Pursuant To The Metropolitan Redevelopment Code, And Authorizing And Directing The Metropolitan Redevelopment Agency To Update The Metropolitan Redevelopment Plan For The West Central Metropolitan Redevelopment Area Consistent With This Resolution (Peña)
- A motion was made by President Peña that this matter be Postponed to June 17, 2019. The motion carried by the following vote:**
- For: 9 - Peña, Borrego, Sanchez, Benton, Winter, Davis, Gibson, Jones, and Harris

**9. CONSENT AGENDA: {Items may be removed at the request of any Councilor}**

- a. [EC-19-378](#) Mayor's Appointment of Ms. Adena Martinez to the Americans with Disabilities Act Advisory Council
- A motion was made by Vice-President Borrego that this matter be Confirmed. The motion carried by the following vote:**
- For: 9 - Peña, Borrego, Sanchez, Benton, Winter, Davis, Gibson, Jones, and Harris

- b. [EC-19-379](#) Mayor's Appointment of Mr. Robert Sullo to the Library Advisory Board
- A motion was made by Vice-President Borrego that this matter be Confirmed.**  
**The motion carried by the following vote:**
- For:** 9 - Peña, Borrego, Sanchez, Benton, Winter, Davis, Gibson, Jones, and Harris
- c. [EC-19-380](#) Mayor's Appointment of Mr. Steve Borbas to the Senior Affairs Advisory Council
- A motion was made by Vice-President Borrego that this matter be Confirmed.**  
**The motion carried by the following vote:**
- For:** 9 - Peña, Borrego, Sanchez, Benton, Winter, Davis, Gibson, Jones, and Harris
- d. [EC-19-381](#) Mayor's Appointment of Ms. Kristina Chongsirawatana to the Biological Park Board
- A motion was made by Vice-President Borrego that this matter be Confirmed.**  
**The motion carried by the following vote:**
- For:** 9 - Peña, Borrego, Sanchez, Benton, Winter, Davis, Gibson, Jones, and Harris
- e. [EC-19-382](#) Mayor's Appointment of Ms. Laura Vanoni to the Balloon Fiesta Park Commission
- A motion was made by Vice-President Borrego that this matter be Confirmed.**  
**The motion carried by the following vote:**
- For:** 9 - Peña, Borrego, Sanchez, Benton, Winter, Davis, Gibson, Jones, and Harris
- f. [EC-19-395](#) Mayor's Appointment of Ms. Keely D. Frazier to the Para Transit Advisory Board
- A motion was made by Vice-President Borrego that this matter be Confirmed.**  
**The motion carried by the following vote:**
- For:** 9 - Peña, Borrego, Sanchez, Benton, Winter, Davis, Gibson, Jones, and Harris
- g. [EC-19-397](#) Mayor's Appointment of Mr. Michael V. Marcotte to the Cable Franchise & Hearing Board
- A motion was made by Vice-President Borrego that this matter be Confirmed.**  
**The motion carried by the following vote:**
- For:** 9 - Peña, Borrego, Sanchez, Benton, Winter, Davis, Gibson, Jones, and Harris
- h. [EC-19-403](#) Mayor's Appointment of Mrs. Kathy Foster to the Transit Advisory Board
- A motion was made by Vice-President Borrego that this matter be Confirmed.**  
**The motion carried by the following vote:**
- For:** 9 - Peña, Borrego, Sanchez, Benton, Winter, Davis, Gibson, Jones, and Harris
- i. [EC-19-384](#) Mayor's Appointment of Dr. Ellen Bernstein to the Bernalillo County/Albuquerque Census 2020 Complete Count Committee

**A motion was made by Vice-President Borrego that this matter be Confirmed.  
The motion carried by the following vote:**

**For:** 9 - Peña, Borrego, Sanchez, Benton, Winter, Davis, Gibson, Jones, and Harris

j. [EC-19-385](#)

Mayor's Appointment of Mr. Robert Rhatigan to the Bernalillo County/Albuquerque Census 2020 Complete Count Committee

**A motion was made by Vice-President Borrego that this matter be Withdrawn by Administration. The motion carried by the following vote:**

**For:** 9 - Peña, Borrego, Sanchez, Benton, Winter, Davis, Gibson, Jones, and Harris

k. [EC-19-386](#)

Mayor's Appointment of Mr. L. Adrien Lawyer to the Bernalillo County/Albuquerque Census 2020 Complete Count Committee

**A motion was made by Vice-President Borrego that this matter be Withdrawn by Administration. The motion carried by the following vote:**

**For:** 9 - Peña, Borrego, Sanchez, Benton, Winter, Davis, Gibson, Jones, and Harris

l. [EC-19-387](#)

Mayor's Appointment of Ms. Alexandra D Paisano to the Bernalillo County/Albuquerque Census 2020 Complete Count Committee

**A motion was made by Vice-President Borrego that this matter be Confirmed. The motion carried by the following vote:**

**For:** 9 - Peña, Borrego, Sanchez, Benton, Winter, Davis, Gibson, Jones, and Harris

m. [EC-19-388](#)

Mayor's Appointment of Dr. Monica M. Kowal to the Bernalillo County/Albuquerque Census 2020 Complete Count Committee

**A motion was made by Vice-President Borrego that this matter be Confirmed. The motion carried by the following vote:**

**For:** 9 - Peña, Borrego, Sanchez, Benton, Winter, Davis, Gibson, Jones, and Harris

n. [EC-19-389](#)

Mayor's Appointment of Mr. Zhibin "Bing" Hong to the Bernalillo County/Albuquerque Census 2020 Complete Count Committee

**A motion was made by Vice-President Borrego that this matter be Confirmed. The motion carried by the following vote:**

**For:** 9 - Peña, Borrego, Sanchez, Benton, Winter, Davis, Gibson, Jones, and Harris

o. [EC-19-390](#)

Mayor's Appointment of Ms. Adelamar N. Alcantara to the Bernalillo County/Albuquerque Census 2020 Complete Count Committee

**A motion was made by Vice-President Borrego that this matter be Confirmed. The motion carried by the following vote:**

**For:** 9 - Peña, Borrego, Sanchez, Benton, Winter, Davis, Gibson, Jones, and Harris

p. [EC-19-391](#)

Mayor's Appointment of Mr. Nathaniel Hughes to the Bernalillo County/Albuquerque Census 2020 Complete Count Committee



**A motion was made by Vice-President Borrego that this matter be Confirmed.  
The motion carried by the following vote:**

**For:** 9 - Peña, Borrego, Sanchez, Benton, Winter, Davis, Gibson, Jones, and Harris

q. [EC-19-392](#)

Mayor's Appointment of Mrs. Hana E. Gossett to the Bernalillo County/Albuquerque Census 2020 Complete Count Committee

**A motion was made by Vice-President Borrego that this matter be Confirmed.  
The motion carried by the following vote:**

**For:** 9 - Peña, Borrego, Sanchez, Benton, Winter, Davis, Gibson, Jones, and Harris

r. [EC-19-393](#)

Mayor's Appointment of Mr. Courtenay J. Eichhorst to the Bernalillo County/Albuquerque Census 2020 Complete Count Committee

**A motion was made by Vice-President Borrego that this matter be Confirmed.  
The motion carried by the following vote:**

**For:** 9 - Peña, Borrego, Sanchez, Benton, Winter, Davis, Gibson, Jones, and Harris

s. [EC-19-394](#)

Mayor's Appointment of Ms. Virginia Dickson to the Bernalillo County/Albuquerque Census 2020 Complete Count Committee

**A motion was made by Vice-President Borrego that this matter be Confirmed.  
The motion carried by the following vote:**

**For:** 9 - Peña, Borrego, Sanchez, Benton, Winter, Davis, Gibson, Jones, and Harris

t. [EC-19-396](#)

Mayor's Appointment of Mr. Felipe J. Rodriguez to the Bernalillo County/Albuquerque Census 2020 Complete Count Committee

**A motion was made by Vice-President Borrego that this matter be Confirmed.  
The motion carried by the following vote:**

**For:** 9 - Peña, Borrego, Sanchez, Benton, Winter, Davis, Gibson, Jones, and Harris

u. [EC-19-398](#)

Mayor's Appointment of Mr. Ronald R. Royster to the Bernalillo County/Albuquerque Census 2020 Complete Count Committee

**A motion was made by Vice-President Borrego that this matter be Confirmed.  
The motion carried by the following vote:**

**For:** 9 - Peña, Borrego, Sanchez, Benton, Winter, Davis, Gibson, Jones, and Harris

v. [EC-19-399](#)

Mayor's Appointment of Ms. Tessah Latson to the Bernalillo County/Albuquerque Census 2020 Complete Count Committee

**A motion was made by Vice-President Borrego that this matter be Confirmed.  
The motion carried by the following vote:**

**For:** 9 - Peña, Borrego, Sanchez, Benton, Winter, Davis, Gibson, Jones, and Harris

w. [EC-19-400](#)

Mayor's Appointment of Ms. Anni M. Lemming to the Bernalillo County/Albuquerque Census 2020 Complete Count Committee

**A motion was made by Vice-President Borrego that this matter be Confirmed.  
The motion carried by the following vote:**

**For:** 9 - Peña, Borrego, Sanchez, Benton, Winter, Davis, Gibson, Jones, and Harris

**x. [EC-19-401](#)**

Mayor's Appointment of Mr. Jacob Vigil to the Bernalillo  
County/Albuquerque Census 2020 Complete Count Committee

**A motion was made by Vice-President Borrego that this matter be Confirmed.  
The motion carried by the following vote:**

**For:** 9 - Peña, Borrego, Sanchez, Benton, Winter, Davis, Gibson, Jones, and Harris

**y. [EC-19-404](#)**

Mayor's Appointment of Ms. Beverly A. McMillan to the Bernalillo  
County/Albuquerque Census 2020 Complete Count Committee

**A motion was made by Vice-President Borrego that this matter be Confirmed.  
The motion carried by the following vote:**

**For:** 9 - Peña, Borrego, Sanchez, Benton, Winter, Davis, Gibson, Jones, and Harris

**z. [EC-19-405](#)**

Mayor's Appointment of Mr. George V. Luján to the Bernalillo  
County/Albuquerque Census 2020 Complete Count Committee

**A motion was made by Vice-President Borrego that this matter be Confirmed.  
The motion carried by the following vote:**

**For:** 9 - Peña, Borrego, Sanchez, Benton, Winter, Davis, Gibson, Jones, and Harris

## **10. GENERAL PUBLIC COMMENTS**

## **14. FINAL ACTIONS:**

**A motion was made by President Peña that the rules be suspended for the  
purpose of pulling R-19-148 out of the Finance and Government Operations  
Committee and placing it on tonight's agenda for final action. The motion  
carried by the following vote:**

**For:** 9 - Peña, Borrego, Sanchez, Benton, Winter, Davis, Gibson, Jones, and Harris

**\*aa. [R-19-148](#)**

Approving And Authorizing The Acceptance Of Grant Funds From The  
W.K. Kellogg Foundation And Providing An Appropriation To The Legal  
Department For Fiscal Years 2019 Through 2021 (Peña, by request)

**A motion was made by President Peña that this matter be Passed. The motion  
carried by the following vote:**

**For:** 9 - Peña, Borrego, Sanchez, Benton, Winter, Davis, Gibson, Jones, and Harris

## **11. ANNOUNCEMENTS**

## 12. PUBLIC HEARINGS: {Appeals, SAD Protest Hearings}

- a. [AC-19-5](#) Project #2018-001840 / RZ-2019-00053: University Heights Association Appeal the decision of the Environmental Planning Commission (EPC) to Approve a Zone Map Amendment for all or a portion of Lot 13, Block 25, University Heights, zoned RM-L to MX-T, located at 123 Girard Blvd. SE on the northwest corner of Girard Blvd. and Silver Ave. SE, containing approximately 0.2 acre
- A motion was made by Councilor Gibson that this matter be To Accept the Land Use Hearing Officer Recommendation and Findings. The motion carried by the following vote:**
- For: 7 - Borrego, Sanchez, Benton, Winter, Gibson, Jones, and Harris
- Against: 2 - Peña, and Davis

## 13. APPROVALS: {Contracts, Agreements, and Appointments}

- a. [EC-19-402](#) Approval of the Second Supplemental Agreement to add HOME funding to the PY 2018 Inca Street Development Agreement with Greater Albuquerque Housing Partnership (GAHP)
- A motion was made by President Peña that this matter be Approved. The motion carried by the following vote:**
- For: 9 - Peña, Borrego, Sanchez, Benton, Winter, Davis, Gibson, Jones, and Harris
- \*b. [EC-19-406](#) Approval of Outside Counsel for Legal Services Agreement with Lynn & Associates, LLC
- A motion was made by President Peña that this matter be Approved. The motion carried by the following vote:**
- For: 9 - Peña, Borrego, Sanchez, Benton, Winter, Davis, Gibson, Jones, and Harris

## 14. FINAL ACTIONS

- b. [R-19-150](#) Adopting Interim Procedures For The Development Review Board Until The First Annual Update To The Integrated Development Ordinance Has Been Completed (Jones)
- A motion was made by Councilor Jones that this matter be Passed. The motion carried by the following vote:**
- For: 9 - Peña, Borrego, Sanchez, Benton, Winter, Davis, Gibson, Jones, and Harris
- \*d. [R-19-138](#) Appropriating Funds For Operating The Government Of The City Of Albuquerque For Fiscal Year 2020, Beginning July 1, 2019 And Ending June 30, 2020; Adjusting Fiscal Year 2019 Appropriations; And Appropriating Capital Funds (Jones, by request)

**A motion was made by President Peña that the rules be suspended for the purpose of considering a Floor Substitute for R-19-138 this evening. The motion carried by the following vote:**

**For:** 9 - Peña, Borrego, Sanchez, Benton, Winter, Davis, Gibson, Jones, and Harris

**A motion was made by President Peña that this matter be Substituted. The motion carried by the following vote:**

**For:** 9 - Peña, Borrego, Sanchez, Benton, Winter, Davis, Gibson, Jones, and Harris

**A motion was made by Vice-President Borrego that this matter be Amended. Vice-President Borrego moved Floor Amendment No. 1. The motion carried by the following vote:**

**For:** 9 - Peña, Borrego, Sanchez, Benton, Winter, Davis, Gibson, Jones, and Harris

**A motion was made by Councilor Benton that this matter be Amended. Councilor Benton moved Floor Amendment No. 2. The motion carried by the following vote:**

**For:** 9 - Peña, Borrego, Sanchez, Benton, Winter, Davis, Gibson, Jones, and Harris

**A motion was made by Councilor Jones that this matter be Amended. Councilor Jones moved Floor Amendment No. 3. The motion failed by the following vote:**

**For:** 4 - Borrego, Winter, Gibson, and Jones

**Against:** 5 - Peña, Sanchez, Benton, Davis, and Harris

**A motion was made by Councilor Davis that the rules be suspended for the purpose of allowing Floor Amendment No. 4 to be considered. The motion carried by the following vote:**

**For:** 9 - Peña, Borrego, Sanchez, Benton, Winter, Davis, Gibson, Jones, and Harris

**A motion was made by Councilor Davis that this matter be Amended. Councilor Davis moved Floor Amendment No. 4.**

**A motion was made by Councilor Harris that this matter be Amended. Councilor Harris moved Amendment No. 1 to Floor Amendment No. 4. The motion carried by the following vote:**

**For:** 6 - Peña, Borrego, Sanchez, Winter, Jones, and Harris

**Against:** 3 - Benton, Davis, and Gibson

**A motion was made by Councilor Davis that this matter be Amended. Councilor Davis moved Floor Amendment No. 4. The motion carried by the following vote:**

**For:** 8 - Peña, Sanchez, Benton, Winter, Davis, Gibson, Jones, and Harris

**Against:** 1 - Borrego

**A motion was made by President Peña that this matter be Passed as Substituted, as Amended. The motion carried by the following vote:**

**For:** 9 - Peña, Borrego, Sanchez, Benton, Winter, Davis, Gibson, Jones, and Harris

- \*e. [R-19-147](#)** Accepting The Report And Recommendations From The Center For Community Progress And Creating A Vacant, Abandoned Substandard Properties (VASP) Working Group And Making An Appropriation (Gibson)
- A motion was made by Councilor Gibson that this matter be Passed. The motion carried by the following vote:
- For: 8 - Peña, Borrego, Benton, Winter, Davis, Gibson, Jones, and Harris
- Excused: 1 - Sanchez
- \*f. [R-19-149](#)** Approving And Adopting The 2019 Action Plan And Program Investment Summary For The Expenditure Of Community Development Block (CDBG) Grant, Home Investment Partnerships Program (HOME) And Emergency Solutions Grant (ESG) Funds; Providing An Appropriation To The Department Of Family And Community Services For 2019 U.S. Department Of Housing And Urban Development (HUD) Entitlement Funds (Peña, by request)
- A motion was made by President Peña that this matter be Passed. The motion carried by the following vote:
- For: 8 - Peña, Borrego, Benton, Winter, Davis, Gibson, Jones, and Harris
- Excused: 1 - Sanchez

## 15. OTHER BUSINESS: {Reports, Presentations, and Other Items}

There may be motions to pull each of the following items, a through e, out of the Finance and Government Operations Committee and place them on the June 3, 2019 Council agenda for action.

- a. [O-19-54](#)** Amending The Municipal Elections Ordinance To Implement Ranked Choice Voting (Benton, Davis, Winter)
- No motion made.
- b. [O-19-60](#)** Amending Chapter 8, Article 2, Part 4, Section 6 Of The Revised Ordinances Of Albuquerque (The "Traffic Code") Relating To Racing On Streets And Drag Racing; Prohibiting Racing Or Drag Racing On City Streets; Prohibiting Spectating Of Racing Or Drag Racing Or Spectating Preparations For The Same (Winter)
- A motion was made by Councilor Winter to pull O-19-60 out of the Finance and Government Operations Committee and place it on the June 3, 2019 Council Agenda for final action. The motion carried by the following vote:
- For: 8 - Peña, Borrego, Benton, Winter, Davis, Gibson, Jones, and Harris
- Excused: 1 - Sanchez

- c. [P-19-2](#) Adopting A Proposition To Be Submitted To The Voters At The November 5, 2019 Regular Local Election Proposing To Amend Article IV, Sections 1, 2, And 3 Of The Albuquerque City Charter Concerning Council Districts (Benton)
- A motion was made by Councilor Benton to pull P-19-2 out of the Finance and Government Operations Committee and place it on the June 3, 2019 Council Agenda for final action. The motion carried by the following vote:**
- For:** 6 - Benton, Winter, Davis, Gibson, Jones, and Harris
- Against:** 2 - Peña, and Borrego
- Excused:** 1 - Sanchez
- d. [R-19-142](#) Amending The Adopted Capital Implementation Program Of The City Of Albuquerque By Approving New Projects, Supplementing Current Appropriations And Changing The Scope Of Existing Projects (Peña, Davis, Sanchez)
- A motion was made by President Peña to pull R-19-142 out of the Finance and Government Operations Committee and place it on the June 3, 2019 Council Agenda for final action. The motion carried by the following vote:**
- For:** 8 - Peña, Borrego, Benton, Winter, Davis, Gibson, Jones, and Harris
- Excused:** 1 - Sanchez
- e. [R-19-144](#) Approving And Authorizing A Grant Application To The U.S. Department Of Housing And Urban Development For A 2019 Continuum Of Care Grant; And Providing An Appropriation To The Department Of Family And Community Services Beginning In Fiscal Year 2019 (Peña, by request)
- A motion was made by President Peña to pull R-19-144 out of the Finance and Government Operations Committee and place it on the June 3, 2019 Council Agenda for final action. The motion carried by the following vote:**
- For:** 8 - Peña, Borrego, Benton, Winter, Davis, Gibson, Jones, and Harris
- Excused:** 1 - Sanchez