

CITY of ALBUQUERQUE

TWENTY SEVENTH COUNCIL

COUNCIL BILL NO. O-26-10 **ENACTMENT NO.**

SPONSORED BY: Klarissa J. Peña

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1 WHEREAS, this amendment ensures that the assessment of costs and fees
2 remains consistent with both the closed-record nature of the appeal and the
3 legal and equitable principles that guide similar determinations in court
4 settings.

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

7 SECTION 1. Section 14-6-6-4(U)(5) of the Integrated Development
8 Ordinance is hereby amended as follows:

9 **6-4(U)(5) Appeal Costs [and Fees]**

10 **6-4(U)(5)(a) For an appeal to City Council related to an application that was**
11 **denied, all parties shall be responsible for their own costs [and fees].**

12 **6-4(U)(5)(b) For an appeal to City Council related to an application that was**
13 **approved, if the appellant loses their appeal, they shall be responsible for**
14 **paying [up to] \$1,000 for the [reasonable] costs and fees of the appellee.**

15 **1. A finding on [the reasonableness of any] costs and fees shall be made**
16 **by the LUHO. [The finding shall be based on the following factors:]**

17 **a. The conduct of the parties during the appeal, and whether that**
18 **conduct was in bad faith, or malicious.**

19 **b. The objective reasonableness of the claims and defenses asserted**
20 **by the parties.**

21 **c. The extent to which an award of costs and fees in the case would**
22 **deter others from asserting good faith claims or defenses in similar**
23 **appeals.**

24 **d. The extent to which an award of a costs and fees in the case would**
25 **deter others from asserting meritless claims and defenses in future**
26 **appeals.**

27 **e. The objective reasonableness of the parties and the diligence of the**
28 **parties and/or their attorneys during the proceedings.]**

29 **2. [A costs and fees exemption may be granted to an appellant that**
30 **demonstrates in their appeal application that they meet one of the following**
31 **criteria. The review of these criteria shall be conducted administratively by the**
32 **Planning Department and included in the appeal record transmitted to the**
33 **LUHO.] [The LUHO may grant an exception to either of the following:]**

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1 a. Any individual appellant that demonstrates hardship, low income, or
2 indigent status.

3 b. Any entity appellant with a geographic boundary that includes more than
4 50 percent of its area within an area that has an overall score of 50 or greater
5 on the City's Social Vulnerability Index.

6 **SECTION 2. SEVERABILITY.** If any section, paragraph, sentence, clause,
7 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 3. COMPIRATION.** SECTION 1 of this Ordinance amends, is
14 incorporated in, and is to be compiled as part of the Revised Ordinances of
15 Albuquerque, New Mexico, 1994.

16 **SECTION 4. EFFECTIVE DATE.** This Ordinance takes effect five days after
17 publication by title and general summary.

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