

## ARTICLE XV. Historic Preservation Ordinance

### Sec. 16-610. - Authority; purpose.

- (a) *Authority.* As the preservation of historic assets within the county has been determined by the county council to be a legitimate purpose of government, this Article is adopted pursuant to and furthers the purposes of NMSA 1978, §§ 3-21-1 et seq., (Municipal and County Zoning Regulations); NMSA § 3-22-1 et seq., (Historic Districts and Landmarks Act); and NMSA §§ 18-6-1 et seq., (Cultural Properties Act).
- (b) *Purpose.* The county council hereby declares that the archeological and historical heritage of the county is one of the county's most valued and important assets; that the public has an interest in the preservation of all prehistoric and historic ruins, sites, trails, primitive or historic roads—excluding existing modified thoroughfares, structures, objects and similar places and things for their scientific and cultural information and value; that the neglect, desecration and destruction of prehistoric and historic sites and objects results in an irreplaceable loss to the public. The term "prehistoric and historic sites and objects" includes, but is not limited to, real and personal property, including structures and ruins, that have historical and/or archeological significance. Therefore, the purpose of this article is to establish a cooperative approach for the protection and enhancement of the county's unique heritage and identity through the protection of historic sites, structures, and artifacts and through the designation of districts and landmarks of historical or archeological significance. This article is further intended to:
- (1) Create a reasonable balance between private property rights and the public's interest in preserving the county's historic properties;
  - (2) Allow for the preservation, protection and enhancement of archeological and historical sites and objects within the county;
  - (3) Foster civic pride in the beauty and accomplishments of our past;
  - (4) Provide educational opportunities for Los Alamos residents of all ages;
  - (5) Enhance and promote the county's ability to attract tourists and other visitors while respecting the privacy of individual building occupants;
  - (6) Promote the continued use, adaptive reuse, and maintenance of historic or architecturally significant properties;
  - (7) Ensure that the exterior design and appearance of new structures and improvements within a historic district will be compatible with the established character of that district;
  - (8) Provide owners of properties of historic significance with helpful information and other potential incentives for the preservation, maintenance and improvement of their properties; and
  - (9) Establish efficient and simple administrative systems to carry out the purposes of this article utilizing, wherever possible, approval procedures already in existence.

(Ord. No. 02-234, § 2, 10-29-2013)

### Sec. 16-611. - Definitions.

For the purposes of this article, the following words and phrases shall be defined as follows:

*Historic preservation advisory board (referred to as the HPAB in this article)* means the board established by chapter 8 of the county code and authorized by this article to make recommendations to the planning and zoning commission and to county council on proposed historic designations and projects affecting historic properties within the county.

*Historic district* means an area within Los Alamos County that has been so designated by ordinance pursuant to the procedures outlined in this article and section 16-452(b) and mapped as an overlay district on the county's official zoning map.

*Historic landmark* means an individual building, structure or site within Los Alamos County that has been so designated by ordinance pursuant to this article and mapped as an overlay district on the county's official zoning map.

*Historic property* means a historic landmark or any property located within a historic district, including all structures or improvements thereon.

*Historic property alteration certificate* means the official form issued under this article stating that proposed work on a historic property is compatible with the historic character of the property and therefore: (1) has been recommended for approval as appropriate and may be completed as specified in the certificate subject to compliance with all local, state and federal laws, as applicable; and (2) any building permits or other construction-related permits regarding work specified in the certificate may be issued by the community development department or other regulatory department upon satisfaction of all requirements for such permits.

(Ord. No. 02-234, § 2, 10-29-2013; Ord. No. 02-271, § 4, 5-2-2017)

Sec. 16-612. - Designation of historic landmarks and historic districts.

- (a) *Generally.* The county council may designate and list individual historic landmarks or historic districts within the county and such landmarks or districts shall be designated on the official zoning map. Such designation will result in the creation of an overlay district which will impose regulations on the designated property or district in addition to the zoning regulations already in effect in the underlying zones. Designated landmarks and districts may include publicly as well as privately owned property.
- (b) *Criteria for designation.* Council may authorize the designation of a historic landmark or historic district where the landmark or district proposed for inclusion is found to possess not less than two of the following characteristics; the landmark or district:
  - (1) Embodies an architectural style or method of construction dating from one or more significant historic periods;
  - (2) Establishes a sense of time and place unique to Los Alamos County;
  - (3) Exemplifies or reflects the cultural, social, economic or political history of the nation, state or county;
  - (4) Is associated with the lives of significant historical persons or events;
  - (5) Has the potential to preserve, display, or yield significant historic or archaeological information;  
or
  - (6) Exists on the registry of the State or National Register of Historic Places.
- (c) *Owner consent required.* Any person or group may nominate a historic landmark or district for designation; however, written consent of the property owner(s) is required before the nomination of an individual landmark will be considered. A historic district nomination application requires the written consent of the owners of at least 66 percent of the properties within the proposed district.
- (d) *Application requirements.* Nominating applications shall be submitted to the community development department director and shall contain at a minimum:
  - (1) The proper application form as provided by the community development department director;
  - (2) Any application fees as established by resolution of the county council;
  - (3) A map showing the boundary of the proposed historic landmark or district, including all structures and property lines within the proposed landmark or district;
  - (4) Written consent of the owner(s) satisfying the requirement of subsection 16-612(c);

- (5) A statement of justification reviewing the historical or architectural significance of the proposed landmark or district and how it meets the criteria for designation in this article;
  - (6) A description of the particular historic or architectural features that should be preserved. The description shall be based on a study prepared by an architectural or qualified authority on historic preservation surveying the proposed landmark or all properties within the proposed district, as applicable. The features deemed to be significant and worthy of preservation shall be specifically listed and illustrated in the study and shall form the basis for proposed preservation regulations within the district.
- (e) *Review and public hearing.*
- (1) After the community development department director determines the nominating application is complete, the HPAB shall hold a public hearing to solicit comment on the application. At least 15 days prior to the public hearing the community development department shall send notice of the meeting by U.S. mail to all owners of property within the proposed district. At the public meeting, the HPAB shall make a recommendation, with rationale based on the criteria contained in this article, and forward the same to be heard by the planning and zoning commission. The HPAB may nominate or sponsor an application for the designation of an individual landmark or an historic district. In that case, the requirements for owner consent still apply, but the public hearing provisions of this subsection (e)(1) shall not apply and, after the community development department director determines the nominating application is complete, the application shall be heard at a public hearing of the planning and zoning commission as provided below in subsection (e)(2).
  - (2) The planning and zoning commission shall hold a public hearing on the application and HPAB's recommendation. Notice of public hearing shall be as set forth in section 16-192. The planning and zoning commission shall make a recommendation to the county council as to whether the proposed historic landmark or district shall be officially designated on the county zoning map as an overlay district in accordance with section 16-452(b).
  - (3) As soon as practicable thereafter, the county council shall hold a public hearing. Notice of public hearing shall be as set forth in section 16-192. The county council shall determine whether the proposed historic landmark or district shall be officially designated on the county zoning map as an overlay district in accordance with section 16-452(b).
  - (4) The same application and processing procedures shall apply to subsequent amendments to any designated landmark or district.

(Ord. No. 02-234, § 2, 10-29-2013; Ord. No. 02-266, § 1, 5-24-2016; Ord. No. 02-271, § 5, 5-2-2017)

Sec. 16-613. - Historic property alteration certificate.

- (a) *Generally.* With respect to any designated historic property under this article, the exterior appearance of any structure shall not be altered, new structures shall not be constructed, and existing structures shall not be demolished until a historic property alteration certificate has been obtained by the owner. Construction, alteration, relocation or demolition of any fence or other landscape feature including, without limitation, any deck, wall, berm, garden structure, exterior lighting, driveway, or landscaping that has the potential for affecting historic structures or features shall also require an approved historic property alteration certificate.
- (b) *Exemptions.* Notwithstanding the foregoing, a historic property alteration certificate shall not be required for:
  - (1) Ordinary maintenance and repair where the purpose of the work is to preserve the integrity of the structure and/or materials, correct deterioration to the structure, and restore it to its condition prior to deterioration; or

- (2) Construction, alteration or demolition involving only interior features of the structure, unless such work impacts the structure's exterior appearance.
- (c) *Application.* The owner of a designated historic property shall apply to the community development department director for a historic property alteration certificate using the forms and submitting the necessary documentation as prescribed by the director. The applicant also shall submit any fees as established by resolution of the county council.
- (d) *Standards for review.* No application for an historic property alteration certificate shall be approved unless the following conditions are satisfied:
  - (1) The proposed work will preserve, enhance, or restore and does not damage or destroy the significant features of the resource as identified in the nomination for designation under sections 16-612(d)(4) and (5) and any specific design guidelines adopted for the historic landmark or district; and
  - (2) The proposed work will be compatible with the relevant historic, cultural, or architectural qualities characteristic of the structure, site or district including, but not limited to, elements of size, scale, massing, proportions, orientation, materials, surface textures and patterns, details and embellishments and the relation of these elements to one another.
- (e) *Review and public hearing.*
  - (1) *Committee review.* Within ten business days after acceptance by the community development department director of an application for historic property alteration certificate, a committee consisting of the community development department director, or designee, and two members of the HPAB designated by the HPAB chair shall meet to review the application and determine whether the proposed work will have a significant impact upon or be potentially detrimental to the historic property.
    - a. If the committee determines there will be no significant impact or potential detriment, the director shall issue an alteration certificate to the applicant and shall notify the HPAB and the planning and zoning commission of such issuance.
    - b. If it has been determined by the majority of the committee that the proposed work would create a significant impact or potential detriment to the historic property, the application shall be referred to a public hearing pursuant to section 16-613(e)(3) below, and the applicant shall be promptly notified of the referral.
  - (2) *Expedited review.* The above notwithstanding, the director may review any application that seeks approval of common alterations; and if the director determines that there will be no significant impact or potential detriment from the alteration, then the director shall issue a historic property alteration certificate to the applicant.
  - (3) *Review and recommendation by HPAB.* In addition to those applications referred for public meeting after administrative review pursuant to section 16-613(e)(1)b. above, a public meeting before the HPAB shall be required for any application requesting new construction over 200 square feet in gross floor area, or the relocation or demolition of a historic property.
    - a. Upon acceptance by the community development department director of any application for an historic property alteration certificate, the HPAB shall schedule a meeting to review the application.
    - b. The HPAB shall hold a public meeting on the application during which it shall make a recommendation to the planning and zoning commission regarding whether a historic property alteration certificate should be issued. The HPAB shall have 40 calendar days from the acceptance date of the application in which to hold said meeting. The planning and zoning commission shall take no action on the application until the HPAB has either made its recommendation or the 40-day review period has passed.

- c. The HPAB recommendation on the application shall take one of three forms: (i) approval as presented; (ii) approval with conditions; or (iii) denial. A written explanation applying the standards for review under section 16-614(d) shall accompany the recommendation.
  - d. If the HPAB fails to make a recommendation within the 40-day period, the planning and zoning commission shall proceed with its determination.
- (4) *Determination by planning and zoning commission.* As soon as practicable after the HPAB meeting on an application for historic property alteration certificate, the planning and zoning commission shall hold a public hearing to consider the recommendation. In making its decision on whether the certificate shall issue, the planning and zoning commission shall apply the standards for review under section 16-613(d) and shall also consider any recommendation received from the HPAB. The planning and zoning commission shall make a determination whether the historic property alteration certificate shall issue. If the determination of the planning and zoning commission differs from the recommendation of the HPAB, such determination shall include a statement explaining why the HPAB recommendation was not followed, and this statement shall be forwarded to the HPAB.
  - (5) *Appeals.* The final action of the planning and zoning commission regarding any historic property alteration certificate may be appealed to the county council in accordance with article XII of this chapter.

(Ord. No. 02-234, § 2, 10-29-2013; Ord. No. 02-271, § 6, 5-2-2017)

#### Sec 16-614. - Temporary restraint of demolition.

While it is the purpose of this article to preserve structures of historic or architectural significance, it is recognized that all areas of significance cannot be identified, analyzed, and designated at one time. However, it is important to protect properties with potentially qualifying buildings from inappropriate demolitions until review and hearings can be completed for possible historic preservation designation. Therefore:

- (a) No demolition permit shall be issued by the building official regarding any structure located within an area of an application for historic designation under section 16-612 between such time as the application is filed and the time the action is taken on the application by the county council unless it is determined after review by the committee established under subsection 16-613(e)(1) that the structure to be demolished contains no historic or architectural significance and is not an essential contribution to other historic features in the area.
- (b) If a demolition approval is not issued after committee review, then the HPAB shall, within 30 calendar days of the application acceptance date, hold a public hearing, at which time, the requesting party shall demonstrate:
  - (1) For total demolition:
    - a. The structure is of minimal historic significance because of its location, condition, modifications or other factors, and its demolition will be inconsequential to historic preservation needs of the area; or
    - b. The structure is determined to have historic or architectural significance but:
      - i. The structure proposed for demolition is not structurally sound despite evidence of the owner's efforts to maintain the structure; and
      - ii. The structure cannot be rehabilitated or reused on site to provide for any reasonable beneficial use of the property; and
      - iii. The structure cannot be practically moved to another site in Los Alamos; and

- iv. The applicant demonstrates that the proposal mitigates the greatest extent practical the following:
  - a) Any impacts that occur to the visual character of the neighborhood where demolition is proposed to occur.
  - b) Any impact on the historical importance of the structure or structures located on the property and adjacent properties.
  - c) Any impact to the architectural integrity of the structure or structures located on the property and adjacent properties.
- (2) For partial demolition:
  - a. The partial demolition is required for renovation, restoration, or rehabilitation of the structure; and
  - b. The structure is determined to have historic or architectural significance but, the structure proposed for demolition is not structurally sound despite evidence of the owner's efforts to maintain the structure; and
  - c. The applicant has mitigated, to the greatest extent possible:
    - i. Impacts on the historic importance of the structure or structures located on the property.
    - ii. Impacts on the architectural integrity of the structure or structures on the property.

At the conclusion of the meeting, the HPAB shall submit its recommendation if the permit should be approved or denied to the planning and zoning commission.

- (c) Within 14 days of the HPAB meeting date, the planning and zoning commission shall hold a public hearing. The recommendation of the HPAB shall be entered into the record and shall be considered by the planning and zoning commission in making its determination. The finding of the planning and zoning commission shall be final and may be appealed to the county council in accordance with article XII of this chapter.
- (d) If the request for demolition permit is denied, then no permit for demolition shall be issued for six months from the date of the planning and zoning commission hearing on the permit.
  - (1) If historic designation has not been granted for the property, at the expiration of the six-month period, the building official shall grant a demolition permit for the property.
  - (2) At the time of adoption of historic property designation, the temporary restraint of demolition and any stays of demolition in effect shall expire. Demolition approvals after that time shall be regulated by section 16-613.

(Ord. No. 02-234, § 2, 10-29-2013; Ord. No. 02-271, § 7, 5-2-2017)

#### Sec. 16-615. - Demolition by neglect.

No owner of an historic property shall permit such property to fall into a serious state of disrepair so as to result in the deterioration of any exterior architectural feature which would produce a detrimental effect upon the character of the district as a whole or the life and character of the property itself. Examples of such deterioration include: deterioration of exterior walls or other vertical supports; deterioration of roof or other horizontal members; deterioration of exterior chimneys; deterioration or crumbling of exterior stucco or mortar; ineffective waterproofing of exterior walls, roof, or foundations, including broken windows or doors; and deterioration of any feature so as to create a hazardous condition which could lead to the claim that demolition is necessary for the public safety.

(Ord. No. 02-234, § 2, 10-29-2013)



Sec. 16-616. - Economic hardship.

- (a) An applicant who has been denied a historic property alteration certificate may seek an exemption from all, or portions of, the requirements of this article based on economic hardship. Economic hardship in this context does not relate to the applicant's financial status, but rather whether the impact of this ordinance is such that it denies the applicant all reasonable or beneficial use of the property. A request for relief from this ordinance on account of economic hardship shall be made using the necessary forms provided by the community development department.
- (b) If a request for economic hardship is made, the applicant may not undertake any work on the historic property until and unless the planning and zoning commission makes a finding that an economic hardship exists and a certificate has been issued.
- (c) When a claim of economic hardship is made due to the effect of this article, the owner must demonstrate:
  - (1) In the case of an income-producing property, that a reasonable rate of return cannot be obtained from the property in its present condition or if improved in compliance with this article.
  - (2) In the case of a non-income-producing property, that the property has no beneficial use as a dwelling or for an institutional use in its present condition or if improved in compliance with this article.
  - (3) The consideration for economic hardship shall not include willful or negligent acts by the owner, purchase of the property for substantially more than the market value, or failure to perform normal maintenance and repairs.
  - (4) In addition, the applicant shall demonstrate that it has consulted in with the HPAB, local preservation groups, or interested parties in an effort to seek an alternative that will result in preservation of the property.
- (d) The planning and zoning commission shall hold a public hearing on the economic hardship request at its next regularly scheduled meeting, or not less than 30 days after filing of the request with the community development department director.
- (e) Any decision of the planning and zoning commission regarding an economic hardship request may be appealed by the applicant to the county council in accordance with article XII of this chapter.

(Ord. No. 02-234, § 2, 10-29-2013; Ord. No. 02-271, § 8, 5-2-2017)

Sec 16-617. - Enforcement; violation; penalties.

Any violation of this article is a violation of the Los Alamos County Development Code and is therefore subject to the enforcement and penalties prescribed by section 16-85 and section 1-8 of the LAC County Code.

(Ord. No. 02-234, § 2, 10-29-2013)

Sec. 16-618. - Public safety exclusion.

Nothing in this article shall be construed as to prevent any repairs, construction alterations or demolition necessary to correct or abate the unsafe or dangerous condition of any structure or site feature or part thereof, where such condition has been declared unsafe or dangerous by the county building official, other applicable county department directors, or federal or state agencies, and where proposed measures have been declared necessary by such departments or agencies. To the maximum practical extent such repairs, alterations, or demolitions shall be carried out in accordance with the standards required by this article.

(Ord. No. 02-234, § 2, 10-29-2013)

Sec. 16-619. - Severability.

If any section, clause, sentence, or phrase of this article is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this article.

(Ord. No. 02-234, § 2, 10-29-2013)



## Planning and Zoning

### Sec. 16-452. - Decision making.

#### (a) *Amendment to text.*

- (1) If the planning and zoning commission, after hearing and deliberation, determines (after making such changes as it deems necessary) that:
  - a. The amendment to text is in conformity with the review criteria contained within section 16-158 and is not materially detrimental to public welfare, the planning and zoning commission shall forward a recommendation (supported by findings) to the county council that the proposed amendment to text be approved.
  - b. The proposed amendment to text does not conform to the review criteria within section 16-158, it shall forward its recommendation for denial to the county council.
  - c. If it is unable to arrive at a recommendation within 30 days from the date of the first published legal notice, the proposed amendment to text shall automatically be forwarded without recommendation to the county council for consideration.
- (2) County council determination. Following receipt of the planning and zoning commission recommendation for the proposed amendment to text, the county council shall schedule and hold a public hearing as set forth in section 16-195, to consider the proposed amendment to text and the recommendation of the planning and zoning commission. The county council, after public hearing, shall approve, modify or disapprove the proposed amendment, based on the review criteria contained in section 16-158 or shall vote to refer the matter back to the planning and zoning commission for further proceedings, in which case the county council shall specify the time within which the planning and zoning commission shall report back to the county council its findings and recommendation on the matter(s) referred to it. The final form and content of this chapter, in any event, shall be determined by the county council.

#### (b) *Amendment to official zoning map.*

- (1) If the planning and zoning commission, after hearing and deliberation, determines that:
  - a. The amendment to official zoning map is in conformity with the review criteria within section 16-155 and is not materially detrimental to the public welfare or the property of other persons located in the vicinity, it shall forward a recommendation (supported by findings) to the county council that the proposed amendment to official zoning map be approved.
  - b. The proposed amendment to official zoning map does not conform to the review criteria within section 16-155, it shall forward its recommendation for denial to the county council.
  - c. If it is unable to arrive at a recommendation within 30 days from the date of the first published legal notice, the proposed amendment to official zoning map shall automatically be forwarded with no recommendation to the county council.
- (2) County council determination. Following receipt of the planning and zoning commission recommendation for the proposed amendment to official zoning map, the county council shall schedule and hold a public hearing as set forth in section 16-195, to consider the proposed amendment to official zoning map and the recommendation of the planning and zoning commission. The county council, after public hearing, shall approve or deny the proposed amendment to official zoning map based on the review criteria within section 16-155 or shall vote to refer the matter back to the planning and zoning commission for further proceedings, in which case the county council shall specify the time within which the planning and zoning commission shall report back to the county council its findings and recommendations on the matter(s) referred to it. Final approval of the amendment to official zoning map shall, in any event, be determined by the county council.

#### (c) *Site plans.*

- (1) If the community development director or planning and zoning commission, as applicable, after hearing and deliberation, determines that:
    - a. The site plan request is in conformity, with or without conditions, with the review criteria within section 16-152A, the request shall be approved.
    - b. The site plan request is not in conformance with the review criteria within section 16-152A, or if the potential adverse impacts cannot be mitigated by the imposition of conditions to a degree which assures that adjacent properties will not be unreasonably impacted, the request shall be denied.
  - (2) Following receipt of the planning and zoning commission recommendation for a proposed special plan (SP) district which includes a site plan and a request for change in uses allowed by the Use Index, the county council shall schedule and hold a public hearing to consider the proposed special plan (SP) district and site plan and the recommendation of the planning and zoning commission in conformance with section 16-452(h) and this section 16-452(c).
- (d) *Special use permits.*
- (1) If the planning and zoning commission, after hearing and deliberation, determines that:
    - a. The special use permit request is in conformity, with or without conditions, with the review criteria within section 16-156, the request shall be approved.
    - b. The special use permit request is not in conformance with the review criteria within section 16-156, or if the potential adverse impacts cannot be mitigated by the imposition of conditions to a degree which assures that properties within 100 yards will not be unreasonably impacted, the request shall be denied.
- (e) *Waivers.*
- (1) If the board of adjustment, after hearing and consideration, determines that:
    - a. The waiver request is in conformity, with or without conditions, with the criteria within section 16-157, the request shall be approved.
    - b. The waiver request is not in conformance with the criteria within section 16-157, the request shall be denied.
- (f) *Subdivisions (sketch, preliminary and final plats).*
- (1) If the planning and zoning commission, after hearing and deliberation, determines that:
    - a. The sketch, preliminary or final plat is in conformity, with or without conditions, with the subdivision review criteria within section 16-153, including the hillside standards, if applicable, the request shall be approved.
    - b. The proposed sketch, preliminary or final plat does not conform with the review criteria within section 16-153, the request shall be denied.
  - (2) Following receipt of the planning and zoning commission recommendation for a proposed special plan (SP) district which includes a sketch plan and a request for change in uses allowed by the Use Index, the county council shall schedule and hold a public hearing to consider the proposed special plan (SP) district and sketch plan and the recommendation of the planning and zoning commission in conformance with section 16-452(h) and this section 16-452(f).
- (g) *Summary plats.*
- (1) If the community development director, board of adjustment, or planning and zoning commission, as applicable, after review and consideration, determines that:
    - a. The request is in conformity, with or without conditions, with the review criteria within section 16-154, the community development director shall approve the request by signing the summary plat before it is filed with the county clerk.

- b. The request is not in conformance with the review criteria within section 16-154, or cannot be modified so as to conform with the review criteria within section 16-154 the decision-making authority shall deny the request.
- (h) *Special plan (SP) district.*
  - (1) If the planning and zoning commission, after hearing and deliberation, determines that:
    - a. The request is in conformity, with or without conditions, with the review criteria within section 16-159, it shall forward a recommendation (supported by findings) for approval to the county council.
    - b. The request is not in conformance with the review criteria within section 16-159, it shall forward a recommendation (supported by findings) for denial to the county council.
  - (2) County council determination. Following receipt of the planning and zoning commission recommendation for the special plan (SP) district, the county council shall schedule and hold a public hearing to consider the special plan (SP) district request and the recommendation of the planning and zoning commission. The county council, after public hearing, shall approve or deny the proposed request based on the review criteria within section 16-159 or shall vote to refer the matter back to the planning and zoning commission for further consideration, in which case the county council shall specify the time within which the planning and zoning commission shall report back to the county council its findings and recommendations on the matter(s). Final approval of the special plan (SP) district request shall be determined by the county council.
- (i) *Development plan.*
  - (1) If the planning and zoning commission, after hearing and deliberation, determines that:
    - a. The request is in conformity, with or without conditions, with the review criteria within section 16-160, it shall forward a recommendation (supported by findings) for approval to the county council.
    - b. The request is not in conformance with the review criteria within section 16-160, it shall forward a recommendation (supported by findings) for denial to the county council.
  - (2) County council determination. Following receipt of the planning and zoning recommendation for a proposed special plan (SP) district which includes a development plan, the county council shall schedule and hold a public hearing to consider the proposed special plan (SP) district and development plan and the recommendation of the planning and zoning commission in conformance with section 16-452(h) and this section 16-452(i).
- (j) *Adoption of or amendment to the comprehensive plan.*
  - (1) If the planning and zoning commission, after hearing and deliberation, determines (after making such changes as it deems necessary) that:
    - a. The adoption of or amendment to the comprehensive plan is in conformity with the review criteria within section 16-161, it shall forward a recommendation to the county council that the proposed comprehensive plan or amendment thereto be approved.
    - b. The proposed adoption of or amendment to the comprehensive plan is not in conformance with the review criteria within section 16-161, it shall forward its recommendation for denial to the county council.
    - c. It is unable to arrive at a recommendation, the proposed comprehensive plan or amendment thereto shall be forwarded without recommendation to the county council for consideration.
  - (2) County council determination. Following receipt of the planning and zoning commission recommendation, the county council shall schedule and hold a public hearing to consider the application and the recommendation of the planning and zoning commission. The county council, after public hearing, shall approve, modify or disapprove the proposed adoption or amendment, or shall vote to refer the matter back to the planning and zoning commission for further

proceedings, in which case the county council shall specify the time within which the planning and zoning commission shall report back to the county council its findings and recommendation on the matter(s).

- (3) The county council may adopt the comprehensive plan submitted by the planning and zoning commission, as a whole, by a single resolution or may from time to time approve and adopt a part or parts thereof, any such part to correspond generally with one or more of the functional elements of the plan.
- (4) The plan shall only become effective as the comprehensive plan of the county upon approval of it by resolution of the county council, carried by affirmative votes of not less than a majority of all members of the county council. The resolution shall refer expressly to revisions to specific elements, the addition of elements, maps, descriptive matter, changes to the vision statement, policy plan and goals, or other revisions intended by the planning and zoning commission to form the whole or part of the comprehensive plan.

(k) *Landscape plans.*

- (1) If the community development director determines that:

- a. The landscape plan request is in conformity, with or without conditions, with the provisions of section 16-575, the request shall be approved.
- b. The landscape plan request is not in conformance with the provisions of section 16-575, or if the potential adverse impacts cannot be mitigated by the imposition of conditions to a degree which assures that properties within 100 yards will not be unreasonably impacted, the request shall be denied.

(l) *Temporary uses.*

- (1) If the community development director determines that:

- a. The temporary use conforms to the permitted uses as set forth in section 16-278(2) and the temporary use will not adversely impact properties within 100 yards, the request shall be approved with conditions.
- b. The temporary use can be made to be in conformance with the permitted uses as set forth in section 16-278(2) and the temporary use can be made to not adversely impact properties within 100 yards, the request may be conditionally approved.
- c. In issuing a temporary use permit, the community development director may require information and impose conditions to assure area, sanitary facilities and parking spaces are adequate for the proposed use; indicate the permitted hours of operation, and any other conditions such as lighting, parking or protective fences, which are deemed necessary to protect adjacent property or the public health, safety and welfare. Each site occupied by a temporary use shall be left free of debris, litter or any evidence of the temporary use upon the expiration of the temporary use permit and the cessation of the temporary use.
- d. Before issuing a temporary use permit, the community development director may require a cash deposit or letter of credit as may be determined to be adequate to insure the cleaning up of the property covered by the temporary use permit. If the property and the surrounding area is not in the condition required, then the county may restore it to that condition, in which event the county shall have the right to be reimbursed for the costs incurred from the deposit or other security.
- e. Upon written application, the community development director may modify any of the conditions contained in the temporary use permit, if the community development director determines that the modification does not conflict with the purposes of the zoning requirements.
- f. Upon written application, the community development director may extend the time of operation of the temporary use permit no more than 20 percent above the total time allowed

for the temporary use involved. Extension of time beyond 20 percent shall be approved by formal action of the planning and zoning commission.

- g. The temporary use is not in conformance with permitted uses as set forth in subsection 16-278(2) or cannot be modified so as not to adversely impact properties within 100 yards, the request shall be denied.

(Ord. No. 85-210, § 3, 1994; Code 1985, § 17.22.020; Ord. No. 85-301, § 14, 11-6-01; Ord. No. 02-007, § 5, 6-11-02; Ord. No. 02-224, § 13, 5-1-2012)