



Los Alamos County  
Community Development Department  
**PLANNING & ZONING COMMISSION STAFF REPORT**

**Public Hearing Date:** June 9, 2021  
**Subject:** Case No. ZCA-2021-0007, Ordinance No. 02-317, an ordinance amending the text of Chapter 16, Articles XIII and XIV, to add a new section 16-543 to create a new downtown overlay zone  
**Applicant:** Los Alamos County, County Manager's Office  
**Case Manager:** Bryce Ternet, Planning Manager

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**Case No. ZCA-2021-0007:** A request for approval of draft Ordinance No. 02-317, Text Amendments to Los Alamos County Code of Ordinances, Chapter 16, Articles XIII and XIV, to add a new section 16-543 to create a new downtown overlay zone.

#### **SUMMARY**

The proposed text amendment and associated draft ordinance would create a new downtown retail overlay zone (retail overlay) within Los Alamos County (the County). The proposed new overlay district has been labeled by the application as the Downtown Pedestrian Retail Overlay Zone (DT-PRO). Although the text amendment application and draft ordinance do not define a proposed geographical boundary for the proposed new overlay zone, it can reasonably be anticipated that the new zone would apply to the County's two defined downtown boundary areas (downtown areas) as delineated in the 2016 Los Alamos County Comprehensive Plan (Comprehensive Plan, Page 83).

According to the text amendment application, the proposed code text amendment is intended "to create a new downtown overlay that promotes a walkable, vibrant downtown district that is attractive to new retail and restaurant opportunities which the community is seeking."

On May 4, 2021, the County Council voted five votes to two votes to "direct the County Manager to forward the proposed changes to Chapter 16 to the Planning and Zoning Commission for their review."

#### **STAFF TEXT INTERPRETATION**

It is staff's interpretation that the proposed text amendment language would essentially disallow any future use of ground floor area of a building within the downtown areas for any other use aside from retail (including restaurant) use. The proposed text amendment would restrict a variety of residential, professional office, and accessory uses so that these uses would only be allowed on upper-level floors of buildings. Therefore, all future proposed development in the form of new buildings or proposed use of existing vacant buildings would be required to have ground floor space reserved for solely retail use.

It is further staff's interpretation of proposed text amendment language that existing non-retail use in buildings within the downtown areas would continue to be allowed as non-conforming uses. However, substantial remodeling of any of existing building would prompt ground floor restrictions to apply.

The proposed updates would be accomplished through changes to the Use Index Matrix within section 16-287, incorporating a new permitted use category of P/U (Permitted Use Upper Floors Only).

#### **INTERDEPARTMENTAL REVIEW COMMITTEE (IDRC) REVIEW**

At a special IDRC review meeting on May 20, 2021, the IDRC unanimously approved to move the application forward as was submitted to public hearing and review by the Planning and Zoning Commission.

#### **PUBLIC NOTICE**

Notice was provided at least 15 days prior to the public hearing within accordance to the Los Alamos County Code of Ordinances, Chapter 16, Development Code, Sec. 16-192 (a), which includes:

- (1) Publication within the Los Alamos Daily Post, the County's official newspaper of record (published 5/20/2021); and
- (2) Posting at the Los Alamos County Municipal Building (5/17/2021)

#### **TEXT AMENDMENT REVIEW CRITERIA**

*Sec. 16-158. - Amendment to text. During the course of the review of any request for amendment to the text of this chapter, including determination of uses and addition, deletion or change in the Use Index, the IDRC shall utilize the following criteria in formulating a recommendation to the planning and zoning commission; and the planning and zoning commission shall utilize the following criteria in making its recommendation to the county council. The county council shall utilize the following criteria in making its determination of approval or denial:*

- 1. The request substantially conforms to the comprehensive plan and shall not be materially detrimental to the health, safety and general welfare of the county;*

**Application Response:** The request is intended to support the Comprehensive Plan's stated goal on page 84 to: "create a vibrant, pedestrian-friendly downtown that includes a central gathering place, nighttime entertainment, and more retail stores and restaurants."

**Staff Response:** Staff agrees that proposed text amendments for the retail overlay could support the Comprehensive Plan's goal of creating more pedestrian-friendly downtown areas and more retail stores and restaurants. However, without having supporting analysis provided, staff is not able to determine that the proposed retail overlay would be beneficial to the economic welfare, therefore general welfare, of the County.

The proposed retail overlay could have an unintended adverse impact of essentially "downzoning" existing properties within the downtown areas and/or reducing the market potential for vacant locations and/or potential redevelopment locations within the downtown areas as the proposed retail overlay would restrict potential uses allowed for a building. Downzoning is defined as a change in zoning where permitted uses are reduced. As a downzoning action would essentially restrict property owners of existing entitled uses; this could lead to legal challenges by property owners.

Furthermore, prohibiting certain uses on the ground floor of buildings within the County's downtown areas may have an unintended impact of hindering future residential development within the downtown areas.

- 2. A request for amendment to the comprehensive plan shall, if necessary, be submitted concurrently with the request for amendment to the text of this chapter.***

**Application Response:** N/A

**Staff Response:** Staff agrees with the application that a request for amendment to the Comprehensive Plan is not necessary to be submitted concurrently with the request for the text amendment.

- 3. The proposed change will not result in land use inconsistent with the purpose of the district or incompatible with a use allowed in the district.***

**Application Response:** The request would not add any uses that are not currently allowed within the district.

**Staff Response:** Staff agrees with the application that the retail overlay would not add any uses that are not currently allowed within the downtown areas. However, the retail overlay would restrict currently allowed uses in the downtown areas of the County. This restriction of ground floor use for existing and future buildings within the downtown areas may be challenged by property owners as a "taking" action by the County. Taking is defined as a seizure of private property or a substantial deprivation of the right to its free use that is caused by government action.

- 4. The proposed change will clarify existing language, remove redundant or inconsistent language or will simplify the understanding and implementation of the Code.***

**Application Response:** The request clearly states the types of allowable uses for the district to which it may be applied.

**Staff Response:** Staff agrees that the language included within the draft ordinance submitted as part of the text amendment application does clearly identify types of allowable uses and disallowed uses for the proposed retail overlay.

However, it is the opinion of staff that the use of overlay districts should be carefully considered. Overlay districts tend to be difficult for the general public and/or property owners to understand as an overlay district by nature creates a new layer of development standards on top of an existing base layer with its own development standards.

Additionally, it is staff's opinion that the existing County zoning map includes an over-abundance of zoning districts and that the general public, County staff, and County decision-makers would benefit from a consolidation of existing zoning districts rather than adding new districts or overlays. The consolidation of County zoning districts is currently being contemplated by the ongoing Chapter 16 update process, as previously approved and directed by the County Council. The County has contracted with a private

consulting firm to conduct this process. A goal of the code update process is to simplify the existing County Code structure. The proposal to establish a new overlay may be perceived as negating this simplification goal.

#### **FINDINGS OF FACT**

1. The application ZCA-2021-0007 is a request for approval of draft Ordinance No. 02-317, Text Amendments to Los Alamos County Code of Ordinances, Chapter 16, Articles XIII and XIV, to add a new section 16-543 to create a new downtown overlay zone.
2. On May 4, 2021, the Los Alamos County Council voted five votes to two votes to “direct the County Manager to forward the proposed changes to Chapter 16 to the Planning and Zoning Commission for their review.”
3. The code amendments comply with all criteria for text amendments as stated in the Los Alamos County Code of Ordinances, Chapter 16, Land Development, Section 16-158, Amendment to Text.<sup>1</sup>
4. Notice of this public hearing, setting forth the nature of the request, and the date, time and place of the public hearing, was announced and published in The Los Alamos Daily Post, the official newspaper of record; all in accordance with the requirements of §16-192 of the Los Alamos County Development Code.
5. The proposed application, ZCA-2021-0007, including attached draft Ordinance No. 02-317, were presented to the Planning & Zoning Commission for consideration of recommending approval of the application to the County Council on June 9, 2021.

#### **CONCLUSIONS OF LAW**

After full hearing and consideration, the Planning and Zoning Commission finds that the application has met each applicable County Code text amendment criteria contained in §16-158 of the Los Alamos County Development Code and is acting under the authority granted it by §16-452(b)(1)(a) of the Development Code.

#### **MOTION**

##### **Motion Option 1:**

I move to **recommend approval** of Case No. ZCA-2021-0016 to County Council for text amendments to Los Alamos County Code, Chapter 16-543 as presented in the application. Recommendation is based on the Findings of Facts established at the hearing and conclusion that the application has met each applicable review criteria contained in §16-158 of the Los Alamos County Development Code and that the Commission is acting under the authority granted by §16-452(b)(1)(a) of the Development Code.

I further move to authorize the Chair to sign a Final Order recommending approval of the application to County Council and Findings of Fact and Conclusions of Law for this case, based on this decision and to be subsequently prepared by County staff.

##### **Motion Option 2:**

I move to **recommend denial** of application number ZCA-2021-0007, text amendments to Los Alamos County Code, Chapter 16 to County Council as the proposed text amendments do not conform to the review criteria within §16-158 of the Los Alamos County Development Code.

I further move to authorize the Chair to sign a Final Order recommending denial of the application to County Council, based on this decision and to be subsequently prepared by County staff.

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<sup>1</sup> Staff does not believe there is sufficient evidence available at this time to determine that the proposed code amendments of the application comply with all criteria for text amendments as stated in County Code. However, the Planning & Zoning Commission may disagree with Staff’s opinion and determine Finding #3 is accurately stated.

## **EXHIBITS**

Exhibit 1: Text Amendment Application (ZCA-2021-0007)

Exhibit 2: Proposed Code Amendments in Draft Ordinance Format (Ordinance No. 02-317)