

## CHAPTER 155: ZONING

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## **GENERALLY**

### **§ 155.001 PURPOSE OF CHAPTER.**

(A) The purpose of this chapter is to encourage the most appropriate use of land and to promote the health, safety and general welfare of the community. The regulations within this chapter are deemed necessary to:

- (1) Prevent congestion in the streets and other public rights-of-way;
- (2) Secure safety from fire, panic and other dangers;
- (3) Ensure adequate light and air for all properties;
- (4) Prevent the overcrowding of land and undue concentration of population;
- (5) Facilitate adequate provisions for transportation, water, sewer, schools, parks and other public facilities and reduce the effect of natural hazards;
- (6) Control and abate the unlawful use of structures, buildings or land;
- (7) Protect the public health and general welfare; and
- (8) Encourage the conservation of energy in the use of structures, buildings and land in the City.

(B) Regulations within this chapter are established to provide for the administration of this chapter, provide for amendments, to prescribe penalties for violation of such regulations, and to define powers and duties of the City staff, the Planning Commission and the City Council in relation to this chapter.

(1988 Code, § 9-10-2) (Am. Ord. 2022-06, passed 7-11-2022)

**§ 155.002 STATUTORY AUTHORITY;  
TERRITORIAL JURISDICTION.**

This chapter is created and adopted pursuant to the authority set forth in §§ 3-21-1 and 3-21-11 NMSA 1978, and shall be applicable to all property within the jurisdiction of the City.  
(1988 Code, § 9-10-3)

**§ 155.003 RELATIONSHIP OF CHAPTER TO  
COMPREHENSIVE PLAN.**

The administration, enforcement and amendments to this chapter shall be accomplished in accordance with the recommendations contained in the Comprehensive Plan, as developed and amended from time to time by the Planning Commission and the City Council.  
(1988 Code, § 9-10-4) (Am. Ord. 2022-06, passed 7-11-2022)

**§ 155.004 INTERPRETATION OF CHAPTER;  
CONFLICTING PROVISIONS.**

(A) *Minimum requirements.* The provisions of this chapter shall be considered the minimum requirements to meet the purpose and intent expressed in § 155.001.

(B) *Conflicts with local ordinances.* Where the provisions of any local ordinance or covenant impose greater restrictions than those of this chapter, the more restrictive provisions shall prevail.

(C) *Conflicts with Federal and State law.* Any provision of U.S. law or State law which imposes a greater duty, standard or requirement than those contained in this chapter shall supersede the provisions of this chapter.

(D) *Interpretation of meaning.* The Planning Services Director or his or her designee shall interpret the meaning of the provisions of this chapter. Disagreement with an interpretation may be appealed to the Planning Commission and then to the City Council.

(E) *Conflicting provisions within chapter.* When two or more provisions of this chapter are in conflict, the most restrictive provision shall apply.  
(1988 Code, § 9-10-5) (Am. Ord. 2022-06, passed 7-11-2022)

**§ 155.005 ZONING DISTRICT MAP;  
DESIGNATION OF DISTRICTS;  
INTERPRETATION OF DISTRICT  
BOUNDARIES.**

(A) *Zoning district map.* For the purpose of this chapter, the City shall be divided into zoning districts and these shall be shown on a map entitled the "Official Zoning District Map."

(B) *Designation of official zoning districts.* The following shall be the official zoning districts:

(1) *General districts.*

(a) R-1 Single-Family Residential District;

(b) R-2 Two-Family Residential District;

(c) R-3 Multiple-Family Residential District;

(d) R-4 High-Density Residential District;

(e) AR-1 Agricultural/Residential District;

(f) AR-2 Agricultural Medium Density Residential District;

(g) M-1 Low-Density Mobile Home District;

(h) M-2 Medium-Density Mobile Home District;

(i) C-1 Neighborhood Commercial District;

- District;
- (j) C-2 Community Commercial District;
  - (k) C-3 Midtown Commercial District;
  - (l) C-4 Heavy Commercial District;
  - (m) I-1 Industrial District.

(C) *Special districts.* PUD Planned Unit Development District.

(D) *Interpretation of district boundaries.* Where uncertainty exists concerning the boundaries of any district shown on the official zoning district map, the following rules shall apply:

(1) Boundaries shall be construed as the centerline of existing, future or vacated streets, highways, railroads, alleys, drainage or irrigation canals or other public rights-of-way.

(2) Where property has been subdivided into blocks and lots, the boundaries shall be construed to be the lot line.

(3) Where property is not otherwise designated, divided or subdivided, the boundary line shall be determined by the scaled distance shown on the official zoning district map.

(4) No zone boundary line shall hereafter be established to divide one lot into two or more zones unless the size of the lot in question is such that division is determined to be essential by the Planning Commission and the City Council.

(1988 Code, § 9-10-6) (Am. Ord. 2022-06, passed 7-11-2022)

#### § 155.006 DEFINITIONS.

(A) *Rules of construction.* Words used in the present tense include the future tense. Words used in the singular include the plural, and words used in the plural include the singular. The word “shall” is always mandatory. The word “person” includes a firm, association, organization, partnership, trust,

corporation or company, as well as an individual. The word “lot” includes the words “plot” and “parcel.” The word “building” includes the word “structure.” The words “used” and “occupied.” as applied to any land or building, shall be construed to include the words “intended, arranged or designed to be used or occupied.” The words “map” and “zoning map” mean the official zoning map of the City that delineates the area to be governed by this chapter.

(B) *Definitions.* The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. Except as specifically defined in this chapter, all words used in this chapter shall have their customary dictionary definitions.

**ACCESSORY BUILDING or USE.** A subordinate building, or portion of the principal building, located on the same lot as the principal building, or a subordinate use of land, either of which is customarily incidental to the principal building or to the principal use of land. Where part of an accessory building is connected to part of the principal building in a substantial manner, as by a roof, such accessory building shall be counted as part of the principal building. Local public utility installations above ground are considered accessory buildings.

**ACCESSORY DWELLING UNIT.** A secondary, self-contained dwelling is allowed only in conjunction with a detached single-family dwelling. It is subordinate in size, location, and appearance to the primary detached single-family dwelling.

**ADJOINING.** Includes those lots separated from the subject lots by a street or alley.

**ADVANCED INFESTATION.** Any insect, pest, fungal growth, parasite or other infestation which threatens the life of a tree according to United States Forest Service standards.

**AGRICULTURAL/RANCHING.** The cultivation of the soil or the raising of livestock and all activities incidental thereto. The terms **FARMING** and **RANCHING** shall be interchangeable for purposes of this chapter.



**ALLEY.** A permanent public thoroughfare providing a secondary means of access to abutting lands.

**APARTMENT BUILDING.** A building other than a hotel or motel containing five or more dwelling units that have primary entrances from common hallways.

**AREA OF SHALLOW FLOODING.** A designated AO zone on the flood insurance rate map (FIRM). The base flood depths range from one to three feet, a clearly defined channel does not exist, the path of flooding is unpredictable and indeterminate, and velocity flow may be evident.

**AUTO REDUCTION YARD.** A lot or yard where three or more unlicensed motor vehicles, or the remains thereof, are kept for the purpose of dismantling, sale of parts, sale as scrap, storage or abandonment.

**AUTOMOBILE SERVICE STATION.** An establishment with the primary business function of the retail sale of gasoline for passenger car use and the minor service and repair work incidental to the operation of passenger automobiles.

**AUTOMOBILE WASHING ESTABLISHMENT.** A building which has as its primary purpose washing automobiles. Such facilities shall be considered incidental to automobile service stations if no more than one auto may be washed at one time and if the service station is clearly the principal use.

**BANNER.** A sign of temporary construction of lightweight, flexible materials such as cloth, canvas, plastic or paper on which letters, numbers, symbols or pictures are printed or painted, with or without a frame.

**BASAL AREA.** The cross-sectional area in square feet of each tree in a stand of timber as measured at breast height (4.5 feet). The equation for basal area per tree is:

$$\text{Basal Area} = 0.005454 \times \text{DBH} \times \text{DBH}$$

Where DBH is the tree diameter at breast height measured in inches. Or:

$$\text{Basal Area} = 0.0005526 \times \text{CBH} \times \text{CBH}$$

Where CBH is the tree circumference at breast height measured in inches.

**BASE FLOOD.** The flood having a 1% chance of being equaled or exceeded in any given year. Base flood is also commonly known as 100-year flood.

**BASEMENT.** A portion of a building located partly underground but having not less than half its floor-to-ceiling height below the average grade of the adjoining ground.

**BED AND BREAKFAST HOME STAY.** A private, owner occupied residence with one to five guest rooms that have a separate bathroom for each guest room and separate bathroom for owner/manager, where lodging and morning meal is provided for compensation on a daily rate basis with length of stay not to exceed 14 consecutive days.

**BLOCK FRONTAGE.** All of the property of a given lot or any portion thereof lying adjacent to a public street or highway.

**BOARDINGHOUSE.** An establishment in a private dwelling in which more than one guestroom is used to provide or offer overnight accommodations and meals for transient guests.

**BUILDING.** Any structure having enclosed space and a roof for the housing and/or enclosure of persons, animals or chattels, except mobile homes and mobile offices.

**BUILDING AREA.** The maximum horizontal projected area of the principal and accessory buildings, excluding open steps, terraces, unenclosed porches of one story, and architectural appurtenances projecting not more than two feet. Building area, as that portion of a lot upon which construction is permitted, is as follows: that area of a

lot that lies within the boundaries of the front, side and rear yard setback requirements measured from the actual lot line.

***BUILDING, ATTACHED.*** A building having one or more party walls in common with another building when the principal use of each building is independent of the other and when no interior access exists from one building to another.

***BUILDING, DETACHED.*** A building having no party wall in common or structural connection with another building.

***BUILDING ENVELOPE.*** That area of a lot lying between the front, rear and side yard setback lines and between ground level and the maximum allowable building height.

***BUILDING, FRONT LINE OF.*** The line of the face of a building nearest the front line.

***BUILDING, HEIGHT OF*** The vertical distance from the average contact ground level of the front and rear walls of the building to the highest point of the coping of a flat roof or to the deck of a mansard roof, or to the mean height level between eaves and ridges for gable and hip or gambrel roofs.

***BUILDING LINE, FRONT.*** The line nearest to the front across a lot establishing the minimum open space to be provided between the front line of a building and the front lot line.

***BUILDING LINE, REAR.*** The line nearest to the rear across a lot establishing the minimum open space to be provided between the rear line of a building and the rear lot line.

***BUILDING, NONCONFORMING.*** A legally existing building which fails to comply with the regulations set forth in this chapter applicable to the zone in which the building is located.

***BUILDING, PRINCIPAL.*** A building in which is conducted the main or principal use of the lot on which the building is situated.

***BUILDING, PUBLIC.*** A building, supported by government funds, to be used in an official capacity on the behalf of the entire community.

***BUSINESS.*** The engaging in or the purchase, sale, barter or exchange of goods, wares, merchandise or service; or the maintenance or operation of offices or recreational or amusement enterprises.

***CAMPGROUND.*** Any area of land used to temporarily accommodate two or more camping parties, including cabins, tents, house trailers or other camping outfits.

***CANNABIS.*** All parts of the plant genus Cannabis containing a delta-9-tetrahydrocannabinol concentration of more than 0.3% on a dry weight manufacture, salt, derivative, mixture or preparation of the plant, its seeds, or its resin; and does not include:

(a) The mature stalks of the plant; basis, whether growing or not; the seeds of the plant; the resin extracted from any part of the plant; and every compound, fiber produced from the stalks; oil or cake made from the seeds of the plant; any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, fiber, oil, or cake; or the sterilized seed of the plant that is incapable of germination; or

(b) The weight of any other ingredient combined with cannabis products to prepare topical or oral administrations, food, drink, or another product.

***CANNABIS CONSUMPTION AREA.*** An area where cannabis products may be served and consumed.

***CANNABIS COURIER.*** A person that transports cannabis products to qualified patients, primary caregivers, reciprocal participants, or directly to consumers.

**CANNABIS MANUFACTURER.** A person that:

- (a) Manufactures cannabis products;
- (b) Packages cannabis products;
- (c) Has cannabis products tested by a cannabis testing laboratory; or
- (d) Purchases, acquires, sells, or transports wholesale cannabis products to other cannabis establishments.

**CANNABIS PRODUCER.** A person that:

- (a) Cultivates cannabis plants.
- (b) Has unprocessed cannabis products tested by a cannabis testing laboratory.
- (c) Transports unprocessed cannabis products only to other cannabis establishments.
- (d) Sells cannabis products wholesale.

**CANNABIS PRODUCER MICROBUSINESS.** A cannabis producer at a single licensed premises that possesses no more than two hundred total mature cannabis plants at any one time.

**CANNABIS RESEARCH LABORATORY.** A facility that produces or possesses cannabis products and all parts of the plant genus Cannabis for the purpose of studying cannabis cultivation, characteristics or uses.

**CANNABIS RETAILER.** A person that sells cannabis products to qualified patients, primary caregivers, reciprocal participants, or directly to consumers.

**CANNABIS TESTING LABORATORY.** A person that samples, collects, and tests cannabis products and transports cannabis products for the purpose of testing.

**CARPORT.** A structure consisting of a roof and either walls or columns for the purpose of housing automotive vehicles and other chattels. The structure shall be considered as an accessory building when detached from the principal building and as a part of the principal building when attached to the principal building along one or more sides of the carport or principal building.

**CEMETERY.** Land used for the burial of the dead and dedicated for cemetery purposes, including columbarium, crematories, mausoleums and mortuaries when operated in conjunction with and within the boundary of such cemetery.

**CERTIFICATE OF OCCUPANCY.** A certificate issued by the appropriate government agency that verifies all building permit requirements have been met.

**CERTIFICATE OF ZONING COMPLIANCE.** A certificate issued by the City of Ruidoso Downs verifies all zoning regulations have been met.

**CHILD.** A person younger than 18 years boundaries of any district shown on the official of age.

**CHURCH.** A building, together with its accessory buildings and uses, where persons regularly assemble for religious worship, and which building, together with its accessory buildings and uses, is maintained and controlled by a religious body organized to sustain public worship.

**CLINIC AND MEDICAL CENTER.** An establishment where patients are admitted for special study and treatment by one or more licensed physicians and/or dentists and their professional associates, as distinguished from a professional office for general consultation purposes.

**CLUB, PRIVATE (NONPROFIT).** A nonprofit association of persons who are bona fide members paying annual dues which owns, hires or leases a building or a portion thereof, the use of such premises being restricted to members and their guests.

**COMMERCIAL CANNABIS ACTIVITY.**

The cultivation, production, possession, manufacture, storage, testing, researching, labeling, transportation, couriering, purchase for resale, sale, or consignment of cannabis products; and does not include activities related only to the medical cannabis program, to cannabis training and education programs or to the personal cultivation or use of cannabis.

**COMMUNITY SERVICE OFFICER.** City staff designated by the City Mayor to enforce provisions of the Land Use ordinances of the City.

**CONDITIONAL USE PERMIT.** Legal authorization to undertake a conditional use as defined by this chapter.

**CONDOMINIUM.** A building or group of buildings in which units are owned individually and the structure, common areas and facilities are owned by all the owners on a proportional, undivided basis. **CONDOMINIUMS** may be residential, commercial or industrial in nature.

**CONDOMINIUM HOTEL (TIMESHARE CONDOMINIUM).** A condominium set up like a hotel in which each room is individually owned and in which some or all rooms are available to transients for rent.

**CONFINED ANIMAL FEEDING OPERATION (CAFO).** As defined in 40 C.F.R. parts 122.23 and 412, are agricultural enterprises where animals are kept and raised in confined situations. CAFOs congregate animals, feed, manure and urine, dead animals, and production operations on a small land area. Feed is brought to the animals rather than the animals grazing or otherwise seeking feed in pastures or fields. The CAFO is defined in EPA regulations as a lot or facility where animals have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period and crops, vegetation, forage, growth or post harvest residues are not sustained in the normal growing season over any portion of the lot or facility. There are either, more than 1,000 "animal units" (as defined by the regulation) that are confined at the facility; or more than 300 animal units that are confined at the facility and:

(a) Pollutants are discharged into navigable waters through a manmade ditch, flushing system, or other similar man-made device; or

(b) Pollutants are discharged directly into waters that originate outside of and pass over, across, or through the facility or come into direct contact with the confined animals.

(c) Poultry operations that remove waste from pens and stack it in areas exposed to rainfall or an adjacent watercourse have established a crude liquid manure system for process wastewater that may discharge pollutants.

**CONTIGUOUS.** Touching along a boundary or at a point.

**CONVENIENCE FOOD RESTAURANT.**

An establishment whose principal business is the sale of foods, frozen desserts or beverages to the consumer in a ready-to-eat state for consumption either within the premises or for carryout with consumption either on or off the premises and whose design or principal method of operation includes both of the following characteristics:

(a) Foods, frozen desserts or beverages are usually served in edible containers or in paper, plastic or other disposable containers.

(b) The customer is not served food at his or her table by an employee but receives it at a counter, window or similar facility for carrying to another location for consumption either on or off the premises.

**CORPORATION COUNSEL.** The City Attorney or any assistant or special counsel of the City.

**CUT.** The removal of materials such as sand, soil, gravel, and rock from the area of land being graded with earthmoving or other heavy equipment.

**DAY CARE CENTER COMMERCIAL.** A use where care is provided for pay to five or more unrelated children subject to the requirements of the State.

**DAY CARE CENTER, IN-HOME.** Provides day care for children under the age of 18 within a private residence and follows state certification requirements if applicable.

**DEFENSIBLE SPACE.** An area, either natural or manmade, where materials capable of allowing a fire to spread unchecked have been treated, cleared or modified to slow the rate and intensity of advancing wildfire and create an area for fire suppression operations to occur.

**DENSITY, GROSS RESIDENTIAL.** The number of dwelling units of land is calculated with no exclusion.

**DENSITY, NET RESIDENTIAL.** The number of dwelling units per unit of land, excluding streets, alleys and publicly owned property.

**DEVELOPMENT.** Any manmade change to improve or alter real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation, drilling operations, or clearing.

**DISEASED TREE.** A tree that shows signs of severe damage, structural unsoundness or advanced infestation.

**DRIVE-IN BUSINESS.** Any business in which people are provided a service or a product where a sale is made without the customer being required to leave the vehicle. Such businesses include but are not limited to the following: drive-in theater, drive-in bank, drive-in laundry or dry cleaning pickup station, drive-in restaurant, and any convenience food restaurant.

**DWELLING.** A building, or portion thereof, used primarily for residential occupancy, including single-family, two-family and multiple-family dwellings, and dwelling rentals, but not including hotels, motels or tourist homes.

**DWELLING, MULTIFAMILY.** A building, or portion thereof, used for occupancy by three or more families living independently of each other.

**DWELLING, RENTAL.** Dwelling units that may be rented on a nightly, weekly, monthly, or long term basis, provided there is no onsite advertisement; density may not exceed district regulations.

**DWELLING, SINGLE-FAMILY.** A building used for residential occupancy by one family.

**DWELLING, TWO-FAMILY.** A building, or portion thereof, used for occupancy by two families living independently of each other, also referred to as a **DUPLEX**.

**DWELLING UNIT.** A dwelling, or portion of a dwelling, used by one family for cooking, living and sleeping purposes.

**DWELLING UNIT, ACCESSORY.** A secondary, self-contained dwelling is allowed only in conjunction with a detached single-family dwelling. It is subordinate in size, location, and appearance to the primary detached single-family dwelling.

**ENAMEL.** A glassy, opaque substance fused to metal as a protective coating.

**FAMILY.** One or more persons related by blood, marriage or adoption, or not more than three unrelated persons living as a single housekeeping unit, as distinguished from a group occupying a hotel, motel, club, fraternity, sorority or lodging house.

**FARM.** An area which is used for growing, raising, producing and storage of agricultural products on a commercial basis, such as timber, livestock, poultry and foodstuffs, including the residence of those conducting and engaged in the operation. A **FARM** shall not include commercial feedlots or sanitary landfills.

**FENCE.** A barrier constructed of materials erected for the purpose of protection, confinement, enclosure or privacy.

**FILL.** The addition of materials such as soil, sand, and gravel to the land being graded.

**FLOOD INSURANCE RATE MAP (FIRM).** The official map on which the Federal Emergency Management Agency has delineated both the areas of special flood hazards and risk premium zones applicable to the community. For Ruidoso Downs, the applicable map is Community-Panel Number 350034 0001.

**FLOOD INSURANCE STUDY.** The official report in which the Federal Emergency Management Agency has provided flood profiles, as well as the flood boundary-floodway map and the water surface elevation of the base flood. For Ruidoso Downs, this study is designated Community Number 350034.

**FLOODPLAIN, 100-YEAR.** That area encompassing the floodway area and the floodway fringe.

**FLOODPROOFING.** Any combination of structural and nonstructural additions, changes or adjustments to properties and structures which reduce or eliminate flood damage or potential flood damage to lands, water and sanitary facilities, structures, and contents of buildings.

**FLOODWAY, 100-YEAR.** The channel of a river or other watercourse and the adjacent land areas which must be kept free of encroachment in order to carry and discharge a flood of 100-year magnitude without substantial increases in flood height.

**FLOODWAY ENCROACHMENT LINES.** The lines marking the limits of floodways on the zoning map.

**FLOODWAY FRINGE, 100-YEAR.** The area between the floodway and the 100-year flood boundary.

**FOREST/URBAN INTERFACE.** An area where development and forested area meet at a well-defined boundary.

**FOREST/URBAN INTERMIX.** An area where development and forested area meet with no well-defined boundary.

**FUEL BREAK.** Generally, a wide strip of land on which native vegetation has been permanently modified so that fires burning into it can be more readily controlled. Some fuel breaks contain narrow fire breaks, which may be roads or narrow hand-constructed lines. During fires these line breaks can quickly be widened either with hand tools or firing out.

**FUEL MODIFICATION.** A method of modifying fuel load by reducing the amount of non-fire-resistive vegetation to reduce the fuel loads.

**GARAGE, PRIVATE.** A detached accessory building, or portion of a main building, used for the storage of self-propelled vehicles, where the capacity does not exceed three vehicles per family housed in the building to which such garage is accessory. Not more than one of the total number of vehicles stored in such garage shall be commercial vehicles.

**GARAGE, PUBLIC.** Any building or premises, except a private garage, used for the storage or care of motor vehicles, or where such vehicles are equipped for operation, repaired, or kept for remuneration, hire or sale.

**GRADING.** Any disturbance of the surface of the land with earth-moving or other heavy equipment.

**GREENSPACE.** A designated area that cannot be developed because it is: within the floodway, or in a historical district, or has been set aside to remain in its natural state.

**GROUND FLOOR AREA.** The square foot area of a building within its largest outside dimension computed on a horizontal plane at the ground floor level, exclusive of open porches, breezeways, terraces, garages, exterior stairways and secondary stairways.

**GROUP HOME.** A single residential structure having common kitchen facilities occupied by persons having physical, mental, emotional or social problems and living together for the purpose of training, observation and/or common support.

**HABITABLE FLOOR.** Any floor usable for living purposes, which includes working, sleeping, eating, cooking or recreation, or a combination thereof.

**HEALTHY TREE.** A tree that shows no signs of severe damage, structural unsoundness or advanced infestation.

**HOME OCCUPATION or PROFESSION.** Any use conducted entirely within a dwelling and carried on solely by the occupants thereof, which use is clearly incidental and secondary to the use of the dwelling for residential purposes and which meets the requirements of this chapter.

**HOSPITAL.** Includes a sanitarium, preventorium or clinic, provided such institution is operated by or treatment is given under the direct supervision of a physician licensed to practice by the State.

**HOTEL and MOTEL.** A building or portion thereof, or a group of buildings, in which lodging is provided and offered to transient guests for compensation; this shall not include a lodgehouse.

**INDUSTRY, HEAVY.** Those industries whose processing of products results in the emission of any atmospheric pollutant, light flashes, or glare, odor, noise or vibration which may be heard and/or felt off the premises, and those industries which constitute a fire or explosion hazard.

**INDUSTRY, LIGHT.** Those industries whose processing of products results in none of the conditions described for heavy industry.

**INTEGRATED CANNABIS MICROBUSINESS.** A person that is authorized to conduct one or more of the following:

(a) Production of cannabis at a single licensed premises, provided that the person shall not possess more than 200 total mature cannabis plants at anyone time.

(b) Manufacture of cannabis products at a single licensed premises.

(c) Sales and transportation of only cannabis products produced or manufactured by that person.

(d) Operation of only one retail establishment.

(e) Couriering of cannabis products to qualified patients, primary caregivers, or reciprocal participants or directly to consumers.

**JUNKYARD.** Any place at which personal property is or may be salvaged for reuse, resale or reduction or similar disposition and is owned, possessed, collected, accumulated, dismantled or sorted, including but not limited to use of salvaged base metals or their compounds or combinations; and used or salvaged rope, bags, rags, glass, rubber, lumber, mill-work, brick, automobiles and similar property which is used, owned or possessed for the purpose of wrecking or salvaging parts therefrom.

**KENNEL.** Any lot or premises on which are kept ten or more dogs, cats or small animals over eight weeks of age, for any purpose, or on which there is commercial boarding or breeding of dogs or cats. The term does not include premises for the boarding of animals by a non-profit organization which is dedicated to permit the humane care and treatment of animals.

**LADDER FUELS.** Fuels which provide vertical continuity between strata. Fire is able to carry from surface fuels into the crown of trees or shrubs with relative ease and ensure initiation and continuity of crowning.

**LIVESTOCK.** All domestic or domesticated animals used or raised on a farm or ranch, including the carcasses thereof, and exotic animals in captivity

and includes all horses and cattle. **LIVESTOCK** does not include canine or feline animals. Wild animals shall also be included within the meaning of **LIVESTOCK**.

**LOADING AND UNLOADING BERTH.**

The off-street area required for the receipt of or distribution by vehicles of material or merchandise.

**LODGINGHOUSE.** A building with more than two but not more than ten guestrooms where long term lodging with or without meals is provided for compensation.

**LOT.** A piece, parcel, plot, tract or area of land occupied or capable of being occupied by one or more principal buildings, and the accessory buildings or uses customarily incidental to them, and including the open spaces required under this chapter, and having its principal lot frontage on a street.

**LOT, CORNER.** A lot at a junction of and fronting on two or more intersecting streets.

**LOT COVERAGE.** The percentage of the lot area covered by buildings.

**LOT DEPTH.** The horizontal distance of a line measured at a right angle to the front lot line and running between the front lot line and rear lot line of a lot.

**LOT, INTERIOR.** A lot other than a corner or through lot.

**LOT LINE, FRONT.** In the case of an interior lot, means a line separating the lot from the street, and in the case of a corner lot means a line separating the narrowest street frontage of the lot from the street, except that, where the lot is square or nearly so, the owner may choose which of the two street frontages is to be considered the front lot line.

**LOT LINE, REAR.** A lot line which is opposite and most distant from the front lot line and, in the case of an irregular or triangular shaped lot, a line ten feet in length within the lot, parallel to and at the maximum distance from the front lot line.

**LOT LINE, SIDE.** Any lot boundary line not a front lot line or a rear lot line.

**LOT, THROUGH.** A lot having frontage on two parallel or approximately parallel streets.

**LOT WIDTH.** The distance, measured in a straight line, between side lot lines at the points of intersection with the setback line.

**MANUFACTURED HOUSING.** A manufactured home or modular home that is a single-family dwelling with a heated area of at least 36 by 24 feet and at least 864 square feet, constructed in a factory to the standards of the United States Department of Housing and Urban Development (HUD), the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. §§ 5401 *et seq.*) and the Housing and Urban Development Zone Code II and the Uniform Building Code, all as amended to the date of the unit's construction, and installed consistent with the Manufactured Housing Act (§§ 60-14-1 *et seq.* NMSA 1978) and sited on a permanent foundation in accordance with HUD Handbook 4145.1 as amended to the date of the unit's installation.

**MANUFACTURING.** The creation of products either with machinery or by hand according to an organized plan and with the division of labor.

**MATURE TREE.** A tree measuring ten inches or more in diameter at four and one-half feet above ground level.

**MINIMUM.** Not less than the requirement indicated, but may be greater, if necessary, to meet the development standards of this chapter.

**MINING.** The extraction of sand, gravel or other material from the land in the amount of 400 cubic yards or more, and the removal from the site without processing.

**MINOR DEVELOPMENT.** Any small-scale land development that is less than three legal lots disturbs less than 5,000 square feet of land per lot,



disturbs no slope greater than 10%, and no more than 3,500 square feet of new impervious surface is created per lot.

**MOBILE HOME.** A factory-assembled structure exceeding eight feet in width, originally equipped with the necessary service connections and originally made so as to be readily movable as a unit on its own running gear, and designed to be used as dwelling unit without a permanent foundation, whether or not the running gear has been removed.

**MOBILE HOME PARK.** Any plot of ground upon which two or more mobile homes, occupied or intended to be occupied for dwelling or sleeping purposes, are located.

**MOBILE HOME SPACE.** A plot of ground within a mobile home park designed for the accommodation of one mobile home.

**MOBILE HOME STAND.** That portion of an individual mobile home space which has been reserved for the placement of a mobile home and structures or additions appurtenant to the mobile home.

**MOBILE HOME SUBDIVISION.** A subdivision designed for the express purpose of placing mobile homes on the individual lots.

**MOBILE OFFICE.** A factory-assembled structure exceeding eight feet in width, originally equipped with the necessary service connections, and originally made so as to be readily movable as a unit on its own running gear and designed to be used as an office without a permanent foundation, whether or not the running gear has been removed.

**NEW CONSTRUCTION.** Structures for which the start of construction commenced on or after the effective date of the ordinance from which this chapter is derived.

**NOXIOUS MATTER or MATERIAL.** Material capable of causing injury to living organisms by chemical reaction or capable of causing detrimental effects on the physical or economic well-being of individuals.

**OFFICES.** Structures, or portions of structures, in which commercial activities take place but where goods are not produced, sold or repaired. These include banks, general and professional offices, governmental offices, insurance offices, real estate offices, taxicab offices (but not taxi stands), travel agency or transportation ticket offices, telephone exchanges, utility offices, radio broadcasting and similar uses.

**ONE-HUNDRED YEAR FLOOD.** the highest level of flooding that, on the average, is likely to occur once every 100 years (i.e., that has a 1% chance of occurring each year). It is also known as the base flood.

**ON-SITE CANNABIS CONSUMPTION PREMISE.** On-site consumption of cannabis includes the smoking, vaporizing, and ingesting of cannabis or cannabis products on a licensed premise.

**OPEN SALES (OR RENTAL) LOT.** Any land used or occupied for the purpose of buying, selling or renting, for use away from the premises, any goods, materials or merchandise, and for the exterior storing of such goods, materials or merchandise prior to sale or rental.

**OPEN SPACE.** An undeveloped area within a development that is made up of open park-like areas.

**OVERLAY ZONE.** A zone superimposed upon an underlying zone, which establishes special requirements in addition to those of the underlying zone. Development or use of land or structures must conform to the requirements of both zones or the more restrictive of the two, if in conflict.

**PARKING AREA, PUBLIC.** An open area, other than a street or alley, designated for use or used as temporary parking for four or more vehicles, when available for public use, whether free or for compensation or as an accommodation for clients or customers.

**PARKING SPACE, OFF-STREET.** A space designated for the temporary parking of a motor vehicle not on the right-of-way or alley but accessible from a street or alley.

**PARTY WALL.** Any wall of a building or structure which is common to two or more buildings.

**PAVED PARKING SPACE or SURFACE.** An area covered by an impervious dustfree surface of asphalt or concrete designed to specifications of the City Engineer.

**PERSON.** Any individual or group of individuals, corporations, partnerships, associations or any other organized group of persons, including State and local governments and agencies thereof.

**PERSONAL AND CONVENIENCE SERVICES.** Businesses offering services, such as barbershops, beauty shops, laundromats, laundry and dry cleaning pickup and delivery stations (but excluding actual laundry operations), and similar uses.

**PLANNED UNIT DEVELOPMENT.** A type of residential, commercial, and/or industrial land development in which buildings are clustered or set on lots that may be smaller than the minimum lot size allowed by Zone and open, park-like areas that are included within the development. Individual properties are typically owned in fee with joint ownership of open areas.

**PLANNING COMMISSION.** Persons appointed by the City Mayor and/or his or her designee to be responsible for the duties set out in § 155.020. The Planning Commission may be referred to in this chapter as the "Commission."

**PLANNING SERVICES DIRECTOR.** City staff designated by the City Mayor and/or his designee to be responsible for the administration of this chapter. The Planning Services Director may be referred to in this chapter as the "Director."

**PORTABLE or MOBILE VENDING STAND or BOOTH.** A structure or assembly intended or designed for vending of food, beverages or general retail merchandise which is without permanent foundation and without connection to approved water and sewer systems and other required utilities and not meeting State Uniform Building Code requirements for construction.

**PROCESSED MATERIAL.** Naturally occurring materials such as sand, soil, gravel, and rock have been subjected to any process other than initial excavation as, but not limited to, screening, crushing, washing, and segregating.

**PROPERTY, PERSONAL.** Property other than real property, consisting of things temporary and movable.

**PROPERTY, REAL.** Property in buildings and land.

**PUBLIC HEARING.** A meeting announced and advertised in advance and open to the public where the public has the right, within prescribed rules, to participate and be heard.

**PUBLIC MEETING.** A meeting open to the public where the public has the right to attend and listen to the proceedings. Participation by the public shall be at the discretion of the public body.

**RANCH.** An area utilized for the primary purpose of raising and producing livestock, including the residence of those conducting and engaged in the operation. A **RANCH** shall not include commercial feedlots or sanitary landfills.

**RECREATIONAL VEHICLE (RV).** The following shall be known as **RECREATIONAL VEHICLES**:

(a) Travel trailers, camping trailers, fifth-wheel trailers, and all other vehicles that are constructed to include a chassis, integral wheels and a towing hitch, and are primarily designed or constructed to provide temporary, readily moveable living quarters for recreation, camping or travel uses. For purposes of this subsection, readily moveable shall mean movable within 24 hours. Recreational vehicles when used for living purposes shall be located solely in approved mobile home/RV parks. Recreational vehicles on property outside of approved RV parks may not be hooked up to any utilities, nor inhabited unless approved as an accessory dwelling unit.

(b) Pickup campers, either mounted or non-mounted, or any structure designed to be mounted in the bed of a truck and providing living quarters for recreation, camping or travel uses.

(c) Chassis mount, motor home, mini-motor home or other recreational structures or vehicles constructed integrally with a truck or motor van chassis and incapable of being separated therefrom, and designed to be used for moveable living quarters for recreational, camping or travel uses.

(d) Recreational vans or converted and chopped vans or other vehicles which are either initially constructed or converted to contain living quarters for recreational, camping or travel uses.

**RECREATIONAL VEHICLE PARK (RVP).** A tract of land on which individual recreational vehicles are parked in designated spaces.

**RESTAURANT.** Any restaurant (except a drive-in restaurant or a convenience food restaurant), coffee shop, cafeteria, short-order café, luncheonette, tavern, sandwich stand, drugstore or soda fountain serving food, and all other eating or drinking establishments provided that at least one-half of the total sales are derived from the sale of food.

**SALES LOT FOR AUTOMOBILES, BOATS OR RECREATIONAL VEHICLES.** A lot or area used for display and sales only of three or more automobiles, boats or recreational vehicles or any combination thereof, with or without a sales office on-site and without service facilities.

**SCHOOL.** Any pre-primary, primary or grammar, public, parochial or private school, high school, preparatory school or academy, public or founded, owned or conducted by or under the sponsorship of a religious or charitable organization; any private preparatory school or academy furnishing courses of instruction substantially equivalent to the courses offered by public high schools for preparation of admission to college or universities which award B.A. or B.S. degrees; any junior college or

university, public or founded or conducted by or under the sponsorship of a religious or charitable organization; or any private school when not conducted as a commercial enterprise for the profit of individual owners or stockholders.

**SCREENING.** A solid or nearly solid barrier (i.e., wall, fence or plantings) constructed or installed for the purpose of visual separation.

**SETBACK.** The minimum horizontal distance between a building and the street or lot line.

**SHOPPING CENTER.** Any grouping of four or more principal retail uses, whether on a single lot or on abutting lots, under multiple or single ownership, and whether contained in one building or multiple buildings.

**SIGN.** Any board, device or structure or part thereof used for advertising, display or publicity purposes. Signs placed or erected by governmental agencies for the purposes of showing street names or traffic directions or regulations for other governmental purposes shall not be included in this definition.

**SIGN, BILLBOARD.** Any nonaccessory sign, whether freestanding, wall-mounted or roof-mounted.

**SIGN, NON-ACCESSORY.** A sign which directs attention to a business, commodity, service or entertainment conducted, sold or offered at a location other than the premises on which the sign is located.

**SIGN, WALL.** A sign fastened to or painted on the wall of a building or structure in such a manner that the wall becomes the supporting structure for or forms the background surface of the sign, and which does not project more than 18 inches from such building or structure.

**SITE DRAINAGE.** The means of controlling storm runoff across a piece of property is by altering site topography or by the use of drainage structures such as piping or channels. The purpose of site drainage is to protect lives and property from damage caused by flooding.

**SITE PLAN.** A drawing to a scale not less than one inch equals 100 feet showing the accurate location of all structures, streets, alleys and parking areas existing and proposed on subject property, or any other information as may be required by this chapter.

**SKETCH PLAN APPROVAL.** An approval of a proposed development by a property owner prior to the preparation of a final site plan. The purpose of this approval is to provide relief for the property owner or developer from the expense of the required professionally prepared documents prior to reaching general agreement with the Planning Commission and the affected property owners of the proposed development.

**SLASH.** The debris created from cutting trees and forest growth.

**SPECIAL EXCEPTIONS. SPECIAL EXCEPTIONS** to this chapter shall be limited to variances, conditional uses and expansion of nonconforming uses, and shall not be granted except as prescribed in this chapter.

**SPOT ZONING.** Rezoning of a lot or parcel of land to benefit an owner for a use incompatible with surrounding uses and not for the purpose or effect of furthering the comprehensive plan.

**STABLE, PRIVATE.** Any building located on a lot which is designed, arranged, used or intended to be used for not more than four horses for the private use of the owner of the lot, but shall not exceed 6,000 square feet in area.

**STABLE, PUBLIC.** A stable where horses are kept for remuneration, hire or sale.

**START OF CONSTRUCTION.** The first placement of permanent construction of a structure (other than a mobile home) on a site, such as the pouring of slabs or footings or any work beyond the state of excavation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of

streets and/or walkways; nor does it include excavation for a basement, footings, piers or foundations or the erection of temporary forms; nor does it include the excavation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not a part of the main structure. For a structure (other than a mobile home) without a basement or poured footings, the start of construction includes the first permanent framing or assembly of the structure or any part thereof on its piling or foundation. For mobile homes not within a mobile home park or mobile home subdivision, the **START OF CONSTRUCTION** is the date on which the construction of facilities for servicing the site on which the mobile home is to be affixed (including, at a minimum, the construction of streets, either final site grading or the pouring of concrete pads, and installation of utilities) is completed.

**STREET.** A right-of-way, other than an alley, dedicated or otherwise legally established for public use, usually affording the principal means of access to abutting property.

**STREET, ARTERIAL.** A major street of exceptional continuity that is intended to carry the greater portion of through traffic from one area of the City to another.

**STREET, COLLECTOR.** A street designed to accommodate traffic within residential neighborhoods with the primary purpose of collecting and distributing traffic to and from the arterial streets.

**STREET FRONTAGE.** Any property line separating a lot from a street.

**STREET, PUBLIC.** Any street which has been dedicated or is otherwise publicly owned by the City.

**STRIP DEVELOPMENT.** Commercial or retail development, usually one store deep, that fronts on a major street.

**STRUCTURAL ALTERATION.** Any change in the supporting members of a building such as bearing walls or partitions, columns, beams or girders, or any change in the exterior walls or the roof.

**STRUCTURE.** Anything constructed, erected, or assembled which requires location on the ground.

**SUBSTANDARD LOT.** A lot that has less than the dimensions required for the use in the land use district in which it is located, but that is a legal nonconforming lot because it was created under a prior law that required less than the dimensions now required.

**SUBSTANTIAL IMPROVEMENT.** Any repair, reconstruction or improvement of a structure, the cost of which equals or exceeds 50% of the market value of the structure either before the improvement or repair is started, or, if the structure has been damaged and is being restored, before the damage occurred. For the purpose of this definition, **SUBSTANTIAL IMPROVEMENT** is considered to occur when the first alteration of any wall, ceiling, floor or other structural part of the building commences, whether or not the alteration affects the external dimensions of the structure. The term does not, however, include either:

(a) Any project for improvement of a structure to comply with existing or local health, sanitary or safety code specifications which are solely necessary to ensure safe living conditions; or

(b) Any alteration of a structure listed on the National Register of Historic Places.

**TEMPORARY or PORTABLE CARPORT.** Those which are designed to be portable, are prefabricated off-site for assembly and/or installation on-site, having an exterior finish of the fabric, fiberglass, plastic, metal, or like materials. Carports must be permanently anchored.

**TEN-FOOT ZONE.** The area within ten feet of a structure, as measured from a line drawn perpendicular from the roofline of the structure to the ground.

**TOURIST HOME.** An establishment in a private dwelling that supplies a building in which more than one but not more than five guestrooms are used to provide or offer overnight accommodations for transient guests for compensation.

**TOWNHOUSE.** A single-family dwelling constructed as part of a series of dwellings, all of which are either attached to the adjacent buildings by party walls or are located immediately adjacent thereto with no visible separation between walls or roof, all of which dwellings may be located on individual and separate lots if individually owned, or upon a single lot if under common ownership.

**TOWNHOUSE CLUSTER.** A building consisting of three or more non-communicating, attached one-family units, placed side by side and having a common wall between each two adjacent dwelling units.

**TRAVEL TRAILER.** Any vehicular or similar portable structure designed as a temporary dwelling for travel, recreational and vacation uses and having maximum size of eight feet in width and 27 feet in overall length.

**TRAVEL TRAILER PARK.** A parcel of land designed and intended principally for short term occupancy for periods of less than 30 days by travel trailers, tents, automobiles, trucks or buses that have been adapted for vacation use and where lots are rented.

**TREE MANIPULATION ACTIVITY.** Cutting or thinning of mature trees.

**TREE PROTECTIVE ZONE.** The portion of any lot or parcel covered by the front, rear and side yard requirements of this chapter.

**TREE REMOVAL.** Any act which causes a tree to die within a period of two years, including

but not limited to damage inflicted upon the root system by machinery, storage of materials and soil compaction; changing the natural grade above the root system or around the trunk; damage inflicted on the tree permitting infection or pest infestation; excessive pruning; or paving with concrete, asphalt or other impervious material within such proximity as to be harmful to the tree.

***UNOBSTRUCTED UTILITY EASEMENT.***

No utility easement shall have trees or shrubbery growing into, around, or over, or have branches that threaten with a snow or ice load, any above ground utility line.

***USE.*** The employment or occupation of a building, structure or land for a person's service, benefit or enjoyment.

***USE, CONDITIONAL.*** Either a public or private use as listed in this chapter which, because of its unique characteristics, cannot be properly classified as a permitted use in a particular district. After consideration in each case of the impact of such use upon neighboring land and of the public need for the particular use at the particular location, a permit for such conditional use may or may not be granted pursuant to the requirements of this chapter. A ***CONDITIONAL USE*** may be a principal use or an accessory use.

***USE, NONCONFORMING.*** An existing use of land or buildings which was legal prior to the effective date of the ordinance from which this chapter is derived but which fails to comply with the requirements set forth in this chapter applicable to the zone in which such use is located.

***USE, PERMITTED.*** A use which is lawfully established in a particular district and which conforms with all requirements, regulations and performance standards of such district. A ***PERMITTED USE*** may be a principal use or an accessory use.

***USE, PRINCIPAL.*** A use or structure which determines the predominant or major use of the lot on which it is located. A ***PRINCIPAL USE*** may be either a permitted or a conditional use.

***VARIANCE.*** A modification or variation of the provisions of this chapter as applied to a specific piece of property. Dimensional variances only may be allowed, and only as prescribed by § 155.020(E)(1)(g). No variance regarding use of property shall be permitted. No variances decreasing lot area requirements shall be allowed.

***VARIANCE, DIMENSIONAL.*** Departure from the terms of this chapter pertaining to height or width of structures and size of yards and open spaces where such departure will not be contrary to the public interest and where, owing to conditions peculiar to the property because of its size, shape or topography, and not as a result of the action of the applicant, the literal enforcement of this chapter would result in unnecessary and undue hardship.

***VERTICALLY INTEGRATED CANNABIS ESTABLISHMENT.*** A person that is authorized to act as any of the following:

- (a) A cannabis courier.
- (b) A cannabis manufacturer.
- (c) A cannabis producer.
- (d) A cannabis retailer.

***WAREHOUSE.*** An enclosed building designed and used primarily for the storage of goods and materials.

***WAREHOUSE, RESIDENTIAL STORAGE and MINIWARE-HOUSE.*** A building or group of buildings in a controlled-access and fenced or screened compound that contains relatively small storage spaces of varying sizes, having individual, compartmentalized and controlled access for the storage of excess personal property of an individual or family generally stored in residential accessory structures, when such building or group of buildings is not located on the lot of the residence.

***YARD.*** A space on the same lot with a principal building, which is open and unoccupied other than by steps, walks, terraces, driveways,

lampposts and similar structures, and unobstructed by structures, except as otherwise provided in this chapter.

**YARD, CORNER SIDE.** A yard on a corner lot, the area of which is bounded by a line extending from the front of the principal building (the front building line) to a point intersecting the side street right-of-way line (side lot line), then along the side lot line to a point intersecting the line formed by extending the wall of the nearest principal building paralleling the side lot line.

**YARD, FRONT.** A yard extending across the full width of the lot between two side lot lines, the depth of which is the least distance between the street right-of-way and the building line.

**YARD, REAR.** A yard extending across the full width of the lot between the two side lot lines and between the rear line and a parallel line tangent to the rear of the principal building, the depth of which is the least distance between the rear lot line and the parallel line.

**YARD, SIDE.** A yard extending between the front building line and the rear building line, the width of which is the least distance between the side lot line and the nearest part of the principal building.

**ZONING AUTHORITY.** The City Council. (1988 Code, § 9-10-1) (Am. Ord. 2022-05, passed 3-28-2022; Am. Ord. 2022-06, passed 7-11-2022)

## § 155.007 APPLICATION FEES.

(A) *Intent.* It is the intent of this chapter to require applicants that receive permits to pay a portion of the cost of public services that are necessary for processing their request. While the City is not expecting 100% recovery of all costs, it does feel that all required publication and mailing costs plus a portion of administrative costs should be borne by the applicant.

(B) *Payment; amount.* The applicable application fees shall accompany the respective application. The fees shall be set from time to time and are listed in the fee schedule in Appendix A to this Code, which is on file in the City offices and incorporated herein by reference.

(C) *Refund of fees for denied applications.*

(1) The following fees charged under Appendix A, Land Use (1), which is on file in the City offices and incorporated herein by reference, for applications that have been denied in total, shall be returned to the applicant upon the exhaustion of all appeals allowed by this Code and handled directly by the City:

(a) Site development plan fees:

1. Original approval fees.

2. Amendments to site development plan fees.

(b) Variance fees.

(c) Minor plat or replat fees.

(d) Street vacation, conditional easement, or license fee.

(2) This section does not apply if the applicant appeals beyond the City to district court or any other court.

(3) The fee will be returned within 14 days after the time of appeal has lapsed or the applicant has signed a waiver to any additional legal action on this application against the City or its agents. (1988 Code, § 9-10-7) (Am. Ord. 2022-06, passed 7-11-2022)

## **ADMINISTRATION**

### **§ 155.020 PLANNING COMMISSION.**

(A) *Established; purpose.* The Planning Commission is hereby established for the purpose of preparation and updating of the comprehensive plan or other specific plans through various means such as zoning, subdivision, annexation and other related techniques to promote the general welfare of the City and to secure efficiency, economy and concerted effort in its growth and development and carry out the purpose of this chapter as set out in § 155.001, and the duties as set out in division (E) of this section. The Planning Commission may be referred to in this chapter as the "Commission."

(B) *Membership; appointment of members; compensation of members.* The Commission shall consist of five members, who shall be residents of the City representing, insofar as possible, different professions or occupations. Members shall be appointed by the Mayor with the approval of the majority vote of the City Council. Members of the Commission shall serve without pay of any kind except actual expenses.

(C) *Term of members; removal of members; vacancies.* The terms of members of the Commission shall be two years, with staggered terms, with half of the members' terms expiring in March of even-numbered years, and the remainder of the members' terms expiring in March of odd-numbered years. All members shall hold office until their successors are appointed and qualified. Any members of the Commission may be removed by the Mayor, with the consent of the majority vote of the City Council, for inefficiency, neglect of duty, malfeasance in office, or other good and sufficient cause. Vacancies occurring other than through the expiration of the term shall be filled for the unexpired term by the Mayor, with the approval of a majority vote of the City Council.

(D) *Officers; meetings and rules of procedure.* The Commission shall elect a chairperson from the members of the Commission, and shall

create and fill such other of its offices as it may determine. The chairperson shall be eligible for reelection. The Commission shall hold at least one regular meeting each month, at such time and place as may be fixed by the Commission. The Commission may fix special meetings of the Commission. Special meetings of the Commission may be called by the Chairperson, or by any three members of the Commission. A majority of three members of the Commission shall constitute a quorum for the transaction of business. The Commission may adopt such other rules and regulations governing its organization and procedures as it may deem necessary, so long as they are not inconsistent with this chapter and the laws of the State. The Commission shall keep a record of its resolutions, transactions, findings, policies and determinations, and this record shall be a public record.

#### (E) *Duties.*

(1) It shall be the duty of the Commission to:

(a) Submit and recommend to the City Council a proposed official zoning map and recommend whatever regulations and restrictions concerning the erection, construction, reconstruction, alteration, repair or use of buildings, structures or land it shall deem to be in the best interest of the City and its inhabitants.

(b) Prepare and recommend to the City Council for adoption a Comprehensive Plan.

(c) Hold a public hearing on all requests for zone changes and initial zoning and forward its recommendations to the City Council.

(d) Recommend to the City Council any amendments to this chapter that may be needed concerning the plotting or use of land in any district, or restrictions upon buildings or structures therein.

(e) Review or delegate review of site plans for multiple-dwelling, commercial and industrial developments and determine the appropriate action and requirements for each site plan of the development as set out in this chapter.



(f) Make determinations and decisions regarding conditional uses as provided for in this chapter.

(g) Make recommendations to the City Council on matters regarding the interpretation, enforcement and administration Chapter 154 of this Code, pertaining to subdivisions.

(h) Make recommendations to vary or adjust the strict application of the requirements of this chapter in the case of an irregular, narrow, shallow or steep lot or other physical condition applying to a lot or building as a result of which strict application would result in practical difficulty or unnecessary hardship that would deprive the owner of the reasonable use of the land or building involved. Any such variance granted shall be granted according to the requirements and procedures established by this chapter. Variances may be granted only for hardships related to the physical characteristics of land. Variances to this chapter related to permitted, accessory and/or conditional uses in any district shall not be allowed. No variance or adjustment in the strict application of any provision of an ordinance may be granted unless:

1. Special circumstances or conditions, fully described in the Commission's findings, are peculiar to the land or building for which the adjustment is sought and do not apply generally to land or buildings in the neighborhood and have not resulted from any act of the applicant subsequent to the adoption of the ordinance from which this chapter is derived. Substandard lot size shall be considered a special circumstance in accordance with § 155.078(J);

2. For reasons fully set forth in the Commission's findings, the circumstances or conditions are such that the strict application of the provisions of this chapter would deprive the applicant of the reasonable use of the land or building, the granting of the adjustment is necessary for the reasonable use thereof and the adjustment as granted is the minimum adjustment that will accomplish this purpose; and

3. The granting of the variance is in harmony with the general purpose and intent of this chapter and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

(i) Make recommendations to the City Council to grant exceptions and variances upon request after a showing that an illegal construction or a nonconforming building or use existed for a period of at least seven years in violation of this chapter and the City, with knowledge of the existence of the condition, has not taken any steps toward elimination of such violation of this chapter.

(j) Oversee reduction of district dimensional requirements for substandard lots in accordance with § 155.078(J).

(2) The Commission shall be able to make recommendations to the City Council to grant variances from those sections of this chapter where the granted variance would not be prohibited by Federal or State law, rule or regulation. Areas specifically excluded from this clause would be sign regulations and building codes unless specifically allowed. This clause would supersede any conflicting clause in this chapter.

(F) *Hearing procedures.*

(1) *Public hearings required.* The Planning Commission shall hold public hearings to consider applications as required under this chapter.

(2) *Reconsideration of applications.* An application for the same consideration on the same site shall not be accepted within 12 months of the date of final Planning Commission action on a prior application.

(3) *Form and contents of applications.* Applications shall be submitted on forms prescribed by the Director and shall include all related information.

(4) *Notification of hearing required.*

Notification of hearings shall be given in accordance with Table 1 below.

(5) *Contents of notice of hearing.* The

notice of public hearing shall:

(a) Give the time and place of the hearing;

(b) Contain a statement describing the location of the property and the subject matter of the hearing; and

(c) Specify how additional information can be obtained.

(6) *Submission of comments prior to hearing.* Prior to the public hearing, the Director shall request City Departments and other agencies which he or she judges would be interested to comment on the application. Comments received shall be submitted to the Planning Commission and shall be made a part of the hearing record.

(7) *Parties to hearing.* A written statement giving the name and address of the person making the appearance, signed by him or her or his or her agent and filed with the Director, constitutes an appearance of record. The parties to a hearing shall be any of the following persons who entered an appearance of record either prior to commencement of the hearing or when permitted by the Commission during the conduct of the hearing:

(a) Persons entitled to notice under division (F)(4) of this division.

(b) The representatives of any department or agency of the City or another unit of government.

(c) A person who satisfies the Planning Commission that he or she has an interest in the subject matter of the hearing.

(8) *Testimony.* Each party or witness shall be placed under oath by the chairperson of the Commission at the time of speaking and shall be offered reasonable opportunity to present evidence and argument and to cross-examine witnesses on all relevant issues. The Planning Commission may impose reasonable limitations on the number of witnesses heard and on the nature and length of testimony and questioning. The Commission may call witnesses and introduce papers on its own volition.

(9) *Records.* The Director shall make a full record of the hearing by sound recording. Summary minutes shall be kept of all public hearings, and they shall be kept available for public inspection. Any person shall have the opportunity to listen to, copy or transcribe the sound recording of the public hearing at any reasonable time at the office of the Director.

(10) *Continuation of hearing.* An advertised hearing may be continued to a time and place announced at the hearing without readvertising.

(11) *Prohibited acts by the Commission.* Prior to Commission action, the Commission shall neither:

(a) Communicate directly or indirectly with any party or his or her representative in connection with the merits of an issue involved;

(b) Use or rely upon communication, reports, staff review or other materials prepared in connection with the particular case unless made part of the record; nor

(c) Inspect the site with any party or his or her representative unless all parties are given an opportunity to be present.

(12) *Decision by the Commission.* The Commission shall act on an application on the conclusion of the public hearing or at its next regular meeting following the hearing. The Commission shall state for the record the key findings of the facet on which the Commission decision is based.

(13) *Notification of decision.* When any application is approved, approved with conditions, or denied, written notification of the Commission's action, listing any conditions imposed, shall

be sent within five days of the Commission action to the applicant and to any other party who has requested to be so informed.

**Table 1: Notification of Hearing**

<i>Type of Request</i>	<i>Submission Date Before Hearing</i>	<i>Property Posting &amp; Legal Publication Before Hearing</i>	<i>Notification Area*</i>	<i>Notification Before Hearing</i>	<i>Type of Mailing</i>
1. Zone Code Amend	30 days	15 days	None	None	N/A
2. Rezoning	30 days	15 days	100 feet	7 days	Certified
3. Variance	30 days	15 days	100 feet	7 days	First Class
4. Site Plan Approval					
a. Single-family & Duplex	10 days	Staff review	None	None	N/A
b. Multi-family, Comm., Ind.	17 days	None	200 feet	7 days	First Class
5. Conditional Use	17 days	None	200 feet	7 days	First Class
6. Expansion of Non-conforming Use	17 days	None	200 feet	7 days	First Class
7. Street Vacation or License for Use	17 days	None	200 feet	7 days	First Class
8. Planned Unit Development					
a. Concept Plan	10 days	None	None	None	N/A
b. Preliminary Development	30 days	15 days	100 feet	7 days	First Class
c. Final Development	10 days	None	None	None	N/A
9. Plat or Replat (Minor Plat)	10 days	None	None	None	N/A
10. Subdivision					
a. Sketch Plan	10 days	None	None	None	N/A
b. Preliminary Plat	30 days	None	200 feet	7 days	First Class
c. Final Plat	14 days (min.)	None	None	None	N/A
d. Complete Final Plat	14 days	None	None	None	None
11. Mobile Home Moving Permit					
a. Moving to Existing M.H. or Trailer Park	None	None	None	None	None
b. Move to site other than Existing M.H. or Trailer Park	17 days	15 days	100 feet	7 days	First Class
*Notification area extends specified distance from outside boundary excluding rights-of-way and alleys					

(14) *Appeals.* Any decision by the Planning Commission is final unless an appeal is initiated to the City Council as prescribed by § 155.021. A building permit dependent on a case shall not be issued until an appeal is decided or the time for filing an appeal has expired without an appeal being filed. However, if the public hearing produces no objection of any kind to the approval of an application, which application is approved, a building permit may be issued before 15 days if the applicant agrees in writing to surrender the building permit and cease all work if an appeal is duly filed.

(1988 Code, § 9-10-31) (Ord. 2004-04, passed 7-12-2004; Am. Ord. 2005-04, passed 6-15-2005; Am. Ord. 2010-02, passed 4-12-2010; Am. Ord. 2022-06, passed 7-11-2022)

#### **§ 155.021 APPEALS TO COUNCIL.**

(A) *Designation of Board of Appeals.* The City Council shall serve as the Board of Appeals.

(B) *Notice of appeal.* Any aggrieved person or any official, department, board or bureau of the City affected by a decision of the Commission may appeal to the City Council by filing a notice of appeal with the Director. The notice shall be on a form prescribed by the Planning & Zoning Department, and shall state the name and address of the applicant, and shall specify the error in the decision made by the Commission in the enforcement of this chapter or of any ordinance adopted pursuant thereto. The notice shall be filed within 15 days of the decision which is being appealed. Upon the filing of the notice of appeal, the Director shall forthwith forward the notice of appeal to the City Council with all the documents constituting the record of the case appealed, and such further facts as may be pertinent or material to show the grounds of the decision appealed. The Director shall give written notice of receipt of an appeal to the applicant, the appellant, a representative of the opponents if any are known, and any persons who appeared before the Commission during its determination of the matter, and to any other parties who have requested to be so informed.

(C) *Stay of proceedings.* The filing of a notice of appeal shall stay all proceedings in furtherance of the action appealed unless the officer, official, commission, committee or board from whom the appeal is taken certifies that, by reason of facts stated in the certificate, a stay would cause imminent peril to life and property. Upon certification, the proceedings shall not have stayed other than by a restraining order granted by the District Court on notice to the City Clerk with due cause shown.

(D) *Notice of hearing.* Upon receiving the notice of appeal from the Director, the City Clerk/Treasurer shall schedule a public hearing on the appeal. The Director shall give written notice of the date, time and place of such hearing to the applicant, the appellant, a representative of the opponents if any are known, and any persons who appeared before the Commission during its consideration of the matter, and any other parties who have requested to be so informed. Such notice shall be mailed at least 15 days prior to the date of the hearing. A notice of time, date, place and purpose of the hearing shall be published in a newspaper of general circulation in the City at least 15 days prior to the date of the hearing. In addition, if the appeal relates to a specific site, a similar notice shall be mailed at least five days prior to the date of the hearing to each owner of property situated within the required notification area of the property to which the appeal relates. The Director shall be responsible for mailing, by certified mail, such notice. For the purpose of giving mailed notice, the City Council may require the appellant to furnish an abstractor's certified property certificate showing the property ownership within the required notification area of the property. The Director shall make a copy of the notice and a list of the owners and addresses to which the notice was sent as a part of the record of proceedings. The failure to receive notice by individual property owners shall not invalidate the proceedings.

(E) *Review and decision.*

(1) No sooner than 15 days from the date of a public notice, the City Council shall hear the appeal, and render a decision within 45 days. The City Council shall consider oral and written testimony

from the appellant, his or her agent or attorney, City staff members and other interested parties. All such oral testimony, other than attorneys' statements and questions, shall be in accordance with the provisions of § 155.020(F)(8), relating to testimony and evidence before the Commission. The City Council shall also study the record of the action on the appeal. If postponed, the City Council shall make a decision on the appeal at its next regularly scheduled meeting. The City Council, by a majority vote may:

(a) Reverse any order, requirement, decision, or determination of the Commission;

(b) Decide in favor of the appellant; or

(c) Make any change in any order, requirement, decision, or determination of the Commission.

(2) If the City Council fails to decide by a majority vote to uphold the decision of the Commission, then the decision of the Commission shall stand.

(F) *Notice of decision.* The City Clerk/Treasurer, on behalf of the City Council, shall issue a written notice of its decision to all concerned parties. The notice shall state the facts of the matter as determined by the City Council, the reasons for its decision, and any conditions applied to the decision.

(G) *Judicial review.* The exclusive remedy for parties dissatisfied with the action of the City Council shall be the filing of a petition for review in the District Court, according to State law. (1988 Code, § 9-10-32) (Am. Ord. 2022-06, passed 7-11-2022)

## **§ 155.022 PLANNING SERVICES DIRECTOR; ENFORCEMENT PROCEDURES; ZONING PERMIT; CERTIFICATE OF ZONING COMPLIANCE.**

(A) *Office of Planning Services Director established; staff; supervision.* The staff position of the Director is hereby established for the general and specific administration of this chapter. The duties of the Director may be performed directly by the Director or by such staff as may be designated by the Director specifically for the administration of this chapter. The Director shall perform all duties under the direction of the Mayor and/or his or her designee.

(B) *General duties of the Planning Services Director.* It shall be the duty of the Director to:

(1) Receive, process, record and administer all requests for approvals and permits as governed by this chapter, except that building permits shall be issued by the State of New Mexico Construction Industries Division after review by the Director.

(2) Advise and recommend to the Planning Commission and the City Council regarding requests for approvals and permits as required by this chapter.

(3) Perform such inspections, observations and analyses of any and all erection, construction, reconstruction, alteration, repair or use of buildings, structures or land within the jurisdiction of the City relating to the regulations and restrictions as set forth in this chapter.

(C) *Right of entry of the Planning Services Director.* The Director or his or her agent is hereby authorized to make such inspections as are necessary to determine satisfactory compliance with this chapter and shall have the authority to enter at reasonable times upon any private or public real property for the purpose of inspecting and investigating conditions relating to the enforcement of this chapter.

(D) *Enforcement procedures.*

(1) *Notice of violation.* If the Director shall find that any of the provisions of this chapter are being violated, he or she shall, in writing, notify the owner or tenant of the property, indicating the nature of the violation and ordering the action necessary to correct it. He or she shall order discontinuance of illegal use of land, buildings or structures; removal of illegal buildings or structures or of additions, alterations, or structural changes thereto; or discontinuance of any illegal work being done; or shall take any other action authorized by this chapter to ensure compliance with or to prevent violations of its provisions.

(2) *Remedies for violations.* If any building or structure is erected, constructed, reconstructed, altered, repaired, convened or maintained, or any building, structure or land is used, in violation of this chapter, the Planning & Zoning Department may institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use; to restrain, correct or abate such violation; to prevent the occupancy of such building, structure or land; or to prevent any illegal act, conduct, business or use in or about such premises.

(3) *Complaints.* When a violation of this chapter occurs or is alleged to have occurred, any person may file a complaint, which shall be in writing. The complaint, stating fully the causes and basis thereof, shall be filed with the Planning & Zoning Department. He or she shall record the complaint properly, investigate in a timely manner and take action as provided by this chapter.

(E) *Zoning permit required.* No building or other structure shall be erected, moved, added to, or structurally altered without a zoning permit therefore issued by the Planning & Zoning Department. A zoning permit shall not be issued by the Director except in conformity with the provisions of this chapter, unless he or she receives a written order from the City Council in the form of an interpretation

involving error, or a special exception or variance as provided in this chapter. If the permit is denied, the reasons shall be stated, in writing, for the denial.

(F) *Application for zoning permit.*

(1) All applications for zoning permits shall be accompanied by plans in triplicate, drawn to scale, showing the actual dimensions and shape of the lot to be built upon; the exact sizes of structures to be retained and which are to be demolished, if any; and the location and dimensions of the proposed building or alteration. The application or plan shall include such other information as lawfully may be required by the Planning & Zoning Department, including existing or proposed uses of the building and land, the number of families or rental units the building is designed to accommodate, conditions existing on the lot and on nearby lots, and such other matters as may be necessary to determine conformance with and provide for the enforcement of this chapter.

(2) One a copy of the plan shall be returned to the applicant by the Director, after he or she shall have marked such copy either as approved or disapproved and attested to this by his or her signature on such copy. The second copy, similarly marked, shall be transmitted by the Director to the building official, who shall not issue a building permit until and unless the zoning permit applicable thereto and indicating compliance with this chapter has been received by him or her. The third copy, similarly marked, shall be retained by the Planning & Zoning Department.

(G) *Certificate of zoning compliance.*

(1) *Required.* It shall be unlawful to use or occupy or permit the use or occupancy of any building or premises, or both, or part thereof, hereafter created, erected, changed, converted, or wholly or partially altered or enlarged in its use or structure, until a certificate of zoning compliance shall have been issued therefor by the Director stating that the proposed use of the building or land conforms to the requirements of this chapter.

(2) *Nonconforming uses.* No nonconforming use shall be maintained, renewed after discontinuance, changed or extended until a certificate of zoning compliance shall have been issued by the Director; provided, however, that upon enactment of the ordinance from which this chapter is derived or upon amendment of this chapter, owners or occupants of uses made nonconforming shall have one year to apply for such certificates. Failure to make such application within three months shall be presumptive evidence that the property was in conforming use at the time of enactment or amendment, and any use other than a permitted use will be a violation of this chapter. The certificate of zoning compliance for a nonconforming use shall state specifically wherein the nonconforming use differs from the provisions of this chapter.

(3) *New or altered uses or structures.* No permit for erection, alteration, moving of any building shall be issued until an application has been made for a certificate of zoning compliance. The certificate of zoning compliance shall be issued upon completion of the work in conformity with the provisions of this chapter, including certification by a New Mexico registered surveyor or engineer that placement of building(s) conforms to an approved site development plan.

(a) For site-built houses, the certification shall occur within two weeks of completing the foundation.

(b) For modular, manufactured or mobile homes, the certification shall occur upon the setting of the unit.

(4) *Temporary certificate.* A temporary certificate of zoning compliance may be issued by the administrative official for a period not exceeding six months during alterations or partial occupancy of a building pending completion, provided that such temporary certificate may include such conditions and safeguards as will protect the safety of the occupants and the public.

(5) *Records.* The Director shall maintain a record of all certificates of zoning compliance, and a copy shall be furnished to any person upon request.

(6) *Failure to obtain certificate.* Failure to obtain a certificate of zoning compliance shall be a violation of this chapter and punishable under § 155.135.

(H) *Expiration of zoning permit.*

(1) If the work described in any zoning permit has not begun within one year from the date of issuance thereof, or in the case of Planned Unit Development rezoning or special exceptions, within the time limit established therefor, the permit shall expire and be canceled by the Director. Written notice thereof shall be given to the persons affected, and in the case of Planned Unit Development rezoning, to the City Council and the Commission.

(2) If the work described in any zoning permit has not been substantially completed within two years of the date of issuance thereof, or in the case of Planned Unit Development rezoning or special exceptions within the time limit established therefor, the permit shall expire and be canceled by the Director. Written notice thereof shall be given to the persons affected, including notice that further work as described in the canceled permit shall not proceed unless and until a special zoning permit has been obtained. In the case of Planned Unit Development rezoning, the City Council and the Commission shall be informed in writing of the expiration of the zoning permit and no special zoning permit shall be issued except in accordance with § 155.028.

(I) *Construction and use to be in accordance with approved application and plans.* Zoning permits or certificates of zoning compliance are issued on the basis of plans and applications approved by the Planning & Zoning Department and other officials or agencies where additional approval is required authorize only the use, arrangement, location, and construction set forth in such approved plans and applications, and no other use, arrangement, location or construction. Use, arrangement, location or construction at variance with that authorized shall be deemed a violation of this chapter, punishable as provided by § 155.135.

(1988 Code, § 9-10-33) (Am. Ord. 2022-06, passed 7-11-2022)

**§ 155.023 AMENDMENTS.**

(A) *Generally; initiation.* In accordance with the provisions of State Statutes, the City Council may from time to time adopt amendments to this chapter. An amendment to this chapter may involve changes in its text and wording, including but not limited to changes in the regulations regarding uses, setbacks, heights, lot areas, definitions, administration and/or procedures. Code amendments do not, however, include the rezoning of property. Amendments may be initiated by the City Council, by the Commission, or by petition of a person whose property would be affected by the amendment.

(B) *Application.* If an individual or other party initiates a request for an amendment to this chapter, the request must be made on forms provided by the Planning Services Director. The request must state the exact section of this chapter proposed for amendment, the proposed substitute wording, and the reasons for requesting the amendment. Graphic material should also be submitted, as it will assist in understanding the benefits of the amendment. The submittal must be made to the Director and the processing fee paid at least 30 days prior to the date of the public hearing by the Commission. An amendment to this section of the code brought forth by the City Council shall be done in accordance with division (F) below.

(C) *Notice of hearing.* No amendment to this chapter shall be adopted until:

(1) Public hearings have been held thereon by the Commission and the City Council. A notice of the time, date, place and purpose of the hearings shall be published in a newspaper of general circulation in the City at least 15 days prior to the date of the first hearing which shall be held by the Commission, and at least 15 days prior to a subsequent hearing by the City Council; or

(2) Public hearings have been held by the City Council as referenced in division (F) below.

(D) *Hearing and recommendation by the Commission.* An amendment not initiated by the Commission shall be:

(1) Referred to the Commission for study and public hearing. In its deliberations on the matter, the Commission shall consider oral or written statements from the petitioner, the public, City staff and its own members. The Commission may approve, disapprove or postpone an amendment application. The Commission shall notify the City Council, in writing, of its recommendation; or

(2) Considered by the City Council in accordance with division (F) below.

(E) *Hearing and decision by City Council of non-City Council initiated amendments.* The City Council may, at its next regular meeting after receipt of the report and recommendation of the Commission, set a date for a public hearing on the amendment request. An amendment which has been recommended for denial by the Commission shall not be reviewed by the City Council except upon written request by the applicant. In its deliberations on the matter, the City Council shall consider oral or written statements from the petitioner, the public, City staff, the Commission and its own members. The City Council may approve or disapprove the request by ordinance, or postpone the request. A vote of two-thirds of all members of the City Council shall be required to reverse the recommendation of the Commission.

(F) *Hearing and decision of City Council initiated amendments.* The City Council may, from time to time, discuss and amend the planning code. If the matter has been acted on by the City Council within the last 18 months, the City Council may choose to amend the ordinance through its own public hearing process, without changes being considered in public hearings of the Planning Commission. Upon approval of the amendment the City Council will notify the Planning Commission of the changes. (1988 Code, § 9-10-34) (Am. Ord. 2022-06, passed 7-11-2022)

**§ 155.024 REZONING.**

(A) *Generally; initiation.* In accordance with the provisions of State Statutes, the City Council may from time to time change the zoning of parcels of land



within the City. These changes in zoning classification are for the purpose of meeting the land use needs of the residents of the City in conformance with the City Comprehensive Plan. Rezoning may be initiated by the City Council, by the Commission, or by petition of the person whose property would be affected by the rezoning.

(B) *Application.* An application for rezoning shall be made on forms provided by the Planning & Zoning Department. The application shall indicate the legal description of the property, the present zoning classification, and the recommended use of the property by the City Comprehensive Plan. The applicant shall present evidence to the Director of ownership or type of controlling interest in the property (e.g., option to purchase). This application shall be completed and submitted along with the established fee to the Director at least 30 days prior to the public hearing by the Commission.

(C) *Notice of hearing.*

(1) No rezoning may be adopted until public hearings have been held on the matter by the Commission and by the City Council.

(2) A notice of the time, date, place and purpose of the hearings shall be published in a newspaper of general circulation in the City at least 15 days prior to the date of the first hearing and at least 15 days prior to the date of any subsequent hearing.

(3) A similar notice shall be mailed by certified mail in accordance with Table 1 above. The Planning & Zoning Department shall be responsible for placing and mailing such notices. For the purpose of giving mailed notice, the Director shall require the applicant to furnish the names and addresses of all owners within a 100-foot radius of the property excluding right-of-way and alleys, as recorded in the county assessor's office. The Director shall make a copy of the notice and list of the owners and addresses to which the notice was sent as part of the record of the proceedings. The failure to receive notice by individual property owners shall not invalidate the proceedings.

(D) *Hearing and recommendation by the Commission.* A rezone not initiated by the Commission shall be referred to the Commission for study and public hearing. In its deliberations on the matter, the Commission shall consider oral or written statements from the applicant, the public, City staff, and its own members. The application may not be postponed for more than two meetings in succession. The Commission shall notify the City Council, in writing, of its recommendation.

(E) *Hearing and decision by City Council.* The City Council may, at its next regular meeting after receipt of the report and recommendation of the Commission, set a date for a public hearing on the rezoning request or, by a majority vote of all members of the City Council, act to deny the Commission's recommendation for rezoning and thereby retain current zoning. A rezone which has been recommended for denial by the Commission shall not be reviewed by the City Council except upon written request by the applicant. During the scheduled public hearing on the matter, the City Council may approve or disapprove the request for rezoning by ordinance, or postpone the request. The application may not be postponed for more than two meetings. If approved, the Director shall revise the official zoning map accordingly. A majority vote of the City Council shall be required to reverse the recommendation of the Commission.

(F) *Protests.* If there is a written protest against a change in the zoning classification of a parcel of land, signed by the owners of 20% or more of the area of lots included in the proposed change, or of those within a distance of a 100-foot radius, the change shall not be approved except upon the majority vote of the members of the City Council.

(G) *Resubmittal of application.* Application for a zoning district change which has been rejected by the Commission and/or City Council for a parcel of land shall not be resubmitted or reconsidered for a period of one year after it has been acted upon at a public hearing of the Commission, except that application may be made for a different zoning district change on

the same parcel of land six months after a previous action has been taken; provided that such application for a different zoning district change shall be permitted only on payment of a double fee.

(1988 Code, § 9-10-35) (Am. Ord. 2022-06, passed 7-11-2022)

## § 155.025 VARIANCES.

(A) *Generally.* The Commission may vary or adjust the strict application of the requirements of this chapter in the case of an irregular, narrow, shallow or steep lot or other physical condition applying to a lot or building where strict application of this chapter would result in practical difficulty or unnecessary hardship that would deprive the owner of reasonable use of the property involved. Granting of variances shall be done in accord with the requirements and procedures established in this chapter. Variances may only be granted for hardships related to the physical characteristics of the land and should normally be limited to regulations pertaining to the height or width of structures or the size of yards and open spaces where a departure from the literal interpretation of this chapter will not be contrary to the public interest or establish a precedent that would undermine the purpose and intent of this chapter as described in § 155.001. Use variances shall not be permitted. No variance or adjustment in the strict application of any provisions of an ordinance may be granted unless:

(1) Special circumstances or conditions, fully described in the Commission's findings, are peculiar to the land or building for which the adjustment is sought and do not apply generally to land or buildings in the neighborhood, and have not resulted from any act of the applicant subsequent to the adoption of this chapter. Substandard lot size shall be considered a special circumstance in accordance with § 155.078(J);

(2) For reasons fully set forth in the Commission's findings, the circumstances or conditions are such that the strict application of the provisions of this chapter would deprive the applicant of the reasonable use of the land or building, the

granting of the variance is necessary for the reasonable use thereof and the variance as granted is the minimum adjustment that will accomplish this purpose; and

(3) The granting of the variance is in harmony with the purpose and intent of this chapter and will not be harmful to the neighborhood or otherwise detrimental to the public welfare.

### (B) *Special Humanitarian Variance.*

(1) A request for the placement on residential property of a secondary housing arrangement specifically for the care and supervision of a family member, relative, or other, must receive the approval of the Commission and City Council prior to use. The secondary housing arrangement may include a recreation vehicle, manufactured and mobile home, including single section homes, and any construction on site. All procedural application and notification requirements contained within this section must be followed. A Special Humanitarian Variance may have conditions for approval applied such as, but not limited to, duration of approval, size restriction, and location of any secondary housing units placed on the property. The applicant must demonstrate that the placement of any secondary housing arrangement on the same lot as the principal residence will:

- (a) Not be used for rental income;
- (b) Not require an additional sewer or water tap;
- (c) Not exceed 50% of the principal structure in square footage;
- (d) Not require an additional address;
- (e) Meet all-district setback and development requirements;
- (f) Provide a conforming parking space; and
- (g) Meet all Flood Hazard regulations.

(2) A request to place a recreational vehicle or single section mobile home not allowed by Chapter 155 Zoning and district regulations on an undeveloped lot will require the same approvals as the secondary housing request and must follow all applicable development requirements as set forth in Chapter 155 Zoning.

(C) *Application.* A request for a variance shall be made by filing a completed application with the Director at least 30 days prior to the Commission meeting. The application shall be accompanied by a development plan showing such information as the Director may reasonably require for purposes of this chapter. The plans shall contain sufficient information for the Commission to make a proper decision on the matter. The request shall state the exceptional conditions and the peculiar and practical difficulties claimed as a basis for a variance. In all cases, the application shall include:

- (1) The name and address of the applicant;
- (2) The legal description of the property involved in the request for variance, including the street address, if any, of the property;
- (3) The names and addresses of the owners of the property;
- (4) Drive accesses, driveways, access roads, parking spaces, off-street loading areas and sidewalks as applicable;
- (5) An improvement survey prepared by a registered New Mexico surveyor showing the property dimensions, setbacks, existing and proposed structures, easements, rights-of-way, utilities and, if applicable, grading and landscaping. Abutting walls and distances from the property line of structures on adjoining properties shall be shown along any property line where variance is requested;
- (6) The variance requested and the reasons for the request;
- (7) The names and addresses of all property owners within 100-feet of the property boundary excluding rights of way and alleys; and

(8) Justification, in writing, in accordance with division (A) of this section.

(D) *Notice of hearing.* Notice of the time, date, place, and purpose of the variance hearing shall be published once in a newspaper of general circulation in the City and posted in a conspicuous place on the property affected at least 15 days prior to the hearing, and shall be mailed at least seven days prior to the Commission meeting to each owner of property situated wholly or partly within 100 feet of the property boundary, excluding rights of way and alleys, to which the variance relates.

(E) *Review and decision by the Commission.* In considering applications for variance, the Commission shall consider the effect of the proposed variance upon the health, safety, and welfare of the community, traffic conditions, light and air, danger of fire, the risk to the public safety, and the safety and the effect on values of property in the surrounding area. The Commission shall hear oral or written statements from the applicant, the public, City staff or its own members. If the Commission determines by motion that the special conditions applying to the structure or land in question are peculiar to such property or the immediately surrounding area and do not apply generally to other land or structures in the district in which the land is located, that granting the proposed variance will not in any way impair health, safety or welfare or in any other respect be contrary to the intent of this chapter and the City Comprehensive Plan, and that the granting of such variance will not merely serve as a convenience to the applicant, but is necessary to alleviate demonstrable hardship or difficulty, the Commission may grant such variance and impose conditions and safeguards therein. A variance shall not be approved except upon the majority vote of the Commission. The Commission shall be required to make findings supporting its decision based on divisions (A) through (D) of this section.

(F) *Hearing and decision by City Council.* A variance which has been recommended for denial by the Commission shall not be reviewed by the City Council except upon written request by the applicant. The City Council may, at its next regular meeting

after receipt of the appeal, set a date for a public hearing on the variance request. During the scheduled public hearing on the matter, the City Council may approve or disapprove the request for a variance. The variance shall not be approved except upon the affirmative vote of two-thirds of the City Council. If approved, the City Council shall be required to make findings supporting its decision based on divisions (A) through (D) of this section.

(G) *Blanket variance for existing structures.* Any structures, buildings, or improvements which otherwise lawfully existed prior to June 25, 2001, are hereby automatically issued a blanket variance from the standard setback requirements of their zoning district unless the existing setbacks are three feet or less. No fee or application shall be necessary for eligibility for a blanket variance. However, eligibility for a blanket variance for structures existing on a lot prior to June 25, 2001, does not in any way preclude or exempt any form of new construction proposed on the same lot after June 25, 2001, from the requirements and restrictions set out in this section. Substandard lots are eligible for reductions in accordance with § 155.078(J).

(H) *Variance agreement required.* In order for the terms and conditions of the variance granted to become effective, a variance agreement is required and shall be filed of record with the County Clerk, the provisions of which shall be binding upon and inure to the benefit of the parties, grantees, successors, heirs or assigns. The variance agreement shall be recorded prior to commencing any work on improvements for which variances are granted. The variance granted shall become null and void if the variance agreement is not signed and filed with the Director within 90 days from date of approval by the Commission. Variance agreements shall not be recorded until the time for filing an appeal has expired or until the appeal is decided if filed.

(I) *Conditions.* The property owner is required to agree to the following minimum conditions for inclusion in all variance agreements:

(1) To obtain all necessary approvals from the City, including site development and building permits, prior to commencing any work on improvements for which variance is granted.

(2) To commence any work covered by the variance within one year from the date of approval of the variance and complete all work within two years from such date, unless the Commission sets alternate dates for commencement and completion of work.

(3) The Commission may impose such additional conditions and safeguards as it deems necessary to protect the health, safety, and welfare of the community.

(1988 Code, § 9-10-36) (Am. Ord. 2022-06, passed 7-11-2022)

## **§ 155.026 SITE PLAN AND CONCEPT APPROVAL.**

(A) *Generally.* For purposes of this chapter, the site plan requirements in this section shall pertain to all development. The Commission has the right to review and require revisions in all proposed site plans. The purpose of this review is to relieve demonstrable adverse impacts of the development upon public investment in roads, drainage facilities, sewage facilities, etc.; to conserve the value of buildings; and to ensure that the regulations of this chapter are upheld.

(B) *Processing of applications.*

(1) *Generally.* Application for site plan approval shall be on forms provided by the Planning & Zoning Department. The application shall be accompanied by development plans showing sufficient information for the Commission or Planning & Zoning Department to determine whether the proposed development will meet the requirements of this chapter. Site plan applications shall be submitted at least 17 days prior to the next Commission meeting. A \$25 site location fee will be charged for the purpose of ensuring that any proposed new structure or addition to an existing structure is situated on the lot in such a manner to comply with all applicable setback

and development requirements of Chapter 155. This fee is also listed in the fee schedule in Appendix A to this Chapter.

(2) *Single-family and duplex development.* Site plans for single-family and duplex development shall be reviewed and acted on by the Director in accord with division (E) of this section. Notification under division (D) of this section shall not be required in R-1 and R-2 districts.

(C) *Contents of application.* In all cases, the application shall contain the following:

(1) General information:

- (a) Name of project or development.
- (b) Location of project or development by street address and legal description.
- (c) Location map, including the area within one-half mile of the site.
- (d) Name and mailing address of the developer and owner.
- (e) Name and mailing address of the engineer, architect, land surveyor and/or builder.
- (f) Date of plan preparation.
- (g) North point indicator.
- (h) Scale of not less than one inch to 100 feet.

(2) Site plan (over the seal and signature of the preparing engineer, land surveyor or architect):

- (a) General location map showing the subject property and vicinity, at a scale of one inch equals 1,000 feet or one inch equals 2,000 feet.
- (b) Boundary line of the property or development site, with dimensions.
- (c) Location, identification, and dimension of existing and proposed:

1. Topography contours at a minimum interval of five feet, to a distance of 100 feet outside the property line.

2. Adjacent streets and street rights-of-way.

3. On-site streets and street rights-of-way and edges of roads and pavement.

4. Utilities and utility rights-of-way and easements:

- a. Electric.
- b. Natural gas.
- c. Telephone.
- d. Television.
- e. Water.
- f. Sewers (sanitary and storm sewers).

5. Buildings and structures, including exterior building and roofing materials and indication of type of construction and occupancy group.

6. Parking facilities.

7. Water bodies.

8. Surface water holding ponds and drainage ditches.

9. Sidewalks, walkways, driveways, access points, loading areas and docks, and bike-ways.

10. Fences.

11. Exterior signs.

12. Exterior refuse collection areas.

13. Exterior lighting.

14. Landscaping (detailed plan showing plantings, materials, equipment, etc.):

a. Botanical and common names of vegetation to be used.

b. Size of plantings at time of planting and at maturity.

c. Area to be irrigated.

15. Traffic flow on-site.

16. Traffic flow off-site.

17. Surface water drainage arrows.

18. Information, as applicable, required by §§ 155.066 and 155.068, relating to hillside and forest protection.

(d) Number, configuration and dimension of employee and non-employee parking spaces existing and proposed and total square footage of each, including handicapped spaces.

(e) Site statistics including site square footage, percent of site coverage, dwelling unit density, and percent park or open space.

(3) Building information:

(a) Height above mean sea level of the lowest floor, when the structure is proposed to be located in a floodway area.

(b) Gross square footage and leasable space square footage of existing and proposed structures.

(c) Elevations, including exterior materials. The Planning Commission may require a rendering for architectural review.

(4) A listing of all required Federal, State and City permits, and status of applications.

(5) If the site is located in a floodplain of floodway area as shown on the duly adopted FIRM map, dated November 5, 2014, the following information shall also be submitted:

(a) Elevation in relation to mean sea level of the lowest floor (including basement) of all structures;

(b) Elevation in relation to mean sea level to which the structure has been, or will be, floodproofed;

(c) Certification by a registered professional engineer or architect, licensed in the State, that the flood hazard reduction methods for any structure meet the criteria in § 154.04; and

(d) Description of the extent to which any watercourse will be altered or relocated as a result of the proposed development.

*(D) Review criteria; action by the Director and/or the Planning & Zoning Department.*

(1) In considering applications for site plan review under this chapter, the Director and/or the Planning & Zoning Department shall consider the following:

(a) Relationship of the site plan elements to conditions both on and off the property.

(b) Conformance to this chapter.

(c) The impact of the plan on the existing and anticipated traffic and parking conditions.

(d) The adequacy of the plan with respect to land use.

(e) Pedestrian and vehicular ingress and egress.

(f) Building location and height.

(g) Landscaping.

(h) Provisions for utilities.

- (i) Site drainage.
- (j) Open space.
- (k) Lading and unloading areas.
- (l) Grading.
- (m) Signage.
- (n) Screening.
- (o) Setbacks.

(p) Compatibility with the surrounding environment.

- (q) Any other related matters.

(2) If the Director and/or the Planning & Zoning Department determines the proposed site plan will not be detrimental to the health, safety, or welfare of the community or cause traffic congestion or seriously depreciate surrounding property values, and at the same time is in harmony with the purposes and intent of this chapter, the plan for the area and the City Comprehensive Plan, the Director and/or the Planning & Zoning Department may grant such site plan approval and impose such conditions and safeguards as it deems necessary.

(3) Site plan review applications may be denied by the Director and/or the Planning & Zoning Department when such motion or consent shall constitute a finding and determination by the Director and/or the Planning & Zoning Department that the conditions required for approval do not exist.

(E) *Concept approval.*

(1) The applicant(s) shall be notified that they may seek approval of their concept prior to ordering the various professionally prepared documents required for a site plan by this section. The applicant, at a minimum, must provide an existing improvement survey for improved property, or a survey or plat, drawn to scale, for the unimproved property with all the proposed construction and land uses sketched in. It should include all measurements

necessary for the Director and/or the Planning & Zoning Department review including, but not limited to property dimensions, building dimensions, use dimensions, distances to property lines, any variances requested, etc.

(2) The applicant(s) shall meet with the Director and/or the Planning & Zoning Department to determine areas of the code that are applicable to the proposed plan. Upon sketch plan approval, the applicant will be responsible for ordering all documentation required for final site plan approval and submit the final application.

(3) The procedure provided herein shall be in addition to, and not in lieu of, the site plan requirements of this section, and no permit or licenses shall be issued or uses allowed until such time as all documentation required by the code is completed, submitted to the Planning & Zoning Department and approved by the Commission. The applicant is totally responsible for any and all inaccuracies or omissions to the sketch plan they submitted. Any inaccuracy or omission may lead to a modification of the sketch plan approval or a complete denial if a misrepresentation leads to that approval.

(4) The applicant shall be notified upon selection of this option, that the overall process may be longer than if the required professionally prepared documentation was provided at the up front. The applicant shall be required to sign the sketch plan approval application that will include a disclosure statement stating that they fully understand and accept the responsibility to provide a complete and accurate sketch plan. Furthermore, that they fully understand and accept the potential consequences of failing to do so. The applicant shall specifically initial this disclosure statement.

(F) *Minor amendments.* Minor amendments to the approved site plans may be approved by the Director and/or the Planning & Zoning Department finding by the Director that the amendment to the site plan is in compliance with §§ 155.040 *et seq.*, pertaining to zoning district regulations, §§ 155.065 *et seq.*, pertaining to development standards, and Chapter 154 of this Code, pertaining to flood hazard

regulations. Amendments to site plans pursuant to this subsection shall include only minor adjustments to approved site plans where the amendment is in conformance with this chapter, and shall not include changes in use, conditional uses, variances, change of any nonconforming use to any other nonconforming use, and expansions of nonconforming uses. Amended site plans shall be subject to divisions (A) through (C) of this section. Site plan review by the Director shall include all items listed under divisions (D)(1)(a) through (g) of this section.

(G) *Minor variances.* Minor design standard variances may be granted by the concurrence of the Director and/or the Planning & Zoning Department for site plans submitted and found by the Planning & Zoning Department to be in otherwise compliance with this section of this chapter. Variance to site plan requirements pursuant to this subsection shall include only minor adjustments to design standards and shall not include variances in use, conditional uses, change of any nonconforming use to any other nonconforming use, expansion of nonconforming uses, or property setbacks or variance to other district regulations as found in §§ 155.040 *et seq.* of this chapter.

(1988 Code, § 9-10-37) (Ord. 2015-03, passed 9-14-2015; Am. Ord. 2022-06, passed 7-11-2022)

#### **§ 155.027 CONDITIONAL USE PERMIT APPROVAL.**

(A) *Generally.* Certain uses, (as defined in § 155.040(C)), may, under certain circumstances, be acceptable. When such circumstances exist, a conditional use permit may be granted. The permit may be issued for a specified period of time, with automatic cancellation at the end of that time unless it is renewed, or conditions may be applied to the issuance of the permit and periodic review may be required. The permit shall be granted for a particular use and not for a particular person.

(B) *Application.* The person applying for a conditional use permit shall fill out and submit to the Planning & Zoning Department the appropriate form, together with the required fee. The request for a

conditional use permit shall follow the procedures and applicable requirements of § 155.026 which pertain to site plan review.

(C) *Notice of hearing.* A notice of hearing shall be mailed at least seven days prior to the Commission meeting to each owner of property situated wholly or partly within 200 feet of the property to which the site plan relates. The Planning & Zoning Department shall be responsible for mailing such notices. For the purpose of giving mailed notice, the Director shall require the owner of the property affected to furnish the names and addresses of all property owners within 200 feet of the property boundary excluding rights of way and alleys.

(D) *Review and decision by Planning Commission.*

(1) No conditional use permit shall be given for a use which is not listed in this chapter as a conditional use in the particular district in which it is proposed to be located. "The Commission shall consider the effect of the proposed use upon the health, safety and general welfare of occupants of surrounding lands, existing and anticipated traffic conditions, including parking facilities, on adjacent streets and land, the impact upon the natural environment, and the effect of the proposed use upon the City Comprehensive Plan. The Commission may grant the application by motion, imposing such conditions and safeguards as it deems necessary, or it may deny the application. In reviewing conditional uses in residential areas, the Commission shall consider particularly the response of adjoining property owners.

(2) Approval of conditional use permits shall require a two-thirds vote of the members of the Commission. If approved, the Commission shall be required to make findings supporting its decision. If an application is denied, the denial shall constitute a finding that the applicant has not shown that the conditions required for approval exist. No application for a conditional use permit which has been denied wholly or in part shall be resubmitted for a period of six months from the date of the order of denial,



except on grounds of new evidence or proof of a change of conditions found to be valid by the Commission.

(E) *Notice of decision; contents of permit.* The applicant shall be notified in writing of the action taken by the Commission. If the application has been granted, the permit shall be issued upon the signature of the chairperson of the Commission and the Director, and any conditions, automatic termination date, or period of review shall be stated on the permit.

(F) *Revocation.* If the conditions and safeguards set by the Commission are violated, the conditional use permit, after due process, may be revoked by a majority vote of the Commission. Appeals may be made in accordance with § 155.021. (1988 Code, § 9-10-38) (Am. Ord. 2022-06, passed 7-11-2022)

#### **§ 155.028 PLANNED UNIT DEVELOPMENT APPROVAL.**

(A) *Generally.* Any development proposal which meets the requirements of § 155.055, pertaining to Planned Unit Development, shall be reviewed according to the provisions of this section. All Planned Unit Development applications shall be reviewed and approved by the Commission and the City Council prior to any physical development on the subject property.

##### **(B) *Application.***

(1) Prior to making an application for Planned Unit Development approval, the applicant is encouraged to meet with appropriate City staff to discuss the development concept, the submittal requirements, and the review and approval process.

(2) The applicant shall obtain the necessary application forms from the Planning & Zoning Department. Application forms properly completed and accompanied by the required fee shall be submitted to the Director. Concept plan exhibits shall

accompany the application. The concept plan shall be submitted at least ten days prior to a regularly scheduled Commission meeting.

##### **(C) *Concept plan.***

(1) *Submittal requirements.* The concept plan shall indicate proposed land uses, general circulation patterns, general building massing, property boundaries, existing land uses on adjacent properties and special site conditions or problems. A computation table showing proposed land use allocations in acres and percent of total site area shall be included on the concept plan.

##### **(2) *Commission review.***

(a) The Planning Director shall schedule an informal review by the Commission at its next regularly scheduled meeting.

(b) The Commission shall review the concept plan and shall determine whether the plan is in conformance with the City Comprehensive Plan. The Commission may instruct the applicant regarding features or design elements to be included in the preliminary development plan and what exceptions or variances to this chapter may apply.

(3) *Review by City Council.* It is not required that the City Council review Planned Unit Development concept plans. However, the applicant may request a concept plan review by the City Council following the Commission review and comment. The scope of review and comment by the City Council shall be the same as that of the Commission.

##### **(D) *Preliminary development plan.***

(1) *Submittal requirements.* Based upon comments received during the concept plan review, the applicant shall prepare a preliminary development plan, which shall be submitted at least 30 days prior to the hearing by the Commission. The following information shall be submitted to the Planning & Zoning Department:

(a) Legal description of the property and indication of gross area.

(b) Nature of the applicant's interest in the land to be developed.

(c) A generalized location map showing surrounding land use and traffic circulation patterns.

(d) Site conditions: An analysis of the existing site conditions which indicates at a minimum:

1. Topographic contours with intervals of no more than five feet, to a distance to 100 feet beyond the property boundary.

2. Location and extent of major vegetative cover, consistent with § 155.068.

3. Location and extent of perennial or intermittent streams and water ponding areas.

4. Existing drainage patterns.

5. Other information considered relevant by the applicant, City staff, or the members of the Commission.

(e) Proposed allocations of land use expressed as a percentage of the total area, as well as in acres. Uses to be indicated include:

1. Streets.

2. Parking lots.

3. Public open space.

4. Private open space.

5. Residential uses, if appropriate.

6. A stratification of residential uses in terms of single-family detached residences, townhouses, garden apartments, etc.

7. Commercial uses, if appropriate.

8. Industrial uses, if appropriate.

(f) A development site plan at a scale not smaller than one inch equals 100 feet, indicating all circulation elements, both pedestrian and vehicular, structures, open space, recreational space, proposed grading and proposed landscaping.

(g) Plans indicating the alignment and sizing of water lines, sanitary sewers and storm sewers, if any, as well as easements for all utilities, if necessary. Proposed surface drainage patterns should also be indicated.

(h) Plans consistent with §§ 155.066 and 155.068, pertaining to forest and hillside protection.

(i) A preliminary plat of the proposed development if land subdivision is proposed.

(j) Preliminary architectural plans indicating the elevations and exterior wall finishes of proposed buildings.

(k) A three-dimensional model of the proposed development is not required but is encouraged as a means of indicating the character of the development plan as well as depicting site development relationships.

(2) *Commission review and hearing.*

(a) *Notice of hearing.*

1. The Commission shall hold a public hearing on the preliminary development plan. A notice of the time, date, place and purpose of the

hearing shall be published in a newspaper of general circulation in the City at least 15 days prior to the date of the hearing.

2. A similar notice shall be mailed at least five days before the day of the hearing to each owner of property situated wholly or partly within 100 feet of the property to which the planned unit development relates. Failure of individual property owners to receive notice will not necessarily invalidate the proceedings.

(b) *Review.*

1. In considering applications for Planned Unit Development approval, the Commission shall consider the following:

a. Interrelationship with the plan elements to conditions both on and off the property;

b. Conformance to the comprehensive plan;

c. The impact of the plan on the existing and anticipated traffic and parking conditions;

d. The adequacy of the plan with respect to land use;

e. Pedestrian and vehicular ingress and egress;

f. Building location and height;

g. Landscaping;

h. Lighting;

i. Provisions for utilities;

j. Site drainage;

k. Open space;

areas;

l. Loading and unloading

m. Grading;

n. Signage;

o. Screening;

p. Setbacks;

q. Impact upon the natural environment; and

r. Other related matters.

2. The Commission shall consider oral or written statements from the applicant, the public, City staff or its own members. It may question the applicant and approve, disapprove or postpone the preliminary development plan. The application may not be postponed for more than two regular meetings of the Commission.

3. If the Commission determines by motion that the proposed preliminary development plan will not be detrimental to the health, safety or welfare of the community, or cause traffic congestion or seriously depreciate surrounding property values, and at the same time is in harmony with the purposes and intent of this chapter, the plan for the area and the City Comprehensive Plan, the Commission may recommend granting preliminary development plan approval along with conditions and safeguards it deems necessary in the public interest.

4. The Commission shall forward its recommendation to the City Council.

(3) *Review and hearing by City Council.*

(a) *Hearing required; notice.*

1. The City Council shall hold a public hearing on the preliminary development plan. A notice of the time, date, place and purpose of the

hearing shall be published in a newspaper of general circulation in the City at least 15 days prior to the date of the hearing.

2. A preliminary development plan which has been recommended for denial by the Commission shall not be reviewed by the City Council except upon written request by the applicant.

(b) *Review.*

1. In its deliberations on the preliminary development plan, the Council shall consider oral or written statements from the applicant, City staff, the public and its own members. The Council's review shall encompass the same spectrum of considerations as the review by the Planning Commission.

2. The Council may approve the preliminary development plan, deny the request or postpone the request. The application may not be postponed for more than two meetings in succession.

3. Conditions may be applied to the approval, and/or periodic review of the approval may be required. Approvals, if granted, shall be for a particular development, not for a particular applicant.

4. Approval at this stage constitutes preliminary approval.

(c) *Protests.* If there is written protest against the Preliminary Development Plan, signed by the owners of 20% or more of the property within a 100-foot radius of the proposed Planned Unit Development, the Preliminary Development Plan shall not be approved except upon the majority vote of a majority of all members of the City Council.

(E) *Final development plan.*

(1) *Approval.* Final development plan approval by the City Council for a Planned Unit Development and the issuance of a Planned Unit Development permit shall occur only when:

(a) The design and construction specifications for all utilities and street improvements have been approved by the City Engineer.

(b) The final development plan is certified by the Director to be in conformance with preliminary development plan approvals. The final development plan shall be a reproducible Mylar copy and shall provide for all appropriate signatures.

(c) A performance bond, cash escrow agreement or other acceptable instrument has been deposited with the City in an amount as set by the City Council. This financial guarantee shall be used to ensure the full completion, as specified, of:

1. Public and private streets, utilities and drainage;
2. Landscaping;
3. Privately owned and maintained recreational facilities; and
4. Grading and revegetation.

(2) *Platting requirements.* All applicants for a Planned Unit Development permit shall be required to file with the county a plat of the Planned Unit Development complying with all of the requirements of the subdivision code (Chapter 156 of this Code), except to the extent that the City Council may give specific permission to the effect that specific portions of the subdivision code need not be complied with. Such required plats shall contain on their face a cross-reference to the final development plan.

(F) *Withdrawal of application.* Any application for a Planned Unit Development permit may be withdrawn by the applicant at any time prior to filing the final plat or at any time prior to the physical implementation of the approved permit, such as the commencement of construction on the permit site, upon written notification to the Director and the City Clerk/Treasurer. The Planned Unit Development approval may be deemed null and void upon receipt of such notice by the City; however, the application fee

for Planned Unit Development approval shall be forfeited. Subsequently, if the final plat has been filed, final plat has been filed, action to vacate the final plat shall be commenced, subject to the requirements of the subdivision code (Chapter 156 of this Code).

(G) *Amendments to approved plans.*

(1) *Minor changes.* Minor changes in the location and placement of buildings may be authorized by the Director and City Engineer where unforeseen circumstances such as engineering requirements dictate such change. When in question, the Planning & Zoning Department and the Public Works Director may determine whether the changes shall be classified as a minor or major change, or may refer the question to the Commission if they deem it necessary.

(2) *Major changes.* Major changes, such as alterations in structural types, in the shapes and arrangements of lots and blocks, or in the allocation of open space or other land uses which increase density of the project, and all other changes which significantly affect the overall design of the project, shall be referred to the Commission for report and recommendation to the City Council, after which the City Council shall hold a public hearing and shall either approve or deny the changes in the final development plan. If such changes are authorized, the developer shall submit a revised plan showing the authorized changes. The requirements of division (D)(3) of this section shall apply to requests for major changes. Applications for a major change shall be made on forms supplied by the Director and shall be accompanied by the required fee and exhibits as required by the Director.

(H) *Reapplication.* If an application for a planned unit development is denied, no new application for planned unit development approval by the same applicant on the same site or portion thereof may be filed within 90 days from the date of denial. (1988 Code, § 9-10-39) (Am. Ord. 2022-06, passed 7-11-2022)

**§ 155.029 ANNEXATIONS.**

(A) *Policy.* All annexation to the City shall be in accord with the annexation statement of policy as adopted by the City Council and as amended from time to time.

(1) Generally, the annexation of land shall not impose an economic burden on the City or result in an indirect subsidy of services by the City. Evidence shall be provided by the petitioner that existing infrastructure, including but not limited to streets, sewer and water lines, public facilities including fire stations and parks, and operating services such as fire, police, and garbage collection, can accommodate potential development within the area to be annexed.

(2) Annexation agreements shall be entered into between the City and the petitioner requesting annexation to cover extension of streets, utilities, facilities and operation services for the area proposed for annexation, and provision by petitioner of all improvements within the annexation area required to serve such area, including streets, water and sewer and public facilities and provision by petitioner of water rights or arrangement for payment by petitioner of water rights to be used.

(B) *Initial zoning.* The petitioner simultaneously shall also submit an initial zoning request. Annexation and initial zoning shall be a joint and concurrent action and shall have final approval of the City Council after recommendation by the Commission. All newly annexed areas shall be considered to be in the R-1 district until otherwise classified.

(C) *Annexation petition.* Initial submission of an annexation petition and plat must be accompanied by applicable fees and will include the following information:

(1) A petition which shows the following:

(a) Date.

(b) Description of the property (certified by a New Mexico professional land surveyor).

(c) Acknowledgement of property owners.

(d) Name of property owners.

(e) Address of property owners.

(f) Signature of property owners, duly notarized.

(2) Annexation plat which contains:

(a) Annexation name.

(b) Acreage of the site to the nearest one-tenth acre.

(c) Location map (inscribed on plat).

(d) Certification block for the Mayor and City Clerk/Treasurer.

(e) Certification and recording block for the County Clerk.

(f) Certification block for the New Mexico professional land surveyor with seal and date.

(g) Survey, scale and north arrow.

(h) Plat boundary lines (bearings in degrees, minutes and seconds with distances in feet in hundredths).

(i) Adjacent land conditions (within 150 feet).

(j) Public rights-of-way existing on the site: Name, width and curve data.

(k) Public rights-of-way abutting the site: Name, width and curve data.

(3) Statement regarding the adequacy of infrastructure, public facilities and operational services to serve the area proposed for annexation.

(4) Copy of the proposed annexation agreement.

(5) Application for initial zoning, including fee.

(6) Site plan for proposed development, if any.

(7) Site plan for existing development.

(8) Statement regarding water rights.

**(D) Review procedure.**

(1) The flow chart included in this division details the City annexation process. In reviewing annexation petitions, the Planning & Zoning Department looks at the proposed annexation in conjunction with the Comprehensive Plan and Major Transportation plan to determine the initial zoning classification and determine the need for dedication of public right-of-way.

(2) The infrastructure division looks at streets and utilities and the physical relationship of property proposed for annexation to determine the feasibility of serving the subject land. Other departments review the proposed annexation for general input on their particular service. Legal counsel will review the application and annexation agreement to determine compliance with applicable State statutes.

(3) The annexation petition shall also be distributed to the City public schools and all private utilities for review and comment.

<b>ANNEXATION PROCESS</b>
Petition signed by property owners is presented to Planning Officer.
Plat of survey and legal description signed by New Mexico professional land surveyor.
Annexation and initial zoning request reviewed by City staff (three weeks).
Notice of public hearing published 15 days prior to Planning Commission meeting.

<b>ANNEXATION PROCESS</b>
Annexation and initial zoning are presented at Planning Commission public hearing for recommendation to City Council.
Upon the Commission's recommendation, both annexation and initial zoning ordinances are placed on the City Council agenda (ordinances advertised 15 days).
If annexation is denied by Council, process ends. Petitioner may appeal to district court.
If Council approves annexation, annexation plat signed and filed with county clerk. Two filed copies returned to City. If zoning is denied, staff and property owners negotiate alternate zoning request. If initial zoning is approved, district is designated.
Annexation is deemed final and complete 30 days after filing.
Length of time for process: Three to six months.
Fees to be paid: Annexation fees plus initial zoning fees as listed in the fee schedule in Appendix A to this Code, which is on file in the City offices and incorporated herein by reference.

(1988 Code, § 9-10-40) (Am. Ord. 2022-06, passed 7-11-2022)

## **DISTRICT REGULATIONS**

### **§ 155.040 GENERAL DISTRICTS DEFINED; PERMITTED AND CONDITIONAL USES.**

(A) General districts are the residential, commercial, and industrial zoning districts of the City. This subchapter outlines the intended purpose of each general district and states the permitted uses and conditional uses for each district.

(B) A permitted use is a use which is listed as permitted by right in a zoning district. Non-specified uses which are similar to those specified are also permitted by right, except as otherwise restricted within this chapter.

(C) A conditional use is a use which is of an unusual or unique character and which may be offensive or incompatible in some cases within a zoning district. A conditional use requires review and approval by the Commission to determine impacts of the use on the surrounding area. See § 155.027 for procedures governing a conditional use permit.

(D) Uses listed as permitted of conditional in more restrictive districts are not automatically included as permitted or conditional uses in a less restrictive district, but must be specially included.

(E) Overlay zones may be created within any of the districts in accordance with § 155.024. (1988 Code, § 9-10-61) (Ord. 2017-07, passed 1-8-2018; Am. Ord. 2022-06, passed 7-11-2022)

### **§ 155.041 R-1 SINGLE-FAMILY RESIDENTIAL DISTRICT.**

(A) *Purpose; maximum density.* The purpose of the R-1 single-family residential district is to provide for the development, at a low density, of single-family detached dwellings and directly related accessory uses. The district is intended to be strictly residential in character with a minimum of disturbance due to traffic or overcrowding and shall be developed at a gross residential density of not more than four dwelling units per acre. No livestock, including horses, are permitted in the R-1 residential district. Reference Chapter 92 of Animal Ordinance.

(B) *Principal permitted uses.* Principal permitted uses in the R-1 district are:

- (1) Single-family dwellings.
- (2) Public parks.

(C) *Conditional uses.* Conditional uses in the R-1 district are:

- (1) In home day care centers. A minimum of 35 square feet per child shall be provided within the day care facility for indoor activity and at least 50 square feet of fenced-in outdoor play space per child

shall be provided on-site. Fenced-in outdoor play space shall not include driveways, parking areas or land unsuited for children's play space by virtue of the usage or natural features. A State license shall be obtained prior to commencement of operation in a home day care center.

(2) *Accessory Dwelling Unit.* Subject to the following conditions:

(a) A maximum of one accessory dwelling unit per parcel are allowed. Properties with two-dwellings or more on the property is not allowed to have an accessory dwelling.

(b) The floor area of the accessory dwelling not to exceed 900 square feet.

(c) Setbacks, lot width, and area requirements must comply with R-1 District.

(d) A conforming parking space is required for each motor vehicle parked at the site.

(e) No new utility taps, services or addresses will be allowed.

(f) Accessory Dwelling Units may not be used for rental income.

(3) Electrical substations, gas regulating stations, water pump stations, water towers and lift stations.

(4) Public buildings.

(5) Churches.

(6) Schools.

(7) Bed and breakfast home stay provided the following conditions are met.

(8) Nonconforming uses subject to § 155.078

(a) Minimal outward modification of the structure or grounds may be made only if such

changes are compatible with the residential character of the area or neighborhood and will not alter the structure's single family character.

(b) The architectural integrity and arrangement of the existing interior space must be maintained except as may be required to meet health, safety and sanitation requirements.

(c) The only meal to be provided to guests shall be breakfast and shall only be served to guests taking lodging in the facility on that date. No food preparation or cooking shall be conducted within any bedroom made available for rent.

(d) Parking shall be provided at the rate of one space per guest room plus two spaces for the resident owner/operator. All parking shall be provided on site and shall be landscaped to maintain residential character of the property. Parking areas and access shall be designed in accord with multi-family residential standards which prohibit backing onto public right-of-way.

(e) Signs shall be limited to one identifying sign not to exceed six square feet in area and not over six feet in height. Sign location must be approved by the Commission if not building mounted.

(f) Bed and breakfast home stay in the R-1 single-family residential zone district shall only be permitted on properties having frontage on arterial or collector streets.

(g) Maximum number of guest rooms shall not exceed five per site.

(h) Minimum lot size for bed and breakfast home stay use shall not be less than one acre (43,560 square feet) with topographic and other site conditions such that property can be readily adapted to bed and breakfast home stay use.

(D) *Permitted accessory uses.* Permitted accessory uses in the R-1 district are:

(1) Private garages.



(2) Greenhouses.

(3) Toolhouses, sheds, and other similar buildings for storage of domestic supplies. No accessory building or garage for single-family homes shall occupy more than 25% of a rear yard or exceed 900 square feet of floor area. Accessory buildings which exceed this maximum may be allowed a conditional use permit.

(4) Private or jointly owned swimming pools and tennis courts for the use and convenience of the residents.

(5) Home occupations as provided in §§ 155.120 *et seq.* of this chapter.

(6) Television and radio signal receiving facilities not to exceed 35 feet above ground.

(E) *Development requirements.*

(1) Development requirements for the R-1 district are as follows:

(a) Subject to division (E)(1)(a)1. below, minimum lot area: 10,000 square feet.

1. Resubdivision of previously subdivided or platted land shall be as provided herein. The provisions of this subsection shall apply to any land, regardless of size, identified as a lot, tract or similar term and described by lot or tract number or letter, block number or letter, street address or similar means.

2. The Commission and City Council shall consider the size of adjoining lots, the effects of the re-subdivision on those adjoining lots, the availability of City utilities and the capacity to provide utility service to the newly created lots, and other pertinent factors in determining the actual sizes of the lots to be allowed. Adjoining lots shall include those lots separated from the subject lots by a street or alley.

3. Nothing herein shall be construed to prevent the re-platting of smaller lots into larger lots or otherwise re-platting contiguous or

adjacent lots where there is no increase in the number of lots after the replat as otherwise provided by this Code.

(b) Minimum lot width: 75 feet.

(c) Minimum lot depth: 100 feet.

(d) Minimum front setback: 20 feet.

(e) Minimum side setback: Ten feet.

(f) Minimum corner side setback: 20 feet.

(g) Minimum rear setback: 20 feet, except that structures accessory to single-family residences may have a ten-foot rear setback.

(h) Maximum height: 35 feet.

(i) Schools and civic, cultural and religious institutions, including their accessory structures, shall have setbacks of 50 feet on all sides.

(2) Minimum lot area and lot dimensions of conditional uses shall be determined by building area, parking requirements and required setbacks.

(3) The setback and yard requirements listed in this section are subject to the following additional requirements for front setbacks: When more than 25% of the frontage on the side of a street between intersections is occupied by structures having setbacks from street rights-of-way of greater or lesser amounts than required in this section, the average setback of all existing buildings between the intersections shall be maintained by all-new or relocated structures. If a building is to be built where there is an established average setback different from that required in this section and there are existing buildings on one side only, the front setback of the new building need be no greater than that of the next adjoining existing building. In a case where a building is to be built where there is such an established average setback and there are existing buildings on both sides of the new building, the front setback shall

not be greater than that which would be established by connecting a straight line between the forwardmost portion of the first adjacent building on each side.

(4) Metal siding is permitted in residential districts as follows:

(a) On mobile homes or manufactured housing otherwise permitted by this Code;

(b) On residences and accessory buildings;

(c) On prefabricated storage buildings.

(5) *Unenameled metal roofs.* Unenameled metal roofs are prohibited in all districts except as approved by the Commission upon findings that:

(a) The metal will have a protective coating that sufficiently reduces glare;

(b) The metal is consistent with the architectural style of the building.

(F) *Encroachments into yards subject to § 155.075.*

(1) *Open steps and decks.* Open steps and decks shall be permitted to extend into the front, rear and side yard setback a distance of not more than ten feet in the case of front yards and not closer than ten feet to the property line in the case of side yards and rear yards.

(2) *Covered patios, decks, porches or carports.* Covered patios, decks, porches or carports shall not be permitted encroachments on any setbacks, except as provided under § 155.075.

(3) *Roof projections into required side yards.* A house or garage roof may not be constructed closer than two feet to a side property line.

(G) *Landscaping.* Except for single-family lots and their adjacent rights-of-way, all areas not left in their natural state, or which have been otherwise disturbed during construction, and are not designated

for buildings, circulation, parking or storage, shall be landscaped in accordance with § 155.070. Landscaping of public parks shall be the responsibility of the City.

(H) *Relationship to overlay zones.* Any property located in the R-1 district must comply with the regulations of any overlay zone and any flood hazard requirements.

(I) *Hillside and forest protection.* Property located in the R-1 district shall comply with the hillside protection standards and the forest protection standards set forth in §§ 155.066 and 155.068.

(1988 Code, § 9-10-62) (Ord. 2014-03, passed 9-8-2014; Am. Ord. 2017-07, passed 1-8-2018; Am. Ord. 2022-06, passed 7-11-2022)

## **§ 155.042 R-2 TWO-FAMILY RESIDENTIAL DISTRICT.**

(A) *Purpose; maximum density.* The purpose of the R-2 two-family residential district is to provide for the development, at a low density, of single-family detached dwellings, two-family dwellings and directly related complementary uses. The zone is intended to be strictly residential in character with a minimum disturbance due to traffic or overcrowding and shall be developed at a gross residential density of not more than seven dwelling units per acre. No livestock are permitted.

(B) *Principal permitted uses.* Principal permitted uses in the R-2 district are:

- (1) Single-family detached dwellings.
- (2) Two-family detached dwellings.
- (3) Public parks.

(C) *Conditional uses.* Conditional uses in the R-2 district are:

- (1) In-home day-care centers. A minimum of 35 square feet per child shall be provided within the daycare facility for indoor activity and at least 50

square feet of fenced-in outdoor play space per child shall be provided on-site. Fenced-in outdoor play space shall not include driveways, parking areas, or land unsuited for children's play space by virtue of the usage or natural features. A State license shall be obtained before commencement of operation of an in-home daycare center.

(2) Accessory Dwelling Unit. Subject to the following conditions:

(a) A maximum of one accessory dwelling unit per parcel are allowed. Properties with two dwellings or more on the property are not allowed to have an accessory dwelling.

(b) The floor area of the accessory dwelling is not to exceed 900 square feet.

(c) Setbacks, lot width, and area requirements must comply with R-2gha District.

(d) A conforming parking space is required for each motor vehicle parked at the site.

(e) No new utility taps, services, or addresses will be allowed.

(f) Accessory Dwelling Units may not be used for rental income.

(3) Electrical substations, gas regulating stations, water pump stations, water towers and lift stations.

(4) Public buildings.

(5) Churches.

(6) Schools.

(7) Bed and breakfast homestay provided the following conditions are met:

(a) Minimal outward modification of the structure or grounds may be made only if such changes are compatible with the residential character of the area or neighborhood and will not alter the structure's single-family character.

(b) The architectural integrity and arrangement of the existing interior space must be maintained except as may be required to meet health, safety, and sanitation requirements.

(c) The only meal to be provided to guests shall be breakfast and shall only be served to guests taking lodging in the facility on that date. No food preparation or cooking shall be conducted within any bedroom made available for rent.

(d) Parking shall be provided at the rate of one space per guest room plus two spaces for the resident owner/operator. All parking shall be provided on-site and shall be landscaped to maintain the residential character of the property. Parking areas and access shall be designed in accord with multi-family residential standards which prohibit backing onto public right-of-way.

(e) Signs shall be limited to one identifying sign not to exceed six square feet in area and not over six feet in height. Sign location must be approved by the Commission if not building mounted.

(f) Bed and breakfast homestay in the R-2 single-family residential zone district shall only be permitted on properties having frontage on arterial or collector streets.

(g) Maximum number of guest rooms shall not exceed five per site.

(h) Minimum lot size for bed and breakfast homestay use shall not be less than one acre (43,560 square feet) with topographic and other site conditions such that the property can be readily adapted to bed and breakfast homestay use.

(8) Nonconforming uses subject to § 155.078.

(D) *Permitted accessory uses.* Permitted accessory uses in the R-2 district are:

(1) Private garages.

(2) Greenhouses.

(3) Tool houses, sheds, and other similar buildings for storage of domestic supplies. No accessory building or garage for single-family homes shall occupy more than 25% of a rear yard or exceed 900 square feet of floor area. Accessory buildings which exceed this maximum may be allowed a conditional use permit.

(4) Private or jointly owned swimming pools and tennis courts for the use and convenience of the residents.

(5) Home occupations as provided in §§ 155.120 et seq. of this chapter.

(6) Television and radio signal receiving facilities are not to exceed 35 feet above the ground and must meet setback requirements unless permitted by conditional use permit.

(7) Solar panels and/or wind energy turbines are not to exceed 35 feet above the ground and must meet setback requirements unless permitted by conditional use permit.

*(E) Development requirements.*

(1) Development requirements for the R-2 district are as follows:

(a) Single-family dwellings:

1. Minimum lot area: 7,000 square feet.
2. Minimum lot width: 70 feet.
3. Minimum lot depth: 100 feet.
4. Minimum front setback: 20 feet.
5. Minimum side setback: Ten feet each side.
6. Minimum corner side setback: 20 feet.

7. Minimum rear setback: 20 feet, except that structures accessory to single-family residences may have a ten-foot rear setback.

8. Maximum height: 35 feet.

(b) Two-family dwellings:

1. Minimum lot area: 9,000 square feet at 4,500 square feet per unit.

2. Minimum lot width: 40 feet per unit.

3. Minimum lot depth: 100 feet.

4. Minimum front setback: 20 feet.

5. Minimum side setback: Ten feet each side.

6. Minimum corner side setback: 20 feet.

7. Minimum rear setback: 20 feet.

8. Maximum height: 35 feet.

(2) Schools and civic, cultural and religious institutions, including their accessory structures, shall have setbacks of 50 feet on all sides. Minimum lot area and lot dimensions of conditional uses will be determined by building area, parking requirements and required setbacks.

(3) The setbacks and yard requirements listed in this section are subject to the following additional requirements for front setbacks: When more than 25% of the frontage on the side of a street between intersections is occupied by structures having setbacks from street rights-of-way of greater or lesser amounts than required in this section, the average setback of all existing buildings between the intersections shall be maintained by all new or relocated structures. If a building is to be built where there is an established average setback different from

that required in this section and there are existing buildings on one side only, the front setback of the new building need be no greater than that of the next adjoining existing building. In a case where a building is to be built where there is such an established average setback and there are existing buildings on both sides of the new building, the front setback shall be greater than that which would be established by connecting a straight line between the forwardmost portion of the first adjacent building on each side.

(4) Metal siding is permitted in residential districts as follows:

(a) On mobile homes or manufactured housing otherwise permitted by this Code;

(b) On residences and accessory buildings;

(c) On prefabricated storage buildings).

(5) *Unenameled metal roofs.* Unenameled metal roofs are prohibited in all districts except as approved by the Commission upon findings that:

(a) The metal will have a protective coating that sufficiently reduces glare;

(b) The metal is consistent with the architectural style of the building.

(F) *Encroachments into yards subject to § 155.075.*

(1) *Open steps and decks.* Open steps and decks shall be permitted to extend into the front, rear and side yard setback a distance of not more than ten feet in the case of front yards and not closer than ten feet to the property line in the case of side yards and rear yards.

(2) *Covered patios, decks, porches or carports.* Covered patios, decks, porches or carports shall not be permitted encroachments in any setback, except as provided under § 155.075.

(3) *Roof projections into required side yards.* A house or garage roof may not be constructed closer than three feet to a side property line.

(G) *Landscaping.* Except for single-family lots and their adjacent rights-of-way, all areas not designated for buildings, circulation, parking or storage shall be landscaped in accordance with § 155.070. Landscaping of public parks shall be the responsibility of the City.

(H) *Relationship to overlay zones.* Any property located in the R-2 district must comply with the regulations of any overlay zone and any flood hazard requirements.

(I) *Hillside and forest protection.* Property located in the R-2 district shall comply with the hillside protection standards and the forest protection standards set forth in §§ 155.066 and 155.068. (1988 Code, § 9-10-63) (Am. Ord. 2022-06, passed 7-11-2022)

### **§ 155.043 R-3 MULTIPLE-FAMILY RESIDENTIAL DISTRICT.**

(A) *Purpose; maximum density.* The purpose of the R-3 multiple-family residential district is to provide for high-density housing in multiple-family structures and directly related complementary uses. The R-3 district is designed to allow highly economical use of land while creating an attractive, functional and safe residential environment. Gross residential densities of up to 14 units per acre may be allowed; however, the size of individual structures may be limited to allow for maximum preservation of on-site vegetation. No livestock are permitted.

(B) *Principal permitted uses.* Principal permitted uses in the R-3 district are:

(1) Single- and two-family dwellings.

(2) Multifamily dwellings (townhomes and apartments) not to exceed six units or 135 linear feet, whichever is less.

(3) Public parks.

(C) *Conditional uses.* Conditional uses in the R-3 district are:

(1) In-home day-care centers. A minimum of 35 square feet per child shall be provided within the day facility for indoor activity and at least 50 square feet of fenced-in outdoor play space per child shall be provided on-site. Fenced-in outdoor play space shall not include driveways, parking areas, or land unsuited for children's play space by virtue of the usage or natural features. A State license shall be obtained prior to commencement of operation of an in-home daycare center.

(2) Accessory Dwelling Unit. Subject to the following conditions:

(a) A maximum of one accessory dwelling unit per parcel are allowed. Properties with two dwellings or more on the property is not allowed to have an accessory dwelling.

(b) The floor area of the accessory dwelling not to exceed 900 square feet.

(c) Setbacks, lot width, and area requirements must comply with R-2gha District.

(d) A conforming parking space is required for each motor vehicle parked at the site.

(e) No new utility taps, services, or addresses will be allowed.

(f) Accessory Dwelling Units may not be used for rental income.

(3) Electrical substations, gas regulating stations, water pump stations, water towers and lift stations.

(4) Public buildings.

(5) Churches.

(6) Schools.

(7) Bed and breakfast homestay provided the following conditions are met:

(a) Minimal outward modification of the structure or grounds may be made only if such changes are compatible with the residential character of the area or neighborhood and will not alter the structure's single-family character.

(b) The architectural integrity and arrangement of the existing interior space must be maintained except as may be required to meet health, safety, and sanitation requirements.

(c) The only meal to be provided to guests shall be breakfast and shall only be served to guests taking lodging in the facility on that date. No food preparation or cooking shall be conducted within any bedroom made available for rent.

(d) Parking shall be provided at the rate of one space per guest room plus two spaces for the resident owner/operator. All parking shall be provided on site and shall be landscaped to maintain residential character of the property. Parking areas and access shall be designed in accord with multi-family residential standards which prohibit backing onto public right-of-way.

(e) Signs shall be limited to one identifying sign not to exceed six square feet in area and not over six feet in height. Sign location must be approved by the Commission if not building mounted.

(f) Bed and breakfast homestay in the R-1 single-family residential zone district shall only be permitted on properties having frontage on arterial or collector streets.

(g) Maximum number of guest rooms shall not exceed five per site.

(h) Minimum lot size for bed and breakfast homestay use shall not be less than one acre (43,560 square feet) with topographic and other site conditions such that property can be readily adapted to bed and breakfast homestay use.

(8) Group homes.

(9) Nonconforming uses subject to § 155.078.

(D) *Permitted accessory uses.* Permitted accessory uses in the R-3 district are:

(1) Private garages.

(2) Greenhouses.

(3) Tool houses, sheds and other similar buildings for storage of domestic supplies. No accessory building or garage for single-family homes shall occupy more than 25% of a rear yard or exceed 900 square feet of floor area. Accessory buildings which exceed this maximum may be allowed a conditional use permit.

(4) Private or jointly owned swimming pools and tennis courts for the use and convenience of the residents.

(5) Home occupations as provided in §§ 155.120 et seq. of this chapter.

(6) Television and radio signal receiving facilities not to exceed 35 feet above ground and must meet setback requirements unless permitted by conditional use permit.

(7) Solar panels and/or wind energy turbines not to exceed 35 feet above ground and must meet setback requirements unless permitted by conditional use permit.

(E) *Lot area and development requirements.* In determining minimum lot area and minimum lot dimensions in the R-3 district, the following table should be used:

(1) Metal siding is permitted in residential districts as follows:

(a) On mobile homes or manufactured housing otherwise permitted by this Code;

(b) On residences and accessory buildings;

(c) On prefabricated storage buildings.

	<i>Minimum Lot Area per Unit</i>	<i>Minimum Lot Dimensions</i>	
<i>Use</i>	<i>(Square Feet)</i>	<i>(Feet)</i>	<i>Outdoor Living Area*</i>
Single-family	7,000	Width: 70 Depth: 100	Restricted by R-1 setbacks
Two-family	3,000	Width: 70 Depth: 90	600 sq. ft. per dwelling unit
Three-family	3,000	Width: 80 Depth: 90	500 sq. ft. per dwelling unit
Four-family	2,500	Width: 90 Depth: 90	400 sq. ft. per dwelling unit
Townhouse	2,000	Width: 90 Depth: 90	400 sq. ft. per dwelling unit

Other permitted uses	Minimum area and lot dimension to be determined by building area, parking requirements and required setbacks.
<p>* Outdoor living area in the minimum amount specified in the table must be provided on any lot occupied by the multiple residence or townhouse building. This space must be easily accessible for daily recreational use by the occupants of the building. Driveways, parking areas, ornamental landscaped areas having a width of less than 20 feet, and required side or front yards shall not be considered as an outdoor living area, except in the case of interior townhouse units where the unit is less than 20 feet in width, in which case the minimum width of the outdoor living area shall be the width of the lot.</p>	

(F) *Lot area allowances.* The minimum lot areas in this section may be adjusted according to the following, except that allowance shall not be made for two- or three-family dwellings:

(1) For each parking stall in or under the residence, or otherwise completely underground, subtract 400 square feet from the total minimum lot area.

(2) For each unit with a balcony or patio of not less than 40 square feet, subtract 100 square feet from the outdoor living area.

(G) *Setbacks, yards and heights.* Setback, yard and height requirements for the R-3 district are as follows:

(1) *Minimum setbacks from property lines.* Minimum setbacks from property lines are as follows:

		<i>Interior</i>	<i>Corner</i>	
	<i>Front</i>	<i>Side</i>	<i>Side</i>	<i>Rear</i>
<i>Use</i>	<i>(Feet)</i>	<i>(Feet)</i>	<i>(Feet)</i>	<i>(Feet)</i>
Single-family Dwelling	20	10	20	20
Two-family Dwelling	20	10	20	20
Three-family Dwelling	20	10	20	20
Four-family Dwelling	20	15	20	20
Townhouse Cluster	20	15	20	20
Schools and civic, cultural and religious institutions, including their accessory use structures	50	50	50	50
Structures accessory to single-family residences	20	3	20	3
Structures for all other principal, conditional and other uses	30	10	20	50

(2) *Maximum building height.* Maximum building height is 35 feet.

(H) *Distance between buildings.* When two or more principal buildings are located on one lot, the minimum separation between any two adjacent principal buildings shall be a distance of not less than an amount equal to the height of the taller of the two buildings or 20 feet, whichever is greater, when developed as a ff. For major and minor site plans, building separation shall be the sum of two interior side yard setbacks.

(I) *Accessory buildings.* Accessory buildings shall observe the same setback requirements established for the multiple-residence buildings, except those accessory buildings located within the rear yard of the multiple-residence building may be located within five feet of the rear or interior side property line. The City Council may require common walls for accessory buildings on the same lot where common walls will eliminate unsightly and hazardous areas. Accessory buildings on the same lot shall otherwise be separated by a distance of not less than ten feet.



(J) *Landscaping.* Except for two-family lots and their adjacent rights-of-way, all areas not designated for buildings, circulation, parking or storage shall be landscaped in accordance with § 155.070. Landscaping of public parks shall be the responsibility of the City.

(K) *Encroachments into yards are subject to § 155.075.*

(1) *Open steps and decks.* Open steps and decks shall be permitted to extend into the front, rear and side yard setback a distance of not more than five feet in the case of front yards and not closer than five feet to the property line in the case of side yards and rear yards.

(2) *Covered patios, decks, porches or carports.* Covered patios, decks, porches or carports shall not be permitted encroachments on any setbacks.

(3) *Roof projections into required side yards.* A house or garage roof may not be constructed closer than two feet to a side property line.

(L) *Relationship to overlay zones.* Any property located in the R-3 district must comply with the regulations of any overlay zone and satisfy any flood hazard requirements.

(M) *Hillside and forest protection.* Property located in the R-3 district shall comply with the hillside protection standards and the forest protection standards set forth in §§ 155.066 and 155.068. (1988 Code, § 9-10-64) (Am. Ord. 2022-06, passed 7-11-2022)

#### **§ 155.044 R-4 HIGH-DENSITY RESIDENTIAL DISTRICT.**

(A) *Purpose; maximum density.* The purpose of the R-4 high-density residential district is to provide for high-density housing in multiple-family structures and directly related complementary uses. The R-4 district is designed to allow highly economical use of land while creating an attractive, functional and safe residential environment. Gross residential densities of

up to 20 units per acre may be permitted provided the natural character of the City is not jeopardized. Livestock are not permitted.

(B) *Principal permitted uses.* Principal permitted uses in the R-4 district are:

(1) Multiple-family structures containing four or more dwelling units.

(2) Townhouse clusters, or condominiums of at least four units but not more than 170 feet in length.

(C) *Conditional uses.* Conditional uses in the R-4 district are:

(1) In-home day-care centers. A minimum of 35 square feet per child shall be provided within the daycare facility for indoor activity and at least 50 square feet of fenced-in outdoor play space per child shall be provided on-site. Fenced-in outdoor play space shall not include driveways, parking areas or land unsuited for children's play space by virtue of the usage or natural features. A State license shall be obtained prior to commencement of operation of an in-home day care center.

(2) Accessory Dwelling Unit. Subject to the following conditions:

(a) A maximum of one accessory dwelling unit per parcel are allowed. Properties with two dwellings or more on the property is not allowed to have an accessory dwelling.

(b) The floor area of the accessory dwelling not to exceed 900 square feet.

(c) Setbacks, lot width, and area requirements must comply with R-2gha District.

(d) A conforming parking space is required for each motor vehicle parked at the site.

(e) No new utility taps, services or addresses will be allowed.

(f) Accessory Dwelling Units may not be used for rental income.

(3) Electrical substations, gas regulating stations, water pump stations, water towers and lift stations.

(4) Public buildings.

(5) Churches.

(6) Schools.

(7) Bed and breakfast home stay provided the following conditions are met:

(a) Minimal outward modification of the structure or grounds may be made only if such changes are compatible with the residential character of the area or neighborhood and will not alter the structure's single-family character.

(b) The architectural integrity and arrangement of the existing interior space must be maintained except as may be required to meet health, safety and sanitation requirements.

(c) The only meal to be provided to guests shall be breakfast and shall only be served to guests taking lodging in the facility on that date. No food preparation or cooking shall be conducted within any bedroom made available for rent.

(d) Parking shall be provided at the rate of one space per guest room plus two spaces for the resident owner/operator. All parking shall be provided on site and shall be landscaped to maintain residential character of the property. Parking areas and access shall be designed in accord with multi-family residential standards which prohibit backing onto public right-of-way.

(e) Signs shall be limited to one identifying sign not to exceed six square feet in area and not over six feet in height. Sign location must be approved by the Commission if not building mounted.

(f) Bed and breakfast home stay in the R-1 single-family residential zone district shall only be permitted on properties having frontage on arterial or collector streets.

(g) Maximum number of guest rooms shall not exceed five per site.

(h) Minimum lot size for bed and breakfast home stay use shall not be less than one acre (43,560 square feet) with topographic and other site conditions such that property can be readily adapted to bed and breakfast home stay use.

(8) Nonconforming uses subject to § 155.078.

(9) *Unenameled metal roofs.* Unenameled metal roofs are prohibited in all districts except as approved by the Commission upon findings that:

(a) The metal will have a protective coating that sufficiently reduces glare;

(b) The metal is consistent with the architectural style of the building.

(10) Group homes.

(D) *Permitted accessory uses.* Permitted accessory uses in the R-4 district are:

(1) Private garages.

(2) Greenhouses.

(3) Tool houses, sheds and other similar buildings for storage of domestic supplies. No accessory building or garage for single-family homes shall occupy more than 25% of a rear yard or exceed 900 square feet of floor area. Accessory buildings which exceed this maximum may be allowed a conditional use permit.

(4) Private or jointly owned swimming pools and tennis courts for the use and convenience of the residents.

(5) Home occupations as provided in §§ 155.120 et seq. of this chapter.

(6) Television and radio signal receiving facilities not to exceed 35 feet above ground.

(7) Solar panels and/or wind energy turbines not to exceed 35 feet above ground and must meet setback requirements unless permitted by conditional use permit.

(E) *Lot area and lot dimensions.* In determining minimum lot area and lot dimensions in the R-4 district, the following table shall be used:

	<i>Minimum Lot</i>	<i>Minimum Lot</i>	
	<i>Area per Unit</i>	<i>Dimensions</i>	
<i>Use</i>	<i>(Square Feet)</i>	<i>(Feet)</i>	<i>Outdoor Living Area*</i>
Apartments buildings:			
0 bedrooms per unit	1,500	Width: 90 Depth: 90	300 sq. ft. per unit
1 bedrooms per unit	1,500	Width: 90 Depth: 90	300 sq. ft. per unit
2 bedrooms per unit	2,000	Width: 90 Depth: 90	300 sq. ft. per unit
3 bedrooms per unit	2,000	Width: 90 Depth: 90	300 sq. ft. per unit
Townhouse Cluster or Condo	2,000	Width: 90 Depth: 90	400 sq. ft. per unit
Other permitted uses	Minimum area and lot dimensions to be determined by building area, parking requirements and required setbacks		
* Outdoor living area is the minimum amount specified in the table must be provided on any lot occupied by the multiple residence or townhouse building. This space must be easily accessible for daily recreational use by the occupants of the building. Driveways, parking areas, ornamental landscaped areas having a width of less than 20 feet, and required side or front yards shall not be considered as an outdoor living area, except in the case of an interior townhouse units where the unit is less than 20 feet in width, in which case the minimum width of the outdoor living area shall be the width of the lot.			

(F) *Lot area allowances.* The minimum lot areas in this section may be adjusted according to the following: For each unit with a balcony or patio of not less than 40 square feet, subtract 100 square feet from the outdoor living area.

(G) *Setbacks, yards and heights.* Setback, yard and height requirements for the R-4 district are as follows:

(1) *Minimum setbacks from property-lines.* Minimum setbacks from property lines are as follows:

		<i>Interior</i>	<i>Corner</i>	
	<i>Front</i>	<i>Side</i>	<i>Side</i>	<i>Rear</i>
<i>Use</i>	<i>(Feet)</i>	<i>(Feet)</i>	<i>(Feet)</i>	<i>(Feet)</i>
Apartments	20	10	20	20
Townhouse Cluster	20	15	20	20
Schools and civic, cultural and religious institutions, including their accessory use structures	50	50	50	50
Structures accessory to multi-family residences	20	3	20	3
Structures for all other principal, conditional or other uses	30	10	20	50

(2) *Maximum building height.* Maximum building height is 35 feet.

(H) *Distance between buildings.* When two or more principal buildings are located on one lot, the minimum separation between any two adjacent principal buildings shall be a distance of not less than an amount equal to the height of the taller of the two buildings or 20 feet, whichever is greater, when developed as a planned unit development. For major and minor site plans, building separation shall be the sum of two interior side yard setbacks.

(I) *Accessory buildings.*

(1) Accessory buildings shall observe the same setback requirements established for the multiple-residence buildings, except those accessory buildings located within the rear yard of the multiple-residence building may be located within three feet of the rear or interior side property line. The Council may require common walls for accessory buildings on the same lot where common walls will eliminate unsightly and hazardous areas. Accessory buildings on the same lot shall otherwise be separated by a distance of not less than ten feet.

(2) Exteriors of accessory buildings shall have an exterior finish compatible with the main structure. Compatibility shall be determined by the City based on type and use of building materials.

(J) *Developmental Standards.* Metal siding is permitted in residential districts as follows:

(1) On mobile homes or manufactured housing otherwise permitted by this Code;

(2) On residences and accessory buildings;

(3) On prefabricated storage buildings.

(K) *Screening.* All principal and accessory uses shall be screened from adjacent residential districts (except R-4 districts) as described in § 155.069.

(L) *Landscaping.* All areas not designated for buildings, circulation, parking or storage shall be landscaped in accordance with § 155.070. Landscaping of public parks shall be the responsibility of the City.

(M) *Encroachments into yards are subject to § 155.075.*

(1) *Open steps and decks.* Open steps and decks shall be permitted to extend into the front, rear and side yard setback a distance of not more than five feet in the case of front yards and not closer than five feet to the property line in the case of side yards and rear yards.

(2) *Covered patios, decks, porches or carports.* Covered patios, decks, porches or carports shall not be permitted encroachments on any setbacks.

(3) *Roof projections into required side yards.* A house or garage roof may not be constructed closer than two feet to a side property line.

(N) *Relationship to overlay zones.* Any property located in the R-4 district must comply with the regulations of any overlay zone and satisfy any flood hazard requirements.

(O) *Hillside and forest protection.* Property located in the R-4 district shall comply with the hillside protection standards and the forest protection standards set forth in §§ 155.066 and 155.068. (1988 Code, § 9-10-65) (Am. Ord. 2022-06, passed 7-11-2022)

#### **§ 155.045 AR-1 AGRICULTURAL/ RESIDENTIAL DISTRICT.**

(A) *Purpose.* The purpose of the AR-1 district is to allow agricultural uses such as farming and ranching and single-family detached dwellings and related complementary uses. The district is intended to be rural in character. No Confined Animal Feeding Operations are permitted. Subject to Ruidoso Downs Animal Ordinance.

(B) *Principal permitted uses.* Principal permitted uses in the AR-1 district are:

- (1) Farms and ranches.
- (2) Single-family residences.

(C) *Conditional uses.* Conditional uses in the AR-1 district are:

- (1) Churches and schools.
- (2) Electrical substations, gas regulatory stations, water pump stations, water towers and lift stations.
- (3) Public buildings.
- (4) Radio, television or microwave transmitting towers, not to exceed 35 feet in height.
- (5) Cannabis microbusiness.

(a) Cannabis microbusiness establishments will comply with all State of New Mexico regulatory and licensing requirements.

(b) Remain 300 feet from a school or adult or child daycare center.

(c) Limited to no more than 200 mature cannabis plants at one time.

(d) Must demonstrate a legal right to use the quantity of water that the division determines is needed for cannabis production, as approved by the State of New Mexico Regulation and Licensing Department, and the City of Ruidoso Downs.

(6) Cannabis producer.

(a) Cannabis producers will comply with all State of New Mexico regulatory and licensing requirements.

(b) Remain 300 feet from a school or adult or child daycare center.

(c) Cannabis production facilities may not operate in an area zoned for residential use.

(d) Cannabis production facilities must utilize odor mitigation technology or techniques to mitigate the odor created by cannabis plants and products.

(e) Cannabis production facilities must develop and utilize an air filtration plan that is approved by the State of New Mexico prior to commencing cannabis production in the City of Ruidoso Downs.

(7) Nonconforming uses subject to § 155.078.

(8) Television and radio signal receiving facilities.

(9) *Unenameled metal roofs.* Unenameled metal roofs are prohibited in all districts, except as approved by the Commission upon findings that:

(a) The metal will have a protective coating that sufficiently reduces glare;

(b) The metal is consistent with the architectural style of the building.

(10) Bed and breakfast home stay provided the following conditions are met:

(a) Minimal outward modification of the structure or grounds may be made only if such changes are compatible with the residential character of the area or neighborhood and will not alter the structure's single-family character.

(b) The architectural integrity and arrangement of the existing interior space must be maintained except as may be required to meet health, safety, and sanitation requirements.

(c) The only meal to be provided to guests shall be breakfast and shall only be served to guests taking lodging in the facility on that date. No food preparation or cooking shall be conducted within any bedroom made available for rent.

(d) Parking shall be provided at the rate of one space per guest room plus two spaces for the resident owner/operator. All parking shall be provided on site and shall be landscaped to maintain residential character of the property. Parking areas and access shall be designed in accord with multi-family residential standards which prohibit backing onto public right-of-way.

(e) Signs shall be limited to one identifying sign not to exceed six square feet in area and not over six feet in height. Sign location must be approved by the Commission if not building mounted.

(f) Bed and breakfast home stay in the AR-1 agricultural/residential zone district shall only be permitted on properties having frontage on arterial or collector streets.

(g) Maximum number of guest rooms shall not exceed five per site.

(h) Minimum lot size for bed and breakfast homestay use shall not be less than one acre (43,560 square feet) with topographic and other site conditions such that property can be readily adapted to bed and breakfast home stay use.

(D) *Permitted accessory buildings.* Permitted accessory buildings in the AR-1 district are:

(1) All structures accessory to farming and ranching.

(2) Private garages.

(3) Toolhouses, sheds and other similar buildings for storage of domestic supplies.

(4) Private or jointly owned swimming pools and tennis courts for the use and convenience of residents.

(5) Television and radio signal receiving facilities.

(6) Private Stables.

(7) Solar panels and/or wind energy turbines not to exceed 35 feet above ground and must meet setback requirements unless permitted by conditional use permit.

(E) *Development requirements.* All primary and accessory uses shall conform to the following minimum standards:

(1) Farming and Ranching operations, and Residential single-family uses:

(a) Minimum lot area: Two acres.

(b) Minimum setbacks: 20 feet from all property lines.

(c) Maximum height: 35 feet.

(2) Churches, schools and public buildings:

(a) Minimum lot area: One acre.

(b) Minimum setbacks: 50 feet, all sides.

(c) Maximum height: 35 feet.

(3) Metal siding is permitted in residential districts as follows:

(a) On mobile homes or manufactured housing otherwise permitted by this Code.

(b) On residences and accessory buildings.

(c) On prefabricated storage buildings.

(F) *Encroachments into yards are subject to § 155.075.*

(G) *Landscaping.* Landscaping shall not be required in the AR-1 district except for churches, schools and public buildings.

(H) *Relationship to overlay zones.*

(1) *Comply with overlay zoning and flood hazard requirements.* Any property located in the AR-1 district must comply with regulations of any overlay zone and flood hazard requirements.

(2) *Hillside and forest protection.* Property located in the AR-1 district shall comply with the hillside protection standards and forest protection standards set forth in §§ 155.066 and 155.068. (1988 Code, § 9-10-66) (Ord. 2014-03, passed 9-8-2014; Am. Ord. 2022-05, passed 3-28-2022; Am. Ord. 2022-06, passed 7-11-2022)

#### **§ 155.046 AR-2 AGRICULTURAL/MEDIUM DENSITY RESIDENTIAL DISTRICT.**

(A) *Purpose.* The purpose of the AR-2 district is to allow agricultural uses such as farming and ranching and single-family detached dwellings and related complementary uses as in district AR-1, while allowing smaller minimum lot sizes than district AR-1.

The district is intended to be rural in character. No confined animal feeding operations. Subject to Ruidoso Downs Animal Ordinance.

(B) *Principal permitted uses.* Principal permitted uses in the AR-2 district are:

(1) Farms and ranches.

(2) Single-family residences.

(C) *Conditional uses.* Conditional uses in the AR-2 district are:

(1) Churches and schools.

(2) Electrical substations, gas regulatory stations, water pump stations, water towers and lift stations.

(3) Public buildings.

(4) Radio, television, or microwave transmitting towers, not to exceed 35 feet in height.

(5) Nonconforming uses subject to § 155.078.

(6) Television and radio signal receiving facilities.

(7) *Unenameled metal roofs.* Unenameled metal roofs are prohibited in all districts, except as approved by the Commission upon findings that:

(a) The metal will have a protective coating that sufficiently reduces glare.

(b) The metal is consistent with the architectural style of the building.

(8) Bed and breakfast home stay provided the following conditions are met:

(a) Minimal outward modification of the structure or grounds may be made only if such changes are compatible with the residential character of the area or neighborhood and will not alter the structure's single-family character.

(b) The architectural integrity and arrangement of the existing interior space must be maintained except as may be required to meet health, safety, and sanitation requirements.

(c) The only meal to be provided to guests shall be breakfast and shall only be served to guests taking lodging in the facility on that date. No food preparation or cooking shall be conducted within any bedroom made available for rent.

(d) Parking shall be provided at the rate of one space per guest room plus two spaces for the resident owner/operator. All parking shall be provided on site and shall be landscaped to maintain residential character of the property. Parking areas and access shall be designed in accord with multi-family residential standards which prohibit backing onto public right-of-way.

(e) Signs shall be limited to one identifying sign not to exceed six square feet in area and not over six feet in height. Sign location must be approved by the Planning Services Commission if not building mounted.

(f) Bed and breakfast home stay in the AR-2 agricultural/medium density residential zone district shall only be permitted on properties having frontage on arterial or collector streets.

(g) Maximum number of guest rooms shall not exceed five per site.

(h) Minimum lot size for bed and breakfast home stay use shall not be less than one acre (43,560 square feet) with topographic and other site conditions such that property can be readily adapted to bed and breakfast home stay use.

(D) *Permitted accessory buildings.* Permitted accessory buildings in the AR-2 district are:

(1) All structures accessory to farming and ranching.

(2) Private garages.

(3) Tool houses, sheds and other similar buildings for storage of domestic supplies.

(4) Private or jointly owned swimming pools and tennis courts for the use and convenience of residents.

(5) Television and radio signal receiving facilities.

(6) Private stables.

(7) Solar panels and/or wind energy turbines not to exceed 35 feet above ground and must meet setback requirements unless permitted by conditional use permit.

(E) *Development requirements.* All primary and accessory uses shall conform to the following minimum standards.

(1) Farming and ranching operations, and residential single-family uses:

(a) Minimum lot area: One acre.

(b) Minimum setbacks: 10 feet from all property lines.

(c) Maximum height: 35 feet.

(2) Churches, schools and public buildings:

(a) Minimum lot area: One acre.

(b) Minimum setbacks: 50 feet, all sides.

(c) Maximum height: 35 feet.

(3) Metal siding is permitted in residential districts as follows:

(a) On mobile homes or manufactured housing otherwise permitted by this Code;

(b) On residences and accessory buildings.



(c) On prefabricated storage buildings.

(F) *Encroachments into yards are subject to § 155.075.*

(G) *Landscaping.* Landscaping shall not be required in the AR-2 district except for churches, schools and public buildings.

(H) *Relationship to overlay zones.* Any property located in the AR-2 district must comply with regulations of any overlay zone and flood hazard requirements (1988 Code, § 9-10-67) (Am. Ord. 2017-07, passed 1-8-2018; Am. Ord. 2022-06, passed 7-11-2022)

#### **§ 155.047 M-1 LOW-DENSITY MOBILE HOME DISTRICT.**

(A) *Purpose; maximum density.* The purpose of the M-1 low-density mobile home district is to promote affordable housing and to make economical use of the land by allowing the development of mobile home subdivisions at gross residential densities of not more than four units per acre. No livestock are permitted including horses.

(B) *Minimum site area.* No M-1 district may be established unless the site contains at least five acres of land.

(C) *Principal permitted uses.* Principal permitted uses in the M-1 district are:

- (1) Mobile homes.
- (2) Single-family detached dwellings.

(D) *Conditional uses.* Conditional uses in the M-1 district are all conditional uses of the R-1 district.

(E) *Permitted accessory uses.* Permitted accessory uses in the M-1 district are: All accessory uses permitted in the R-1 district.

- (1) Private garages.
- (2) Greenhouses.

(3) Tool houses, sheds and other similar buildings for storage of domestic supplies. No accessory building or garage for single-family homes shall occupy more than 25% of a rear yard or exceed 900 square feet of floor area. Accessory buildings which exceed this maximum may be allowed a conditional use permit.

(4) Private or jointly owned swimming pools and tennis courts for the use and convenience of the residents.

(5) Home occupations as provided in §§ 155.120 et seq. of this chapter.

(6) Television and radio signal receiving facilities not to exceed 35 feet above ground.

(7) Solar panels and/or wind energy turbines not to exceed 35 feet above ground and must meet setback requirements unless permitted by conditional use permit.

(F) *Lot area and dimensions.* Lot area and dimensional requirements for the M-1 district are as follows:

(1) Minimum lot area.

(a) Mobile homes: 10,000 square feet.

(b) Single-family detached dwellings: 10,000 square feet.

(c) Other uses: Minimum lot area shall be determined by buildings, required lot dimensions and required setbacks.

(2) Required lot dimensions.

(a) Mobile homes and single-family detached dwellings:

1. Minimum lot width: 70 feet.
2. Minimum lot depth: 100 feet.

(b) Other uses: Lot dimensions shall be determined by building area, parking requirements, required lot dimensions and required setbacks.

(G) *Setbacks, yards and heights.* Encroachments into yards are subject to § 155.075. Setback, yard and height requirements for the M-1 district are as follows:

(1) *Minimum setbacks from property lines.* Minimum setbacks from property lines are as follows:

		<i>Interior</i>	<i>Corner</i>	
	<i>Front</i>	<i>Side</i>	<i>Side</i>	<i>Rear</i>
<i>Use</i>	<i>(Feet)</i>	<i>(Feet)</i>	<i>(Feet)</i>	<i>(Feet)</i>
Mobile Home	20	10	20	20
Single-family dwelling	20	10	20	20
Schools and civic, cultural and religious institutions, including their accessory use structures	50	50	50	50
Structures accessory to mobile homes and single-family dwellings	20	10	20	10
Structures for all other principal, conditional or other uses	20	10	20	20

The setback and yard requirements listed in this section are subject to the following additional requirements for front setbacks: When more than 25 % of the frontage on the side of a street between intersections is occupied by structures having setbacks from street rights-of-way of greater or lesser amounts than required in this section, the average setback of all existing buildings between the intersections shall be maintained by all new or relocated structures. If a building is to be built where there is an established average setback different from that required in this section, and there are existing buildings on one side only, the front setback of the new building need be no greater than that of the next adjoining existing building. In a case where a building is to be built where there is such an established average setback, and there are existing buildings on both sides of the new building, the front setback shall not be required to be greater than that which would be established by connecting a straight line between the forwardmost portion of the first adjacent building on each side.

(2) *Maximum building height.* Maximum building height is 35 feet.

(H) *Developmental Standards.* Metal siding is permitted in residential districts as follows:

- (1) On mobile homes or manufactured housing otherwise permitted by this Code;
- (2) On residences and accessory buildings.
- (3) On prefabricated storage buildings.

(I) *Encroachments into yards are subject to § 155.075.*

(1) *Open steps and decks.* Open steps and decks shall be permitted to extend into the front, rear and side yard setback a distance of not more than ten feet in the case of front yards and not closer than ten feet to the property line in the case of side yards.

(2) *Covered patios, decks, porches or carports.* Covered patios, decks, porches or carports shall not be permitted encroachments in any setbacks, except as provided under § 155.075.

(3) *Roof projections into required side yards.* A house or garage roof may not be constructed closer than two feet to a side property line.

(J) *Landscaping.* Except for mobile home and single-family lots and their adjacent rights-of-way, all areas not left in their natural state, or which have otherwise been disturbed by construction, and which are not designated for buildings, circulation, parking or storage, shall be landscaped in accordance with § 155.070. Landscaping of public parks shall be the responsibility of the City.

(K) *Placement and maintenance of mobile homes; mobile home construction standards.*

(1) No mobile home may be placed upon any lot prior to submittal of a site plan to the City and receipt of subsequent approval of the site plan as provided in § 155.026.

(2) There shall be no occupancy of any mobile home until an occupancy permit is issued. No occupancy permit shall be issued if the mobile home is not connected to public sewer and water lines, unless an alternate system is approved by the City Engineer.

(3) No mobile home may be parked on a roadway for more than 24 hours.

(4) No abandoned, burned or wrecked mobile home may be kept within the M-1 district for more than 30 days.

(5) Each mobile home must bear an insignia which attests that the construction of the mobile home meets regulation A119.1 of the American National Standards Institute (adopted by the U.S. Department of Housing and Urban Development).

(6) Standard mobile home skirting must be provided around the entire perimeter of the mobile home between the bottom of the body of the mobile home and the ground.

(7) Each mobile home must be anchored to the ground in a manner acceptable to the building official.

(8) Each mobile home must be stabilized from beneath using a concrete masonry and/or metal support system acceptable to the building official.

(9) There shall be no exposed outdoor storage of furniture (except lawn furniture), household goods, tools, equipment or building materials or supplies.

(L) *Inspections.*

(1) The Planning Services Director or his/her agent is hereby authorized to make such inspections as are necessary to determine satisfactory compliance with this chapter and shall have the authority to enter at reasonable times upon any private or public real property for the purpose of inspecting and investigating conditions relating to the enforcement of this chapter.

(2) It shall be the duty of the owners or occupants of a lot in a mobile home subdivision to allow the Director or free access to such premises at reasonable times for the purpose of inspections.

(M) *Relationship to overlay zones.* Any property located in the M-1 district must comply with the regulations of any overlay zone and satisfy any flood hazard requirements.

(N) *Hillside and forest protection.* Property located in the M-1 district shall comply with the hillside protection standards and the forest protection standards set forth in §§ 155.066 and 155.068. (1988 Code, § 9-10-68) (Ord. 2017-07, passed 1-8-2018; Am. Ord. 2022-06, passed 7-11-2022)

## **§ 155.048 M-2 MEDIUM-DENSITY MOBILE HOME DISTRICT.**

(A) *Purpose; density.* The purpose of the M-2 medium-density mobile home district is to promote affordable housing and to make economical use of the land by allowing the development of mobile home communities at gross residential densities of not more than ten units per acre. No livestock are permitted.

(B) *Minimum site area.* No M-2 district may be established unless the site contains at least five acres of land.

(C) *Principal permitted uses.* Principal permitted uses in the M-2 district are:

- (1) Mobile homes.
- (2) Single-family detached dwellings.

(D) *Conditional uses.* Conditional uses in the M-2 district are all conditional uses of the R-1 district.

(E) *Permitted accessory uses.* Permitted accessory uses in the M-2 district are:

- (1) Private garages.
- (2) Greenhouses.
- (3) Tool houses, sheds and other similar buildings for storage of domestic supplies. No accessory building or garage for single-family homes shall occupy more than 25% of a rear yard or exceed 900 square feet of floor area. Accessory buildings which exceed this maximum may be allowed a conditional use permit.

(4) Private or jointly owned swimming pools and tennis courts for the use and convenience of the residents.

(5) Home occupations as provided in §§ 155.120 et seq. of this chapter.

(6) Television and radio signal receiving facilities not to exceed 35 feet above ground.

(F) *Lot area and dimensions.* Lot area and dimensional requirements for the M-2 district are as follows:

(1) *Required lot area.* Minimum lot area is as follows:

(a) Mobile homes to 18 feet in width: 4,000 square feet.

(b) Mobile homes over 18 feet in width: 5,000 square feet.

(c) Single-family detached dwellings: 5,000 square feet.

(d) Other uses: Minimum lot area shall be determined by building area, parking requirements, required lot dimensions and required setbacks.

(2) *Required lot dimensions.* Minimum lot dimensions are as follows:

	<i>Minimum Lot Width</i>	<i>Minimum Lot Depth</i>
	<i>(Feet)</i>	<i>(Feet)</i>
Mobile homes to 18 feet in width	40	100
Mobile homes over 18 feet in width	50	100
Single-family detached dwellings	50	100
Other uses	Lot dimensions shall be determined by building area, parking requirements, required lot dimensions and required setbacks	

(G) *Setbacks and yards.* Minimum setbacks from property lines are as follows:

		<i>Interior</i>	<i>Corner</i>	
	<i>Front</i>	<i>Side</i>	<i>Side</i>	<i>Rear</i>
<i>Use</i>	<i>(Feet)</i>	<i>(Feet)</i>	<i>(Feet)</i>	<i>(Feet)</i>
Mobile homes to 18 feet in width	20	10	10	20
Mobile homes over 18 feet in width	20	10	10	20
Single-family detached dwellings	20	10	10	20
Schools and civic, cultural and religious institutions, including their accessory use structures	50	50	50	50
Structures accessory to mobile homes and single-family dwellings	20	10	10	10
Structures for all other principal, conditional or other uses	20	10	20	20

(H) *Encroachments into yards are subject to § 155.075.*

(1) *Covered patios, decks, porches or carports.* Covered patios, decks, porches or carports shall not be permitted encroachments in any setbacks.

(2) *Roof projections into required side yards.* A mobile home, single-family dwelling or garage roof may not be constructed closer than two feet to a side property line.

(I) *Developmental Standards.* Metal siding is permitted in residential districts as follows:

(1) On mobile homes or manufactured housing otherwise permitted by this Code.

(2) On residences and accessory buildings.

(3) On prefabricated storage buildings.

(J) *Landscaping.*

(1) The front setback area of each mobile home or single-family lot shall be landscaped or left in its natural state.

(2) All private commonly owned recreation areas not devoted to buildings, structures, surfaced courts, sandboxes, etc., shall be landscaped and irrigated. Landscaping of public parks shall be the responsibility of the City.

(K) *Screening.* All principal and accessory uses shall be screened from adjacent residential zones (except M-2 districts) as described in § 155.069.

(L) *Placement and maintenance of mobile homes; mobile home construction standards.*

(1) No mobile home may be placed upon any lot prior to submittal of a site plan to the City and receipt of subsequent approval of the site plan. See § 155.026.

(2) There shall be no occupancy of any mobile home until an occupancy permit is issued. No occupancy permit shall be issued if the mobile home is not connected to public sewer and water lines, unless an alternate system is approved by the City Engineer.

(3) No mobile home may be parked on a roadway for more than 24 hours.

(4) No abandoned, burned or wrecked mobile home may be kept within the M-2 district for more than 30 days.

(5) Each mobile home must bear an insignia which attests that the construction of the mobile home meets regulation A119.1 of the American National Standards Institute (adopted by the U.S. Department of Housing and Urban Development) and Federal manufactured home construction and safety standards.

(6) Standard mobile home skirting must be provided around the entire perimeter of the mobile home between the bottom of the body of the mobile home and the ground.

(7) Each mobile home must be anchored to the ground in a manner in accordance with City codes as enforced by the City Officer.

(8) Each mobile home must be stabilized from beneath using a concrete masonry and/or metal support system in accordance with City codes as enforced by the City Officer.

(9) There shall be no exposed outdoor storage of furniture (except lawn furniture), household goods, tools, equipment or building materials or supplies.

*(M) Inspections; access by owner.*

(1) The Director or Community Service Officer is hereby authorized to make such inspections as are necessary to determine satisfactory compliance with this chapter and shall have the authority to enter at reasonable times upon any private or public real property for the purpose of inspecting and investigating conditions relating to the enforcement of this chapter.

(2) It shall be the duty of the owners of mobile home parks or persons in charge thereof, or owners or occupants of a lot in a mobile home subdivision, to allow the Director or Community Service Officer free access to such premises at reasonable times for the purpose of inspections.

(3) It shall be the duty of every occupant of a mobile home park to allow the owner thereof, or the owner's agents or employees, access to any part of such mobile home park at reasonable times for the

purpose of making such repairs and alterations as may be necessary to effect compliance with this chapter or with any lawful order issued pursuant to the provisions of this chapter.

(N) *Relationship to overlay zones.* Any property located in the M-2 district must comply with the regulations of any overlay zone and satisfy any flood hazard requirements.

(O) *Hillside and forest protection.* Property located in the M-2 district shall comply with the hillside protection standards and the forest protection standards set forth in §§ 155.066 and 155.068. (1988 Code, § 9-10-69) (Ord. 2017-07, passed 1-8-2018; Am. Ord. 2022-06, passed 7-11-2022)

## **§ 155.049 C-1 NEIGHBORHOOD COMMERCIAL DISTRICT.**

(A) *Purpose.* The purpose of the C-1 neighborhood commercial district is to provide for establishment of local centers for convenient retail outlets which deal directly with the consumer for whom the goods or services are intended. These centers are located in predominately residential areas and are limited to a type of use compatible with the surrounding residential character of the area. No livestock are permitted.

(B) *Principal permitted uses.* Principal permitted uses in the C-1 district are:

- (1) Antique stores and arts and craft stores.
- (2) Art studios or galleries.
- (3) Retail bakeries.
- (4) Barbershops.
- (5) Beauty parlors.
- (6) Candy and ice cream stores.
- (7) Convenience food stores not to exceed 2,000 square feet.

(8) Branch libraries.

(9) Drugstores, variety stores, and notion and soft goods stores of not more than 2,000 square feet.

(10) Professional offices of not more than 2,000 square feet.

(11) Public buildings.

(12) Self-service laundries and cleaning pickup stations.

(13) Resale shops.

(14) Restaurants or prepared foods, including alcoholic beverages served in conjunction with food service.

(C) *Conditional uses.* Conditional uses in the C-1 district are:

(1) Principal and conditional uses permitted in R-1, R-2, R-3 and R-4 districts.

(2) *Day care centers.* A minimum of 35 square feet per child shall be provided within the day care facility for indoor activity and at least 50 square feet of fenced-in outdoor play space per child shall be provided on-site. Fenced-in outdoor play space shall not include driveways, parking areas or land unsuited for children's play space by virtue of the usage or natural features. A state license shall be obtained prior to commencement of operation for a day care facility.

(3) Convenience food stores with not more than four gas pumps.

(a) Pump stands shall be set back not less than 25 feet from any street right-of-way, not less than 40 feet from any non-street property line and not less than 100 feet from any residential district boundary.

(b) Interior curbs of not less than six inches in height shall be constructed to separate driving surfaces from sidewalks, landscaped areas and street rights-of-way.

(4) Resident health care facilities, including nursing homes.

(5) Restaurants or prepared foods, including alcoholic beverages served in conjunction with food service.

(6) Hotels and motels, and cabin rentals, detached or semi-detached, in excess of 50 rental units and including incidental rental offices, pools, spas and related recreational facilities for use of guests only.

(7) Miniwarehouses.

(a) *Minimum site area.* Minimum site size shall be one acre.

(b) *One-site circulation.* On-site circulation, drives and driveways.

1. Each miniwarehouse shall provide a minimum of two exits.

2. All one-way driveways shall provide for one ten-foot-wide parking lane and one 15-foot-wide travel lane. Traffic direction and parking shall be designated by painting or signs.

3. All two-way driveways shall provide for one ten-foot-wide parking lane and two 12-foot -wide travel lanes.

4. The parking lanes may be eliminated when the driveway does not serve storage cubicles.

5. At least one parking space for each ten storage cubicles, equally distributed throughout the storage area, shall be provided, in addition to those in the parking lanes.

6. All driveways and parking, loading and circulation areas shall be paved with concrete, asphalt or asphaltic concrete.

(c) *Fencing and screening.*

1. Fencing shall be required around the perimeter of the project at a minimum of six feet in height and constructed of decorative concrete block, as approved by the Commission.

2. All outdoor storage shall be limited to recreational vehicles and shall be screened from view from surrounding properties.

(d) *Setbacks.* Any side of a building providing doorways to storage areas shall be set back from the property line with not less than 25-foot side and rear yard setbacks; otherwise, sides of a building not providing doorways to storage areas may have a zero side or rear lot line provided the building is of the same material as the fencing. If not of the same material, the rear yard setback shall be at least 15 feet.

(e) *Trash enclosures.* Masonry trash enclosures shall be installed subject to the approval of the Commission.

(f) *Prohibited uses.* No auctions, commercial sales, garage sales or similar activities shall be conducted on the premises.

## (8) Cannabis research laboratory.

(a) Cannabis establishments shall comply with all State of New Mexico regulatory and licensing requirements and shall be located at least 300 feet from a school or adult or child daycare center.

## (9) Cannabis retailer.

(a) Cannabis producers will comply with all State of New Mexico regulatory and licensing requirements.

(b) Remain 300 feet from a school or adult or child daycare center.

(c) Cannabis production facilities may not operate in an area zoned for residential use.

(d) Customer visits and deliveries are prohibited between the hours of 12:00 a.m. and 8:00 a.m.

(e) All storage, dispensing, or retail activities shall be conducted indoors.

## (10) Cannabis testing laboratory.

(a) Cannabis establishments shall comply with all State of New Mexico regulatory and licensing requirements and shall be located at least 300 feet from a school or adult or child daycare center.

## (11) On-site cannabis consumption premise.

(a) Cannabis consumption areas must be located in areas zoned as general commercial and industrial.

(b) Properly licensed cannabis establishments having a designated cannabis consumption area on site shall comply with the CRA, the Dee Johnson Clean Indoor Air Act, and the rules adopted by the Cannabis Control Division of the New Mexico Regulation & Licensing Department. They must also satisfy the following standards required by the City of Ruidoso Downs.

(c) The cannabis consumption area shall have a separate heating, ventilation, and air conditioning (HVAC) system such that none of the air in the Designated Cannabis Consumption Area will be recirculated into other parts of the Cannabis establishment premises.

(d) The cannabis consumption area shall be completely separated from the remainder of the premises, and all doors leading to the cannabis consumption area shall be self-closing.

## (12) Commercial stables and outfitters.

## (13) Mobile home parks.

(14) *Unenameled metal roofs.* Unenameled metal roofs are prohibited in all districts, except as approved by the Commission upon findings that:



(a) The metal will have a protective coating that sufficiently reduces glare;

(b) The metal is consistent with the architectural style of the building.

(15) The Commission may approve metal siding and painted or tinted cinderblock and cement on all buildings in C-1 through C-4 districts and accessory buildings in all districts upon finding that:

(a) Such siding is characteristic of building types within the areas; and

(b) Portions of the building facing any public way are covered with a suitable building veneer, such as but not limited to wood, brick or stucco.

(D) *Permitted accessory uses.* Permitted accessory uses in the C-1 district are:

(1) Business signs consistent with §§ 155.095 *et seq.*

(2) Trash enclosures consistent with § 155.079(D).

(3) Parking consistent with § 155.076.

(E) *Access.*

(1) Access to commercial activities shall be allowed only from arterial or collector streets or a street specifically designed for such development, provided, the Commission may grant a variance from this provision upon a showing of good cause, if said commercial activity is located on U.S. Highway 70.

(2) Access points shall be located at least 150 feet from any street intersection.

(3) Access points on the same street shall not be spaced closer than 100 feet as measured from the center-lines. Commercial developments of a small scale shall be encouraged to develop common access drives and parking facilities.

(4) (a) Commercial developments which may not be able to meet the requirements of divisions (E)(2) and (3) of this section and which are requesting deviations from such standards shall submit an engineer's report certified by a professional engineer addressing the following site conditions, both present and future:

1. Traffic volumes.

2. Turning movements.

3. Traffic controls.

4. Site design.

5. Site distances.

6. Location and alignment of other access points.

(b) Based upon this data, the Commission shall determine whether a deviation from the required standards is justified and, if so, what alternative requirements will be necessary.

(F) *Setbacks and height.* Setback and height requirements for the C-1 district are as follows:

(1) *Setback from property lines.* The minimum building setback from property lines shall be as follows:

(a) Building setbacks:

1. Front: 25 feet.

2. Interior side and rear: Ten feet.

3. Corner side: Ten feet.

4. Residential district boundary: Same as adjoining residential district.

(b) Parking lots:

1. Front: Four feet.

- feet.
2. Interior side and rear: Three feet.
  3. Corner side: Four feet.
  4. Residential district boundary: Three feet.

(c) Under certain conditions, the Commission may reduce the required standard yard setbacks and parking requirements as set out in division (F)(1)(a) of this section and § 155.076. It must be shown that, because of shared parking facilities and/or shared access and drives, the standard requirements for yard setbacks and parking would not be necessary or in the best interest of the citizens of the City.

(2) *Maximum height.* Maximum height of structures shall be 35 feet.

**(G) Lot width and lot area.**

- (1) The minimum lot width shall be 100 feet.
- (2) Minimum lot area shall be determined by building area, parking requirements and required setbacks.

**(H) Screening.** All principal and accessory uses shall be screened from adjacent residential districts as described in § 155.069.

**(I) Landscaping.** All areas not designated for buildings, circulation, parking or storage shall be landscaped as described in § 155.070.

**(J) Signs.** Signs are allowed according to §§ 155.095 *et seq.*

**(K) Relationship to overlay zones.** Any property located in the C-1 district must comply with the regulations of any overlay zone and satisfy any flood hazard requirements.

**(L) Hillside and forest protection.** Property located in the C-1 district shall comply with the hillside protection standards and the forest protection standards set forth in §§ 155.066 and 155.068. (1988 Code, § 9-10-70) (Ord. 2004-05, passed 8-9-2004; Ord. 2017-07, passed 1-8-2018; Am. Ord. 2022-05, passed 3-28-2022; Am. Ord. 2022-06, passed 7-11-2022)

**§ 155.050 C-2 COMMUNITY COMMERCIAL DISTRICT.**

**(A) Purpose.** The purpose of the C-2 community commercial district is to provide for low-intensity retail or service outlets, which deal directly with the consumer for whom the goods or services are intended. The uses allowed in this district are to provide goods and services on a community market scale and should be located in areas which are served by arterial street facilities.

**(B) Additional districts.** There are created additional sub-districts within the C-2 district, identified as C-2a through C-2f, as may be designated on the official zoning map after notice and hearing, and which are subject to the C-2 provisions herein, provided that additions or exceptions to the C-2 provisions may be made by ordinance from time to time for specific sub-districts.

**(C) Principal permitted uses.** Principal permitted uses in the C-2 district are:

- (1) Any principal permitted uses of the C-1 neighborhood commercial district.

- (2) Any of the following uses, subject to the provisions of division (D) of this section (conditional uses):

- (a) Automobile, boat and recreational vehicle sales, supplies and services.

- (b) Automotive upholster shops.

- (c) Banks, savings and loans and other financial institutions.

(d) Churches, religious establishments, clubs and meeting facilities.

(e) Entertainment, recreational, health and exercise facilities.

(f) Essential public services and utility installations.

(g) Hospitals and medical clinics.

(h) Hotels, motels, cabin rentals, bed and breakfasts and other such lodging establishments.

(i) Metalwork and machine shops.

(j) Offices.

(k) Radio and television studios, printing and publishing houses and other such media production facilities.

(l) Rental stores.

(m) Restaurants, bars and package liquor sales.

(n) Retail sales and services.

(o) Schools and instructional centers.

(p) Service establishments.

(q) Small engine repair.

(r) Tire sale, service and repair.

(s) Engraving shops.

(t) Pawn shops.

(D) *Conditional uses.* Conditional uses in the C-2 district are:

(1) Principal and conditional uses. Principal and conditional uses permitted in R-1, R-2, R-3, R-4 and C-1 districts.

(2) Automobile service stations.

(a) Automobile service station site improvements such as buildings or structures (permanent or temporary) shall be separated from any residential district by at least 50 feet. Parking areas shall be separated from any residential district by at least 15 feet.

(b) The total site area shall be at least 12,000 square feet.

(c) Pump islands shall be set back at least 25 feet from any street right-of-way line, not less than 40 feet from any non-street line, and not less than 75 feet from any residential district boundary.

(d) Hydraulic hoists, pits and all lubrication, greasing, washing, repair and diagnostic equipment shall be used and enclosed within a building.

(e) Interior curbs of not less than six inches in height shall be constructed to separate driving surfaces from sidewalks, landscaped areas and street rights-of-way.

(f) No automobile service station on a site contiguous to any residential district shall be operated between the hours of 10:00 p.m. and 7:00 a.m. of the following day.

(3) Body shops and paint shops provided the building is located 100 feet from any residential boundary and are screened from ordinary public view.

(4) Automobile washing establishments.

(a) Automobile washing establishments shall be subject to the same limitations and conditions as automobile service stations as set out in divisions (D)(2)(a) through (f) of this section.

(b) Sufficient off-street area to provide space for not less than ten automobiles waiting to be washed or three waiting spaces per washing stall, whichever is greater, shall be provided. A space 20 feet by nine feet shall be deemed adequate for each such required space.

(c) All wastewater disposal facilities, including sludge and grit removal and disposal equipment, shall be subject to the approval of the Public Works Director, and shall conform with all City ordinances regarding sewage and health, and shall be designed so as not to detrimentally affect the City water or sewer system.

(5) Convenience food restaurants. Convenience food restaurants shall be subject to the same limitations and conditions as automobile service stations as set out in divisions (D)(2)(a) through (f) of this section.

(6) Automobile drive-in theaters.

(a) Automobile drive-in theater parking shall be screened from view of any residential development.

(b) Light, glare and noise shall not impact nearby residential developments.

(7) Overnight campgrounds, which shall be developed in accord with § 155.083.

(8) Miniwarehouses, as subject to the provisions of § 155.049(C)(7).

(9) Public utilities structures such as transformer, switching, pumping and similar technical installations essential to the operation of a public utility.

(10) Auditoriums.

(11) Billiard or pool rooms.

(12) Boxing or wrestling arenas.

(13) Dancehalls or nightclubs.

(14) Games of skill.

(15) Theaters, auditoriums, amphitheaters, outdoor, showing moving pictures or dramatic performances, located a minimum of 1,000 feet from any residential area, to be enclosed by an eight-foot

wall or fence which is solid and providing facilities for not less than 60 parked automobiles for viewing purposes; and theaters, indoor, showing moving pictures or dramatic performances, restricted to no less than 200 seats for spectators, with automobile parking facilities of not less than one for each three spectators.

(16) Penny arcades or game rooms.

(17) Shooting galleries.

(18) Swimming pools.

(19) Health studios and Turkish bath, massage or hot tub parlors, all oriented to the promotion of good health.

(20) Tattoo parlors. Any of those uses requiring a license under the City of Ruidoso Downs Public Health and Safety Ordinance.

(21) Adult entertainment. Any of those uses requiring a license under the City of Ruidoso Downs Public Health and Safety Ordinance.

(22) Amusement enterprises limited to the following and/or similar uses and provided any lighting shall be so located, screened or shaded as not to reflect off the premises:

(a) Baseball batting or archery range, provided the area shall be fenced or otherwise designed to prevent any balls or arrows from going off the premises.

(b) Circus, carnival or similar enterprise, provided it is located at least 300 feet from any dwelling which is a conforming use, and shall be not more than seven days.

(c) Golf driving range, including incidental commercial uses related to the operation of the use, provided that the site shall contain at least six acres and that fencing shall be provided, or the use so designed as to prevent balls from being driven out of the premises.

(d) Cart track, including go-cart tracks and similar facilities, provided that the site shall contain at least three acres, the track shall be located at least 1,000 feet from any dwelling and at least 100 feet from any public way, and the spectator area shall be protected from the vehicular area by suitable fencing, bumpers or other protective devices.

(e) Children's playlands and amusement parks, provided that amusement devices shall be located at least 300 feet from any dwelling and the site shall be enclosed by a wall or fence at least six feet in height.

(23) Lumberyards, provided that all goods and materials are screened from adjacent properties.

(24) Commercial stables and outfitters. The setbacks for all horse fencing is ten feet from all property lines.

(25) Uses or activities in a fiber or membrane tent, if the user or activities are listed in this section, and provided:

(a) The Fire Chief gives prior approval of the tent and proposed location thereof, as meeting the requirements of article 32 of the Uniform Fire Code, 1994 edition, as amended.

(b) There is sufficient off-street parking available on the premises to meet parking requirements for all uses on the premises, including the activity in the tent.

(c) There are toilet facilities on the premises available to the users of the tent.

(d) The Commission approves site development plans for the uses which demonstrate adequate parking, vehicular circulation, site grading and drainage and conformance to setback requirements.

(26) Sales lots only for three or more automobiles, boats or recreational vehicles or any combination thereof.

(27) Assembly, testing and processing of goods and products which conform to performance standards set forth in § 155.080.

(28) Mobile vending stands are permitted subject to the following conditions:

(a) Vending operation shall be so located as to prevent any pedestrian and vehicle conflicts within parking, driveways and walkways and not interfere with vehicle ingress and egress to the property.

(b) Vending operation shall not create any additional pedestrian congestion on sidewalks within the public right-of-way. All vending and patron service and waiting areas must be entirely on privately property and shall not interfere with pedestrian ingress and egress to any business, building or facility on the premises.

(c) Operators and employees of the vending operation must have access to restroom facilities on the same site as the vending operation during all hours of operation.

(d) Signage for mobile vending stands shall comply with the provisions of §§ 155.095 *et seq.* For purposes of calculating sign size, each mobile vending stand shall be subject to the formula contained in § 155.105(B)(1).

(e) No mobile vending stand shall be operated until business registration is obtained from the City.

(f) Mobile vending stands shall be subject to the parking requirements for drive-in or walk-up food or drink services as found in § 155.076(E)(25).

(29) Animal hospitals, clinics and kennels, provided the establishment and animal runs are completely enclosed in a building.

(30) Custom dressmaking, furrier, millinery or tailor shops employing five persons or more.

(31) Firewood. Wood shall be stacked or screened from view and should not exceed eight feet in height.

(32) Recreation vehicle parks.

(33) Feed, grain and related sale and storage.

(34) Warehousing, storage and distribution of bulk goods.

(35) Glass, cutting and finishing.

(36) Mobile home parks.

(37) Cannabis manufacturer.

(a) Cannabis cultivation is allowed, provided that the establishment complies with all New Mexico State law requirements, including 300 feet from a school or adult or child daycare center.

(b) Site development plan meets minimum code requirements set forth in § 155.026 - Site plan and concept approval.

(c) All activities in this use shall be conducted within the fully permanent enclosed building, be permanently secured to an established foundation, shall adhere to County building and safety codes, including the Construction Industry Division (CID).

(d) An incidental storage area is allowed outside of the fully enclosed portions of a building but shall be screened from view from each property line.

(e) An air filtration plan approved by the City Building Official and New Mexico Environment Department is required.

(38) Cannabis retailer.

(a) Cannabis producers will comply with all State of New Mexico regulatory and licensing requirements.

(b) Remain 300 feet from a school or adult or child daycare center.

(c) Cannabis production facilities may not operate in an area zoned for residential use.

(d) Customer visits and accessory uses in the C-2 district are prohibited between the hours of 12:00 a.m. and 8:00 a.m.

(e) All storage, dispensing, or retail activities shall be conducted indoors.

(39) Cannabis testing and research laboratory.

(a) Cannabis establishments shall comply with all State of New Mexico regulatory and licensing requirements and shall be located at least 300 feet from a school or adult or child daycare center.

(40) On-site cannabis consumption premise.

(a) Cannabis consumption areas must be located in areas zoned as general commercial and industrial.

(b) Properly licensed cannabis establishments having a designated cannabis consumption area on site shall comply with the CRA, the Dee Johnson Clean Indoor Air Act, and the rules adopted by the Cannabis Control Division of The New Mexico Regulation & Licensing Department. They must also satisfy the following standards required by The City of Ruidoso Downs.

(c) The cannabis consumption area shall have a separate heating, ventilation, and air conditioning (HVAC) system such that none of the air in the Designated Cannabis Consumption Area will be recirculated into other parts of the Cannabis establishment premises.

(d) The cannabis consumption area shall be completely separated from the remainder of the premises, and all doors leading to the cannabis consumption area shall be self-closing.

(E) *Permitted accessory uses.* Permitted accessory uses in the C-2 district are:

(1) Business signs consistent with §§ 155.095 *et seq.*

(2) Trash enclosures consistent with § 155.079.

(3) Parking consistent with § 155.076.

(F) *Access.* Access shall comply with the requirements of § 155.049.

(G) *Setbacks and height.* Setback and height requirements for the C-2 district are as follows:

(1) *Minimum setback from property lines.* Encroachments into yards are subject to § 155.075. The minimum building setbacks from property lines shall be as follows:

(a) Building setbacks:

1. Front: 20 feet.
2. Interior side and rear: Ten feet.
3. Corner side: 15 feet.
4. Residential district boundary: Same as the adjoining residential district.

(b) Parking lots:

1. Front: Four feet.
2. Interior side and rear: Three feet.
3. Corner side: Four feet.
4. Residential district boundary: Three feet.

(2) *Maximum height.* Maximum height of structures shall be 35 feet.

(H) *Lot width, lot area and parking lots.*

(1) The minimum lot width shall be 100 feet, except that corner lots shall have a minimum width of 150 feet.

(2) Minimum lot area shall be determined by building area, parking requirements and required setbacks.

(I) *Screening.* All principal and accessory uses shall be screened from adjacent residential districts as described in § 155.069.

(J) *Landscaping.* All areas not designated for buildings, circulation, parking or storage shall be landscaped as described in § 155.070.

(K) *Signs.* Signs are allowed according to § 155.095 *et seq.*

(L) *Relationship to overlay zones.* Any property located in the C-2 district must comply with the regulations of any overlay zone and satisfy any flood hazard requirements.

(M) *Hillside and forest protection.* Property located in the C-2 district shall comply with the hillside protection standards and the forest protection standards set forth in §§ 155.066 and 155.068. (1988 Code, § 9-10-71) (Ord. 2017-07, passed 1-8-2018; Am. Ord. 2022-05, passed 3-28-2022; Am. Ord. 2022-06, passed 7-11-2022)

### **§ 155.051 C-3 MIDTOWN COMMERCIAL DISTRICT.**

(A) *Purpose.* The purpose of the C-3 midtown commercial district is to allow the development of commercial retail and service establishments with carefully integrated multiple-family residential, entertainment and public parking facilities in the "Midtown" area of the City. The district encourages development to take place in an intensive fashion to facilitate pedestrian circulation and to maximize the use of valuable locations and existing infrastructure and building stock. No livestock are permitted.

(B) *Principal permitted uses.* Principal permitted uses in the C-3 district are: Any principal permitted uses of the C-2 community commercial district.

(C) *Conditional uses.* The following conditional uses may be allowed in the C-3 midtown commercial district:

(1) Convenience food restaurants, subject to § 155.050(D)(4).

(2) Day care centers, subject to § 155.049(C)(1).

(3) Residential uses permitted in R-4 districts.

(4) Radio, television or microwave transmitting towers.

(5) Attached one- and two-bedroom apartment units occupied by the owner of a business on the same premises or by an employee of the business who provides custodial and security services for the business premises.

(6) Mobile vending stands are permitted subject to the following conditions:

(a) No walk-up mobile vending stand shall be permitted in any parking lot.

(b) Vending operation shall be so located as to prevent any pedestrian and vehicle conflicts with parking, driveways and walkways and not interfere with vehicle ingress and egress to the property.

(c) Vending operation shall not create any additional pedestrian congestion on sidewalks within the public right-of-way. All vending and patron service and waiting areas must be entirely on private property and shall not interfere with pedestrian ingress and egress to any business, building or facility on the premises.

(d) Operators and employees of the vending operation must have access to restroom facilities on the same site as the vending operation during all hours of operation.

(e) Operators of food or beverage mobile vending stands shall provide handicapped accessible restrooms on the site with running water and approved liquid waste disposal. For purposes of § 155.026(F), a food or beverage stand shall not be considered as being in substantial compliance with an existing site plan unless that plan includes food or beverage services.

(f) Signage for mobile vending stands shall comply with the provisions of §§ 155.095 *et seq.* For purposes of calculating sign size, each mobile vending stand shall be subject to the formula contained in § 155.105(B)(1).

(g) No mobile vending stand shall be operated until business registration is obtained from the City.

(7) Cannabis retailer.

(a) Cannabis producers will comply with all State of New Mexico regulatory and licensing requirements.

(b) Remain 300 feet from a school or adult or child daycare center.

(c) Cannabis production facilities may not operate in an area zoned for residential use.

(d) Customer visits and deliveries are prohibited between the hours of 12:00 a.m. and 8:00 a.m.

(e) All storage, dispensing, or retail activities shall be conducted indoors.

(8) On-site cannabis consumption premise.

(a) Cannabis consumption areas must be located in areas zoned as general commercial and industrial.



(b) Properly licensed cannabis establishments having a designated cannabis consumption area on site shall comply with the CRA, the Dee Johnson Clean Indoor Air Act, and the rules adopted by the Cannabis Control Division of The New Mexico Regulation & Licensing Department. They must also satisfy the following standards required by the City of Ruidoso Downs.

(c) The cannabis consumption area shall have a separate heating, ventilation, and air conditioning (HVAC) system such that none of the air in the Designated Cannabis Consumption Area will be recirculated into other parts of the Cannabis establishment premises.

(d) The cannabis consumption area shall be completely separated from the remainder of the premises, and all doors leading to the cannabis consumption area shall be self-closing.

(9) *Unenameled metal roofs.* Unenameled metal roofs are prohibited in all districts, except as approved by the Commission upon findings that:

(a) The metal will have a protective coating that sufficiently reduces glare;

(b) The metal is consistent with the architectural style of the building.

(10) The Commission may approve metal siding and painted or tinted cinderblock and cement on all building in C-1 through C-4 districts and accessory buildings in all districts upon findings that:

(a) Such siding is characteristic of building types within the area; and

(b) Portions of the building facing any public way are covered with a suitable building veneer, such as but not limited to wood, brick or stucco.

(D) *Permitted accessory uses.* Permitted accessory uses in the C-3 district are:

(1) Business signs consistent with §§ 155.095 *et seq.*

(2) Trash enclosures consistent with § 155.079.

(3) Parking consistent with § 155.076.

(E) *Setbacks and height.*

(1) There are no setback requirements for buildings or structures, with the exception of the following:

(a) Multiple-family structures shall have interior side and rear lot line setbacks as provided in § 155.044(G)(1).

(b) Building setbacks for residential district boundaries shall be the same as for the adjacent residential district.

(2) Parking lot setbacks are as follows:

(a) Front: Four feet.

(b) Interior side and rear: Three feet.

(c) Corner side: Four feet.

(d) Residential district boundary: Three feet.

(3) The maximum height of any structure shall be 35 feet.

(F) *Lot width and lot area.*

(1) There is no minimum lot width.

(2) Minimum lot area shall be determined by building area, parking requirements and required setbacks, if any.

(G) *Screening.* All principal and accessory uses shall be screened from adjacent residential districts as described in § 155.069.

(H) *Landscaping.* All areas not designated for buildings, circulation, parking or storage shall be landscaped as described in § 155.070.

(I) *Signs.* Signs are allowed according to §§ 155.095 *et seq.*

(J) *Relationship to overlay zones.* Any property located in the C-3 district must comply with the regulations of any overlay zone and satisfy any flood hazard requirements.

(K) *Hillside and forest protection.* Property located in the C-3 district shall comply with the hillside protection standards and the forest protection standards set forth in §§ 155.066 and 155.068.

(L) *Parking.* Property located in the C-3 midtown commercial district is not subject to parking requirements set forth under § 155.076(E), number of spaces required. Parking provided on a voluntary basis must comply with development standards set forth under § 155.076(A), (B), (C), (D) and (F). (1988 Code, § 9-10-72) (Am. Ord. 2022-05, passed 3-28-2022; Am. Ord. 2022-06, passed 7-11-2022)

#### **§ 155.052 C-4 HEAVY COMMERCIAL DISTRICT.**

(A) *Purpose.* The purpose of the C-4 heavy commercial district is to provide for construction-oriented businesses and service operations that are necessary to complement the economy of the City and in a manner consistent with the resort character of the City. Uses allowed in this district shall be located in areas which are served by arterial street facilities.

(B) *Principal permitted uses.* Principal permitted uses in the C-4 district are:

(1) Any principal permitted uses of the C-1 neighborhood commercial district, C-2 community commercial district and C-3 midtown commercial district.

(2) Contractors' offices, shops and yards.

(3) Those uses involving storage and storage of volatile or explosive fuels are prohibited.

(4) Exterior storage of goods and materials, provided that all goods and materials are totally screened from adjacent properties by solid fence construction a minimum of eight feet high.

(5) Heavy equipment sale or service or repair.

(6) Welding shops for repair of vehicles or equipment, provided the yard area is enclosed and screened from adjacent properties.

(7) Heavy equipment service and repair, provided the yard area is enclosed and screened from adjacent properties.

(8) Assembly, testing and processing of goods and products which conform to the performance standards set forth in § 155.080.

(C) *Conditional uses.* Conditional uses in the C-4 district are:

(1) Conditional uses permitted in the C-1, C-2, and C-3 districts.

(2) Kennels, commercial.

(3) Stables, commercial.

(4) Recreational vehicle parks.

(5) Amusement parks or enterprises.

(6) Wrecker service, provided the vehicle storage area is enclosed by a solid wall fence at least six feet high.

(7) Recycling purchase centers, not including processing and storage, provided the yard area is enclosed with a solid wall fence at least six feet high.

(8) Any principal permitted use in the C-2 community commercial district, except residential uses.

(9) Radio, television or microwave transmitting towers.

(10) Cannabis manufacturer.

(a) Cannabis cultivation is allowed, provided that the establishment complies with all New Mexico State law requirements, including 300 feet from a school or adult or child daycare center.

(b) Site development plan meets minimum code requirements set forth in § 155.026 - Site plan and concept approval.

(c) All activities in this use shall be conducted within the fully permanent enclosed building, be permanently secured to an established foundation, shall adhere to County building and safety codes, including the Construction Industry Division (CID).

(d) An incidental storage area is allowed outside of the fully enclosed portions of a building but shall be screened from view from each property line.

(e) An air filtration plan approved by the City Building Official and New Mexico Environment Department is required.

(11) Cannabis producer.

(a) Cannabis producers will comply with all State of New Mexico regulatory and licensing requirements.

(b) Remain 300 feet from a school or adult or child daycare center.

(c) Cannabis production facilities may not operate in an area zoned for residential use.

(d) Cannabis production facilities must utilize odor mitigation technology or techniques to mitigate the odor created by cannabis plants and products.

(e) Cannabis production facilities must develop and utilize an air filtration plan that is approved by the State of New Mexico prior to commencing cannabis production in the City of Ruidoso Downs.

(12) Cannabis research laboratory.

(13) Cannabis retailer.

(a) Cannabis producers will comply with all State of New Mexico regulatory and licensing requirements.

(b) Remain 300 feet from a school or adult or child daycare center.

(c) Cannabis production facilities may not operate in an area zoned for residential use.

(d) Customer visits and deliveries are prohibited between the hours of 12:00 a.m. and 8:00 a.m.

(e) All storage, dispensing, or retail activities shall be conducted indoors.

(14) Cannabis testing laboratory.

(15) On-site cannabis consumption premise.

(a) Cannabis consumption areas must be located in areas zoned as general commercial and industrial.

(b) Properly licensed cannabis establishments having a designated cannabis consumption area on site shall comply with the CRA, the Dee Johnson Clean Indoor Air Act, and the rules adopted by the Cannabis Control Division of The New Mexico Regulation & Licensing Department. They must also satisfy the following standards required by The City of Ruidoso Downs.

(c) The cannabis consumption area shall have a separate heating, ventilation, and air conditioning (HVAC) system such that none of the air in the Designated Cannabis Consumption Area will be recirculated into other parts of the Cannabis establishment premises.

(d) The cannabis consumption area shall be completely separated from the remainder of the premises, and all doors leading to the cannabis consumption area shall be self-closing.

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(D) *Permitted accessory uses.* Permitted accessory uses in the C-4 district are:

(1) Business signs consistent with §§ 155.095 *et seq.*

(2) Personnel service facilities providing personal services, recreation, food and convenience goods for employees.

(3) Parking consistent with § 155.076.

(E) *Access.*

(1) Access for uses in the C-4 heavy commercial district shall be allowed only from arterial or commercial collector streets.

(2) Access points on arterial streets shall, whenever possible, be located at least 150 feet from any street intersection.

(F) *Setbacks and heights.*

(1) *Encroachments into yards are subject to § 155.075.* The minimum building setback from property lines shall be as follows:

(a) Building setbacks:

1. Front: 20 feet.
2. Interior side and rear: 15 feet.
3. Corner side: 15 feet.
4. Residential district boundary:

The same as the adjoining residential setback.

(b) Parking lots:

1. Front: Four feet.
2. Interior side and rear: Three feet.
3. Corner side: Four feet.

(2) Maximum height of structures shall be 35 feet.

(G) *Lot width and lot area.*

(1) The minimum lot width shall be 100 feet, except the minimum width for corner lots shall be 150 feet.

(2) Minimum lot area shall be determined by building area, parking requirements and required setbacks.

(H) *Screening.* All principal and accessory uses shall be screened from adjacent residential districts as described in § 155.069.

(I) *Landscaping.* All areas not designated for buildings, circulation, parking or storage shall be landscaped as described in § 155.070.

(J) *Signs.* Signs are allowed according to §§ 155.095 *et seq.*

(K) *Relationship to overlay zones.* Any property located in the C-4 district must comply with the regulations of the overlay zone and satisfy any flood hazard requirements.

(L) *Hillside and forest protection.* Property located in the C-4 district shall comply with the hillside protection standards and the forest protection standards set forth in §§ 155.066 and 155.068. (1988 Code, § 9-10-73) (Ord. 2017-07, passed 1-8-2018; Am. Ord. 2022-05, passed 3-28-2022; Am. Ord. 2022-06, passed 7-11-2022)

## **§ 155.053 I-1 INDUSTRIAL DISTRICT.**

(A) *Purpose.* The purpose of the I-1 industrial district is to provide for the development of storage, warehousing, industrial and office facilities that are necessary to complement the economy of the City in a manner which is not detrimental to the overall resort character of the City and does not cause adverse

off-site environmental impacts. Uses allowed in the I-1 district are those whose activities, including storage, take place entirely within enclosed buildings or areas not visible off-site, which have little or no emission of noise, smoke, dust, odor, vibration or glare, and which pose little or no danger to the public health and safety.

(B) *Principal permitted uses.* Principal permitted uses in the I-1 district are:

(1) Any principal permitted uses of the C-4 heavy commercial district, except residential uses.

(2) Any production, testing, processing, goods or products which conform to the performance standards set forth in § 155.080 for the emission or creation of noise, vibration, smoke, dust or other particulate matter, toxic or noxious materials, odors, glare or heat.

(3) Automobile washing establishments.

(4) Automobile and motor vehicle service and repair facilities.

(5) Building material sales and storage.

(6) Bulk storage of nonexplosive liquids.

(7) Contractors' offices, shops and yards.

(8) Dog kennels.

(9) Railroad tracks and railroad passenger stations, but not railroad switching yards.

(10) Restaurants, including the sale of liquor, and convenience food restaurants.

(11) Stadiums, auditoriums and arenas.

(12) Television and radio towers and studios.

(13) Trade schools.

(14) Exterior storage of goods and materials, provided that all goods and materials are totally screened from adjacent properties.

(15) Sales or rental lots.

(C) *Conditional uses.* Conditional uses in the I-1 district are:

(1) Airports, subject to the limitations of the Federal Aviation Administration.

(2) Sewage treatment plants.

(3) Theaters, and automobile drive-in theaters, subject to § 155.050(D)(5).

(4) Campgrounds, subject to § 155.050(D)(6).

(5) Other uses deemed appropriate, under special conditions, by the Council.

(6) Any principal permitted uses in the C-2 community commercial district, except residential uses.

(7) Feed, grain and fertilizer retail sales, which must meet local and State fire codes as they may be changed from time to time.

(8) Propane or butane in quantities less than 350 gallons (6,125 cu. ft.)

(9) Cannabis courier.

(a) Cannabis establishments shall comply with all State of New Mexico regulatory and licensing requirements and shall be located at least 300 feet from a school or adult or child daycare center.

(10) Cannabis manufacturer.

(a) Cannabis cultivation is allowed, provided that the establishment complies with all New Mexico State law requirements, including 300 feet from a school or adult or child daycare center.

(b) Site development plan meets minimum code requirements set forth in § 155.026 - Site plan and concept approval.

(c) All activities in this use shall be conducted within the fully permanent enclosed building, be permanently secured to an established foundation, shall adhere to County building and safety codes, including the Construction Industry Division (CID).

(d) An incidental storage area is allowed outside of the fully enclosed portions of a building but shall be screened from view from each property line.

(e) An air filtration plan approved by the City Building Official and New Mexico Environment Department is required.

(11) Cannabis producer.

(a) Cannabis producers will comply with all State of New Mexico regulatory and licensing requirements.

(b) Remain 300 feet from a school or adult or child daycare center.

(c) Cannabis production facilities may not operate in an area zoned for residential use.

(d) Cannabis production facilities must utilize odor mitigation technology or techniques to mitigate the odor created by cannabis plants and products.

(e) Cannabis production facilities must develop and utilize an air filtration plan that is approved by the State of New Mexico prior to commencing cannabis production in the City of Ruidoso Downs.

(12) Cannabis research laboratory.

(a) Cannabis establishments shall comply with all State of New Mexico regulatory and licensing requirements and shall be located at least 300 feet from a school or adult or child daycare center.

(13) Cannabis testing laboratory.

(a) Cannabis establishments shall comply with all State of New Mexico regulatory and licensing requirements and shall be located at least 300 feet from a school or adult or child daycare center.

(14) Microbusiness cannabis producer.

(a) Cannabis microbusiness establishments will comply with all State of New Mexico regulatory and licensing requirements.

(b) Remain 300 feet from a school or adult or child daycare center.

(c) Limited to no more than 200 mature cannabis plants at one time.

(d) Must demonstrate a legal right to use the quantity of water that the division determines is needed for cannabis production, as approved by the State of New Mexico Regulation and Licensing Department, and the City of Ruidoso Downs.

(D) *Permitted accessory uses.* Permitted accessory uses in the I-1 district are:

(1) Business signs consistent with §§ 155.095 *et seq.*

(2) Personnel service facilities providing personal services, education, recreation, entertainment, food and convenience goods primarily for those personnel employed in the principal use.

(3) Trash enclosures consistent with § 155.079.

(4) Parking consistent with § 155.076.

(E) *Access.* Access shall comply with the requirements of § 155.049(E).

(F) *Setbacks and height.*

(1) *Encroachments into yards are subject to § 155.075.* The minimum building setbacks from property lines shall be as follows:

## (a) Building setbacks:

1. Front: 35 feet.
2. Interior side and rear: 15 feet.
3. Corner side: 30 feet.
4. Residential district boundary:

60 feet.

## (b) Parking lots:

1. Front: Four feet.
2. Interior side and rear: Three
3. Corner side: Four feet.
4. Residential district boundary:

Three feet.

(2) Maximum height of structures shall be 55 feet, except those buildings over 35 feet in height measured from the lowest floor must be approved by the fire chief and the Commission and shall be subject to additional fire protection precautions as determined by the Fire Chief.

(G) *Design Standards.* Exposed metal siding and painted or tinted cinderblock and cement are permitted in the I-1 district.

(H) *Lot width and lot area.*

(1) The minimum lot width shall be 100 feet.

(2) Minimum lot area shall be determined by building area, parking requirements and required setbacks.

(I) *Screening.* All principal and accessory uses shall be screened from adjacent residential districts as described in § 155.069.

(J) *Landscaping.* All areas not designated for buildings, circulation, parking or storage shall be landscaped as described in § 155.070.

(K) *Signs.* Signs are allowed according to §§ 155.095 *et seq.*

(L) *Relationship to overlay zones.* Any property located in the I-1 district must comply with the regulations of any overlay zone and satisfy any flood hazard requirements.

(M) *Hillside and forest protection.* Property located in the I-1 district shall comply with the hillside protection standards and the forest protection standards set forth in §§ 155.066 and 155.068. (1988 Code, § 9-10-74) (Ord. 2017-07, passed 1-8-2018; Am. Ord. 2022-05, passed 3-28-2022; Am. Ord. 2022-06, passed 7-11-2022)

## § 155.054 SPECIAL DISTRICTS DEFINED.

Special districts are zones that have a set of unique provisions or unusual characteristics and have a special purpose other than a general residential, commercial or industrial district. (1988 Code, § 9-10-75)

**§ 155.055 PUD PLANNED UNIT DEVELOPMENT OVERLAY ZONE.**

**(A) Purpose.**

(1) The purpose and intent of PUD is to:

(a) Produce more appropriate development than would result from the strict application of this chapter.

(b) Permit design flexibility that will encourage a more creative approach to the development of land and that will result in more efficient and aesthetically desirable alternatives to the housing needs of the community.

(c) Locate housing, recreation, shops, offices and industrial uses conveniently to each other for the benefit of the entire community.

(d) Permit flexibility of land use, placement of buildings, arrangement of open space, circulation facilities and off-street parking areas, and to maximize the potentials of individual sites under development.

(e) Promote the infill of vacant land within established City limits.

(f) Accomplish more aesthetic and desirable developments which can best utilize and protect special features of the geography, topography, size and shape of particular pieces of property and provide a compatible and stable environment in harmony with the surrounding area.

(2) *PUD*. The PUD shall consist of a harmonious selection of uses and groupings of buildings, parking areas, circulation and open spaces, and shall be designed as an integrated unit in such a manner as to constitute a safe, efficient and convenient community that complements the resort character of the City. The PUD may include one or more principal uses or structures on a single parcel of ground or contiguous parcels.

**(B) Requirements and standards.**

(1) *Ownership*. The tract shall be a development of land under unified control at the time of application. It shall be planned and scheduled to be developed as a whole, though development may be phased in accordance with this section. No authorization or permits shall be granted unless the applicant has acquired actual ownership of, or executed a binding sales contract for, all of the property comprising such tract. The term "single ownership," as used in this section, shall include individuals who by legal agreement have joined to develop the property.

(2) *Conformance with CP*. The proposed PUD shall be consistent with the comprehensive plan of the City.

**(3) Development regulations.**

(a) *Minimum total area*. The minimum total area of a planned unit development shall be no less than five acres unless the applicant shows that waiving the minimum area requirements would be in the public interest and that one or both of the following conditions exist:

1. Unusual physical features of the property itself or the surrounding area are such that standard development provisions are not appropriate to provide for conservation of terrain or physical features important to the neighborhood or community.

2. The property is adjacent to or across the street from property which has been developed under the provisions of this section and will contribute to the amenities of the neighborhood.

(b) *Minimum requirements; additional design standards*. All residential, commercial and industrial PUD shall meet the minimum requirements of this section. In addition, the Commission may require compliance with such other design standards relating to the construction, placement of buildings,



landscaping, streets, pathways, drainageways and other site design features as it may deem necessary.

(c) *Use mix.* PUD shall be of the following use mixes:

1. *Residential planned unit developments (R-PUD).* Residential PUD shall allow the principal permitted uses in the R-1, R-2, R-3, R-4 and C-1 zoning districts and shall contain at least 70% residential uses. In addition to other requirements, all residential PUDs shall meet the following requirements:

a. *Density.* The number of dwelling units per acre allowable within a residential PUDs shall be determined by the Commission; however, in no event shall the number of dwelling units per acre exceed the maximum established by the following schedule, calculated based only upon the areas indicated for residential use:

<i>Designated Use</i>	<i>Dwelling Units/Acre</i>
R-1	6
R-2	10
R-3	18
R-4	25

b. *Open space.* Seven percent of the area designated for residential use shall be set aside for common open space.

2. *Commercial planned unit developments (C-PUD).* A Commercial PUDs shall allow the principal permitted uses in the C-1, C-2 and C-3 districts plus any type of residential use in the R-1, R-2, R-3 and R-4 districts. Residential use shall in no event exceed 50% of the total planned unit development area.

a. *Density.* Residential densities shall be calculated based only on the areas indicated for residential uses:

<i>Designated Use</i>
R-1
R-2
R-3
R-4

b. *Open space.* Seven percent of the area designated for residential use shall be set aside for common open space.

3. *Mixed use planned unit developments (M-PUD).* A mixed use PUDs shall permit any combination of land uses integrally developed under one concept and shall be permitted in any zoning district or combination of zoning districts. The use mix shall be approved by the Commission as conforming to the comprehensive plan of the City.

a. *Density.* The number of dwelling units per acre allowable within a mixed use planned unit development shall be determined by the Commission. However, in no event shall the number of dwelling units per acre exceed the maximum established by the following schedule, based only upon the areas indicated for residential use:

<i>Designated Use</i>	<i>Dwelling Units/Acre</i>
R-1	6
R-2	10
R-3	18
R-4	25

b. *Open space.* Seven percent of the area designated for residential use shall be set aside for common open space.

4. *Industrial planned unit developments (I-PUD).* An industrial PUDs shall include principal permitted uses in the I-1 and C-4 districts only, and may include conditional uses in the

I-1 and C-4 districts on approval by the Commission. All applications for PUDs approval shall designate the type of use mix for which application is made. No development shall be commenced until the PUDs use mix is designated and approved by the Commission.

(4) *Density in residential PUDs.*

(a) A residential PUD may provide for a variety of housing types allowed in any one of the basic residential zoning districts. In addition, the number of dwelling units allowed may be flexible relative to the number of dwelling units per acre that would otherwise be permitted by the zoning regulations applicable to the site. However, the total number of dwelling units allowed in a PUD shall be consistent with the land use element of the City Comprehensive Plan, and in no case shall the unit density exceed the maximum set forth under division (B)(3)(c) of this section.

(b) If the unit density exceeds that permitted in the comprehensive plan, the applicant has the burden to show that such increase in density will not have an undue and adverse impact on existing public facilities, neighborhood properties or the natural environment.

(c) In determining the reasonableness of the increase in unit density, the Commission and the City Council shall consider increased efficiency in public facilities and services, based in part upon:

1. The location, amount and proposed use of common open space.
2. The location, design and type of dwelling units.
3. The physical characteristics of the site.
4. Particular distinctiveness and excellence in siting, design and landscaping.

(5) *Building setbacks generally.* Residential building setbacks from all property lines which form

the perimeter of the PUD or from all interior and exterior dedicated street right-of-way lines or from the paving of any private interior circulation streets shall be no less than 20 feet. Commercial building setbacks shall be no less than 35 feet or the height of the building, whichever is greater.

(6) *Placement of more than one building on lot; compliance with subdivision regulations.* More than one building may be placed on one platted or recorded lot in any PUD. Areas for single-family detached dwellings or other housing types providing privately owned lots must comply with the City's subdivision code (Chapter 156 of this Code) in all respects not specifically noted in this section as appropriate variances or waivers.

(7) *Developments involving only one housing type.* A PUD which only involves one housing type, such as all detached or all attached units, shall not be considered inconsistent with the stated purposes and objectives of this section, and this shall not be the sole basis for denial or approval.

(8) *Architectural style and appearance of buildings.* Architectural style of buildings shall not solely be a basis for denial or approval of a plan. However, overall appearance and compatibility of individual buildings with other site elements and with surrounding development will be primary considerations in the review stages of the Commission and the City Council.

(9) *Issuance of building permits.* No building permits shall be granted for any building on land for which an application for a PUD is in the process of City review or which does not conform to an approved PUD.

(10) *Staging of development.*

(a) Any part of a plan for a PUD proposed to be constructed in stages shall include full details relating thereto, and the City Council may approve or modify where necessary any such proposals. Any proposal for a PUD must show the overall completed project as well as the details of each stage.

(b) The staging shall include the time for beginning and completion of each stage. Such timing may be modified by the City on the showing of good cause by the developer.

(c) The landowner or developer shall make such easements, covenants and other arrangements and shall furnish such financial guarantees as may be determined by the City to be reasonably required to ensure performance in accordance with the plan and to protect the public.

(11) *Streets, utilities, services and public facilities.* The uniqueness of each proposal for a PUD may allow specifications and standards for streets, utilities and services to be subject to minor modifications of the specifications and standards established in this chapter and other City codes governing their construction. The City may, therefore, waive or modify the specifications or standards where it is found that they are not required in the interests of the residents of the PUD or the City. The plans and profiles of all streets, utilities and services shall be reviewed, modified, if necessary, and approved by the City prior to the final approval of the PUD. All planned unit developments shall be served by public or community water and sewer systems.

(12) *Open space.* At least 7% of the total area of the PUD shall be set aside for public and/or private open space and recreational use. The City shall determine what portion of the 7% shall be private and what shall be public. Large open park-like areas are required within a PUD. The developer is required to clearly show on the submitted plans all proposed landscaping, paths or recreation facilities within the open space.

(13) *Operation and maintenance of common facilities.* If certain land areas or structures are provided within the PUD for private recreational use or as service facilities, the owner of such land and buildings shall enter into an agreement with the City to ensure a continued standard of maintenance. These common areas shall be placed under the ownership of one of the following, depending on which is more appropriate:

(a) Dedicated to the public where a community-wide use would be anticipated.

(b) Landlord control.

(c) Landowners' association, provided all of the following conditions are met:

1. The landowners' association must be established prior to any sale.

2. Membership must be mandatory for each owner and any successive buyer.

3. The open space restrictions must be permanent, not for a given period of years.

4. The association must be responsible for liability insurance and the maintenance of recreational, service and other facilities as deemed necessary by the City.

5. Landowners must pay their pro rata share of the cost, and the assessment levied by the association can become a lien on the property in accordance with State statutes.

6. The association must be able to adjust the assessment to meet changing needs.

(14) *Relationship of building setback and height.* In general, a building's setback from property adjacent to a planned unit development site shall be approximately its height.

(15) *Landscaping.* Landscaping and/or fencing shall be provided according to a plan approved by the City and shall include a detailed planting list with sizes indicated.

(16) *Underground installation of utilities.* All utilities, including electricity and telephone service, shall be installed underground.  
(1988 Code, § 9-10-76) (Ord. 2017-07, passed 1-8-2018)

### **§ 155.056 SHORT TERM RESIDENTIAL RENTAL OVERLAY ZONE.**

(A) *Purpose of zone.* The governing body of the City of Ruidoso Downs finds and declares as follows.

(1) Short-term residential rentals provide a community benefit by expanding the number and type of lodging facilities available to seasonal visitors.

(2) Short-term residential rentals are not commercial but are strictly a residential use of the property under this Code.

(3) The provisions of this section are necessary to prevent a burden on city services and impacts on residential neighborhoods posed by short-term residential rentals.

(B) *Applicability of requirements.* The overlay zone applies to all noncommercial residential property within the city regardless of the zoning district. These requirements of § 155.056 shall apply to dwelling units that are rented at some time during the year for short duration that are not part of a commercial business enterprise such as a hotel, motel or commercial cabin rental located on a single lot or a group of contiguous lots within a commercial zoning district. These requirements do apply to individual dwelling units on non-contiguous property owned and operated by a hotel, motel, or commercial cabin rental owner.

(C) *Definitions.* For purpose of this section, the following words and phrases shall have the meaning respectively ascribed to them by the subsection.

**LOCAL CONTACT PERSON.** An owner, representative of the owner or local property manager who lives in the City of Ruidoso Downs or within proximity of the city limits such that he or she is available to respond within an hour or less to tenant and answer neighborhood questions or concerns and is authorized to respond to any violation of this section and take remedial action.

**MANAGING AGENCY or AGENT.** A person, firm or agency licensed with the New Mexico Real Estate Commission representing the owner of the residential rental or a person, firm or agency owning the residential unit.

**OPERATOR.** The person who is proprietor of a residential rental, whether in the capacity of owner, lessee, sub lessee, or mortgagee in possession.

**OWNER.** One that has legal title to property.

**REMUNERATION.** Compensation, money, rent, or other consideration given in return for occupancy, possession, or use of real property.

**RENT.** The consideration charged, whether or not received, for the occupancy of space in a residential rental, valued in money, whether to be received in money, goods, labor or otherwise, including all receipts, cash, credits, property and services of any kind of nature, without any deductions therefrom whatsoever.

**SHORT-TERM RESIDENTIAL RENTAL.** One or more dwelling units, including either a single-family detached or multiple family attached unit, rented for the purpose of overnight lodging for a period less than one night nor more than 28 consecutive days to the same person or persons.

**SLEEPING UNIT.** As defined by the International Building Code, 2015, and as amended means a room or space in which people sleep, which can also include permanent provisions for living, eating, and either sanitation or kitchen facilities, but not both. Such rooms and spaces that are also part of a dwelling unit are not sleeping units.

**THIRD PARTY INTERNET LISTING SERVICES.** An internet based (or online) marketplace that connects owners of short-term residential rentals to potential renters by way of a website and in exchange for a service fee. **THIRD PARTY LISTINGS AGENT** shall not mean local contact person or managing agency or agent as defined in this chapter.

(D) *Short-term residential permit required.* No owner of a residential dwelling unit shall rent the unit for a short term without having a current valid short-term residential rental permit issued by the Planning & Zoning Department. Short-term residential rental permits are issued to the owner for a period of one year and are non-refundable.

(1) Nothing contained within this section shall be construed to abridge the ability of bona fide neighborhood covenants and deed restrictions to be more restrictive than the regulations within this section. Such covenants and deed restrictions shall not be enforceable by the city but remain the responsibility of property owners to ensure compliance within the applicable neighborhood.

(E) *Applications for short-term residential rental permit.* The dwelling unit owner or managing agency agent shall apply to the city for a short-term residential rental permit and supply, at a minimum, the following information.

(1) The maximum number of occupants and vehicles that the dwelling unit can accommodate.

(a) The parking calculation shall be based upon a minimum of one off-street parking space provided per sleeping unit.

(b) The occupancy per sleeping unit shall be determined by the floor area of each sleeping unit, number of restrooms per dwelling unit, infrastructure suitable to service the occupants and shall be in accord with habitable and occupancy codes contained within the duly adopted International Residential code or successor.

(2) The name, address, email address and contact telephone numbers (including 24-hour emergency contact number) of the owner of the residential rental for which their permit is to be issued.

(3) The name, address, email address and contact telephone numbers (including 24-hour

emergency contact number) of the agent, representative or local contact person for the owner of the residential rental.

(4) A short-term residential rental application fee of \$35 per year.

(5) Compliance inspections are required on all short-term permits. The inspections are valid for Biennial (every 2 years) and the fee is \$40. After a permit is issued the compliance inspections will be conducted by the Planning & Zoning Department no later than 30 days. If the property is not in conformance with the compliance requirements at the time of the inspection, a correction notice will be issued, and a re-inspection fee may be assessed of the \$40 if the inspector must return. The compliance inspection shall meet the following requirements.

(a) An ABC type fire extinguisher(s) to be mounted at points of egress, with at least one provided per floor and minimum one per dwelling unit at least two per dwelling unit if greater than 1,000 square feet, at a height not to exceed 48 inches. Extinguishers must be inspected and maintained according to state requirements and must properly display the inspection history of the device.

(b) Approved (and working) smoke alarms installed as per manufacturer's instructions in every sleeping room and be in compliance with 2015 International Building Code, 2015 International Residential Code, and on every level of the home, including basement.

(c) Every sleeping room and living area with access to a primary means of escape shall provide a clear, unobstructed path of travel to the outside.

(d) Outdoor cooking appliances shall be properly maintained, and indoor fireplaces shall be properly maintained and inspected by a qualified person as necessary.

(e) Authority for code compliance inspection. By submitting application, the owner authorizes the Ruidoso Downs Fire Department, the City Code Enforcement Officer, other designated city employee or representative to conduct a code compliance inspection of the residence at intervals deemed appropriate by the Planning & Zoning Department, or if deemed necessary when it is alleged or suspected that a violation of this section may exist or have occurred.

(6) Notification to adjacent owners shall be required for all short-term rental permits.

(a) The notification fee is \$25. The Planning & Zoning Department will notify all property owners within 200 ft. of the permitted property notifying the intent to use their home as short-term rental and the name and number of the local contact person.

(b) Managing agent may opt out to perform this task by certifying compliance with the notifications. If the managing agent opts out to perform this task, the \$25 fee will not be charged.

(F) *Application renewal or update.* Prior to the expiration of the permit or when there is a change to the information contained in the permit regarding ownership, changes in the structure or parking area, or contact person, a new permit application shall be submitted. Transfer fee of \$10 shall be assessed.

(G) *Fees.* Fees are set forth in appendix A to this code. The initial application fee sufficient to cover the cost of processing the application reviewing the information submitted issuing a revised permit.

(H) *Review of application and issuance of permit.*

(1) The Planning & Zoning Department shall complete review of the initial permit application within ten business days. Renewal notifications of all permits shall occur 30 days prior to renewal. Such permits that are active at the time of this ordinance adoption shall not need to be prorated if extending their expiration to coincide with the new renewal date.

(2) Once the application review is complete, the city shall notify the applicant of the decision of whether or not to issue the permit based on compliance with this section. If approval is granted, the city will issue a short-term residential rental permit specifying the maximum number of cars and maximum number of occupants allowed. Failure to renew the permit within 30 days after the applicable thirty-first day of December shall subject the owner to payment of a late permit renewal penalty fee.

(3) An application for permit or renewal application shall be denied if:

(a) All applicable fees and taxes have not been paid, including lodger's taxes as provided under Chapter 36 of this Code; or

(b) Outstanding property nuisance or building code violations exist on the property; or

(c) The applicant has not met the fuels management certification requirements of § 131.70 or so as amended, of this Code.

(d) The owner of the property is not compliant with herein and has exceeded the number of adjudicated citations afforded under the subsection.

(4) All property owners to purchase short-term rental insurance.

(5) Failure to comply with any provision of § 155.056 of this Code may result in a revocation of the permit for the 12-month time period at the discretion of the Planning & Zoning Department.

(6) If the dwelling unit plans to discontinue short-term residential rental of the property then a statement to that effect shall be filed with the city and the permit will be revoked.

(a) In the event that two or more citations of the city ordinance at a specific short term dwelling unit result in convictions in the City of Ruidoso Downs Municipal Court within a 12-month

time period, or in the event that three or more citations for violations of the city ordinance issued at a specific short-term dwelling unit result in convictions in the City of Ruidoso Downs Municipal Court within a 36-month period, the Planning and Zoning Director or his or her designated representative shall revoke the permit for a period of 12 months. After that time, the property owner may reapply for a new short-term rental license after paying all applicable fees. A warning letter shall be sent to the property owner after the first conviction. Violation shall be subject to § 10.99 of the code for each conviction.

(b) Notwithstanding the provisions of § 155.056 (H)(6)(a) above, citations issued within a 24-hour period at the same short-term dwelling unit that result in more than one conviction in the City of Ruidoso Downs Municipal Court shall be counted as only one conviction.

(I) *Tenant notification requirements.* Each short-term residential rental unit shall have a clearly visible and legible notice posted by the owner or managing agency or agent within the unit on or adjacent to the interior of the front door containing the following information.

(1) Copy of the short-term residential rental permit.

(2) The name of the managing agency, agent property manager, local contact person or owner of the unit and a telephone number at which that party can be reached on a 24-hour, seven days a week basis.

(3) The maximum number of occupants three years of age and older permitted to stay in the unit.

(4) The maximum number of vehicles allowed to be parked on the property.

(5) The number of on-site parking spaces and the parking rules for seasonal snow removal (if applicable).

(6) The specific procedures regarding the disposal of trash and refuse.

(7) A notification that an occupant may be cited and fined for creating a disturbance and/or for violating other provisions of this Code.

(8) Notice that noise provisions contained in this Code, § 131.16, will be enforced.

(9) Notification that the City of Ruidoso Downs Municipal Code prohibits ground fires, campfires, fire rings and fire pits.

(10) The 911 address for the property.

(11) Notice that animal leash laws contained in § 91.44 (prohibited acts; animal nuisances, vicious or dangerous animals) will be enforced.

(12) Notification that the City of Ruidoso Downs Municipal Code § 131.70, make it "unlawful for any person to discard a lit cigarette, cigar, match or other type of incendiary material".

(J) *Exterior advertising or signage.* Exterior signage on short-term rental units which indicate availability, phone numbers or other type of information is prohibited. For this purpose of this section, signage shall only be permitted if it includes the name of the dwelling unit or owners name and does not include advertisement of the property.

(K) *Penalties for violation of requirements of this section.* Any person who shall violate any provision of this chapter for which no other penalty is provided shall be subject to penalties as provided in § 10.99 of this Code.

## Appendix A

Short term Residential rental permit		
A. Application fee per year	\$35.00	For a 1-year permit
B. Compliance inspection certification for property owners not doing business with property managers	\$40.00	Biennial Every 2 years
C. There shall be a reinspection fee for properties that do not pass the compliance if inspector has to return.	\$20.00	
Mailing notification to property owners in 200'  Managing agents may opt out of paying this fee.	\$25.00	Annually
D. Business Registration fee	\$35.00	Annually
E. Fee for registering an unregistered rental after continued non-compliance	Twice listed amount in addition to application fines and penal	
F. Transfer fee: change in property manager or change in owner.	\$10.00	

(Ord. 2022-04, passed 2-28-2022)

### **DEVELOPMENT STANDARDS**

#### **§ 155.065 PURPOSE OF SUBCHAPTER.**

The purpose of this subchapter is to establish general development performance standards. These standards are intended and designed to ensure compatibility of uses, to prevent blight, to enhance the health, safety and general welfare of the residents of the community, and to preserve the natural environmental character of the City.  
(1988 Code, § 9-10-102)

### **§ 155.066 RESIDENTIAL TERRAIN MANAGEMENT.**

#### **(A) Purpose; intent.**

(1) The purpose of this subchapter is to protect the natural environment of the City for social, economic and environmental purposes. To this end, it is the intent of the terrain management stands in this section to:

(a) Preserve hillside features within the City in their natural state.

(b) Encourage the planning, design and development of building sites in such a fashion as to provide the maximum safety and enjoyment, while adapting to, and taking advantage of, the best use of the natural terrain.



(c) Encourage the maximum protection and retention of natural features such as drainage swales, streams, slopes, ridge lines, rock outcrops, scenic views and trees.

(d) Minimize the need to pad or terrace building sites on hillsides.

(e) Minimize the scarring of hillside areas.

(f) Encourage restoration of disturbed areas to their natural state.

(2) It shall not be the intent or purpose of this section to preclude development, but to ensure that development enhances rather than detracts from, or ignores, the natural topography, resources and amenities of the hillsides.

*(B) Applicability.*

(1) Development proposed or located on any residential site with average slopes in excess of 20% within the City shall be subject to the regulations and requirements of divisions (C) and (D) of this section. The following formula may be used to determine the average slope:

$$S = \frac{0.0023 \cdot I_c \cdot L_c}{A}$$

Where: S = Average percent of slope of the site.

$I_c$  = Contour interval.

$L_c$  = Total length of the contour lines within the site.

A = Area in acres of the site.

(2) For subdivided lots of less than one-half acre, average slope may be expressed as the ratio of rise or fall to a distance in percent (i.e., a 1% slope rises (or falls) one foot in 100 feet).

*(C) Information required.* For proposed developments meeting the conditions of division (B) of this section, the following information shall be submitted. This information shall be in addition to any information required elsewhere in this Code.

(1) A proposed grading plan including the following:

(a) The proposed drainage plan shall address roof and driveway surfaces, final ground cover and erosion control.

(b) Detailed plans of all drainage devices, walls, cribbing, dams or other protective devices to be constructed in connection with, or as part of, the proposed work.



(c) The location of easements for drainage.

(2) A map showing:

(a) Accurate contours at five foot intervals showing existing and proposed topography of the site and of the land within 100 feet of the site.

(b) The location of observed drainage courses, springs, swampy areas and areas subject to flooding, landslides and mud flows.

(3) Additional information, as determined by the Planning Commission, which is deemed necessary to guarantee compliance with the purpose of this section.

(D) *Development approval.* Approval for any development in areas meeting the guidelines established in division (A) of this section shall be granted in accordance with the development approval procedure set forth in division (B) of this section upon a finding that the grading and development plan is designed to meet such guidelines and the following standards:

(1) Fill and excavation areas shall meet the following standards:

(a) No organic material may be used.

(b) Compaction shall be a minimum of 90% of maximum density per ASTM 1557 in maximum lifts not to exceed eight inches.

(c) Steepness of finished slope shall not be greater than two feet horizontal to one foot vertical, unless a slope and retention plan certified by a professional engineer licensed in New Mexico is approved.

(2) The maximum percent of the site to be disturbed (area under building footprint, parking and driveway areas) shall be as follows:

<i>Percent Average Slope</i>	<i>Disturbed Area Allowed</i>
0-20	75
21-35	65
35 +	55

Lots substandard as to lot size as defined under § 155.078(J)(1) may be allowed up to an additional 10% of disturbed area. Applications for disturbed area increase will be considered under minor amendment procedures set forth under § 155.026(G). Disturbed area increase shall be the minimum necessary to allow reasonable development of the property. Disturbed area increase above 10% shall require variance consideration by the Planning Commission. (1988 Code, § 9-10-103) (Am. Ord. 2022-06, passed 7-11-2022)

#### **§ 155.067 COMMERCIAL TERRAIN MANAGEMENT.**

(A) The provisions of this section shall apply to all commercial development.

(B) Fill and excavation areas shall meet the following standards:

(1) No organic material may be used.

(2) Compaction shall be a minimum of 90% of maximum density per ASTM 1557 in maximum lifts not to exceed eight inches.

(3) Steepness of finished slope shall not be greater than two feet horizontal to one foot vertical, unless a slope and retention plan certified by a professional engineer licensed in New Mexico is approved, provided, any slope with a steepness of two to one or greater shall have erosion control satisfactory to the Commission.

(C) Retention ponds or other suitable methods satisfactory to the Commission shall be utilized to control drainage and erosion during construction. (1988 Code, § 9-10-103.1) (Am. Ord. 2022-06, passed 7-11-2022)

#### § 155.068 FOREST MANAGEMENT.

(A) *Purpose; intent.* The purpose of this section is to protect the natural environment of the City for social, economic and environmental purposes. To this end, it is the intent of the forest protection standards to:

(1) Provide for the sound management, protection and maintenance of trees and woodland located in the City in order to prevent excessive removal of vegetation, minimize damage from erosion and siltation, maintain or enhance appropriate wildlife habitat, reduce fire danger, and ultimately preserve the economic viability of the City, which is dependent upon the proper management of the natural resources in the area and in the interest of health, safety and general welfare of the residents of the City.

(2) Manage and protect the forest areas of the City to maintain their high aesthetic value for the economic support of local property values.

(B) *Exemptions; responsibility for compliance; responsibility for damages.*

(1) No permit, inspection or site plan is required for the removal of trees under the following conditions:

(a) Immature, diseased or dead trees, or for purposes of fuel modification.

(b) Any trees within a 30-foot zone around the residence.

(c) When the proposed tree manipulation will not reduce the basal area of the remaining trees on the property owner's land below 40 square feet per acre.

(2) In addition, all underground utility easements, both private and commercial, shall remain unobstructed at all times by any permanent structures or any fences that have permanent footings. Substantial landscaping materials, including tree planting, are prohibited.

(a) If a property owner refuses access to the utility easement, then the property owner becomes solely responsible for the cost to provide for an unobstructed utility easement.

(b) The property owner is responsible for maintaining the low vegetation and other flammable matter in the private easements and right-of-ways in such a manner that the low vegetation and other flammable matter will not be a potential fire hazard.

(c) In the advent that the property owner and the franchisee cannot reach agreement in the control of a particular tree, shrub, private easement or right-of-way, the Mayor and Director will make the final determinations.

(3) Compliance with all requirements and conditions stated in this section for tree manipulation shall be solely the responsibility of the property owner. Failure to comply with the requirements in this section shall subject the property owner to prosecution under § 155.135.

(4) The City is not responsible for, and the property owner shall hold the City harmless from, any cause of action resulting in the property owner causing damage to adjoining property or persons due to tree manipulation activities.

(C) *Permitted tree removal for new development.* A property owner proceeding under § 155.026 for site plan approval of new development may remove all trees within the building footprint area and thirty feet beyond, and also within required access and parking areas, as long as that tree removal is consistent with the requirements of the Hazardous Fuel Management Plan as adopted by the City and as amended from time to time.

(D) *Conditions requiring variance.* Any tree manipulation not provided for or covered in division (B) of this section shall require variance approval.

(E) *Granting of variances.*

(1) *Criteria.* The Commission may grant variances to the strict application of the provisions of this section as follows:

(a) Where spacing guides indicate that reduction of basal areas below 40 square feet per acre will improve the health of the tree stand;

(b) On properties which interface or intermix with private and public forested areas, and properties in commercial zone districts, with the intention of establishing a defensible space to reduce fire hazards; or

(c) Where strict application would result in practical difficulty or unnecessary hardship that deprives the owner of the reasonable and safe use of the property involved.

(2) *Application.* A request for variance shall be made by filing a completed application with the Planning & Zoning Department at least 30 days prior to the Commission meeting. The application shall be accompanied by a development plan showing such information as the Planning & Zoning Department may reasonably require for purposes of this chapter. The plans shall contain sufficient information for the Commission to make a proper decision on the matter. The request shall state the exceptional conditions and the peculiar and practical difficulties claimed as a basis for a variance.

(F) *Standards for tree removal activities.*

(1) All chain saws, weed eaters and like equipment with two-cycle motors used in the removal of trees, slash and debris shall be equipped with spark arresters.

(2) It is the responsibility of the property owners to provide for the disposal of the slash in a

legal and appropriate manner. Failure to provide for disposal will subject the owner to the nuisance provisions of this Code.

(3) Individuals or contractors removing trees will be fully responsible for any damage to public and private property or utilities resulting from tree removal.

(1988 Code, § 9-10-104) (Ord. 2009-03, passed 2-23-2009; Am. Ord. 2022-06, passed 7-11-2022)

## § 155.069 SCREENING.

(A) *Multi-density and medium-density mobile home developments.* All R-3, R-4 and M-2 district principal and accessory uses, except signs, which are situated on a parcel which abuts a residential district other than R-3, R-4 or M-2, respectively, shall be screened from such district by an approved wall, fence or landscaping not less than six feet in height above the level of the adjacent property at the district boundary. Walls or fences of lesser heights or planting screens may be permitted by the City if there is a finding that the nature or extent of the use being screened is such that a lesser degree of screening will as adequately promote the use and enjoyment of the properties within the adjacent residential district, or there is a finding that screening of the type required by this chapter would interfere with the provision of adequate amounts of light and air to such properties. All required screening devices shall be designed so that they are architecturally harmonious with the principal structures on the site, and they shall be properly maintained so as not to become unsightly, hazardous, or less opaque than when originally constructed. This subsection shall not apply when the apartment development is adjacent to an already-existing nonresidential use (i.e., a school or church) in a residential district. Such exception to the screening requirement shall only be allowed along that property line between the apartment development and the nonresidential land use.

(B) *Business and industrial developments.* All principal and accessory uses, except signs, which are situated on a parcel which abuts a residential district

shall be screened from such district by an approved wall, fence or landscaping not less than six feet in height above the level of the residential property at the district boundary. Walls or fences of lesser heights or planting screens may be permitted by the City if there is a finding that the nature or extent of the use being screened is such that a lesser degree of screening will as adequately promote the use and enjoyment of the properties within the adjacent residential district, or there is a finding that screening of the type required by this chapter would interfere with the provision of adequate amounts of light and air to such properties. All required screening devices shall be designed so that they are architecturally harmonious with the principal structures on the site, and they shall be properly maintained so as not to become unsightly, hazardous, or less opaque than when originally constructed.

(1988 Code, § 9-10-105)

#### § 155.070 LANDSCAPING.

(A) *Purpose.* Landscaping requirements as set forth in this chapter have been established to encourage quality development within the City; to provide a smooth transition between adjoining properties; to screen service yards, parking lots and other areas which tend to be unsightly; to facilitate the buffering of one land use from other land uses; to encourage harmonious relationships between buildings which are part of one development and buildings located on abutting properties; to provide open space and recreational areas to serve the needs of the residents of the City; to soften the effect of development; to improve erosion and stormwater runoff control; to reduce the particulate matter in the air; to encourage a sense of commitment to the City and its residents on the part of the developers; and to provide for the health, safety and general welfare of the residents of the City.

(B) *Definition.* **LANDSCAPING**, for purposes of this chapter, shall be defined as including any or all of the following:

- (1) Naturally existing vegetation;
- (2) Lawn or grass areas;
- (3) Trees, shrubs, ground cover and other plantings;
- (4) Sprinkler or irrigation systems;
- (5) Decorative rock, natural or man-made;
- (6) Decorative lighting;
- (7) Benches, tables, fountains, planters or other similar outdoor furniture;
- (8) Decorative fences, and detention and retention ponds;
- (9) Waterfalls and manmade streams; and
- (10) Berms or mounds.

#### (C) *Landscaping plan.*

(1) A landscaping plan for any development in a commercial or industrial district shall be submitted in conjunction with any required site plan, and shall be reviewed and approved, denied or modified in conjunction with the site plan. All exposed ground areas surrounding or within a principal or accessory use, including street boulevards, which are not devoted to drives, parking lots, sidewalks, patios or other such uses shall be landscaped.

(2) When possible, areas of any particular site allocated to landscaping shall be located on that site in such a way as to provide substantial benefit to the general public as well as to the site itself.

(3) Where practical, landscaping shall also be provided within parking lots in a manner which will serve to visually reduce the expanse of paved areas.

(D) *Minimum landscaping.*

(1) *Multifamily, apartment, condominium and business developments.*

(a) All areas not used for buildings, parking, drives or other impervious materials, or for storage of materials, or left in a natural and undisturbed state, shall be landscaped according to an approved landscape plan.

(b) For townhouses, landscaping shall be required only in the front yards, side yards and un-paved rights-of-way.

(2) *Commercial and industrial developments.* All areas in front and corner side yards not used for parking, drives or other impervious materials or storage shall be landscaped according to an approved landscape plan.

(3) *Planting of trees.*

(a) Trees shall be provided for all parking lot areas. A minimum of one tree shall be provided for each ten parking spaces. Trees shall be a minimum size of two inches in diameter as measured at four feet above ground, and shall be distributed throughout the lot to maximize shading and eliminate large expanses of unbroken paved parking areas. Not less than 6% of the interior of a parking lot shall be landscaped with trees, shrubs or other durable landscaping materials.

(b) A minimum size tree well of three feet shall be required for all new tree planting. Paving shall not be maintained closer than three feet to existing established trees.

(4) *Peripheral landscaping for parking lots.* Peripheral landscaping shall be required along any side of a parking lot having more than 20 parking spaces. A landscaping strip of not less than four feet wide shall be provided between the parking area and adjoining property. Where a commercial parking area adjoins a residential district, a wall, hedge or other

durable landscaping barrier shall be planted or installed. The height of such landscaping barrier shall be not less than six feet.

(E) *Installation or financial guarantee required prior to issuance of occupancy permit; maintenance guarantee.*

(1) All landscaping materials and equipment as provided for on the approved landscape plan for any residential, business or industrial development, or in the case of phased development, for the particular phase, shall be installed prior to the issuance of any occupancy permit, unless a financial guarantee in the amount of 150% of the cost of the materials and labor is submitted to the City. Financial guarantees shall be of the types and forms provided in § 155.006.

(2) Upon completion of the landscaping requirements as provided on the approved landscape plan, the financial guarantee shall be released except for a portion in the amount of 20% of the cost of materials and installation, which shall be retained for a warranty period of one year as a guarantee for proper installation and maintenance. Following the warranty period, the remaining 20% guarantee shall be released upon a finding that installation and maintenance has occurred as per the approved landscape plan.

(F) *Maintenance standards; prohibited uses.* All landscaped areas shall be kept neat, clean and uncluttered. No landscaped area shall be used for the parking of vehicles or the storage, or display of materials, supplies or merchandise.

(1988 Code, § 9-10-106)

**§ 155.071 USE OF CERTAIN AREAS AND STRUCTURES AS DWELLING UNIT PROHIBITED.**

No cellar, garage, tent, trailer, basement with unfinished structure above, or accessory building shall at any time be used as a dwelling unit. The basement portion of a finished home may be used for normal

living, eating and sleeping purposes, provided it is properly dampproof and has suitable fire protection and exits.

(1988 Code, § 9-10-107)

**§ 155.072 [RESERVED].**

**§ 155.073 FENCES.**

*(A) Building permit; site development approval.*

No person, except on a farm and as related to farming, shall hereafter construct or cause to be constructed or erected within the City, in any residential district, any fence without first making an application for and securing a building permit. Site development approval and building permits shall be obtained for all fences in C-1, C-2, C-3, C-4 and I-1 districts.

*(B) Location.* All fences shall be located entirely upon the private property of the person constructing or causing the construction of such fence, unless the owner of the property adjoining agrees, in writing, that such fence may be erected on the division line of the respective properties.

*(C) Construction and maintenance; restricted materials; nonconformities; height.*

*(1) Construction and maintenance.* All fences shall be constructed in a substantial, workmanlike manner of substantial material reasonably suited for the purpose for which the fence is proposed to be used. Every fence shall be maintained in a condition of reasonable repair and shall not be allowed to become and remain in a condition of disrepair, damage or unsightliness, or constitute a nuisance, public or private. Any such fence which is or has become dangerous to the public safety, health or welfare, or has become unsightly through improper maintenance or neglect, is a public nuisance, and the Director shall commence proper proceedings for the abatement thereof.

*(2) Restricted materials.* Site development approval is required by the Commission for all installations of barbed wire and/or razor wire. Use shall be restricted to properties where necessity has been shown that security is required to protect hazardous processing, products, equipment, storage or attractive nuisances or in situations of exceptional need. Barbed wire and razor wire are prohibited fencing materials except under one of the following conditions:

(a) Public and private utilities may install barbed wire or razor wire at the top of fencing.

(b) Commercial and industrial development may install barbed or razor wire at the top of fencing.



(c) Buildings and properties which involve attractive nuisances may install barbed wire at the top of fencing.

Site development approval is also required by the Commission for all installations of electrified fencing.

(3) *Effective date; nonconforming fences.* Any fencing existing on the effective date of the ordinance from which this section is derived, which does not comply with the regulations of the district in which it is located, shall be deemed a lawful nonconforming fencing installation. All new or replacement fencing shall fully conform to regulations established in this section.

(4) *Measurement of height.* The height of any fence shall be calculated to the uppermost points as follows:

(a) In required yards abutting a street, the height of the fence shall be the total effective height measured from the finished grade on the side nearest the street.

(b) In other required yards, the height of the fence shall be the total effective height above the finished grade measured on the side nearest the abutting property.

(c) On property lines, the height may be measured from the finished grade of either side when the abutting property owners are in joint agreement, with such agreement submitted in writing.

(D) *Residential districts.* In all parts of the City zoned residential, no fence shall be erected or maintained more than eight feet in height, and also:

(1) Solid fences, walls or hedges which are parallel or approximately parallel to the front property line shall be set back from the front line a minimum of five feet.

(2) On corner lots in all districts, no fence or planting in excess of 30 inches above the street centerline grade shall be permitted within a triangular

area defined as follows: measured 30 feet along the front and side street lines of a corner lot from the intersection of the property lines of such lot and a line connecting points 30 feet distant from the intersection of the property lines of such lot.

(3) In those instances where a fence is erected as an enclosure which restricts access from the front to the rear yard, a gate, identifiable collapsible section, or other such means of recognizable ingress shall be installed, shall remain unobstructed and shall measure a minimum of three feet in width. The location of such ingress points shall be positioned at any point paralleling the front lot line between the side lot properly line and the principal structure.

(E) *Business and industrial fences.* Fences in all commercial and industrial districts shall not exceed 12 feet in height, except that boundary line fences abutting residential districts shall not be greater than eight feet in height.

(F) *Finished side to face adjoining property.* In all districts, any fence so constructed as to have only one elevation "finished," which shall be defined as not having its supporting members significantly visible, shall be erected such that the finished elevation of the fence is exposed to the adjacent property.  
(1988 Code, § 9-10-109) (Am. Ord. 2022-06, passed 7-11-2022)

#### § 155.074 RETAINING WALLS.

(A) *Site development approval.* No person shall construct or cause to be constructed or erected along any property lines within the setback areas within the City, any retaining wall above four feet in height without first obtaining site development approval from the Commission, except that all retaining walls within the floodplain area shall be approved in accordance with Chapter 154 of this Code. The site development plan must be accompanied by a design that is stamped by a professional engineer licensed in New Mexico. Site development plans for individual retaining walls on previously developed lots may be approved by the

Director subject to concurrence by the City Council. Following site development plan approval, a building permit shall be obtained from the Planning & Zoning Department.

(B) *Location.* All retaining walls shall be located entirely upon the private property of the person constructing or causing the construction of such retaining wall, unless the owner of the adjoining property agrees, in writing, that such retaining wall may be erected on the division line of the respective properties. The Director may require an applicant for a retaining wall permit to establish the boundary lines of his or her property by a survey thereof, to be made by a registered land surveyor.

(C) *Construction and maintenance.* All retaining walls shall be constructed in conformance with applicable building codes in a substantial, workmanlike manner and of substantial material reasonably suited for the purpose for which the retaining wall is proposed to be used. All retaining walls shall be maintained in a condition of reasonable repair and shall not be allowed to become and remain in a condition of disrepair or danger, or constitute a nuisance, public or private. Any such retaining wall which is or has become dangerous to the public safety, health or welfare is a public nuisance, and the Director shall commence proceedings for the abatement thereof.

(D) *Maintenance easement.* In any instance where a retaining wall is constructed within four feet of a rear or interior side lot line, the property owner shall be required to obtain an easement from the adjoining landowner allowing access for construction and maintenance of the retaining wall. Such easement shall be presented to the Planning & Zoning Department for inspection prior to issuance of the necessary building permit.

(1988 Code, § 9-10-110) (Am. Ord. 2022-06, passed 7-11-2022)

## **§ 155.075 SETBACK AND HEIGHT ENCROACHMENTS, LIMITATIONS AND EXCEPTIONS.**

The following shall be considered as permitted encroachments on setback and height requirements, except as otherwise provided in this chapter:

(A) *Permitted encroachments in any yards.* The following are permitted in any yards: posts, off-street open parking spaces, sills, pilasters, lintels, cornices, eaves, gutters, awnings, open terraces, service station pump islands, open canopies, steps, flagpoles, ornamental features, open fire escapes, sidewalks and fences, except as otherwise provided in this chapter; also, yard lights and name-plate signs in residential districts, trees, shrubs, plants, floodlights or other sources of light illumination, and authorized lights or light standards for illuminating parking areas, loading areas or yards for safety and security reasons, provided the direct source of light is not visible from the public right-of-way or adjacent residential property.

(B) *Permitted encroachments in side and rear yards.* Balconies eight feet above grade may extend into the yards to within five feet of a lot line, provided the balconies do not extend over nonresidential driveways. Detached outdoor picnic shelters, open arbors and trellises may extend to within five feet of a side or rear lot line, except that no such structures shall exceed 500 square feet. Recreational equipment, picnic tables and apparatus needed for the operation of active and passive solar energy systems are permitted encroachments. Storage buildings less than 120 square feet in size may extend to within five feet of the side or rear lot line in any district.

(C) *Permitted encroachments in rear yards.* The following are permitted in rear yards: laundry drying equipment; patios; covered porches; breezeways and detached outdoor living rooms may extend 20 feet into the rear yard but not closer than ten feet to the rear lot line.

(D) *Exemptions from height limitations.* Height limitations shall not apply to church spires, belfries, cupolas and domes, monuments, chimneys and smokestacks, flagpoles, public and private utility facilities, transmission towers of commercial and private radio broadcasting stations, television antennas, parapet walls extending no more than four feet above the limiting height of the building (except as otherwise provided in this chapter), and solar energy collectors and equipment used for the mounting or operation of such collectors.

(E) *Exemption from building setback requirements for buildings with party walls.* Subject to regulations contained in the Uniform Building Code and other applicable regulations, buildings may be excluded from side and rear setback requirements provided party walls are used and if the adjacent buildings are constructed as an integral unit.

(F) *Covered decks, porches and breezeways in front yards.* Covered decks, porches and breezeways in R-1, R-2, M-1 and M-2 districts may extend into the front yard, but not closer than 15 feet to the front property line, provided that they are not enclosed. (1988 Code, § 9-10-111) (Am. Ord. 2022-06, passed 7-11-2022)

## **§ 155.076 OFF-STREET PARKING FACILITIES.**

### **(A) General provisions.**

(1) *Calculation of floor area.* The term “floor area,” for the purpose of calculating the number of off-street parking spaces required, shall be determined on the basis of the exterior area dimensions of the building, structure or use times the number of floors, minus 10%, except as may be otherwise provided or modified in this chapter.

(2) *Change of use or occupancy of buildings.* Any change of use or occupancy of any building, including additions thereto requiring more parking, shall not be permitted until such additional parking spaces as required by this chapter are furnished. This provision does not apply to buildings with principle permitted uses in C-1, C-2, or C-3 districts that existed prior to July 25, 2001.

(3) *Use of parking facilities accessory to residential use.* Off-street parking facilities accessory to a residential use shall be utilized solely for the parking of licensed and operable passenger automobiles and trucks, with no trucks exceeding 5,500 pounds, and recreational vehicles and recreational equipment. Under no circumstances shall required parking facilities accessory to a residential structure be used for storage of commercial vehicles or equipment or for the parking of automobiles belonging to the employees, owners, tenants or customers of business or manufacturing establishments.

### **(B) Design standards.**

#### **(1) Stall and aisle dimensions; traffic flow.**

(a) Parking stalls and aisles shall be provided according to the following minimum requirements in all districts:

[Table on following page]

				<i>Width of Aisle</i>	
	<i>Stall</i>	<i>Stall</i>	<i>Stall</i>	<i>One-Way</i>	<i>Two-Way</i>
<i>Parking Angle</i>	<i>Width (ft)</i>	<i>Base (ft)</i>	<i>Depth (ft)</i>	<i>Traffic (ft)</i>	<i>Traffic (ft)</i>
0 degrees	9	9	22	15*	25
30 degrees	9	18	18.2	15*	25
45 degrees	9	6.5	19	15*	25
60 degrees	9	10.5	22	20	25
75 degrees	9	9.5	21.5	20	25
90 degrees	9	9	20	20	25
* Except where needed as a file lane, in which case a 20-foot minimum is required.					

(b) All angle parking, except 90-degree and parallel parking, shall have aisles designed for one-way traffic flow only, except that two-way traffic is permitted in designs approved by the Planning Officer and City Engineer. All parking designs shall have ingress and egress to a public street. There shall be no through traffic access to adjoining properties or private easements, except within designated shopping centers.

(2) *Parking within structures.* The off-street parking requirements may be furnished by providing spaces so designed within the principal building or a structure attached thereto; however, no building permit shall be used to convert the parking structures into a dwelling unit or living area or other activity until other adequate provisions are made to comply with the required off-street parking provisions of this chapter.

(3) *Circulation; backing onto public street.* Except in the case of single-family, two-family, townhouse, three-family and four-family dwellings, parking areas shall be designed so that there is circulation between parking bays and not upon a public street or alley. Except in the case of single-family, two-family, town-house, three-family and four-family dwellings, parking area design which requires backing into the public street is prohibited.

(4) *Preservation of off-site parking.* When required accessory off-street parking facilities are provided elsewhere than on the lot with the same ownership or control, either by deed or long-term lease, as the property occupied by such principal use, the owner of the principal use shall file a recordable document with the City and County Clerk requiring the owner and his or her heirs and assigns to maintain the required number of off-street spaces during the existence of the principal use.

(5) *Driveways required.* All off-street parking spaces shall have access from driveways and not directly from the public street.

(6) *Distance of access points from street intersections.* No access point (measured to the middle of the driveway) shall be located less than 40 feet in residential districts, 150 feet in commercial districts, or 150 feet in industrial districts, from the intersection of two public street rights-of-way.

(7) *Length of parallel parking spaces.* Parallel parking spaces shall be a minimum of 22 feet in length.

(8) *Approval of driveways; sight line triangle.* All drive accesses shall be approved by the Commission for width and location. A minimum sight line triangle measured 20 feet along the public

right-of-way line and ten feet along the edge of the access drive shall be provided on both sides of a driveway access.

(9) *Distance between driveways.* Driveway access openings on a public street, except for single-family, two-family and townhouse dwellings, shall not be located less than 40 feet from one another as measured from inside of drive to inside of drive.

(10) *Number of driveways.* Each property shall be allowed one drive access for each 100 feet of street frontage. Single-family uses shall be limited to one drive access per property. These conditions shall apply unless otherwise granted approval by the Commission.

(11) *Requirements for specific types of development.*

(a) *Commercial and industrial development.* The grade of ingress and egress driveways and parking lot aisles shall not exceed 12%. All driveways shall provide and maintain a six-foot section from the edge of the traveled way with approximately a three-inch dip to the center (8% grade) from both directions. The dip section shall be paved with asphalt or concrete for the full driveway width. The base shall be a minimum of four inches with either one and one-half inches of asphalt or four inches of concrete paving. The State Department of Transportation may require a lesser grade for driveways to N.M. Highway 70. Commercial and industrial development subject to State Department of Transportation approval shall provide evidence of approval by the department prior to issuance of a City permit. Drainage pipe under driveways, where required, shall be a minimum of 18 inches in size. Parking area grades shall not exceed 3%.

(b) *Multifamily residential development.* The grade of ingress and egress driveways and parking lot aisles shall not exceed 12%. All driveways shall provide and maintain a six-foot section from the edge of the traveled way with approximately a three-inch dip to the center (8%

grade) from both directions. The dip section shall be paved with asphalt or concrete for the full driveway width. The base shall be minimum of four inches with either one and one-half inches of asphalt or four inches of concrete paving. Multifamily development subject to State Highway and Transportation Department approval shall provide evidence of approval by the department prior to issuance of a City permit. Drainage pipe under driveways, where required, shall be a minimum of 18 inches in size. Parking area grades shall not exceed 3%.

(c) *Single-family and duplex development.* Ingress and egress drives shall be provided and maintained to give a clear sight line for street access. Drainage ditch, driveway profile or surfacing shall be so constructed so that surface water from the driveway or lot will not wash dirt, gravel and debris onto the traveled roadway. Driveways that wash dirt, gravel or debris onto the traveled roadway shall be considered a nuisance under §§ 92.15 through 92.23. Driveways on the downhill side of the street shall be constructed to prevent erosion of the driveway or adjoining private property by runoff from the street. Driveways will be inspected by the street department inspector during final inspection of the residence for compliance and be required for a certificate of occupancy. The drainage pipe under the driveway, where required, shall be not less than 18 inches in size. Development subject to approval by the State Department of Transportation shall provide evidence of approval of such department prior to the issuance of a City permit.

(d) *Variances.* Variances from requirements of division (B)(11)(a) of this section shall be requested in connection with the application for site plan approval (see § 155.026). Variances from the requirements of division (B)(11)(c) of this section shall be considered under § 155.026(F) and approved only on favorable finding of the Director with approval by the chairperson and vice-chairperson of the Commission. Variance requests not approved under § 155.026(F) will automatically be appealed to the full Commission.

(12) *Surfacing.* All areas intended to be utilized for parking space and driveways shall be surfaced with materials suitable to control dust and drainage. Plans for paving and drainage of driveways and stalls for five or more vehicles shall be submitted to the Commission for review, and the final drainage plan shall be subject to the written approval of the Director.

(13) *Striping.* Except for townhouses and single-, two-, three- and four-family dwellings, all parking stalls shall be marked with painted lines not less than four inches wide. Where possible, hairpin striping shall be used.

(14) *Lighting.* Any lighting used to illuminate an off-street parking area shall be so arranged as to reflect the light away from adjoining property, abutting residential uses and public rights-of-way and shall be in compliance with this chapter.

(15) *Signs.* No sign shall be so located as to restrict the sight lines and orderly operation and traffic movement within any parking lot. All signs shall conform to §§ 155.095 *et seq.*

(16) *Perimeter curb and gutter.* Except for townhouses and single-, two-, three- and four-family dwellings, all open off-street parking areas and driveways shall have a perimeter curb and gutter around the entire parking lot built according to standards provided by the Planning & Zoning Department.

(17) *Vehicles not to protrude over property lines.* All such parking stalls which abut property lines shall be designed and constructed so that parked vehicles will not protrude over property lines.

(18) *Drainage.* Runoff from new development areas after the site is improved shall not exceed the prior runoff from the site when unimproved. On-site delay or interception of additional runoff by vegetation, temporary ponding, percolation pits or other approved methods shall be used to minimize any adverse effect on other properties.

(C) *Maintenance.* It shall be the joint and separate responsibility of the lessee and owner of the principal use or building to maintain, in a neat and adequate manner, the parking space, accessways, striping, landscaping and required fences.

(D) *Use of parking areas.* Required accessory off-street parking spaces in any district shall not be utilized for open storage, sale or rental of goods, distribution of public relations material, or storage of inoperable vehicles.

(E) *Number of spaces required.* The following minimum number of off-street parking spaces shall be provided and maintained by ownership, easement and/or lease for and during the life of the respective uses:

(1) Dwellings: Single-family, two-family, townhouse, three-family, four-family and multiple-family dwellings: Two spaces per unit.

(2) Motels, motor hotels and hotels: One space per each rental unit, plus one space for each ten units, plus additional spaces as may be required in this section for related uses contained within the principal structure.

(3) Churches, theaters and auditoriums: At least one space for each four seats based on the designed capacity of the main assembly hall. Facilities as may be provided in conjunction with such buildings or uses shall be subject to additional requirements which are imposed by this chapter.

(4) Sanitariums, convalescent homes, rest homes, nursing homes or day nurseries: Four spaces, plus one space for each three beds for which accommodations are offered, plus one space for each employee on the shift of greatest employment.

(5) Elderly (senior citizens) housing: One space per unit.

(6) Convenience food restaurants: At least one space for each three seats, or one space for each three occupants based on the design capacity, whichever is greater.

(7) Bowling alleys: At least five spaces for each alley, plus additional spaces as may be required in this section for related uses contained within the principal structure.

(8) Motor fuel stations: At least four spaces, plus two spaces for each service stall. Those facilities designed for sale of other items than strictly automotive products, parts or service shall be required to provide additional parking in compliance with other applicable provisions of this chapter.

(9) Retail store and service establishment: At least one off-street parking space for each 250 square feet of floor area for retail or service area, plus one space for each 500 square feet of area devoted to storage, warehousing or processing.

(10) Furniture and carpet store: One space for each 500 square feet of floor area.

(11) Manufacturing, fabricating or processing of products or materials: One space for each 350 square feet of floor area, plus one space for each company-owned truck (if not stored inside the principal building).

(12) Warehousing, storage or handling of bulk goods: That space which is solely used as office shall comply with the office use requirements plus one space per each 1,000 square feet of floor area, plus one space for each employee on the maximum shift and one space for each company-owned truck (if not stored inside the principal building).

(13) Automobile washing establishments (in addition to required stacking space):

(a) Automatic drive-through, serviced: A minimum of three spaces, or one space for each employee on the maximum shift, whichever is greater.

(b) Self-service: A minimum of two spaces per stall.

(c) Service station carwash: None in addition to that required for the station.

(14) Private racquetball, handball and tennis courts: Not less than three spaces per each court.

(15) Offices (except medical and dental offices): One space for each 350 square feet of gross floor area; minimum of four spaces.

(16) Medical and dental offices: Four spaces for each doctor or dentist, plus one per employee.

(17) Restaurants and taverns: One space for each three seats, or one space for each three occupants based upon the design capacity, whichever is greater, plus one space for each two employees.

(18) Schools, public and private:

(a) Elementary and junior high schools: One and one-half spaces for each classroom, library, lecture hall and cafeteria, plus one additional space for each three fixed seats in the auditorium, gymnasium or other place of public assembly or one space for every 21 square feet of area available for public assembly where no fixed seats are provided.

(b) Senior high schools: One and one-half spaces for each classroom or lecture hall, plus one additional space for each five students that the school is designed to accommodate, plus one additional space for each employee or staff member. For theaters, auditoriums, sports arenas, gymnasiums and similar places of public assembly, in addition, there shall be one space for each three fixed seats or one space for every 21 square feet of area available for public assembly where no fixed seats are provided. In no event shall less than ten spaces be provided for any use, regardless of the number of employees.

(19) Day care facilities: One space for each eight enrollees, and one space for every employee.

(20) Convention centers, civic/events centers and similar places of assembly: One space for every four fixed seats, or one space for every four persons based upon the design capacity of the building where fixed seats are not provided.

(21) Drive-in banks: One space for every 300 square feet of building floor area, and storage space for four vehicles at each drive-in window.

(22) Funeral homes: One space for each four seats in funeral service and state room areas, in addition to one space for each hearse or other commercial vehicle.

(23) Hospitals: One space for every two beds.

(24) Automobiles and garages for repair, tire recapping, muffler, battery, brakes and other similar services: Three spaces for each service bay.

(25) Drive-in or walk-up food or drink services: One space for each three seats plus one space per employee and storage lanes a minimum of 15 feet wide and 100 feet in length for each drive-up service window. Drive-up only establishments shall provide a minimum of five parking spaces in addition to required employee parking.

(26) Laundry and dry cleaning, self-service: One space for every three pieces of rentable equipment.

(27) Recreation uses:

(a) Golf courses, driving ranges, miniature golf or similar recreation:

1. Four spaces per green for golf courses.
2. One space per each two practice tees.
3. Two spaces per green for miniature golf courses.

(b) Health exercise facilities: One space per 50 square feet of floor area.

(c) Swimming pools: One space per 140 square feet of pool area.

(d) Skating rinks (ice or roller rinks): One space per 200 square feet of building area.

(e) Electronic games: One space per each three games.

(f) Go-carts, tube boats and similar devices: One space for each three pieces of rental equipment.

(28) Cafeterias, nightclubs, taverns, dancehalls and lounges: One space for every 50 square feet of floor area, or one space for every four persons based upon the design capacity, whichever is greater.

(29) Boardinghouses, bed and breakfast establishments, and fraternal organizations: Two spaces, plus one space for each sleeping unit or resident member.

(30) Art galleries, museums and similar uses: One space for each 250 square feet of floor area.

(31) Wholesale establishments: One space for each 500 square feet of floor area.

(32) Contractors' yards, material yards and lumberyards: One space for each 350 square feet of floor area, plus one space for each employee working on the premises, plus one space for each company owned truck, vehicle or equipment, plus a minimum of five spaces for visitor parking.

(33) Retail sales of vehicles, heavy equipment and other large products: One space for each company vehicle, in addition to one space for each 350 square feet of building floor area, plus one space for each employee.

(F) *Handicapped parking spaces.*

(1) For parking areas with five to ten spaces, at least one handicapped space shall be provided. For parking areas with more than ten spaces, one handicapped space per ten spaces shall be provided. Handicapped parking spaces in lots



having 15 spaces or more shall be a minimum of 12 feet by 20 feet and shall be permanently marked with signs restricting use to handicapped persons. On-pavement marking or portable signs shall not be used as substitutes for permanent signage.

(2) Each parking space for the handicapped shall be designated by its own conspicuously posted upright sign, either freestanding or wall mounted, showing the international disabled symbol of a wheelchair; it may include such wording as "disabled parking" or "handicapped parking." Each sign shall be no smaller than 12 by 18 inches. Each sign shall have its lower edge no less than four feet above grade. Signs shall be maintained in good condition. In parking lots serving nonresidential uses, barriers shall protect freestanding signs from being hit by motor vehicles. However, for any such spaces required for dwelling parking, where the premises are required to have ten or fewer off-street parking spaces, no sign need be displayed so long as no person with need of a designated disabled parking space is a resident on the premises.

(G) *Joint use of parking facilities by schools, churches, and business establishments.*

(1) *Authorized.* Up to 80% of the parking facilities required by this section for a church or for an auditorium incidental to a public or parochial school may be supplied by the off-street parking facilities of the following daytime uses: banks, business offices, retail stores, personal service shops, household equipment or furniture shops, clothing or shoe repair or service shops, or manufacturing, wholesale and similar uses.

(2) *Conditions.*

(a) The building or use for which application is being made to utilize the off-street parking facilities provided by another building or use shall be located within 300 feet of such parking facilities.

(b) The applicant shall show that there is no substantial conflict in the operating hours of the two buildings or uses for which joint use of off-street parking facilities is proposed.

(c) A properly drawn legal document, executed by the parties concerned, for joint use of off-street parking facilities, duly approved as to form and manner of execution by the City Attorney, shall be filed with the City Clerk/Treasurer and recorded with the County Clerk.

(H) *Off-site parking.*

(1) Any off-site parking which is used to meet the requirements of this chapter shall be a conditional use as regulated by this chapter and shall be subject to the conditions listed in this subsection.

(2) Off-site parking shall be developed and maintained in compliance with all requirements and standards of this chapter.

(3) Reasonable access from off-site parking facilities to the use being served shall be provided.

(4) The site used for meeting the off-site parking requirements of this chapter shall be under the same ownership as the principal use being served, or under public ownership, or shall have guaranteed permanent use by virtue of a perpetual lease filed with the City Clerk/Treasurer and County Clerk.

(5) Off-site parking for multiple-family dwellings shall not be located more than 200 feet from any normally used entrance of the principal use served.

(6) Off-site parking for nonresidential uses shall not be located more than 300 feet from the main entrance of the principal use being used.

(7) Any use which depends upon off-site parking to meet the requirements of this chapter shall maintain ownership or parking utilization of the off-site location until such time as on-site parking is provided or a site in closer proximity to the principal use is acquired and developed for parking.

(I) *Joint use of parking by businesses on adjacent property.* When it can be established by the owners that two businesses located on adjacent property operate at different hours, parking requirements may be shared jointly according to the maximum parking requirements of the two properties, provided there is a written agreement ensuring retention for such purposes and stating the hours of operation. The agreement shall be properly executed by the owners of both properties, and approved as to content and form by the City Attorney and Director and filed with the application for site development approval. The Commission shall determine the extent of allowable joint use parking based on the owners' submission and staff recommendation.

(J) *Variances.*

(1) The Commission shall be able to grant variances from the parking requirements of this chapter on all buildings existing prior to the adoption of the ordinance from which this chapter is derived. If a preexisting building is to be expanded, then the new portion of the building shall have to meet the parking requirements of this chapter.

(2) The Commission may grant a variance of the parking requirements only where the granting of such variance is not contrary to the public interest and will avoid unnecessary hardship and serve substantial justice while meeting the spirit of this chapter.

(1988 Code, § 9-10-112) (Am. Ord. 2022-06, passed 7-11-2022)

**§ 155.077 OFF-STREET LOADING FACILITIES.**

(A) *Location.*

(1) All required loading berths shall be off-street and located on the same lot as the building or use to be served.

(2) Except for loading berths required for apartments, no loading berths shall be located closer than 50 feet to a residential district unless within a structure.

(3) Loading berths shall not be located within the minimum front yard building setback.

(4) Loading berths located at the front or at the side of buildings on a corner lot shall observe the following requirements:

(a) Loading berths shall not conflict with pedestrian movement.

(b) Loading berths shall not obstruct the view of the public right-of-way from off-street parking access

(c) Loading berths shall comply with all other requirements of this section.

(B) *Screening.* Except in the case of multiple dwellings, all loading areas shall be screened and landscaped from abutting and surrounding residential uses.

(C) *Size.* Unless otherwise specified in this chapter, the first loading berth shall be not less than 70 feet in length, and additional berths required shall be not less than 30 feet in length, and all loading berths shall be not less than ten feet in width and 14 feet in height, exclusive of aisle and maneuvering space.

(1988 Code, § 9-10-113)

**§ 155.078 NONCONFORMING USES AND STRUCTURES.**

(A) Any structure or use lawfully existing upon the effective date of this chapter may be continued at the size and in the manner of operation existing upon such date, except as otherwise specified in this section.

(B) Nothing in this chapter shall prevent the placing of a structure into safe condition when the structure is declared unsafe by the Director.

(C) When any lawful nonconforming use of any structure or land in any district has been changed to a conforming use, it shall not thereafter be changed to any nonconforming use.

(D) Whenever a lawful nonconforming use of a building or structure shall have been damaged by fire, flood, explosion, earthquake, war, riot or act of God, it may be reconstructed.

(E) Whenever a lawful nonconforming use of a building or structure or land is discontinued for a period that exceeds 24 months, it shall be required to apply for a conditional use permit approval from the Commission in order to resume a nonconforming use subject to the requirements of § 155.027. The applicant must be able to demonstrate that a verifiable nonconforming use previously existed on their property along with the ending date of the original use. An applicant must also provide a detailed site plan that show existing structures, buildings and area of the property that will be used for the continuation of the previous nonconforming use.

(F) Subject to the provisions of §§ 155.095 *et seq.*, pertaining to signs, as amended from time to time, normal maintenance of a building or other structure containing or related to a lawful nonconforming use is permitted, including necessary structural repairs, provided such structural repairs do not enlarge or intensify the nonconforming use unless they meet the provisions of this section.

(G) If no structural alterations are made, any nonconforming use of land or a building or structure may be changed to another nonconforming use provided that the Commission makes a finding in the specific case that the proposed use is equally appropriate or more appropriate to the district than the existing nonconforming use. The Commission may require appropriate conditions and safeguards in accordance with the purpose of this chapter.

(H) Alterations and additions may be made to a structure or building containing lawful nonconforming residential units when they will improve the liveability thereof, provided they will not increase the number of dwelling units. Nonconforming residential units shall be subject to the appropriate residential setbacks and restrictions.

(I) (1) A maximum expansion of 25% of the ground or floor area of a legally nonconforming use may be permitted one time by the Commission. The expansion of a nonconforming use shall be approved if and only if, in the circumstances of the particular case and under the conditions imposed, the applicant shows that:

(a) The expanded use will not significantly interfere with the enjoyment of other land in the vicinity.

(b) The expanded use will not significantly damage surrounding structures or activities.

(c) The expanded use is consistent with the spirit of this chapter, substantial justice, and the general public interest.

(d) The owner will experience unnecessary hardship, and in addition will be denied a continued reasonable use of the property, if the expansion is not approved.

(e) The expansion does not exceed 25% of the floor or ground area in nonconforming uses on the site at the time it became nonconforming.

(2) The Commission shall hold a public hearing to consider applications for expansion of a nonconforming use in accord with the provisions of § 155.020(F).

(J) *Existing lots.*

(1) At the time of the enactment of the ordinance from which this chapter is derived, if an owner of a plot of land consisting of one or more adjacent lots in a subdivision of record does not own sufficient contiguous land to enable him or her to conform to the minimum lot size requirements or does not have sufficient lot width to conform to the minimum lot width requirements, such plot of land may nevertheless be used as a building site. The dimensional requirements of the district in which the piece of land is located may be reduced by the

smallest amount that will permit a structure of acceptable size to be built upon the lot, such reduction to be determined by the Commission.

(a) In the R-1, R-2 and M-1 zones, the reductions shall permit only a single-family residence. In M-2 zones, a mobile home shall be less than 18 feet in width.

(b) In the R-3 zone, the reduction shall permit only a duplex.

(c) In the R-4 zone, the reduction shall permit only a townhouse cluster or apartment containing no more than four units.

(2) No lot, even though it may be part of one or more adjacent lots in the same ownership at the time of passage of the ordinance from which this chapter is derived, shall be reduced in size so that lot width or size of yards or lot per area per family or any other requirement of this chapter is not maintained. This subsection shall not apply when a portion of a lot is acquired for a public purpose.

(1988 Code, § 9-10-114) (Ord. 2014-03, passed 9-8-2014; Am. Ord. 2022-06, passed 7-11-2022)

#### **§ 155.079 MISCELLANEOUS PERFORMANCE REQUIREMENTS.**

##### **(A) *Glare and lighting.***

(1) Any lighting used to illuminate an off-street parking area, sign or other structure shall be arranged so as to deflect light away from any adjoining residential zone or from the public streets. Direct or sky-reflected glare, whether from floodlights or from high-temperature processes such as combustion or welding, shall not be directed into any adjoining property. The source of lights shall be hooded or controlled in some manner so as not to light adjacent property. Bare incandescent lightbulbs shall not be permitted in view of adjacent property or public rights-of-way. Any light or combination of lights which causes light on a public street, other than lights specifically intended for that purpose, shall not exceed one footcandle (meter reading) as measured from the

centerline of the street. Any light or combination of lights which casts light on residential property shall not exceed four foot-candles (meter reading) as measured from the property.

(2) No light which is flashing, revolving or otherwise resembles a traffic control signal shall be allowed in any area where it could create a hazard for passing vehicular traffic.

(B) *Surface water ponding.* Natural impoundment shall be retained as much as possible or, if necessary, enlarged or modified as directed by the City Engineer to reduce the off-site runoff.

(C) *Outdoor storage and display of merchandise.* All materials, supplies, merchandise or other similar matter not on display for direct sale, rental or lease to the ultimate consumer or user shall be stored within the confines of a 100% opaque wall or fence not less than six feet tall. Merchandise which is offered for sale as described in this subsection may be displayed beyond the confines of a building in any C-2 district, but the area occupied by such outdoor display shall not constitute a greater number of square feet than 10% of the ground floor area of the building housing the principal use, unless such merchandise is a type customarily displayed outdoors such as automobile and garden supplies. No storage of any type shall be permitted within one-half of the required front or side street setback nearest the street, or within any required interior side or rear setback.

(D) *Trash and garbage incinerators; storage of trash or garbage.* No exterior incineration of trash or garbage is permissible. No exterior storage of trash or garbage is permissible except in an accessory building enclosed by walls and roof or enclosed containers within a totally screened area, except for single-family and duplex residential uses.

(E) *Public street frontage.* Except as otherwise allowed or required by this chapter, no lot shall contain any building unless such lot abuts, for at least 50 feet, on a public street.

(F) *Clear sight triangles.*

(1) An area of unobstructed vision at street intersections, entrances and exits, permitting a vehicle driver to see approaching vehicles to the right or left, shall be maintained. Nothing over 30 inches in height, measured from the street centerline grade, shall be permitted to obstruct a sight line triangle area. The sight line triangle shall be bounded by lines measured 30 feet along the front and side street lines of a corner lot from the intersection of the property lines of such lot and a line connecting points 30 feet distant from the intersection of the property lines of such lot. Any existing trees located within the clear sight triangle may be allowed to remain if all branches are trimmed to a height of eight feet.

(2) No post or column within the designated triangle shall exceed 12 inches in thickness at its greatest cross-sectional dimension.  
(1988 Code, § 9-10-115)

#### **§ 155.080 NOISE ABATEMENT AND EMISSION CONTROL.**

All uses shall be constructed and operated to ensure that there is no excessive noise, vibration, smoke, dust or other particulate matter, toxic or noxious matter, humidity, heat or glare at or beyond any lot line of the parcel on which the use is located. For purposes of this section, excessive is defined as to a degree exceeding that caused in their customary manner of operation by uses permitted in the I-1 district, to a degree injurious to the public health, safety or welfare, or to a degree in which it is a public nuisance.  
(1988 Code, § 9-10-116)

#### **§ 155.081 LOT NUMBERING.**

(A) All lots, buildings and structures in the City shall be numbered in accordance with the plan adopted by the Commission.

(B) The Planning & Zoning Department shall keep a map showing the proper street number of every lot in the City, which chart shall be open to inspection by anyone interested.

(C) It shall be the duty of the owners and occupants of every house, building or other structure in the City to have placed thereon or in a place clearly visible from the street, figures at least four inches high showing the number of the house, building or structure.

(D) If any property owner fails to place house numbers as provided in this section, the City or its authorized agent may place the numbers on the property.

(E) The penalty for failure of a property owner to place conforming numbers on the property or to allow the placing of the numbers by the City or its agents is as provided in § 155.135(D).  
(1988 Code, § 9-10-117) (Am. Ord. 2022-06, passed 7-11-2022)

#### **§ 155.082 LOTS NOT SERVED BY PUBLIC WATER OR SEWER SYSTEMS.**

(A) Lots not served by public water or sewer systems may not be developed unless approved by the environmental improvement division of the State Health and Environment Department and the Commission.

(B) Lots not serviced by public water and sewer systems shall conform to required minimum lot sizes, required minimum setback distances and such other standards as are required by the environmental improvement division of the State Health and Environment Department and the Commission.  
(1988 Code, § 9-10-118) (Am. Ord. 2022-06, passed 7-11-2022)

#### **§ 155.083 RECREATIONAL VEHICLE PARKS.**

(A) *Conditional use permit required; occupancy of recreational vehicles.* A conditional use permit is required for all recreational vehicle park developments

and is intended to provide for the development of recreational vehicle parks at standards consistent with the health, safety and welfare of the City. Recreational vehicle parks are permitted by conditional use permit only in C-2 districts. Recreational vehicles, as defined in § 155.006, when used for living purposes, shall be located solely in recreational vehicle parks.

(B) *General requirements.*

(1) *Access; minimum area.* Recreational vehicle parks shall abut and have access from major arterial streets and shall be a minimum of two acres.

(2) *Utilities.* Water, sewer, electricity, telephone and other necessary utilities shall be available at the recreational vehicle park, and placement shall be approved by the Commission.

(3) *Driveways.* Access and interior driveways shall be designed to increase ease of access, increase privacy and provide safety. Placement shall be approved by the Commission.

(4) *Density of spaces.* The density of spaces in any recreational vehicle park shall not exceed 20 spaces per acre.

(5) *Setbacks.* Setbacks shall be the same as for other permitted uses in a C-2 district.

(C) *Development standards.*

(1) *Size of spaces.* Spaces for recreational vehicles shall be a minimum of 1,500 square feet, with minimum dimensions of 30 feet by 50 feet.

(2) *Pads.* Recreational vehicle pads shall be a minimum of 14 feet by 35 feet, and shall be paved with asphalt or other all-weather surface.

(3) *Setbacks within spaces.* Setbacks within the recreational vehicle space shall be a minimum of eight feet in the front, and five feet in the side and rear.

(4) *Landscaping.* A landscaping concept plan shall be approved by the Commission for all areas not covered by structures or paved.

(5) *Screening.* Screening of the perimeter of a recreational vehicle park by a wall and/or other approved landscaping shall be required.

(6) *Arrangement of spaces and access-ways.* Private accessways and individual space arrangements shall be designed to accommodate frequent movement of recreational vehicles.

(a) Interior streets shall be a minimum of 20 feet for one-way traffic and 27 feet for two-way traffic, and shall be paved with asphalt, concrete or crushed rock.

(b) The street layout shall be designed for preservation of natural features and to follow topography to the greatest extent possible.

(7) *Recreational area.* There shall be active recreational area for tenants, comprising not less than 7% of the gross site area, which shall not include required setback areas.

(8) *Community building.* There shall be a community building which shall provide for recreational and service needs of occupants of the recreational vehicle park. It shall include restrooms, showers and a laundry. No dry cleaning shall be permitted in the recreational vehicle park. The community building may not be included as part of the required recreational area.

(9) *Refuse collection facilities.* Adequate refuse collection facilities shall be provided, constructed and maintained in accordance with all City health regulations, and shall be screened and designed to bar animals from access to refuse. Refuse shall be removed from collection sites at least once a week.

(10) *Lighting.* Lighting shall be provided to illuminate accessways and walkways for the safe movement of vehicles and pedestrians at night.

(11) *Sewage disposal.* An approved means for emptying sewage holding tanks shall be provided.

(12) *Expansion of existing parks.* Expansion of existing recreational vehicle parks shall be in accordance with provisions of this section.

(13) *Caretaker's residence.* One mobile home may be placed in the recreational vehicle park for use by a caretaker.  
(1988 Code, § 9-10-119) (Am. Ord. 2022-06, passed 7-11-2022)

#### **§ 155.084 [RESERVED].**

#### **§ 155.085 APPROVED STRUCTURES.**

(A) Use of property permitted by this chapter shall be conducted from or within a permanent structure conforming to the State Uniform Building Code requirements for the use or uses to be conducted in the respective zone district, unless approved as a mobile vending stand pursuant to division (B) of this section or unless approved under § 155.041(D)(24) allowing use of fiber or membrane tent in a C-2 zone district.

(B) Mobile vending stands are expressly prohibited except when licensed and approved in C-2 and C-3 zone districts as a conditional use or where use is temporary and operated in connection with special community and civic events which have been licensed and approved by the City under § 26-69 and the operation is limited to the approved location and jurisdiction for such event.  
(1988 Code, § 9-10-121)

#### **§ 155.086 DOMESTIC WATER WELLS.**

(A) The City hereby restricts the drilling of new domestic water wells, if the property of the domestic well applicant is within 200 feet of a municipal distribution water line, and if the applicant's property is located within the boundaries of the municipality. This restriction shall not apply to properties zoned agricultural.

(B) The domestic water well restriction will not apply if both of the following conditions are met:

(1) The total cost to the applicant of extending the private water lines along with the meter and hookup fees will not exceed the cost of drilling the domestic well; and

(2) The City must have the ability to provide water service to the applicant within 90 days from the date that the City denies the applicant's permit.

(C) Subsequent to obtaining the State Engineer's approval, any applicant for a new domestic well located within the boundaries of the municipality shall obtain a permit to drill the well from the City.

(D) Upon its approval by the City Council, a copy of the ordinance from which this section is derived shall be filed with the State Engineer's office.

(E) The City must act on a new domestic well permit within 30 days of the receipt of the request or the request shall be deemed approved.

(F) The City shall notify the State Engineer's Office of all City permit denials for domestic well authorization.

(G) The decision of the City may be appealed to the District Court of Lincoln County within 30 days of the City's denial of an application or request to drill a domestic well.

(H) Nothing in this section shall limit the authority of the State Engineer to administer water rights as provided by law.  
(Ord. 2009-03, passed 2-23-2009)

#### **§ 155.087 GRADING AND DRAINAGE.**

(A) *Purpose; intent.*

(1) The provisions of this section are to complement the subdivision ordinance and the zoning ordinance, and to make the uses permitted by these ordinances more feasible and acceptable in the interest of the individual property owner, the adjacent property owner and the general public. It shall be the purpose of this section:

(a) To ensure that proposed grading shall result in the minimum possible disturbance of terrain and natural land features necessary to construct residences or other permitted buildings or structures, or to conduct other legal land uses;

(b) To prevent grading with unnecessary changes to the terrain, other natural features, or creates flood problems which will have an adverse effect on the physical character or economic viability of the community;

(c) To ensure that the grading will not adversely affect the natural topographic drainage features, arroyos or other drainage features or alter natural surface runoff.

*(B) Compliance with provisions.*

(1) No grading shall be done within the City without complying with the requirements of this section. No blasting shall be done within the City without a grading permit. A copy of the grading permit must be posted on the grading site during hours of operation.

(2) Work for which a grading permit has been issued under this section shall be executed in conformance with the grading plan approved by the city and shall not be abandoned or left incomplete.

(a) Failure to continue significant work on a grading site once grading has begun may be determined by the City to be an abandonment of the work required by the permit, and such abandonment will constitute a violation of this section. The permittee is responsible for notifying the City within seven days of stoppage for extenuating circumstances.

(b) Having persons or equipment at a site but not prosecuting the work is not construed to be significant work.

(c) Projects shall not be considered complete until restoration has been made in accordance with National Pollution Discharge Elimination System Requirements.

*(C) Permits required.*

(1) *Clearing and access permit.* Clearing shall mean the removal of surface vegetation without disturbance of the root system. A clearing and access permit shall be issued:

(a) To permit the grading of a driveway/access or road to a site;

(b) To permit clearing of vegetation when this work is necessary to allow proper preliminary engineering on the site;

(c) To provide security for a site from unauthorized grading or dumping by clearing, loosening and berming the soil in a narrow band around the perimeter of the property;

(d) For such other purposes as the City may determine are proper but which do not entail reshaping of the contour of the land to any significant degree.

(2) *Grading Permit.* A grading permit shall be issued by the City:

(a) Submittals shall be prepared and certified by a New Mexico professional engineer.

(b) Grading permits shall be issued based upon approved preliminary subdivision plat; building or such other improvement plans as are necessary for development of the property on which such permit is requested.

(c) No on-site borrow is permitted except as part of necessary cuts.

(d) On-site processing of materials is limited to those used for preparation or construction of improvements - within the site covered by the grading permit.

(e) A grading plan shall show the methods of dust, erosion and drainage control.



(D) *Exceptions from permits.* Grading permits will not be required under the following circumstances, which are exceptions concerning only the obligation to apply for a permit, and do not relieve the landowner from complying with the remaining provisions of this section. The person engaged in grading shall have the burden of establishing that he comes within any of the following exceptions:

(1) Residential new construction, remodeling, additions, or other alterations to existing structures are exempt from the requirements of this section provided that they meet the following conditions:

(a) No slopes greater than 10% are disturbed; and

(b) Existing drainage patterns on the property are not changed in a way that would increase the amount of storm water runoff leaving the property.

(2) Commercial new construction, remodeling, additions, or other alterations to existing structures are exempt from the requirements of this section provided that they meet the following conditions:

(a) Less than 1,000 square feet of total land area is disturbed;

(b) No slopes greater than 10% are disturbed; and

(c) Existing drainage patterns on the property are not changed in a way that would increase the amount of storm water runoff leaving the property.

(3) Where the work to be performed is routine agricultural or land management operations necessary for cultivation of the soil of a farm or ranch;

(4) Where the work is a trenching operation for the construction or repair of pipelines and other underground utilities;

(5) Where the work is small in depth, area or effect such as, but not limited to, tree planting, intermittent and minor landscaping.

(E) *Proposed subdivisions.* If property is required to be subdivided by the Subdivision Ordinance, no grading permit will be issued until a preliminary subdivision plat has been approved and a grading and clearing plan has been approved by the city.

(F) *Permit application.* Any person desiring a permit under this section shall submit forms furnished by the Planning and Zoning Department. The application will be signed by the owner of the property where the work is to be performed or by his duly authorized agent. The applicant shall assure that all application data are correct. Any falsification of application data shall invalidate the permit.

(1) Every application will contain the following information:

(a) Location, nature and extent of the proposed work and a statement as to the intended use of the site. Changes in the intended use of the land involved will require reapplication for a permit.

(b) The name and address of the owner of record (and owners, if more than one) of the property on which the work is to be performed.

(c) The names and addresses of the person(s) or organizations that will perform the work and of the person who will be in effective control of the work.

(d) For all roads or other excavations where the volume of earth to be moved exceeds 1,000 cubic yards, cross-sections of contour maps showing the height of cuts and fills at a minimum of 100-foot intervals and at any major breaks in the terrain shall be required by the City.

(e) An as-built certification signature block to be executed by a New Mexico professional engineer after the project completion to ensure that the construction complies with the approved plans.

(2) An application for a grading permit shall include a topographic survey and grading plan with elevation contours shown at not more than two-foot intervals on slopes up to 30% - and five-foot intervals on slopes greater than 30% which shows:

(a) All areas with slopes 0-20%; 21-30%; and 31% and greater, differentiated through shading, tone, color, or line weight;

(b) All areas to be graded on the site and the final contours to be achieved by the grading;

(c) All finished floor or grade elevations;

(d) The location of temporary erosion control structures and methods used, including staging and stockpile areas;

(e) All facilities for control and disposition of storm water runoff;

(f) All significant trees and areas with substantial grass coverage to be removed;

(g) A construction schedule when the project will be developed in phases;

(h) The location of fencing around the areas to be protected;

(i) The ratio of horizontal to vertical measurement for cut and fill slopes;

(j) The total volume, in cubic yards, of earth to be moved; all existing disturbed areas; and

(k) FEMA flood hazard AREAS. approval of the information contained within the permit application.

*(G) Liability insurance required.*

(1) General liability insurance shall be required as a condition for procurement of a grading permit. Procurement and maintenance of such liability insurance policy shall be the sole responsibility of the

applicant. Before any grading permit is issued, the applicant shall attach a copy of a current certificate of insurance as evidence of general liability and contractual insurance to the application. The minimum limit of liability shall be \$300,000 combined single limit. Such policy certificate shall provide that the insurance cannot be canceled or the limit of coverage reduced, without 30 days prior written notice to the City. Failure to provide the insurance certificate or failure to meet the minimum liability insurance requirements will result in on permit being issued. Should the liability insurance policy expire or be canceled, the City shall revoke any outstanding grading permit under such policy.

(2) The applicant shall be required to enter into a hold harmless agreement with the City of Ruidoso Downs protecting the City, any of its departments, agencies; officers, or employees, from all cost, injury, and damage incurred by the applicant and from any other injury or damage to any person or property whatsoever caused by an activity, condition, or event arising out of any act authorized by the permit. The City shall provide the approved form for this hold harmless agreement.

*(H) Issuance or denial of permit.*

(1) The grading permit will be issued by the City upon verification and approval of the information contained within the permit application.

(2) The City can refuse to issue any grading permit whenever the proposed grading is contrary to the provisions of this chapter.

(3) If any person does any grading or otherwise disturbs the ground cover of any property within the City without a grading permit, he must apply for a grading permit and shall be subject to a double permit fee.

*(I) Period of validity of permits.* All permits issued shall expire within one year of the date of issuance of the permit.

**(J) Permit fees.**

(1) The application for a permit shall be accompanied by the fee schedule below and contingent with the \$25 Site Location Fee:

<i>Acres</i>	<i>Access &amp; Clearing Permit</i>	<i>Grading &amp; Access Permit</i>
0-5	\$55	\$131
6-10	\$63	\$315
11-20	\$73.50	\$367.50
21-30	\$84	\$420
31-40	\$94	\$472
41-50	\$105	\$525
51+	\$115	\$577
The fee for a driveway/access permit shall be \$35.		

(2) The fees are to help pay the expense of enforcing this chapter, staff reviews, and administrative costs and will not be returned. The cost of any required tests of soils or materials will be the applicant's responsibility.

**(K) Revocation of permits.** After reasonable notice and opportunity to be heard, the City may revoke a permit issued under this section if it finds that the work being done is in violation of this section or any other ordinance or law, or creates and unreasonable hazard to persons or property.

**(L) Removing hazardous conditions.**

(1) If the City finds that any grading (either completed or in progress) is causing a hazard to persons or property, it may notify the owner or his authorized agent and require that the hazard be removed or eliminated as soon as practicable depending upon the degree of urgency associated with the hazard involved. If such action is not completed with the time limit stated within the notice, the City may require that reasonable temporary protective measures be provided in the interim.

(2) If materials are washed or deposited upon streets, alleys or other public property as a result of improperly controlled grading of higher or adjacent lands, the City shall notify the owner or his authorized agent to remove such materials and restore the streets, alleys or other public property to their original condition. Failure to comply with such and order shall be a violation of this chapter.

(3) In addition, if the owner fails to comply with such notice, the City may authorize the work to be done by city sources or by contract. A report shall be prepared for the City Council covering the actual cost of doing such work. After notice and an opportunity to be heard, the City Council may, by resolution, determine the actual cost of doing the work and declare this amount, plus the cost of recording the resolution, to be personal liability of the owner of the land and a lien on the land, payable within ten days after adoption of the resolution, and thereafter bearing the 12% simple annual interest until paid. A copy of the resolution, authenticated by the acknowledgment of the City Clerk shall be filed for record in the office of the County Clerk. Notice of the hearing before the City Council shall be in writing and delivered in person or sent by certified mail with return receipt requested to the owner and to holders of recorded liens on the property. If after reasonably diligent efforts the person to be notified of such hearing cannot be found, notice may be given by one publication in the local newspaper.

(4) Materials from a grading site which are spilled or deposited onto public streets shall be removed by contractor or permittee on the same day. Whenever earthen ramps are required to cross city rights-of-way, approval must be obtained by the City.

**(M) Responsibilities of the landowner or his authorized agent.** Under this section, the landowner or his authorized agent will bear responsibility for:

(1) Obtaining a permit if required for any grading. Application for the permit shall be made by the Planning and Zoning Department;

(2) Obtaining the services of a professional engineer, authorized to practice in the State of New Mexico;

(3) All of the legal duties, obligation, or liabilities incident to ownership of the property while the work of grading is in progress or after the completion of the work. Neither the issuance of a permit nor the compliance with the provisions of this section shall relieve any person or owner from any responsibility for damages to persons or property otherwise imposed by law, nor impose any liability upon the City or any official of the City for such damages;

(4) Installing the appropriate devices, structures, landscaping and facilities and executing soil stabilization, erosion control, handling of materials, and other proper measures in conjunction with any proposed grading so as to fulfill the intent and purpose of this section;

(5) The continued maintenance and repair of all retaining walls, cribbing, drainage facilities, slopes, landscaping, soil stabilization and erosion control measures and any other protective devices located upon his property and constructed pursuant to the permit;

(6) It shall be the responsibility of the applicant applying for a grading permit to obtain clearance from all utilities with a property interest within the boundaries of the permit. Failure to clear with any such utility may result in an immediate suspension of the grading permit.

(N) Responsibility and authority of the City of Ruidoso Downs. The City, under the authority of this section shall be responsible for:

(1) Reviewing all grading permit applications as submitted under the requirements of this section and issuing or denying of grading permits within ten calendar days.

(2) Performing or obtaining all the appropriate tests and inspections to assure that the conditions of the permit and intent and purpose of this section have been fulfilled. Unforeseen testing requirements shall be the applicant's responsibility at the time of application.

(3) Imposing such conditions and specifications on the issuance and duration of the grading permit as may be reasonably necessary to cause the work to fulfill the intent and purpose of this section. These conditions and specifications shall include, but will not be limited to, the following:

(a) Interim and permanent soil erosion control and land management requirements including provision for:

1. Disturbed soil surface treatments (emulsions, mulches, seeding and the like);

2. Protective drainage measures for the surface drainage and subsurface water where required;

3. Terracing and use of dikes and berms;

4. Landscaping measures as per the Landscape Ordinance; and

5. Paving and other miscellaneous related measures.

(b) Compaction requirements in filled areas.

(c) Slope stabilization requirements:

1. Cut or fill slopes for roads shall not exceed 15 feet in height;

2. Un-stabilized fill slopes shall be no steeper than 2:1, unless a structural alternative such as a retaining wall or some other measures applying professional engineering standards is provided;

3. On-site cut slopes shall not exceed ten feet in height. In no case shall the height of the cut exceed the height of the building;

4. On-site fill slopes shall not exceed fifteen feet in height. Retaining walls for fill slopes shall be no greater than 15 feet in height.

(d) Work procedures and safety requirements.

1. Protective fencing;
2. Excavation slope limitations, shoring and bracing in accordance with OSHA guidelines and procedures;
3. Traffic control requirements concerning transportation of materials on public ways;
4. Limitations on the amount of area which may be disturbed by grading operations;
5. Work scheduling requirements;
6. Stockpiling and reuse of topsoil.

(O) *Authority to issue citations.*

(1) The following public officials are authorized to enforce the provisions of this section and shall have the power to issue Class C misdemeanor citations to any persons violating the provisions of this section:

- (a) Planning Services Director.
- (b) Community Service Officer.

(2) The public officials designated in the above subparagraph are authorized, effective as soon as administratively possible, to make inspections of any property necessary to enforce the provisions of this section. If the owner or person in possession of any property refuses to allow the public officials permission to enter the property, at any reasonable time, those officials shall have recourse to every remedy provided by law to secure entry including obtaining the proper judicial warrants.

(P) *Engineering controls for grading.*

(1) *Purpose; intent.* Earthmoving machinery and methods may be applied to most clearing, grubbing, excavating, filling and land grading operations. The requirement for grading permits may differ due to local conditions of land use, proposed site development, drainage patterns, topography, soil conditions and other items. The principal burden of designing a proper plan for grading must fall upon the landowner, developer, contractor, engineer or architect concerned with the project. In view of this circumstance, the following requirements have been developed as an aid for operations covered by the grading ordinance. Under no circumstances, should these, conditions be construed to replace the basic requirements of judgement, experience or competence that are a part of good engineering and land development practice. The City, in order to assure that correct grading practices are followed as indicated by this section, may impose any of the following requirements as part of the issuance of a grading permit.

(2) *Soil erosion control guidelines.* The requirements for soil erosion control measures depend largely upon the extent of the destructive and nuisance potentials due to erosion that may develop from the work to be performed. Thus, the need for erosion control measures is largely determined by prevailing winds, drainage patterns, soils characteristics and the proximity and hazard to downwind and downstream developments - residences, businesses, thoroughfares and other facilities.

(3) *General principles of effective erosion control.* The following general principles indicate the general measures of erosion control that when properly applied reflect compliance with the grading ordinance:

(a) Development plans for any project site should be as effectively fitted to existing topography and soils as practical so as to create the least erosion potential possible.

(b) All grading shall be performed in a manner which has no adverse effect on adjacent properties; clearing shall be kept to a minimum, and stabilization of bared surfaces shall begin promptly upon completion of construction activity.

(c) Portions of a site to be graded shall be clearly marked on the site prior to any grading or clearing. Construction equipment shall be permitted to grade only within marked areas. No grading is permitted within one foot of a property line, except for streets, roads, driveways and utilities.

(d) Grading for building sites is limited to 15 horizontal feet beyond the outer edge of the building foundation, patio, wall, driveway, road, parking area, or other constructed facility except:

1. As necessary for the construction of storm water runoff management measures in compliance with this section; or

2. As necessary to accommodate required horizontal to vertical measurements for cut and fill slopes.

(e) Where possible, final structures, paving, facilities and effective drainage control measures should be completed in each project area as soon as possible.

(4) *Specific erosion control measures.* Erosion control methods for physically disturbed critical project areas:

(a) *Wind erosion.* The following methods of wind erosion control may be required:

1. *Watering.* During and after completion of site grading the project area shall be completely watered as required to control wind erosions.

2. *Wind fencing.* Reusable wind fencing may be employed to reduce the effects of wind erosion. This fencing should be located immediately adjacent to critical project areas.

3. *Disturbed surface treatments.* Other measures that may be employed for control in critical areas are the use of materials such as straw, mulch nettings, emulsion, mulch and seed mixture, riprap, paving landscaping, etc.

(b) *Water erosion.* Where drainage patterns, soil characteristics and proximity to downstream development suggest that water erosion may cause hazards or damage to public or private property, the following control measures may be required:

1. Permanent storm drainage facilities, paving, and other related, facilities should be constructed as soon as practicable to reduce water erosion problems.

2. Where clearing and grubbing, excavating, stockpiling or filing or grading operations will result in long term exposure to rainfall and runoff, the following temporary control measures may be required:

- a. Temporary diversions and interceptor ditches to intercept runoff and divert it to a safe outfall before destructive erosion can occur on the project area.

- b. Temporary bermed rainfall storage cells or bench terraces to capture and retain rainfall to allow for disposal by percolation into the soil. These cells can be constructed on flat or mild slopes by blading an intersecting network of low berm which can be made in a manner consistent with the rough grading plan for the site.

- c. Contour ripping may be employed on medium to mild slopes to retard runoff and to better induce disposal of rainfall by percolation.

- d. Other measures for disturbed surface treatments as indicated in (4)(a)3. may also be required where desired.

(5) Special care will be taken to ensure that the slope faces of cut, fill or natural slopes are completely protected from runoff. This may be accomplished by:

- (a) Construction of berms and swales on the brow or top of the slope to provide protection from runoff. Swale inverts maybe required to be paved.

(b) Grading of areas adjacent to slopes shall drain away from the slope face.

(c) Construction of bench terraces in slopes of 30 or more feet in height. A bench terrace should be at the mid-height of a 30-foot-high slope and should be no more than 20 feet vertically apart on slopes in excess of 30 feet in height. The bench should be constructed in such a way as to collect rainfall and conduct it to a point of safe discharge. The invert of the bench terrace may be required to be paved to prevent the percolation of water into the slope.

(d) No storm water storage should be allowed at or adjacent to the top of a slope.

(e) Cut and fills should be set back a minimum of five feet from property lines and fences. Walls, buildings or structures should be set back from cut or fill slopes sufficiently to allow access to the top of the slope for maintenance purposes and to assure the stability of the slope and the security of the foundations of the buildings and structures.

(f) Drainage facilities should be provided to protect slope faces from erosion. Subsurface drainage facilities should be provided where needed to intercept seepage that would affect slope stability, building and structure foundations or create undesirable wetness.

(6) *Exposure for extended periods of time.* Where any project area is to be exposed to the effects of wind or water for extended periods of time, erosion control measures should be continued and/or maintained until natural growth comparable to that removed by the work has been reestablished or until a stable, final development project has been wholly completed.

(7) *Earthwork requirements.* The requirements for earthwork are generally fulfilled through application of the requirements of good engineering practice. This, significant earthwork shall be designed by a registered professional engineer. Approved grading plans signed by a registered engineer will generally govern as determining the

specific requirements of significant earthwork. Significant earthwork may be considered the grading of large tracts of land and the construction of fills, excavations and slopes.

(a) *General.*

1. Fill materials will be free of materials detrimental to the construction of stable fills.

2. Excavations will not be made close to property lines as to endanger adjoining property without providing support and protection to prevent damage due to erosion, sliding or settlement.

3. Fills will not be placed where they can slide or wash onto the property of others; nor will they be placed where they can cause encroachment upon arroyos or other natural drainage ways without provision of facilities to assure the capacity of the drainage way as approved by the City.

4. Fills placed above the top of an existing or proposed surface with a slope steeper than three feet horizontal to one foot vertical shall be set back from the top of the slope face at least five feet.

5. Prior to placing fills on natural surfaces, all organic materials will be removed and the natural surface will be scarified to a depth of three inches.

6. Temporary drainage facilities will be provided to protect the earthwork from erosion, overflow, or ponding as generally indicated in (4)(b).

(b) *Compaction.*

1. Load bearing fills upon which streets, alleys or public facilities are to be located will fully meet the requirements of the City as to the quality of fill materials, placement and compaction. The plasticity index (P.I.) of structural fills shall not exceed a value of 12 without specific recommendations from a Geotechnical Engineer.

2. Fills should be compacted to a minimum density 90% as per the American Society for Testing and Materials (ASTM D-1557). Fills will be placed and compacted to minimize erosion and to produce a stable surface.

(8) *Other conditions.* The following conditions may be imposed by the City:

(a) Flagmen may be required as part of the grading permit.

(b) Any use of vibratory rollers must be approved by the City.

(c) The City must be notified 24 hours in advance of any work; such as placing curb, pavement and storm sewer in City rights-of-way.

(d) The City may impose hours of operation and truck routes to be utilized based on individual site locations and shall be indicated on the permit.

(Q) *Engineer controls for storm water and drainage runoff.*

(1) *Storm water and drainage and runoff.*

(a) Flood control studies shall be performed by a qualified design engineer licensed with the State of New Mexico and complete drainage report shall be submitted to the City for approval. The City will approve or require additions or modifications to the report. Storm water drainage and runoff reports and designs shall be approved by the City before construction may begin.

(b) Analysis of any and all watershed areas affecting the proposal site development shall be incorporated into the report and design of flood control/drainage structures.

(c) Total surface runoff from the proposed improved site into existing or future developments shall not exceed the runoff from that area of land prior to development. The Engineer may

utilize retention/detention ponds, underground storm drain, drainage channels, pumping facilities, or any other means to restrict or divert runoff to accomplish this task.

(d) Surface and underground drainage shall not be altered or diverted in any way that creates damage or flooding to other existing developments or areas.

(2) *Storm water hydrology.*

(a) For purposes of hydrological studies and design, the design engineer shall utilize methods and procedures as outlined by the New Mexico State Department of Transportation.

(3) *Storm water drainage improvements.*

(a) Construction plans and details for drainage structure shall be included in the basic improvement plans for the proposed site development.

(b) All drainage structures shall be designed to carry the 50-year storm runoff. All drainage ponds shall be designed to hold the 100-year storm runoff. All plans and details for drainage structures shall be subject to review and approval by the City of Ruidoso Downs.

(c) The design engineer shall be responsible for showing all necessary supporting data and criteria on plans, specifications, or in the drainage report with respect to flow capacities, structural soundness, public safety, etc.

(d) All drainage structures and construction methods shall conform to the New Mexico Standard Specifications for Public Works Construction, latest edition. Drainage structures and construction methods shall be clearly indicated on the construction plans. The design engineer shall be responsible for selecting a design that is structurally sound, functional, and reasonably maintenance free.



(e) Ponding areas used in drainage facilities shall be landscaped. At a minimum the landscaping shall consist of sod or other vegetation for the slopes, and of a gravel lined bottom. A landscaping and maintenance plan for ponding areas shall be submitted as part of the storm drainage plan.

(f) All water containment structures, which have water open to the air, shall empty within 24 hours either through percolation into the soil or through outlet structures designed to ensure a controlled release of water that will not cause flooding or erosion.

(R) *Variances.* The Commission may grant variances to the requirements of the terrain management regulations if the proposed alternative complies with the intent of the terrain management regulations as set forth in the Zoning Ordinance, and if the material, method, or work offered meets equivalent standards prescribed in the terrain management regulations for aesthetic and mechanical quality, effectiveness, durability and safety.

(S) *Penalty; severability.* Any person violating this chapter shall be deemed guilty to a misdemeanor and shall be punished by a fine not to exceed \$1,000. In the case of continuing violation, each day's violation shall be deemed a separate offense. (Am. Ord. 2022-06, passed 7-11-2022)

## ***SIGNS***

### **§ 155.095 PURPOSE OF SUBCHAPTER.**

(A) The purpose of this subchapter is to protect and promote the general welfare, health, safety and order within the City through standards, regulations and procedures governing the erection, use and/or display of devices, signs or symbols serving as visual communicative media to persons situated within or upon public rights-of-way or properties. The regulations set forth in this subchapter are intended to preserve the special qualities inherent in the City that attract tourists and residents alike, and that are the basis of the City's economic stability and growth.

(B) The provisions of this subchapter are intended to encourage creativity, a reasonable degree of freedom of choice, an opportunity for effective communication and a sense of concern for the visual amenities on the part of those designing, displaying or otherwise utilizing needed communicative media of the types regulated by this subchapter, while at the same time ensuring that the public is not endangered, annoyed or distracted by the unsafe, disorderly, indiscriminate or unnecessary use of such communicative facilities.

(1988 Code, § 9-10-152)

### **§ 155.096 DEFINITIONS.**

The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

***SIGN.*** Any display to the public view of letters, numerals, emblems, logos or any parts or combination thereof, designed to inform, advertise or promote merchandise, services or activities. Sign content shall pertain only to the business, industry or pursuit conducted.

***SIGNAGE.*** The eligible area allowed. (Prior Code, § 9-10-153)

### **§ 155.097 PERMIT REQUIRED.**

All signs erected within the City must be reviewed and approved by the Director prior to being placed on any building, pole or other structure, except as otherwise provided in this subchapter. Permits shall be issued for all approved signs and shall be maintained on the premises where the sign is displayed, except that permits for



off-premises signs shall be maintained on the premises of the permittee. Failure to obtain a sign permit is a violation of this subchapter.

(1988 Code, § 9-10-154) (Am. Ord. 2022-06, passed 7-11-2022)

#### **§ 155.098 ENFORCEMENT OFFICERS.**

This subchapter shall be enforced by the Director or employee designated by the Mayor.

(1988 Code, § 9-10-154) (Am. Ord. 2022-06, passed 7-11-2022)

#### **§ 155.099 APPLICATION FOR PERMIT.**

The application form for a sign permit shall be obtained from the Planning & Zoning Department and shall require the following information:

(A) The name and address of the owner of the sign.

(B) The name of the business and the location of the sign (address).

(C) A drawing of the sign, indicating size, materials, texture and finish and illumination to be used.

(D) A site plan showing where the sign will be located on the premises, as well as all other signs existing on the premises.

(E) Indication on the site plan of the location of buildings on the site and the dimension and area of building frontages.

(F) Written consent of the owner of the building, structure or land on which the sign is to be erected.

(G) Any electrical permit required and issued for such sign.

(H) The contractor's name, address and license number, where applicable.

(1988 Code, § 9-10-156) (Am. Ord. 2022-06, passed 7-11-2022)

#### **§ 155.100 RESPONSIBILITIES OF THE PERMITTEE.**

(A) It is the responsibility of the permittee to comply with all provisions of this subchapter and §§ 155.007 and 155.135, as may be applicable.

(B) It is the responsibility of the permittee to be aware of and obtain any license, permit and/or inspection required under the Construction Industries Licensing Act, §§ 60-13-1 to 60-13-59 NMSA 1978, or the construction industries division rules and regulations of the State. Enforcement of any such rules or regulations shall be by the appropriate State inspectors.

(1988 Code, § 9-10-157)

#### **§ 155.101 INSPECTIONS GENERALLY.**

The Director and/or the Community Service Officer shall inspect, as he or she deems necessary, and subject to § 155.100, each sign regulated by this subchapter for the purpose of ascertaining whether such sign is secure or insecure, or in need of repair and for compliance with the requirements of this subchapter. The applicant must call for final inspection on all signs permitted pursuant to this subchapter.

(1988 Code, § 9-10-158) (Am. Ord. 2022-06, passed 7-11-2022)

#### **§ 155.102 APPEALS.**

(A) Any sign permit application which is rejected, for any reason, by the Planning & Zoning Department may be appealed to the Commission. The applicant shall submit, in writing, a request to be placed on the Commission agenda within five working days of the rejection. The appeal will be scheduled for the next Commission meeting, provided the Commission agenda deadline has not passed, in which event the matter will be scheduled for the next regularly scheduled Commission meeting.

(B) Any denial by the Commission may be appealed to the City Council by submitting a written request to the City Clerk/Treasurer within 15 days of the rejection.

(1988 Code, § 9-10-159) (Am. Ord. 2022-06, passed 7-11-2022)

### **§ 155.103 PERMIT FEE; INVALID PERMITS; INSPECTION UPON COMPLETION OF CONSTRUCTION.**

(A) The fee for a sign permit for permanent signage shall be set from time to time and is listed in the fee schedule in Appendix A to this Code, which is on file in the City offices and incorporated herein by reference.

(B) The fee is due at the time the application is approved.

(C) A sign permit shall be issued at the time the fee is paid.

(D) The fee shall be waived where only change of copy is being made for an existing business.

(E) (1) A sign permit shall become null and void:

(a) If the sign for which the permit was issued has not been completed and erected within a period of six months after the date of the permit.

(b) Thirty days after a business closes or ceases to operate if no new business is established at that location. It shall be the responsibility of the owner of the building to see that any sign is removed which pertains to a business which has closed.

(2) If the owner does not remove signs as provided under § 155.107, the Community Service Officer will follow the procedures outlined in § 155.109 to effect removal.

(F) Subject to the provisions of § 155.101, final inspection is required on completion and installation of all signs to determine that the sign conforms to the permit issued pursuant to the provisions of this

subchapter. The sign permit applicant is responsible for obtaining final inspection, and failure to do so will constitute a violation with penalties as prescribed under § 155.135(D).

(1988 Code, § 9-10-160) (Am. Ord. 2022-06, passed 7-11-2022)

### **§ 155.104 GENERAL REGULATIONS.**

(A) *Moving of signs; changing copy.* Moving an approved sign to a new location or changing copy on an existing sign shall require a new permit, except for signs with movable letters as described in § 155.105(A)(7). The Director shall be notified prior to the move or change in order to:

(1) Ascertain that the sign meets the conditions of this subchapter.

(2) Update records.

(B) *Permit not required for painting, cleaning or repair.* Maintenance consisting of painting, cleaning or repair of an existing sign does not require a new permit unless a structural or copy change is made.

(C) *Maintenance required.* Maintenance of signs consisting of painting, cleaning or repair is required to maintain signs in the same condition and appearance as when originally installed.

(D) *Erection of signs on or over public property.* No sign shall be erected or maintained on or over public property, unless licensed by the City Council, subject to approved criteria. However, wall signs may project over a front property line when the building wall is less than one foot from the property line, provided that such sign shall not impede or endanger pedestrians or vehicular traffic and shall project no more than one foot from the wall.

(E) *Special encroachments.* Special encroachments on Highway 70 may be allowed by the State Department of Transportation, such as decorations and banners advertising special events when erected by governmental authorities. Encroachments may be allowed for a limited time

provided they provide minimum 18-foot clearance and do not interfere with traffic control devices and signs. (1988 Code, § 9-10-161) (Am. Ord. 2022-06, passed 7-11-2022)

#### **§ 155.105 REGULATIONS FOR SPECIFIC SIGNS AND USES; SIZE LIMITATIONS.**

##### **(A) Sign types.**

##### **(1) Freestanding signs.**

(a) A freestanding sign shall not exceed 35 feet in height, and must have at least eight feet between the base of the sign and the ground, and may not restrict view of traffic. Freestanding signs shall not exceed 150 square feet in area except for shopping center signs as provided under division (B)(5) of this section, or as approved by the Commission.

(b) An area directly under the freestanding sign shall be landscaped at the base of the sign.

(c) The premises around the freestanding sign shall be maintained by the sign owner in a clean, sanitary and inoffensive condition and shall be free and clear of obnoxious substances, rubbish and weeds.

(d) A minimum sight line triangle measured 20 feet along the right-of-way line from the base of the sign and ten feet in depth at a right angle to the right-of-way line 20 feet in distance from the base of the sign shall be maintained.

(2) *Projecting signs.* The bottom of projecting signs shall be at least eight feet above the ground or sidewalk and shall not project more than four feet from the supporting wall. No projecting sign may rise above the roofline or parapet, and signs may not project into the public right-of-way.

(3) *Hanging signs.* The minimum height to the bottom of a hanging sign shall not be less than eight feet above the ground or sidewalk, and signs

shall be not more than six inches thick. Hanging signs shall be secured, fastened to support beams and supported by heavy chain or material of like strength.

(4) *Wall signs.* Maximum projection of a wall-mounted sign shall be six inches, unless the bottom of the sign is at least eight feet above the ground or sidewalk, in which case the maximum projection shall be 12 inches.

(5) *Window signs.* Permanent signs painted in a window shall be measured by the area enclosed within a sign border, or if no border exists, the area of the minimum imaginary rectangle enclosing the words and symbols and spaces between them. Neon or similar sign devices mounted in a window area shall be measured on the same basis.

(6) *Marquees.* Maximum projection of marquees shall be eight feet from the supporting wall, and there must be not less than ten feet from the bottom of the marquee to the ground or sidewalk. The marquee may not be erected or maintained on or above the public right-of-way.

(7) *Signs with movable letters.* The movable letter portion of any one sign shall not exceed 70% of the total area of that particular sign, except for electronic signs which are allowed full movement of the sign message.

(8) *Ground signs.* Ground or low-profile signs shall only be permitted when set back a minimum distance of ten feet from the property line. Signs may be installed at or above grade level. Ground signs shall not be installed within the sight line triangle of streets or driveways and shall not restrict view of traffic. Ground level signs shall not exceed 100 square feet in area, except for shopping center signs as provided under division (B)(5) of this section or as approved by the Commission. Ground sign installation shall conform to the provisions of divisions (A)(1)(b) and (c) of this section.

(9) *Canopy and awning signs.* Signs on canopies and awnings shall be measured by the area enclosed by a border or imaginary triangle enclosing

the words, symbols or spaces between them. Awnings may be constructed of canvas, plastic or similar materials.

(10) *Banner signs.* A banner sign is a sign printed on lightweight, flexible material such as cloth, canvas or plastic. Banners shall not exceed a total of 32 square feet. Banners shall be attached flat against a wall or structure of the business which is permitted for such banner, or between the supports of a permitted freestanding sign. Banner area does not count against allowable sign area.

(11) *Neon signs.* Neon signs or similar tube signs are permitted sign types. Sign area shall be measured by the area enclosed within a sign border, or if no border exists, the area of a minimum imaginary rectangle enclosing the words, symbols and spaces between them.

(B) *Sign sizes; regulations for specific uses.* Seventy percent of the total allowable signage must be permanent signs. The remaining 30% may be devoted to signs of a temporary nature if not otherwise prohibited by this subchapter. Sign permits shall be obtained for both permanent and temporary signs.

(1) *Commercial businesses, all categories.* The amount of signage shall be computed using the formula 0.076 times the square footage of the front of the building as designated by the owner or leaseholder. This amount of sign footage may be used as wall mounted, freestanding or a combination of both. The amount of signage for a business conducted on a property which has no permanent business structure or structures of less than 250 square feet shall be allowed one freestanding sign based on the linear feet of lot frontage, as follows:

<i>Lot Frontage (linear feet)</i>	<i>Sign Area (square feet)</i>
0-150	32
150-300	64
301-600	100

(2) *Corner lots.* In addition to signs allowed on the front of buildings, wall-mounted signs only shall be allowed on the side of a building which fronts on a side street. Square footage shall be determined by using the formula of 0.076 times the square footage of the designated side of the building. This sign area may not be transferred to any other area of the premises.

(3) *Churches.* Churches shall apply for approval of their signs, and shall be allowed square footage as determined by using the formula of 0.076 times the square footage of the designated front of the building.

(4) *Buildings with multiple tenants.* In cases of more than one business located within one building (but less than four businesses), the owner of the building shall determine the percentage of the total allowable sign size which each business within the building is allowed. The total amount of square footage of signs erected, for all businesses within the building, shall not exceed the total amount allowed as determined by the formula.

(5) *Shopping centers.*

(a) To be designated a center, four or more shops or businesses must be on the premises. Shopping centers may be comprised of one or more tracts or ownerships maintaining a center identity under written agreement.

(b) A center is allowed one freestanding sign for the purpose of identification of the center and of the businesses therein.

1. The size of the freestanding sign shall be computed from the formula of one square foot of sign space per each linear foot of the designated front of the property, with a maximum of 200 square feet allowed.

2. At least 50% of the center sign shall designate the shopping center, and the remaining 50% shall or may be used for riders to advertise the individual businesses within the center.

(c) A center is also allowed wall-mounted signs using the formula of 0.076 times the square footage of the designated front of each building, as in provided in division (B)(1) of this section.

(d) Individual businesses within shopping centers in the C-3 business district may have one projecting sign pursuant to division (A)(2) of this section, provided that such sign shall not exceed ten square feet and shall not project into the traveled roadway.

(e) A temporary freestanding on-site sign may be allowed for a business within a center prior to erection of a center sign. Such temporary sign shall be removed within 30 days following construction of a center sign. Temporary signs must be joint signs with other businesses within the center wherever possible.

*(6) Across-street banners.*

(a) The maximum size allowed shall be three feet by 30 feet on street banners advertising a community or civic event as defined in § 155.108(K) and at a location approved by the City Council and the State Department of Transportation District Office in the City.

(b) There shall be one approved location on east Highway 70 and one approved on west Highway 70 for across-street banners. The City Council shall approve the poles used to support such banners.

(c) A banner may be displayed up to 14 days prior to an event and must be removed within three days after the event.

(d) Applications shall be submitted to the Planning & Zoning Department at least 90 days prior to the event.

*(7) Civic and quasipublic off-premises signs.*

(a) Off-premises name, directional and information signs of service clubs, places of worship, civic organizations and quasipublic uses shall not be more than four square feet in area. Sign height shall not exceed 16 feet.

(b) If a need exists for more than one such sign at one location, all such signs must be consolidated and confined within a single frame.

*(8) Commercial, off premises directional signs.*

(a) No off-premises sign shall be nearer than 200 feet to any other off-premises sign. There shall be no more than one off-premises sign per location. Commercial off-premises signs shall not be placed on any residential zoned property.

(b) No directional advertising sign of the same commercial enterprise shall be nearer than one mile to any other off-premises sign advertising the same commercial enterprise. The one-mile distance shall be determined from point to point on any single highway, street or other public thoroughfare. This provision shall not be construed as prohibiting off-premises signs within one mile of each other advertising the same commercial enterprise, where off-premises signs are located on different highways, streets or public thoroughfares.

(c) Off-premises sign areas shall not exceed 32 square feet.

(d) Off-premises directional advertisement signs shall pertain only to a business conducted on a site within the City limits or within the extraterritorial zone of the City if approved by the Commission. The area of any off-site sign, when added to the area of any existing business sign, shall not exceed the allowable sign area for the business being directionally advertised. Off-premises signs are allowed only for businesses without frontage

on Highway 70. Signage shall not count against allowable sign area of the property where the off-premises sign is located.

(e) Off-premises signs may be placed on vacant property but shall be limited as to size based on allowable signage for property with no permanent structure as set forth in division (B)(1) of this section but in no event to exceed 32 square feet.

(f) Businesses with allowable square footage for off-premises signage shall be limited to two signs per business.

(9) *Residential signs.*

(a) Multifamily premises or mobile home parks with up to 24 dwelling units may have wall signs identifying the development or apartments, provided the signs are mounted flush to the perimeter wall or fence and the total sign area does not exceed 32 square feet. There shall be no more than five words which contain any character equal to or exceeding six inches in height. However, words with characters of less than six inches in height may be used without limit as to number.

(b) Multifamily premises or mobile home parks with more than 24 dwelling units may have signs identifying the premises as follows: Multifamily premises may have wall- or fence-mounted signs, provided the signs do not exceed 40 square feet. Mobile home parks may have wall- or fence-mounted signs, provided the signs do not exceed 100 square feet. Multifamily premises or mobile home park wall-mounted signs may have no more than five words which contain characters equal to or exceeding six inches in height. However, there shall be no limit to words containing characters of less than six inches in height, except as limited under division (B)(1) of this section.

(10) *Service station canopy signs.* The area of signs allowable for freestanding canopies over service station service islands or like installations shall be calculated based on 1.5 times the horizontal plane of the canopy structure times 0.076. Not less than 25% of the allowable sign area shall be on the canopy

facade. The allowable area for canopy signs shall be in addition to allowable sign area for other structures on the premises.

(1988 Code, § 9-10-162) (Am. Ord. 2022-06, passed 7-11-2022)

**§ 155.106 ILLUMINATION.**

(A) Light from any source intended to illuminate a sign shall be shaded, shielded or directed in such a way so that the light intensity or brightness shall not adversely affect the safe vision of pedestrians or vehicle operators on public and private streets, driveways or parking areas and shall not adversely affect any surrounding premises. Illumination from any sign shall not interfere with the effectiveness of any official traffic sign, signal or device.

(B) Signs involving the use of revolving lights, beacons, strobe lights or spotlights are specifically prohibited.

(1988 Code, § 9-10-163)

**§ 155.107 PROHIBITED SIGNS.**

The following signs are prohibited:

(A) Signs contributing to confusion of traffic control lighting, unauthorized signs, signals, markings or devices which purport to be or are imitations of official traffic control devices or railroad signs or signals, or signs which hide or interfere with the effectiveness of any official traffic control devices.

(B) Unauthorized signs which attempt to control traffic on the public right-of-way.

(C) Signs with audible devices.

(D) Freestanding signs with overhead wiring to supply electricity. However, off-premises signs are excluded unless underground power lines supply the site.

(E) Banners, except as otherwise allowed by this subchapter, and portable signs of any type, including signs placed in or carried on vehicles.



(F) Canopy signs, if the bottom of the sign is less than eight feet above grade.

(G) Building-mounted signs which extend above the roofline of the building, except on approval by the Commission. Angle irons or similar supports shall not be visible from public rights-of-way; guy wires or cables may be visible.

(H) Signs with missing letters (including approved signs with movable letters) or signs which are in a state of disrepair.

(I) No sign, except an approved banner, may hang over, or in, any public right-of-way, unless licensed by the City Council, subject to approved criteria.

(J) Billboards or other off-premises signs within the City limits relating to a business not located within the City limits or within five miles extraterritorial.

(K) Signs of temporary construction shall not be used as permanent exterior signs.

(L) Flag signs with the name of a business, name of products, words or numbers, except as provided in § 155.108(J) and (Q).

(M) Inflatable signs and tethered balloons.  
(1988 Code, § 9-10-164) (Am. Ord. 2022-06, passed 7-11-2022)

#### **§ 155.108 SIGNS NOT REQUIRING PERMIT.**

Provided they conform to all other portions of this subchapter as provided, the following types of signs do not require a permit:

(A) Nonilluminated names of buildings, dates of erection, monuments, citations, commemorative tablets and the like are allowed when carved into stone, concrete, metal or any other permanent type construction and made an integral part of an approved structure, or made flush to the ground (but not obstructing view of traffic).

(B) Signs required by law or signs of a duly constituted governmental body, traffic signs or directional signs which are approved by the City Council, are allowed.

(C) Signs placed by a public utility for the safety, welfare or convenience of the public are allowed, such as signs identifying high voltage, public telephones or underground cable.

(D) Signs upon a vehicle are allowed, provided that any such vehicle with a sign face of more than two square feet is not conspicuously parked so as to constitute a sign. Nothing in this subsection prevents such a vehicle from being used for bona fide delivery and other vehicular purposes.

(E) Holiday decorations.

(F) Special political signs on private property shall be allowed up to a total area of six square feet in area for each premises in a residential zone and up to 32 square feet for each sign in a nonresidential zone. Special political signs may be erected no earlier than 45 days prior to any primary election, general election or municipal election, and each candidate shall be responsible for removing their signs within ten days after the election to which the sign pertains or after the termination of a candidacy, whichever occurs first. Signs shall be maintained as specified under § 155.104(C).

(G) One construction sign shall be allowed for all building contractors, one for all professional firms, and one for all lending institutions on premises under construction. Each sign's area shall not exceed 32 square feet, and not more than a total of three such signs are allowed on the premises. Such sign shall be confined to the site of construction, construction shed or construction trailer and shall be removed within 14 days of the beginning of the intended use of the project.

(H) Real estate signs are allowed as follows when located on property for sale, rent or lease (not to be confused with the business sign on the real estate office):

(1) One temporary real estate sign located on the property it refers to shall be allowed for each street frontage of developed premises or undeveloped lot of less than two acres. Signs shall be removed within 14 days after sale or complete leasing.

(a) In residential zones, the signs shall not exceed six square feet in area, including name identification riders. An additional add-on sign area of one-half square foot indicating that the property has been sold or leased is allowed.

(b) In nonresidential zones, the signs shall not exceed eight square feet in area on improved lots and 16 square feet in area on unimproved lots.

(2) One temporary real estate sign not exceeding 16 square feet in area and located on the property it refers to shall be allowed for each lot of two acres or more. If the lot has multiple frontage, one additional sign not exceeding 16 square feet in area shall be allowed on the property, to be placed facing the additional frontage. Under no circumstances shall more than two sign units be allowed on the lot. Signs shall be removed within 14 days of sale or complete leasing.

(3) Temporary real estate directional signs not exceeding four square feet in area, three feet in height, and four in number, showing a directional arrow and placed on private property, may be allowed on approach routes to an open house.

(4) Up to two temporary subdivision identification signs located on the vacant residential property shall be allowed for each subdivision or builder's development often lots or more. Such signs shall not exceed 32 square feet in area, and sign height shall not exceed 35 feet. Signs shall not be displayed prior to the date of the recording of the plat and shall be removed upon completion of the project.

(5) The height of real estate signs shall not exceed five feet when located in a residential zone.

(I) Signs located inside a building or structure for temporary sale notices or play bills, and so located as to be conspicuously visible and readable from outside the building or structure, are allowed.

(J) Signs designating "open" or "closed" are allowed, provided that they are limited to one per business and 15 square feet or less in area.

(K) Banners advertising community or civic events maintained for a temporary period of not in excess of one month prior to the event and not more than seven days after the close of the event. Community or civic events shall be those which are either sponsored by non-profit organizations, approved for expenditures of lodger's tax funds, or approved by the City Council according to the lodgers' tax criteria of chapter 2, article IV, division 3. The City Council may authorize additional locations for banner display within the areas approved for community or civic events to facilitate crowd control.

(L) Official national, State or City flags are allowed for any period of time.

(M) Residential name and street address signs are allowed. A resident's name sign not exceeding three square feet in area per face shall be allowed for each house or townhome. Street address signs shall not exceed three square feet. Premises may have one freestanding sign at any location on the site; provided, however, premises with more than 750 linear feet of public street frontage may have one additional freestanding sign for each 500 feet of additional frontage or fraction thereof. However, no sign shall exceed 16 feet in height or 32 square feet per sign face.

(N) Parking or directional signs in a private parking lot are allowed, not to exceed four square feet.

(O) Business identification on vehicles used for company or business use is allowed where the sign is permanently painted on a vehicle or where the sign is

magnetically attached to the side of the vehicle. Advertisement place cards may also be placed on vehicles classified as common carriers.

(P) Incidental signs. A sign, generally informational, that has a purpose secondary to the business on the lot on which it is located, such as entrance, exit, parking, loading, telephone, no smoking, user directions or instructions and other similar directions. No sign with a commercial message legible from a position off the lot on which the sign is located shall be considered incidental.

(Q) Flags containing logos or emblems.

(R) Signs located within an enclosed sports complex for view by sports event participants and spectators only and under the following conditions:

(1) Signs may be banners or signs of permanent materials attached to or placed within 18 inches of fenced, enclosed play areas and directed for viewing from the field of play. Sign shall not be directed toward public right-of-way or adjoining properties. Banner or sign placement is regulated by the facility manager.

(2) Area of banner or sign shall not exceed 32 square feet. Banners shall have wind slits to reduce wind resistance.

(3) Signs shall be displayed only during sports events and shall be removed immediately thereafter. Permanent signage is not allowed.

(4) Type of sign, placement and manner of attachment or installation must be approved by the City Park and Recreation Director when displayed on City property or property under City control.

(5) Signage shall not count against allowable sign area for business or pursuit being advertised nor property where signage is located.

(6) For purposes of this section the following are designated as sports complexes; and are exempt from the provisions of § 155.105(B)(8):

(a) Ruidoso Gymnastics Complex.

(b) All American Park.

(c) Beaver's Arena.

(d) Ruidoso Downs Racetrack.

(7) Other properties may be designated as a sports complex by the Commission subject to conditions in divisions (R)(1) through (6) above. (1988 Code, § 9-10-165) (Am. Ord. 2022-06, passed 7-11-2022)

#### **§ 155.109 VIOLATIONS; REMOVAL OF UNLAWFUL SIGNS.**

(A) A sign permit shall be issued for all signs regulated by this subchapter and shall be maintained on the premises where the sign is located, except that all off-premises sign permits shall be maintained on the premises of the permittee.

(B) Any sign existing prior to the effective date of this chapter for which the necessary approval and sign permit was not obtained pursuant to the provisions of any previous code shall continue to be illegal and shall be removed or brought into conformance with this subchapter, and, further, the owner thereof shall continue to be liable for the penalties described in this section.

(C) The Community Service Officer shall give seven-days' notice, in writing, by certified mail, to the owner of any sign erected without approval or otherwise in violation of this subchapter, informing the owner that the sign must be brought into conformance with this subchapter or must be removed.

(D) Upon failure to remove the sign or to comply with this notice, the Community Service Officer shall have the sign removed. Any cost of removal incurred by the City shall be assessed to the owner of the property on which such sign is located and may be collected in the manner of ordinary debt or in the manner of taxes, and such charge shall be a lien

upon the property and may be filed with the County Clerk in the manner that municipal liens are filed.

(E) In addition, any person who violates any provision of this subchapter shall be punished by a fine as provided in § 155.135, except that notice and penalty for violation of § 155.105(A)(10) pertaining to banners shall be as provided below:

(1) First violation: Warning and order for immediate removal.

(2) Second violation: Citation issued, each day constitutes a separate violation with penalty of a minimum of \$25 per day.

(3) Third and successive violations: Citation issued, each day constitutes a separate violation with penalty of a minimum of \$50 per day plus the loss of allowable days in the current and the successive year.

(F) Nonconforming or illegal signs required to be removed shall be deemed to be amortized after the expiration of the time period specified under § 155.107(F). The amortization period shall equal just compensation for constitutional and statutory purposes.

(G) Signs placed in the public right-of-way in violation of this subchapter may be removed by the Community Service Officer. Such signs shall be disposed of or destroyed if not claimed within 15 days of removal.

(1988 Code, § 9-10-166) (Am. Ord. 2022-06, passed 7-11-2022)

#### **§ 155.110 ADVERTISEMENT ON PUBLIC PROPERTY.**

(A) It shall be unlawful to tack or place any sign, bill, banner, poster or advertisement of any nature in the public right-of-way except as provided under this subchapter.

(B) Political signs may be located in the public right-of-way for periods specified under § 155.107(F). Applications for such sign permits shall be submitted to the Planning & Zoning Department. The size of the sign is limited as to size under § 155.107(F). Signs shall be maintained as specified under § 155.104(C). Signs for the same candidate shall be spaced a minimum of 300 feet apart and shall be no closer than ten feet from signs for another candidate. No political sign shall be placed on or adjacent to public parks, buildings or facilities. Signs placed in any sight line triangle shall not exceed 30 inches in height nor be closer than ten feet from edge of pavement. Signs shall not distract or interfere with traffic control signs. Each candidate shall be responsible for removing their signs within ten days after the election.

(C) No such permit shall be issued unless a permit fee is paid and there is deposited with the City the sum as set from time to time and listed in the fee schedule in Appendix A to this Code, which is on file in the City offices and incorporated herein by reference. The deposit sum shall be returned to the applicant if the applicant causes all such signs, posters or advertisements to be removed within the time prescribed by this subchapter. If such applicant does not cause the removal of such signs, posters or advertisements within such time, then the deposit shall be forfeited to the City. The permit fee is not refundable.

(D) The provisions of this subchapter shall not apply to notices posted by order of court or notices to the public required by law to be posted in a public place.

(1988 Code, § 9-10-167) (Am. Ord. 2022-06, passed 7-11-2022)

#### ***HOME OCCUPATIONS***

#### **§ 155.120 GENERALLY.**

A home occupation is an accessory use of a dwelling unit, conducted entirely within the dwelling unit, carried on by one or more persons, all of whom

reside within the dwelling unit, and where no persons are employed other than resident and domestic help. The use is clearly incidental and secondary to the use of the dwelling for residence purposes and does not change the character thereof or adversely affect the uses permitted in the residential district of which it is a part. There shall be no outside storage of any kind. Any indoor storage, construction, alterations, or electrical or mechanical equipment used shall not change the fire rating of the structure or the fire district in which the structure is located. The use may increase vehicular traffic flow and parking by no more than one additional vehicle at a time. It shall not cause an increase in the use of one or more utilities (water, sewer or garbage) so that the combined total use for dwelling and home occupation purposes of one or more utilities exceeds the average for residences in the neighborhood. When a use is a home occupation, it means that the owner, lessee or other persons who have a legal right to the use of the dwelling unit also have the vested right to conduct the home occupation without securing special permission to do so. However, such person shall be subject to all conditions set forth in this chapter, such as zoning certification and off-street parking requirements, and shall be subject to all other permits required by the City, such as building permits and business licenses, and are required to check with City officials and obtain necessary approvals before establishing such home occupations.  
(1988 Code, § 9-10-192)

#### **§ 155.121 INTENT OF SUBCHAPTER.**

It is the intent of this subchapter to eliminate as home occupations all uses except those that conform to the standards set forth in this subchapter. In general, a home occupation is an accessory use so located and conducted that the average neighbor, under normal circumstances, would not be aware of its existence. The standards for home occupations in this subchapter are intended to ensure compatibility with other permitted uses and with the residential character of the neighborhood, and a clearly secondary or incidental status in relation to the

residential use of the main building, as the criteria for determining whether a proposed accessory use qualifies as a home occupation.  
(1988 Code, § 9-10-193)

#### **§ 155.122 CONDITIONS FOR CONDUCT OF HOME OCCUPATION.**

Home occupations are permitted accessory uses in residential zones only so long as all the following conditions are observed:

(A) Such occupation shall be conducted solely by resident occupants in their residence.

(B) No more than one room of the residence shall be used for such purposes. Use of accessory buildings or garages for these purposes is prohibited.

(C) No use shall require internal or external alterations or involve construction features or the use of electrical or mechanical equipment that would change the fire rating of the structure or the fire district in which the structure is located.

(D) No home occupation shall cause an increase in the use of any one or more utilities (water, sewer, garbage, etc.) so that the combined total use for dwelling and home occupation purposes exceeds the average for residences in the neighborhood.

(E) There shall be no outside storage of any kind related to the home occupation.

(F) The use may increase vehicular traffic flow and parking by no more than one additional vehicle at a time.

(G) No use shall create noise, dust, vibration, smell, smoke, glare, electrical interference, fire hazard, or any other hazard or nuisance to any greater or more frequent extent than that usually experienced in an average residential occupancy in the district in question under normal circumstances wherein no home occupation exists.  
(1988 Code, § 9-10-194)

### **§ 155.123 EXAMPLES OF PERMITTED HOME OCCUPATIONS.**

The following are typical examples of uses which can be conducted within the limits of the restrictions established in this subchapter and thereby qualify as home occupations; provided that uses which may qualify as home occupations are not limited to those named in this section, nor does the listing of a use in this section automatically qualify the use as a home occupation: accountant, architect, artist, attorney at law, author, consultant, dressmaking, individual stringed instrument instruction, individual tutoring, insurance, millinery, preserving and home cooking, realtor.

(1988 Code, § 9-10-195)

### **§ 155.124 PROHIBITED USES.**

The following uses, by the nature of the investment in operation, have a pronounced tendency, once started, to rapidly increase beyond the limits permitted for home occupations and thereby impair the use and value of a residentially zoned area for residence purposes. Therefore, the following uses shall not be permitted as home occupations: auto repair, minor or major; barbershop; construction trades; dance instruction; dental offices; medical offices; painting of vehicles, trailers or boats; photo developing; photo studios; private schools with organized classes; radio repair; television repair; upholstery.

(1988 Code, § 9-10-196)

## ***ENFORCEMENT***

### **§ 155.135 VIOLATIONS; PENALTIES; ADDITIONAL REMEDIES.**

(A) No person shall locate, erect, construct, reconstruct, enlarge, change, maintain or use any building or structure, or use any land, in violation of this chapter.

(B) The Community Service Officer shall order, in writing, the remedying of any violation. Such order shall state the nature of the violation, the code provision violated, and the time by which the violation must be corrected. After such order has been served, no work shall proceed on any structure or tract of land covered by such an order except to correct such violation or to comply with the order.

(C) Decisions of the Director may be appealed to the Commission and then to the City Council in accordance with § 155.021.

(D) Any and all persons who shall violate any of the provisions of this chapter or fail to comply therewith, or who shall violate or fail to comply with any lawful order or regulation made under this chapter, shall severally, for each and every such violation and noncompliance respectively, be punishable as provided by City ordinance, to which penalty may be added the costs of the action at the discretion of the court. The imposition of one penalty for any violation of this chapter shall not excuse the violation or permit the continuation thereof, and all such persons shall be required to correct or remedy such violations and defects within a reasonable time. Each day that the prohibited condition is not corrected or remedied shall constitute a separate offense, and the court shall impose a fine on a per diem basis for each day that the violation is maintained. Application of the penalty provided for in this subsection shall not be held to preclude the forced removal of prohibited conditions.

(E) In addition to or in lieu of the procedures outlined in division (D) of this section, this chapter shall be enforceable in a court of proper jurisdiction, and any or all appropriate remedies at law or in equity shall be available for the enforcement thereof.

(F) This chapter shall not be construed to hold the City, its Director, or any other City official responsible for any damage to persons or property by reason of any inspection or reinspection authorized in this chapter or the failure to so inspect or reinspect or by reason of the issuance of a building permit as required in this chapter.

(1988 Code, § 9-10-8) (Am. Ord. 2022-06, passed 7-11-2022)

**APPENDIX A: FEE SCHEDULE**

## 1. Change of Zoning:

- A. Less than  $\frac{1}{2}$  acre - \$100.00.
- B.  $\frac{1}{2}$  acre to less than a 5 acres - \$120 for the first acre plus \$20 for each additional acre or portion.
- C. 5 acres to less than 20 acres - \$200 for first 5 acres plus \$15 for each additional acre or portion.
- D. 20 acres or more - \$425 for first 20 acres plus \$10 for each additional acre or portion.

## 2. Annexation by Petition Method:

- A. Fee schedule is the same as change of zoning.

## 3. Plats:

- A. Subdivision (preliminary & Final) - \$100 plus \$2 per lot each time legal ad is published.
- B. Re-subdivision Plat - \$10 plus \$2 per lot.
- C. Summary - \$10 plus \$2 per lot.

## 4. Street Name Change:

- A. \$100 for each name change. Upon approval of name change, an additional fee on the amount of \$25 per existing affected intersection shall be charged.

## 5. Vacation of Public Right-of-Way:

- A. \$100 per application.

## 6. Variances:

- A. \$100 per application.

## 7. Special Use Permit:

- A. \$100 per application.

## 8. Conditional Use Permit:

- A. \$100 per application.

## 9. Site Plan Review:

A. \$25 per application.

## 10. Site Location Review Fee:

A. \$25 per application.

(Ord. 2022-06, passed 7-11-2022)