

TITLE XV: LAND USAGE

Chapter

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CHAPTER 150: GENERAL PROVISIONS

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NUMBERING SYSTEM; STREET NAMES

§ 150.01 NUMBERING SYSTEM ESTABLISHED.

All lots, buildings, and structures in the City shall be numbered in accordance with a plan adopted by the City Council.
(1988 Code, § 9-11-1) (Ord. 88-5, passed - -)

§ 150.02 MAP.

The Planning Services Department shall keep a map showing the proper street number of every lot in the City, which map shall be open to inspection by anyone interested.
(1988 Code, § 9-11-2) (Ord. 88-5, passed - -; Am. Ord. 2017-04, passed 1-8-2018)

§ 150.03 BUILDING IDENTIFICATION; NUMBER PLACEMENT.

It shall be the duty of the owners or occupants of every house, building, or other structure in the City to have placed thereon, in a place visible from the street, figures at least two and one-half inches high, showing the number of the house, building, or structure as determined by the City Council.
(1988 Code, § 9-11-3) (Ord. 88-5, passed - -; Am. Ord. 2017-04, passed 1-8-2018) Penalty, see § 150.99

§ 150.04 SUBDIVISION PLAT; STREET NAME APPROVAL REQUIRED.

Everyone submitting a subdivision plat to the City Council for its approval shall show the proper names of any streets, and these street designations shall be approved by the City Council before the new streets are officially named. Street name suggestions may originate with the parties submitting the plat under the guidance of the Commission or the City Council.
(1988 Code, § 9-11-5) (Ord. 88-5, passed - -; Am. Ord. 2017-04, passed 1-8-2018) Penalty, see § 150.99

§ 150.05 DUTIES OF PLANNING SERVICES DIRECTOR.

(A) Shall inform any applicant of the number or numbers belonging to or embraced within the City limits of any such lot of property as provided in the City ordinance. In case of conflict as to the proper number to be assigned to any building, the Planning Services Director shall determine the number of the building.

(B) Final approval of any structure erected, repaired, altered, or modified shall be withheld until permanent and proper numbers have been affixed to the structure.

(1988 Code, § 9-11-6) (Ord. 88-5, passed - -; Am. Ord. 2017-04, passed 1-8-2018; Am. Ord. 2017-05, passed 1-8-2018)

§ 150.06 CHANGING, NAMING, OR RENAMING STREETS.

The City Council, by resolution, may change, rename, or name an existing or newly established street within the city limits at any time upon recommendation of the Planning Services Director or the Commission.

(1988 Code, § 9-11-7) (Ord. 88-5, passed - -; Am. Ord. 2017-04, passed 1-8-2018)

§ 150.99 PENALTY.

(A) 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.

(B) Any person, firm, or corporation failing to so number any house, building, or other structure owned or occupied by him or her, or if after receiving notice to do so from the Planning Services Director or code compliance officer shall continue in his or her failure to so number each house, building, or structure as required in §§ 150.01 *et seq.*, shall be fined \$1 for each day during or on which a failure to so number continues.

(1988 Code, § 9-11-4) (Ord. 88-5, passed - -; Am. Ord. 2017-04, passed 1-8-2018)

CHAPTER 151: BUILDING REGULATIONS; CONSTRUCTION

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Appendix A: Building Permit Fee Schedule

Cross-reference:

Dangerous Buildings or Premises, see §§ 52.40 et seq.

Excavations, see §§ 94.01 et seq.

Moving of Buildings, see §§ 94.30 et seq.

Statutory reference:

Adoption of codes, see §§ 3-17-6 et seq. NMSA 1978

BUILDING CODE

§ 151.01 ADOPTION BY REFERENCE.

(A) There is hereby adopted by the City, for the purpose of prescribing regulations governing the erection, construction, enlargement, alteration, repair, moving, removal, conversion, demolition, occupancy, equipment, use, height, area, and maintenance of buildings or structures; providing for the issuance of permits and the collection of fees therefor; and providing penalties for the violation thereof, the State Uniform Building Code, 1982 edition, as published by the International Conference of Building Officials and as approved and promulgated by the Construction Industries Commission of the State, including all amendments thereto and all future editions thereof; of which code not less than one copy has been and now is filed in the office of the City Clerk/Treasurer, and the same is hereby adopted and incorporated as fully as if set out at length herein, except as to the section of that code relating to building permit fees, in lieu of which a development fee will be charged in accordance with § 151.02 below.

(B) The Uniform Building Code and the development fees established hereby shall be in force from the date on which this subchapter shall take effect; and the provisions thereof shall be controlling within the limits of the City.

(1988 Code, § 9-5-1) (Ord. 92-05, passed - -)

§ 151.02 BUILDING PERMIT FEES.

(A) Fees shall be applicable to all types of construction, including demolition work. A fee for each building permit shall be paid to the City as set forth in the schedules in Appendix A of this chapter. The determination of violation of any construction shall be made by the Code Building Inspector.

(B) The Building Inspector shall be required to make inspections as necessary in connection with each building permit issued.

(1988 Code, § 9-5-2) Penalty, see § 151.99

§ 151.03 STATE EVALUATION TABLE.

Copies of the State Evaluation Table shall be available and subject to inspection in the office of the City Clerk/Treasurer.

(1988 Code, § 9-5-3)

ELECTRICAL CODE**§ 151.15 ADOPTION BY REFERENCE.**

All electrical wiring of any sort or type within the limits of the City shall fully conform in every respect to the National Electrical Code, 1971 edition, as adopted by the National Fire Protection Association, and the amendments thereof, as published by the Electrical Board of the State, all of which are hereby adopted by reference and incorporated herein as fully as if set out in full and shall be known as the Electrical Code of the City. Copies of that code are available for inspection in the office of the City Clerk/Treasurer during normal business hours.

(1988 Code, § 9-1-1) (Ord. 92-05, passed - -) Penalty, see § 151.99

FIRE PREVENTION CODE**§ 151.30 ADOPTION BY REFERENCE.**

There is hereby adopted by the City, for the purpose of prescribing regulations governing conditions hazardous to life and property from fire and explosion, that certain code known as the Fire Prevention Code, abbreviated edition, recommended by the American Insurance Association, being particularly the 1970 edition and the whole thereof, including all future amendments thereto and all future abbreviated editions thereof, unless otherwise amended in the future by the Governing Body; of which code not less than one copy has been and now is filed in the office of the City Clerk/Treasurer, and is available for inspection during normal business hours. The same is hereby adopted and incorporated as fully as if set out at length herein, and from the date on which this subchapter shall take effect, the provisions thereof shall be controlling within the limits of the City.

(1988 Code, § 9-2-1)

§ 151.31 ENFORCEMENT.

The code hereby adopted shall be enforced by the Chief of the Fire Department ("Fire Chief").

(1988 Code, § 9-2-2)

§ 151.32 DEFINITIONS.

For the purpose of this chapter, the following definition shall apply unless the context clearly indicates or requires a different meaning.

MUNICIPALITY. Whenever used in the code hereby adopted, it shall be held to mean this City.
(1988 Code, § 9-2-3)

§ 151.33 MODIFICATIONS.

The Fire Chief shall have power to modify any of the provisions of the code hereby adopted upon application in writing by the owner or lessee, or his or her duly authorized agent, when there are practical difficulties in the way of carrying out the strict letter of that code, provided that the spirit of the code shall be observed, public safety secured, and substantial justice done. The particulars of such a modification when granted or allowed and the decision of the Fire Chief thereon shall be entered upon the records of the Department, and a signed copy shall be furnished the applicant.

(1988 Code, § 9-2-4)

§ 151.34 APPEALS.

Whenever the Fire Chief shall disapprove an application or refuse to grant a permit applied for, or when it is claimed that the provisions of the adopted code do not apply or that the true intent and meaning of the code have been misconstrued or wrongly interpreted, the applicant may appeal from the decision of the Fire Chief to the Governing Body within 30 days from the date of the decision appealed.

(1988 Code, § 9-2-5)

§ 151.35 VIOLATIONS; REMEDIES NOT EXCLUSIVE.

(A) Any person who shall violate any of the provisions of the code hereby adopted or fail to comply therewith; or who shall violate or fail to comply with any order made thereunder; or who shall build in violation of any detailed statement of specifications or plans submitted and approved thereunder, or of any certificate or permit issued thereunder, and from which no appeal has been taken; or who shall fail to comply with such an order as affirmed or modified by the Governing Body or by a court of competent jurisdiction, within the time fixed herein, shall severally for each and every such violation and non-compliance respectively, be guilty of a misdemeanor and subject to a penalty as described in § 151.99.

(B) The imposition of one penalty for any violation shall not excuse the violation or permit it to continue; and all such persons shall be required to correct or remedy the violations or defects within a reasonable time; and when not otherwise specified, then each ten days that prohibited conditions are maintained shall constitute a separate offense.

(C) The application of a penalty as mentioned above shall not be held to prevent the enforced removal of prohibited conditions.

(1988 Code, § 9-2-6) Penalty, see § 151.99

§ 151.36 AUTHORITY.

This subchapter is adopted by authority contained in § 3-17-6 NMSA 1978, relating to codes adopted and enforced by reference.

(1988 Code, § 9-2-7)

PLUMBING AND GAS CODE

§ 151.50 ADOPTION BY REFERENCE.

(A) For the purpose of prescribing minimum standards regulating the installation of plumbing and gas systems, including appliances, within the City, those certain codes known as the Plumbing Code and the Natural Gas Code of the State, current edition, as proposed and published by the Mechanical Board and accepted by the Construction Industries Commission of the State, as amended, are adopted; except, however, as modified herein.

(B) (1) Ch. I, General Administration, §§ 300 through 390, inclusive, are deleted and part I, Administration, Ch. 1, 2, and 3 are substituted therefor;

(2) The sections and Appendix B of Ch. II of the Plumbing Code are amended as indicated; and

(3) The definitions and sections of Ch. III, Natural Gas Code, are amended as indicated.

(C) All of the above are hereby adopted by reference and incorporated herein as fully as if set out in full, and shall be known as the "Plumbing and Gas Code of the City," and from the date on which this subchapter takes effect shall be controlling within the boundaries of the City.

(1988 Code, § 9-6-1) (Ord. 92-05, passed - -)

(C) Violations as described in § 151.35 of this Code shall be punishable by a fine of not more than \$300 or by imprisonment for not more than 90 days, or by both such fine and imprisonment.

(1988 Code, § 9-2-6)

§ 151.51 COPIES AVAILABLE.

A copy of the Plumbing and Gas Code of the City, as adopted by this subchapter, is now on file in the office of the City Clerk/Treasurer of the City and is available for inspection by the public during normal business hours. A copy of that code shall be available to any individual upon request and the payment of a reasonable charge as set by the City Clerk/Treasurer, to be not less than the actual cost per copy.

(1988 Code, § 9-6-2) (Ord. 92-05, passed - -)

§ 151.52 AMENDMENTS.

The Plumbing and Gas Code of the City, as hereby adopted, may be amended or repealed in the same manner as this Code of Ordinances is amended or repealed.

(1988 Code, § 9-6-3)

§ 151.99 PENALTY.

(A) 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.

(B) Each violation of §§ 151.15 *et seq.*, upon conviction, shall constitute a misdemeanor and shall be punishable by a fine of not more than \$300 or imprisonment for not more than 90 days, or both such fine and imprisonment.

(1988 Code, § 9-1-2)

APPENDIX A: BUILDING PERMIT FEE SCHEDULE

<i>Building Permit Fees</i>		
<i>Type of Building</i>	<i>Details</i>	<i>Fee, Based on Square Feet</i>
Commercial	Heated	\$0.12
Commercial	Unheated	\$0.10
Residential	Heated	\$0.10
Residential	Unheated	\$0.08

(1988 Code, § 9-5-2)

Cross-reference:

Building Code, see §§ 151.01 et seq.

CHAPTER 152: MANUFACTURED HOUSING REGULATIONS

Section

- 152.01 Definitions
- 152.02 Restrictions
- 152.99 Penalty

§ 152.01 DEFINITIONS.

The following definitions apply to all factory-built homes designed to be transported and set up on property.

MOBILE HOME. As used in the Manufactured Housing and Zoning Act (§ 3-21 A-1 NMSA 1978), a movable or portable housing structure larger than 40 feet in body length, eight feet in width or 11 feet in overall height, designed for and occupied by no more than one family for living and sleeping purposes, that is not constructed to the standards of the United States Department of Housing and Urban Development, the National Manufactured Housing Construction and Safety Standards Act of 1974, and the Housing and Urban Development Zone Code 2 or International Building Code, as amended, to the date of the unit's construction, or built to the standards of any municipal building code. The term **MOBILE HOMES** describes factory-built homes built prior to the June 1976 HUD Code enactment.

MANUFACTURED HOMES.

(1) **MULTI-SECTION MANUFACTURED HOME.** As used in the Manufactured Housing and Zoning Act (§ 3-21 A-1 NMSA 1978), 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, and constructed in a factory to the standards of the United States Department of Housing and Urban Development, the National Manufactured Housing

Construction and Safety Standards Act of 1974, and the Housing and Urban Development Zone Code 2 or the International Building Code, as amended, to the date of the unit's construction, and installed consistent with the New Mexico Manufactured Housing Act, and with the rules made pursuant thereto relating to permanent foundations.

(2) **SINGLE - SECTION MANUFACTURED HOME.** A manufactured home larger than 40 feet in length, eight feet in width or 11 feet for overall height, and constructed in a factory to the same standards as the multi-section manufactured home.

(1988 Code, § 9-9-1) (Ord. 2008-05, passed 11-24-2008)

§ 152.02 RESTRICTIONS.

(A) It shall be unlawful to own, possess, maintain, keep, reside in or use any manufactured home within the City limits except in compliance with the provisions of this chapter.

(B) It shall be unlawful for any manufactured home to be moved inside the City limits without first securing a permit for that purpose from the Planning and Zoning Office, and complying with all applicable laws and regulations for the moving and setting up of manufactured homes. The fee for this permit shall be \$25. A placement permit will not be issued without a site plan.

(C) No manufactured or mobile homes built prior to the June 1976 HUD Code 2 enactment, shall be transported into, or installed upon any site in the city. All manufactured or mobile homes must be in a habitable condition prior to placement within the city.

(D) No recreational vehicle, travel or vacation trailer on the same lot with the manufactured home may be used for living purposes.

(E) No manufactured home without a complete and finished exterior appearance shall be placed on a lot.

(F) All manufactured or mobile homes placed on a lot within the city shall be setup within a reasonable period of time not to exceed 30 days, and in no case shall a manufactured or mobile home not intended for setup be placed on property for storage longer than seven days.

(G) The bottom of the exterior edge of all manufactured homes shall be skirted with masonry, metal, brick, block or other durable materials so that its undercarriage is completely hidden from view. All skirting must be painted, if applicable, and installed in a workmanship-like manner. Owners of manufactured homes will have 30 days from the amendment of this chapter, or from placing the manufactured home on the lot, to comply with the provisions of this section.

(H) All hitches must be removed or hidden, when applicable.

(I) There shall not be erected or placed on any one lot more than one manufactured home, together with necessary appurtenant building and garages customarily used in connection therewith.

(J) Off-street parking shall be provided for at least two automobiles for each lot.

(K) All multi-section manufactured homes including triple-wide units and modular homes must be installed upon an approved permanent foundation system. Single-section manufactured or mobile homes installed within the city must be adequately anchored and all homes placed within the city must follow all manufacturers' installation requirements, as well as all state and local laws governing set up and utility hook-ups.

(L) No manufactured or mobile home shall be used for storage purposes.

(M) All manufactured homes shall have a blocking permit issued to a contractor licensed by the State of New Mexico. All utility hook-ups shall be performed by a State-licensed contractor.

(N) All manufactured homes shall be anchored in a suitable manner when located in a flood hazard area.

(O) No tires or other materials are allowed to be placed on the roof of a manufactured or mobile home. (1988 Code, § 9-9-2) (Ord. 2008-05, passed 11-24-2008; Ord. 2015-02, passed 9-28-2015) Penalty, see § 152.99

§ 152.99 PENALTY.

Any person found in violation of any of the provisions of this chapter may be fined in an amount not to exceed \$300 Each day such a violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such hereunder.

(1988 Code, § 9-9-3) (Ord. 88-3, passed 4-25-1989; Ord. 2008-05, passed 11-24-2008; Ord. 2015-02, passed 9-28-2015)

[Text continues on page 15]

CHAPTER 153: SIGNS AND OUTDOOR DISPLAYS

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- 153.02 Definitions
- 153.03 Sign classifications
- 153.04 Structural and design requirements
- 153.05 Permitted areas
- 153.06 Spacing requirements
- 153.07 Permits
- 153.08 Unsafe signs; remedies
- 153.09 Variances, administration, and penalties adopted

§ 153.01 PURPOSE.

The purpose of this chapter is to regulate the outdoor advertising industry to provide that safe structures are built and maintained; to maintain a neat, pleasant-appearing environment; to provide uniform standards of construction and maintenance; and to provide tax revenues by promoting the reasonable, orderly, and effective display of outdoor advertising. (1988 Code, § 9-8-1)

§ 153.02 DEFINITIONS.

For the purpose of this chapter, the following definition shall apply unless the context clearly indicates or requires a different meaning.

OUTDOOR ADVERTISING SIGN.

(1) A sign, including the supporting sign structure, which directs the attention of the general public to a business, service, or activity not usually conducted, or a product not usually offered or sold, upon the premises where the sign is located.

(2) None of the following shall be deemed an ***OUTDOOR ADVERTISING SIGN***:

(a) Directional or other official signs authorized by law, including public utility signs (customarily erected and maintained by publicly or privately owned public utilities, as essential to their operations, but not advertising their product);

(b) Service club and religious notices;

(c) Signs advertising activities conducted on, or products sold on, the property upon which they are located; or

(d) Signs which have a significant portion of their face area devoted to giving public service information, such as, but not limited to, time, date, temperature, weather, or similar information. (1988 Code, § 9-8-2)

§ 153.03 SIGN CLASSIFICATIONS.

(A) *Spectacular sign.* A sign advertising copy usually animated, constructed of metal, wired for lights or luminous tubing, or both, with copy action controlled by the flashed circuit breakers or matrographs, and attached on an open face steel structure built especially for that purpose.

(B) *Ground sign.* A sign which is erected on a free-standing framework supported and affixed by one or more uprights or braces in or upon the ground.

(C) *Wall sign.* A sign affixed to the wall of any building, when the sign shall project not more than 12 inches from the building.

(D) *Projecting sign.* Any sign which is affixed to any building wall, or structure, and extends beyond the building wall, structure, building line, or property line more than 12 inches.

(E) *Marquee sign.* A projecting sign attached to or hung from a marquee; and that marquee shall be known to mean a canopy or covered structure projecting from and supported by a building, when the canopy or covered structure extends beyond the building, building line, or property.

(F) *Trailer-type or portable sign.* A movable sign which, if illuminated, must have permanent electrical connections.
(1988 Code, § 9-8-3)

§ 153.04 STRUCTURAL AND DESIGN REQUIREMENTS.

(A) Structural and design requirements shall conform to the Outdoor Advertising Rules and Regulations approved by the State Highway Commission in force or as amended. Signs in excess of 25 feet in height shall require the certification of a registered engineer as to the soundness of footing, construction, wind pressure, and working stresses. All electrical work shall be performed by a licensed contractor of this State.

(B) Signs projecting from a building or extending over public property shall maintain a clear height of nine feet above the sidewalk, and all signs of this type shall not extend closer than 18 inches to the curb line.

(C) (1) All signs shall observe setback requirements; shall not be placed with illumination that interferes with the effectiveness of any official traffic sign or device; cause beams or rays of light of such intensity or brilliance as to be mistaken for a warning or danger signal, or as to cause glare or impair the vision of any driver's operation of a motor vehicle; or which will impair the safe flow of traffic by actually physically intruding upon the right-of-way,

or by being of such a distracting nature so as to dangerously divert a driver's attention from the roadway.

(2) No sign may be erected or maintained which attempts or appears to attempt to direct the movement of traffic, or which interferes with, imitates, or resembles any official traffic sign, signal, or device.

(D) (1) Any outdoor advertising sign in existence on the effective date of this chapter, and which does not comply with the provisions of this chapter, may continue in existence as a matter of right until removed or destroyed.

(2) A landmark sign of historical or of artistic significance, which has been in place at the same location for a period of 25 years or more, may continue to be maintained. Any substantial change in size, lighting, or message content will terminate its status as a landmark sign.

(1988 Code, § 9-8-4) Penalty, see § 10.99

§ 153.05 PERMITTED AREAS.

Outdoor advertising signs which conform to the provisions of this chapter shall be permitted as a matter of right in C-1, C-2, C-3 and C-4 districts.
(1988 Code, § 9-8-5) (Ord. 2017-05, passed 1-8-2018)

§ 153.06 SPACING REQUIREMENTS.

The spacing of signs shall conform to the Outdoor Advertising Rules and Regulations approved by the State Highway Commission; provided, however, that these spacing requirements shall not apply to structures that are separated by buildings or other obstructions in such a manner that only one sign located otherwise within the above spacing distances is visible from the highway at any one time.

(1988 Code, § 9-8-6) Penalty, see § 10.99

§ 153.07 PERMITS.

Applications for sign permits shall be obtained from the Planning Services Department, and shall be accompanied by an application fee of \$20 per sign. Completed applications shall be submitted to the Planning Services Director and, upon approval of this authority, shall be returned to the applicant for construction.

(1988 Code, § 9-8-7) (Am. Ord. 2017-05, passed 1-8-2018)

§ 153.09 VARIANCES, ADMINISTRATION, AND PENALTIES ADOPTED.

Variances, administration, and penalties shall be governed by Chapter 155 of this Code.
(1988 Code, § 9-8-9)

§ 153.08 UNSAFE SIGNS; REMEDIES.

(A) All signs for which a permit is required shall be kept in good and safe structural condition. Should any sign become insecure or in danger of falling, or otherwise unsafe in the opinion of the code compliance officer, the owner thereof or the person or firm maintaining same shall, upon written notice from the code compliance officer, forthwith in the case of immediate danger, and in any case within ten days, secure the same in a manner to be approved by the code compliance officer, in conformity with the provisions of this chapter, or remove the sign. If the order is not complied with in ten days, the code compliance officer shall remove the sign at the expense of the owner or lessee thereof.

(B) In case any sign shall be installed, erected, or constructed in violation of any of the terms of this chapter, the code compliance officer or the Planning Services Director shall notify, by registered mail or written notice served personally, the owner or lessee thereof to alter the sign so as to comply with this chapter and zoning regulations, and to secure the necessary permit therefor, or to remove the sign. If the order is not complied within ten days, the code compliance officer shall remove the sign at the expense of the owner or lessee thereof.

(1988 Code, § 9-8-8) (Ord. 2017-05, passed 1-8-2018) Penalty, see § 10.99

CHAPTER 154: FLOOD HAZARD REGULATIONS

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- 154.02 Findings of fact
- 154.03 Purpose of chapter
- 154.04 Methods of reducing flood losses
- 154.05 Definitions
- 154.06 Lands to which this chapter applies
- 154.07 Basis for establishing areas of special flood hazard
- 154.08 Development permit required
- 154.09 Compliance with chapter and other regulations
- 154.10 Abrogation of existing restrictions; conflicting regulations
- 154.11 Interpretation of chapter
- 154.12 Warning and disclaimer of liability
- 154.13 Designation of Floodplain Administrator
- 154.14 Duties of Floodplain Administrator
- 154.15 Issuance of development permit
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- 154.17 General standards
- 154.18 Specific standards
- 154.19 Standards for areas of shallow flooding
- 154.20 Standards for subdivision proposals
- 154.21 Computer programs for identification and mapping of special flood hazard areas

§ 154.01 STATUTORY AUTHORITY.

The Legislature of the State has, in § 3-18-7 NMSA 1978, delegated the responsibility to local governmental units to adopt regulations designed to minimize flood losses.
(Ord. 2009-02, passed 1-26-2009)

§ 154.02 FINDINGS OF FACT.

(A) The flood hazard areas of the City are subject to periodic inundation that results in loss of life and property, health and safety hazards, disruption of commerce and government services, and extraordinary public expenditures for flood protection and relief, all of which adversely affect the public health, safety and general welfare.

(B) These flood losses are created by the cumulative effect of obstructions in flood plains, which cause an increase in flood heights and velocities, and by the occupancy of flood hazard areas by uses vulnerable to floods and hazardous to other lands because they are inadequately elevated, floodproofed or otherwise protected from flood damage.
(Ord. 2009-02, passed 1-26-2009; Am. Ord. 2017-06, passed 1-8-2018)

§ 154.03 PURPOSE OF CHAPTER.

It is the purpose of this chapter to promote the public health, safety and general welfare, and to minimize public and private losses due to flood conditions in specific areas, by provisions designed to:

(A) Protect human life and health;

(B) Minimize expenditure of public money for costly flood control projects;

(C) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;

(D) Minimize prolonged business interruptions;

(E) Minimize damage to public facilities and utilities, such as water and gas mains, electric, telephone and sewer lines, streets and bridges, located in flood plains;

(F) Help maintain a stable tax base by providing for the sound use and development of floodprone areas in a manner so as to minimize future flood blight areas; and

(G) Ensure that potential buyers are notified that property is in a flood area.
(Ord. 2009-02, passed 1-26-2009)

§ 154.04 METHODS OF REDUCING FLOOD LOSSES.

In order to accomplish its purposes, this chapter uses the following methods:

(A) Restrict or prohibit uses that are dangerous to health, safety or property in times of flood, or which cause excessive increases in flood heights or velocities;

(B) Require that uses vulnerable to floods, including facilities that serve those uses, be protected against flood damage at the time of initial construction;

(C) Control the alteration of natural flood plains, streams, channels and natural protective barriers involved in the accommodation of flood waters;

(D) Control filling, grading, dredging and other development that may increase flood damage; and

(E) Prevent or regulate the construction of flood barriers that will unnaturally divert flood waters or that may increase flood hazards to other lands.
(Ord. 2009-02, passed 1-26-2009)

§ 154.05 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. Unless specifically defined in this section, words or phrases used in this chapter shall be interpreted to give them the meaning they have in common usage, and to give this chapter its most reasonable application.

ALLUVIAL FAN FLOODING. Flooding occurring in the surface of an alluvial fan or similar landform, which originates at the apex and is characterized by high-velocity flows, active processes of erosion, sediment transport and deposition, and unpredictable flow paths.

APEX. A point on an alluvial fan or similar landform below which the flow path of the major stream that formed the fan becomes unpredictable and alluvial fan flooding can occur.

APPEAL. A request for a review of the Flood Plain Administrator's interpretation of any provisions of this chapter, or a request for a variance.

AREA OF SHALLOW FLOODING. A designated AO, AH, or VO zone on a community's Flood Insurance Rate Map (FIRM) with a 1% or greater chance of flooding to an average depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

AREA OF SPECIAL FLOOD HAZARD. The land in a flood plain within a community subject to a 1% or greater chance of flooding in

any given year. The area may be designated as zone A on the Flood Hazard Boundary Map (FHBM). After detailed ratemaking has been completed in preparation for publication of the FIRM, zone A is usually refined into zones A, AE, AO, AH, A1-99, VO, V1-30, VE and V.

BASE FLOOD. The flood having 1% chance of being equaled or exceeded in any given year.

CRITICAL FEATURE. An integral and readily identifiable part of a flood protection system, without which the flood protection provided by the entire system would be compromised.

DEVELOPMENT. Any manmade change to improved or unimproved real estate, including but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials.

ELEVATED BUILDING. A nonbasement building:

(1) Built, in the case of a building in zones A1-30, AE, A, A99, AO, AH, B, C, X and D, to have the top of the elevated floor, or in the case of a building zones V1-30, VE and V, to have the bottom of the lowest horizontal structural member of the elevated floor, elevated above the ground level by means of pilings, columns (posts and piers) or shear walls parallel to the flow of the water; and

(2) Adequately anchored so as not to impair the structural integrity of the building during a flood of up to the magnitude of the base flood. In the case of zones A1-30, AE, A, A99, AO, AH, B, C, X and D, the term **ELEVATED BUILDING** also includes a building elevated by means of fill or solid foundation perimeter walls, with openings sufficient to facilitate the unimpeded movement of floodwaters. In the case of zones V1-30, VE and V, the term **ELEVATED BUILDING** also includes a building otherwise

meeting the definition of elevated building, even though the lower area is enclosed by means of breakaway walls, if the breakaway walls meet the standards of § 60-3(3)(5) of the National Flood Insurance Program regulations.

EXISTING CONSTRUCTION. For the purposes of determining rates, structures for which the start of construction commenced before the effective date of the FIRM, or before January 1, 1975, for FIRMs effective before that date. **EXISTING CONSTRUCTION** may also be referred to as **EXISTING STRUCTURES**.

EXISTING MANUFACTURED HOME PARK OR SUBDIVISION. A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.

EXISTING MOBILE HOME PARK OR MOBILE HOME SUBDIVISION. A parcel or contiguous parcels of land divided into two or more mobile home lots for rent or sale, for which the construction of facilities for servicing the lot on which the mobile home is to be affixed (including, at a minimum, the installation of utilities, either final site grading or the pouring of concrete pads, and the construction of streets) is completed before the effective date of this chapter.

EXPANSION TO AN EXISTING MANUFACTURED HOME PARK OR SUBDIVISION. The preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and final site grading or the pouring of concrete pads).

EXPANSION TO AN EXISTING MOBILE HOME PARK OR MOBILE HOME SUBDIVISION.

The preparation of additional sites by the construction of facilities for servicing the lots on which the mobile homes are to be affixed (including the installation of utilities, either final site grading or the pouring of concrete pads, or the construction of streets).

FLOOD and FLOODING. A general and temporary condition of partial or complete inundation of normally dry land areas from:

- (1) The overflow of inland or tidal waters;
or
- (2) The unusual and rapid accumulation or runoff of surface waters from any source.

FLOOD HAZARD BOUNDARY MAP (FHBM). An official map of a community, issued by the Federal Insurance Administration, where the areas within the boundaries of special flood hazards have been designated as zone A.

FLOOD INSURANCE RATE MAP (FIRM). An official map of a community, on which the Federal Insurance Administration has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

FLOOD INSURANCE STUDY. The official report provided by the Federal Insurance Administration. The report contains flood profiles, the water surface elevation of the base flood, as well as the Flood Hazard Boundary-Floodway Map.

FLOOD PROTECTION SYSTEM. Those physical structural works for which funds have been authorized, appropriated and expended, and which have been constructed specifically to modify flooding in order to reduce the extent of the areas within a community subject to a special flood hazard, and the extent of the depths of associated flooding. Such a system typically includes hurricane tidal barriers, dams, reservoirs, levees or dikes. These specialized

flood-modifying works are those constructed in conformance with sound engineering standards.

FLOODPLAIN and FLOODPRONE AREA. Any land area susceptible to being inundated by water from any source (see the definition of **FLOODING**).

FLOODWAY and REGULATORY FLOODWAY. The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

FUNCTIONALLY DEPENDENT USE. A use that cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and shipbuilding and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

HABITABLE FLOOR. Any floor usable for living purposes, which includes working, sleeping, eating, cooking or recreation, or a combination thereof. A floor used for storage purposes only is not a **HABITABLE FLOOR**.

HIGHEST ADJACENT GRADE. The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

HISTORIC STRUCTURE. Any structure that is:

- (1) Listed individually in the National Register of Historic Places (a listing maintained by the Department of the Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;

- (2) Certified or preliminarily determined by the Secretary of the Interior as contributing to the

historical significance of a registered historic district, or a district preliminarily determined by the Secretary to qualify as a registered historic district;

(3) Individually listed on a state inventory of historic places in states with historic preservation programs that have been approved by the Secretary of the Interior; or

(4) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:

(a) By an approved state program as determined by the Secretary of the Interior; or

(b) Directly by the Secretary of the Interior in states without approved programs.

LEVEE. A manmade structure, usually an earthen embankment, designed and constructed in accordance with sound engineering practices to contain, control or divert the flow of water so as to provide protection from temporary flooding.

LEVEE SYSTEM. A flood protection system that consists of levees and associated structures, such as closure and drainage devices, which are constructed and operated in accordance with sound engineering practices.

LOWEST FLOOR. The **LOWEST FLOOR** of the lowest enclosed area, including basement. An unfinished or flood-resistant enclosure, usable solely for parking or vehicles, building access or storage, in an area other than a basement area, is not considered a building's **LOWEST FLOOR**, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of § 60.3 of the National Flood Insurance Program regulations.

MANUFACTURED HOME. A structure, transportable in one or more sections, built on a permanent chassis and designed for use, with or

without a permanent foundation, when attached to the required utilities. The term **MANUFACTURED HOME** does not include a recreational vehicle.

MEAN SEA LEVEL. For purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929 or other datum to which base flood elevations shown on a community's flood insurance rate map are referenced.

MOBILE HOME. A structure, transportable in one or more sections, built on a permanent chassis and designed to be used, with or without a permanent foundation, when connected to the required utilities. The term **MOBILE HOME** does not include a recreational vehicle or a travel trailer.

NEW CONSTRUCTION. For the purposes of determining insurance rates, structures for which the start of construction commenced on or after the effective date of an initial FIRM, or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, **NEW CONSTRUCTION** means structures for which the start of construction commenced on or after the effective date of a floodplain management regulation adopted by a community, and includes any subsequent improvements to such structures.

NEW MANUFACTURED HOME PARK OR SUBDIVISION. A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by a community.

NEW MOBILE HOME PARK OR MOBILE HOME SUBDIVISION. A parcel (or contiguous parcels) of land divided into two or more mobile home lots for rent or sale, for which the construction of

facilities for servicing the lot on which the mobile home is to be affixed (including, at a minimum, the installation of utilities, either final site grading or the pouring of concrete pads, and the construction of streets) is completed on or after the effective date of this chapter.

RECREATIONAL VEHICLE. A vehicle that is:

- (1) Built on a single chassis;
- (2) Four hundred square feet or less, when measured at the largest horizontal projection;
- (3) Designed to be self-propelled or permanently towable by a light duty truck; and
- (4) Designed primarily not for use as a permanent dwelling, but as temporary living quarters for recreational, camping, travel or seasonal use.

START OF CONSTRUCTION. For other than new construction or substantial improvements under the Coastal Barrier Resources Act (P.L. 97-348), includes substantial improvements and means the date the building permit was issued, provided the actual **START OF CONSTRUCTION**, repair, reconstruction, rehabilitation, addition, placement or other improvement was within 180 days of the permit date. The actual **START OF CONSTRUCTION** means either the first placement of permanent construction of the structure on a site (such as the pouring of slabs or footings, the installation of pilings, the construction of columns, or any work beyond the stage of excavation); or the placement of a manufactured home on a foundation. **PERMANENT CONSTRUCTION** does not include the installation of streets and/or walkways; nor does it include excavation for basements, footings, piers or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings (such as garages or sheds not occupied as dwelling units or not part of the main structure). For a substantial improvement, the actual **START OF CONSTRUCTION** means the first

alteration of any wall, ceiling, floor or other structural part of a building, whether or not the alteration affects the external dimensions of the building.

STRUCTURE. A walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.

SUBSTANTIAL DAMAGE. Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50% of the market value of the structure before the damage occurred.

SUBSTANTIAL IMPROVEMENT. Any reconstruction, rehabilitation, addition or other improvement of a structure, the cost of which equals or exceeds 50% of the market value of the structure before the start of construction of the improvement. Cost shall be determined according to the standards of § 22-34(b). This term includes structures that have incurred substantial damage, regardless of the actual repair work performed. The term does not, however, include either:

- (1) Any project for improvement of a structure to correct existing violations of State or local health, sanitary or safety codes or specifications that have been identified by the local code enforcement official, and that are the minimum necessary to ensure safe living conditions; or

- (2) Any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure.

VARIANCE. A grant of relief to a person from the requirements of this chapter when specific enforcement would result in unnecessary hardship. A **VARIANCE**, therefore, permits construction or development in a manner otherwise prohibited by this chapter. (For full requirements see § 60.6 of the National Flood Insurance Program regulations.)

VIOLATION. The failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in § 60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4) or (e)(5) of the National Flood Insurance Program regulations is presumed to be in violation until such time as that documentation is provided.

WATER SURFACE ELEVATION. The height, in relation to the National Geodetic Vertical Datum of 1929, or other datum, where specified, of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.
(Ord. 2009-02, passed 1-26-2009; Am. Ord. 2017-06, passed 1-8-2018)

§ 154.06 LANDS TO WHICH THIS CHAPTER APPLIES.

This chapter shall apply to all areas of special flood hazard within the jurisdiction of the City.
(Ord. 2009-02, passed 1-26-2009)

§ 154.07 BASIS FOR ESTABLISHING AREAS OF SPECIAL FLOOD HAZARD.

The areas of special flood hazard identified by the Federal Emergency Management Agency in a scientific and engineering report entitled, "The Flood Insurance Study for Ruidoso Downs," dated November 5, 2014, with accompanying Flood Insurance Rate Maps and Flood Hazard Boundary-Floodway Maps, and any revisions thereto, are hereby adopted by reference and declared to be a part of this chapter.
(Ord. 2009-02, passed 1-26-2009; Ord. 2011-04, passed 9-12-2011; Ord. 2014-06, passed 10-14-2014)

§ 154.08 DEVELOPMENT PERMIT REQUIRED.

A development permit shall be required to ensure conformance with the provisions of this chapter.
(Ord. 2009-02, passed 1-26-2009)

§ 154.09 COMPLIANCE WITH CHAPTER AND OTHER REGULATIONS.

No structure or land shall hereafter be located, altered or have its use changed without full compliance with the terms of this chapter and other applicable regulations.
(Ord. 2009-02, passed 1-26-2009) Penalty, see § 10.99

§ 154.10 ABROGATION OF EXISTING RESTRICTIONS; CONFLICTING REGULATIONS.

This chapter is not intended to repeal, abrogate or impair any existing easements, covenants or deed restrictions. However, where this chapter and another provision conflict or overlap, whichever imposes the more stringent restrictions shall prevail.
(Ord. 2009-02, passed 1-26-2009) Penalty, see § 10.99

§ 154.11 INTERPRETATION OF CHAPTER.

In the interpretation and application of this chapter, all provisions shall be:

- (A) Considered as minimum requirements;
- (B) Liberally constructed in favor of the Council; and
- (C) Deemed neither to limit nor repeal any other powers granted under State statutes.
(Ord. 2009-02, passed 1-26-2009; Am. Ord. 2017-06, passed 1-8-2018)

§ 154.12 WARNING AND DISCLAIMER OF LIABILITY.

The degree of flood protection required by this chapter is considered reasonable for regulatory purposes, and is based on scientific and engineering considerations. On rare occasions, greater floods can

and will occur, and flood heights may be increased by manmade or natural causes. This chapter does not imply that land outside the areas of special flood hazards, or uses permitted within those areas, will be free from flooding or flood damages. This chapter shall not create liability on the part of the City, or any officer or employee thereof, for any flood damages that result from reliance on this chapter or any administrative decision lawfully made thereunder. (Ord. 2009-02, passed 1-26-2009)

§ 154.13 DESIGNATION OF FLOODPLAIN ADMINISTRATOR.

The Planning Services Director is hereby appointed the Floodplain Administrator to administer and implement the provisions of this chapter and other appropriate sections of 44 C.F.R. (the National Flood Insurance Program regulations) pertaining to floodplain management. (Ord. 2009-02, passed 1-26-2009; Am. Ord. 2017-06, passed 1-8-2018)

§ 154.14 DUTIES OF FLOODPLAIN ADMINISTRATOR.

Duties and responsibilities of the Floodplain Administrator shall include, but not be limited to, the following:

(A) Shall maintain and hold open for public inspection all records pertaining to the provisions of this chapter.

(B) Shall review permit applications to determine whether proposed building sites will be reasonably safe from flooding.

(C) Shall review, approve or deny all applications for development permits required by this chapter.

(D) Shall review applications for proposed development to ensure that all necessary permits have been obtained from Federal, State or local

governmental agencies from which prior approval is required by § 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. § 1334).

(E) Where interpretation is needed as to the exact location of the boundaries of the areas of special flood hazard (for example, where there appears to be a conflict between a mapped boundary and actual field conditions) the Floodplain Administrator shall make the necessary interpretation.

(F) In riverine situations, shall notify adjacent communities and the State coordinating agency, the Emergency Management Bureau, prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency.

(G) Shall ensure that the flood-carrying capacity within the altered or relocated portion of any watercourse is maintained.

(H) When base flood elevation data has not been provided in accordance with § 154.07, shall obtain, review and reasonably utilize any base flood elevation data and floodway data available from a Federal, State or other source, in order to administer the provisions of this chapter.

(I) When a regulatory floodway has not been designated, no new construction, substantial improvements or other development, including fill, shall be permitted within zones A1-30 and AE on the community's FIRM, unless it is demonstrated that cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.

(Ord. 2009-02, passed 1-26-2009; Am. Ord. 2017-06, passed 1-8-2018)

§ 154.15 ISSUANCE OF DEVELOPMENT PERMIT.

(A) *Application.* Application for a development permit shall be presented on forms furnished by the Floodplain Administrator, and may include, but shall not be limited to, plans in duplicate, drawn to scale, showing the locations, dimensions and elevation of proposed landscape alterations and existing and proposed structures, and their location in relation to areas of special flood hazard. Additionally, the following information is required:

(1) Elevation, in relation to mean sea level, of the lowest floor, including basement, of all new and substantially improved structures.

(2) Elevation, in relation to mean sea level, to which any nonresidential structure shall be floodproofed.

(3) A certificate from a registered professional engineer or architect that the nonresidential floodproofed structure shall meet the floodproofing criteria of § 154.17.

(4) A description of the extent to which any watercourse or natural drainage will be altered or relocated as a result of proposed development.

The Floodplain Administrator shall maintain a record of all such information in accordance with § 154.14(A).

(B) *Criteria for approval.* Approval or denial of a development permit by the Floodplain Administrator shall be based on all of the provisions of this chapter and the following relevant factors:

(1) The danger to life and property due to flooding or erosion damage.

(2) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.

(3) The danger that materials may be swept onto other lands to the injury of others.

(4) The compatibility of the proposed use with existing and anticipated development.

(5) The safety of access to the property in times of flood for ordinary and emergency vehicles.

(6) The costs of providing governmental services during and after flood conditions, including maintenance and repair of streets and bridges, and public utilities and facilities such as sewer, gas, electric and water systems.

(7) The expected heights, velocity, duration, rate of rise and sediment transport of the floodwaters, and the effects of wave action, if applicable, expected at the site.

(8) The necessity to the facility of a waterfront location, where applicable.

(9) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use.

(10) The relationship of the proposed use to the comprehensive plan for that area.

(Ord. 2009-02, passed 1-26-2009; Am. Ord. 2017-06, passed 1-8-2018) Penalty, see § 10.99

§ 154.16 VARIANCES.

(A) The Floodplain Administrator shall hear and render judgment on requests for variances from the requirements of this chapter.

(B) The Commission shall hear and render judgment on an appeal only when it is alleged that there is an error in any requirement, decision or determination made by the Floodplain Administrator in the enforcement or administration of this chapter.

(C) Any person or persons aggrieved by the decision of the Commission may appeal such decisions to the City Council, as provided in § 155.021, and then to the courts of competent jurisdiction.

(D) The Floodplain Administrator shall maintain a record of all actions involving an appeal, and shall report variances to the Federal Insurance Administration upon request.

(E) Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth in the remainder of this chapter.

(F) Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size, contiguous to and surrounded by lots with existing structures constructed below the base flood level, provided the relevant factors in § 154.15(B) have been fully considered. As the lot size increases beyond one-half acre, the technical justification required for issuing the variance increases.

(G) Upon consideration of the factors noted above and the intent of this chapter, the Commission may attach such conditions to the granting of variances as it deems necessary to further the purpose and objectives of this chapter.

(H) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.

(I) Prerequisites for granting variances are as follows.

(1) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

(2) Variances shall only be issued upon:

(a) A showing of good and sufficient cause;

(b) A determination that failure to grant the variance would result in exceptional hardship to the applicant; and

(c) A determination that the granting of the variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

(3) Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation below the base flood elevation, and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest elevation.

(J) Variances may be issued for new construction and substantial improvements, and for other development necessary for the conduct of a functionally dependent use, provided that:

(1) The criteria outlined in this chapter are met; and

(2) The structure or other development is protected by methods that minimize flood damages during the base flood, and create no additional threats to public safety.

(K) Variances may be issued for the repair or rehabilitation of historic structures, upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure, and that the variance is the minimum necessary to preserve the historic character and design of the structure.

(Ord. 2009-02, passed 1-26-2009; Am. Ord. 2017-06, passed 1-8-2018) Penalty, see § 10.99

§ 154.17 GENERAL STANDARDS.

In all areas of special flood hazard, the following provisions are required:

(A) All new construction and substantial improvements shall be designed or modified, and adequately anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;

(B) All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damage;

(C) All new construction or substantial improvements shall be constructed with materials and utility equipment resistant to flood damage;

(D) All new construction or substantial improvements shall be constructed with electrical, heating, ventilation, plumbing and air conditioning equipment, and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding;

(E) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the system, and discharges from the systems into floodwaters; and

(F) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

(Ord. 2009-02, passed 1-26-2009) Penalty, see § 10.99

§ 154.18 SPECIFIC STANDARDS.

In all areas of special flood hazards where base flood elevation data have been provided as set forth in §§ 154.07, 154.14(H) or 154.17, the following provisions are required.

(A) *Residential construction.* New construction or substantial improvement of any residential structure shall have the lowest floor, including basement, elevated to or above the base flood elevation. A registered professional engineer, architect or land surveyor shall submit a certification to the Floodplain Administrator that the standard of this division, as proposed in § 154.15, is satisfied.

(B) *Nonresidential construction.* New construction or substantial improvement of any commercial, industrial or other nonresidential structure shall either have the lowest floor, including basement, elevated to the level of base flood elevation, or, together with attendant utility and sanitary facilities, be designed so that below the base flood level the structure is watertight, with walls substantially impermeable to the passage of water, and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. A registered professional engineer or architect shall develop and/or review structural design, specifications and plans for the construction, and shall certify that such design, specifications and plans are in accordance with accepted standards of practice as outlined in this division. A record of such certification, which includes the specific elevation (in relation to mean sea level) to which such structures are floodproofed, shall be maintained by the Floodplain Administrator.

(C) *Enclosures.* New construction and substantial improvements with fully enclosed areas below the lowest floor that are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls, by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect, or meet or exceed the following minimum criteria:

(1) A minimum of two openings, having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding, shall be provided.

(2) The bottom of all openings shall be no higher than one foot above grade.

(3) Openings may be equipped with screens, louvers, valves, or other coverings or devices that permit the automatic entry and exit of floodwaters.

(D) *Manufactured homes and mobile homes.*

(1) Manufactured or mobile homes that are placed or substantially improved within zones A1-30, AH and AE on the community's FIRM on sites:

(a) Outside of a manufactured or mobile home park or subdivision;

(b) In a new manufactured or mobile home park or subdivision;

(c) In an expansion to an existing manufactured or mobile home park or subdivision; or

(d) In an existing manufactured or mobile home park or subdivision on which a manufactured home has incurred substantial damage as the result of a flood;

shall be elevated on a permanent foundation such that the lowest floor of the manufactured or mobile home is elevated to or above the base flood elevation, and shall be securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement.

(2) All manufactured or mobile homes shall be in compliance with division (A) of this section.

(3) Manufactured or mobile homes to be placed or substantially improved on sites in an existing manufactured or mobile home park or subdivision within zones A1-30, AH and AE on the community's FIRM that are not subject to provisions of division (D)(1) of this section shall be elevated so that either:

(a) The lowest floor of the manufactured or mobile home is at or above the base flood elevation; or

(b) The manufactured or mobile home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength, which are no less than 36 inches in height above grade, and is securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement.

(E) *Floodways.* Located within areas of special flood hazard established in § 154.07 are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of floodwaters, which carry debris, potential projectiles and erosion potential, the following provisions shall apply:

(1) Encroachments are prohibited, including fill, new construction, substantial improvements and other development, unless certification by a professional registered engineer or architect is provided, demonstrating that encroachments shall not result in any increase in flood levels within the community during the occurrence of the base flood discharge.

(2) If the requirements of this chapter are satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of § 154.17.

(F) *Recreational vehicles.* Recreational vehicles placed on sites within zones A1-30, AH and AE on the community's FIRM shall either:

(1) Be on the site for fewer than 180 consecutive days;

(2) Be fully licensed and ready for highway use; or

(3) Meet the permit requirements of this chapter and the elevation and anchoring requirements for manufactured homes in division (D) above.

A recreational vehicle is **READY FOR HIGHWAY USE** if it is on its wheels or jacking system, is attached to the site only by quick-disconnect-type utilities and security devices, and has no permanently attached additions.

(G) *Evacuation plan.* A plan for evacuating residents of all manufactured home parks or subdivisions located within floodprone areas shall be developed and filed with and approved by the Floodplain Administrator.

(H) *Wells, domestic and public.*

(1) No well shall be located in a floodway.

(2) Any well located within any other areas of special flood hazard or A1-30, AH, or AE zones must be capped above the 100-year flood elevation, as certified by a professional engineer or surveyor. (Ord. 2009-02, passed 1-26-2009; Am. Ord. 2017-06, passed 1-8-2018) Penalty, see § 10.99

§ 154.19 STANDARDS FOR AREAS OF SHALLOW FLOODING.

Located within the areas of special flood hazard established in § 154.07 are areas designated as areas of shallow flooding. These areas have special flood hazards associated with base flood depths of one to three feet, where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow; therefore, the following provisions shall apply:

(A) All new construction and substantial improvements of residential structures shall have the lowest floor, including basement, elevated above the highest adjacent grade at least as high as the depth

number specified in feet on the community's FIRM, or at least two feet if no depth number is specified.

(B) All new construction and substantial improvements of nonresidential structures shall:

(1) Have the lowest floor, including basement, elevated above the highest adjacent grade at least as high as the depth number specified in feet on the community's FIRM, or at least two feet if no depth number is specified; or

(2) Together with attendant utility and sanitary facilities, be designed so that below the base flood level the structure is watertight, with walls substantially impermeable to the passage of water, and with structural components having the capability of resisting hydrostatic and hydrodynamic loads or effects of buoyancy.

(C) A registered professional engineer or architect shall submit a certification to the Floodplain Administrator that the standards of this section, as proposed in § 154.15(B), are satisfied.

(D) Within zones AH and AO, adequate drainage paths are required around structures on slopes to guide floodwaters around and away from proposed structures.

(Ord. 2009-02, passed 1-26-2009; Am. Ord. 2017-06, passed 1-8-2018) Penalty, see § 10.99

§ 154.20 STANDARDS FOR SUBDIVISION PROPOSALS.

(A) All subdivision proposals, including manufactured home parks and subdivisions, shall be consistent with §§ 154.01 through 154.03.

(B) All proposals for the development of subdivisions, including mobile home, trailer or RV parks and subdivisions, shall meet the development permit requirements of §§ 154.15 and 154.17 and other provisions of this chapter.

(C) Base flood elevation data shall be generated for subdivision proposals and other proposed development, including manufactured home parks and subdivisions.

(D) All subdivision proposals, including mobile home, trailer or RV parks and subdivisions, shall have adequate drainage provided to reduce exposure to flood hazards.

(E) All subdivision proposals, including manufactured home parks and subdivisions, shall have public utilities and facilities (such as sewer, gas, electrical and water systems) located and constructed so as to minimize or eliminate flood damage..

(Ord. 2009-02, passed 1-26-2009) Penalty, see § 10.99

developed or amended through the use of the program. For programs not generally available from a Federal agency, the source code and user's manuals must be sent to the Federal Emergency Management Agency free of charge, with fully documented permission from the owner that the Federal Emergency Management Agency may release the code and user's manuals to such impacted parties.

(Ord. 2009-02, passed 1-26-2009)

§ 154.21 COMPUTER PROGRAMS FOR IDENTIFICATION AND MAPPING OF SPECIAL FLOOD HAZARD AREAS.

Any computer program used to perform hydrologic or hydraulic analyses in support of a flood insurance map revision must meet all of the following criteria:

(A) It must have been reviewed and accepted by a governmental agency responsible for the implementation of programs for flood control and/or the regulation of floodplain lands. For computer programs adopted by nonfederal agencies, certification by a responsible agency official must be provided, which states that the program has been reviewed, tested and accepted by that agency for purposes of design of flood control structures or floodplain land use regulation.

(B) It must be well documented, including source codes and user's manuals.

(C) It must be available to the Federal Emergency Management Agency and all present and future parties impacted by flood insurance mapping

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, to 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 Council in relation to this chapter.
(1988 Code, § 9-10-2)

**§ 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 Council.
(1988 Code, § 9-10-4)

**§ 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 Officer 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 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)

**§ 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) M-1 Low-Density Mobile Home District;
- (g) M-2 Medium-Density Mobile Home District;
- (h) C-1 Neighborhood Commercial District;
- (i) C-2 Community Commercial District;

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

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

(D) *Interpretation of district boundaries.* Where uncertainty exists concerning 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 Council.
(1988 Code, § 9-10-6)

§ 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 BUILDINGS** in residential districts shall not exceed 120 square feet or 10% of the size of the principal building whichever is larger.

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.

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.

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.

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.

CODE ENFORCEMENT OFFICER. City staff designated by the City Mayor and/or City Manager to enforce provisions of the 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.

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.

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

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 per unit of land 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 cutting of trees whose circumference is greater than 60 inches.

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.

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.

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.

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 lodginghouse.

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.

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, poultry and birds used for human consumption 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.

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.

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.

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 are smaller than usual, and large, open, park like areas are included within the development.

Individual properties are owned in fee with joint ownership of open areas.

PLANNING OFFICER. City staff designated by the City Mayor and/or City Manager to be responsible for the administration of this chapter.

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.

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 movable shall mean movable within 24 hours.

(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 at least two acres in size, on which individual recreational vehicles are parked temporarily in rental spaces for periods not exceeding 150 days during any 12-month period. Recreational vehicles may not be stored in recreational vehicle parks.

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 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.

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 exterior finish of fabric, fiberglass, plastic, thin metal or like materials, whether or not carport is set on permanent foundation.

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.

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)

§ 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) *Microfiche deposit.*

(1) Applicants for plat, replat or vacation of public right-of-way approval shall pay the required fee at the time of application and shall deposit the amount of \$100.00, cash or check, to cover the cost of obtaining a microfiche of the platted or replatted or right-of-way vacation area. The deposit will be refunded in full under the following conditions:

(a) If the request is denied by the Planning Commission and upheld by the Council; or

(b) If the applicant provides the required microfiche within 60 days of approval by the Planning Commission.

(2) If the applicant does not provide the required microfiche within 60 days of Planning Commission approval, the City will apply the \$100 deposit toward the purchase of the required microfiche.

(D) *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)

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 Planning 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 Council. Members of the Planning 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 Planning 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 Planning Commission may be removed by the Mayor, with the consent of the majority vote of the 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 Council.

(D) *Officers; meetings and rules of procedure.* The Planning 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 Planning Commission to:

(a) Submit and recommend to the 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 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 Council.

(d) Recommend to the 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 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 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 Planning Commission shall be able to make recommendations to the 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 Planning Officer 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 Planning Officer 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 Planning Officer, constitutes 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 Planning 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 Planning 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 limitation on the number of witnesses heard and on the nature and length of testimony and questioning. The Planning Commission may call witnesses and introduce papers on its own volition.

(9) *Records.* The Planning Officer 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 Planning Officer.

(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 Commission.* Prior to Planning 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 Commission.* The Planning Commission shall act on an application on 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 fact 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 planning City Council action, listing any conditions imposed, shall

be sent within five days of the Council 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 & 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 appeal is initiated to the 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 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; Ord. 2005-04, passed 6-15-2005; Ord. 2010-02, passed 4-12-2010)

§ 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 officer, department, board or bureau of the City affected by a decision of the Planning Commission may appeal to the Council by filing a notice of appeal with the Planning Officer. The notice shall be on a form prescribed by the Planning Officer, shall state the name and address of the applicant, and shall specify the error in the decision made by the Planning 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 Planning Officer shall forthwith forward the notice of appeal to the 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 Planning Officer 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 Planning 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 be 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 Planning Officer, the Council shall schedule a public hearing on the appeal. The Planning Officer 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, any persons who appeared before the Planning 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 Planning Officer shall be responsible for mailing, by certified mail, such notice. For the purpose of giving mailed notice, the 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 Planning Officer 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 public notice, the Council shall hear the appeal, and render a decision within 45 days. The 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 Planning Commission. The Council shall also study the record of the action on the appeal. If postponed, the Council shall make a decision on the appeal at its next regularly scheduled meeting. The Council, by a two-thirds vote of all of its members, may:

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

(b) Decide in favor of the appellant; or

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

(2) If the Council fails to so decide by a two-thirds vote of all of its members, or if it decides by a simple majority of those members present to uphold the decision of the Planning Commission, then the decision of the Planning Commission shall stand.

(F) *Notice of decision.* The Council shall issue a written notice of its decision to all concerned parties and to the City Clerk. The notice shall state the facts of the matter as determined by the 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 Council shall be the filing of a petition for review in the district court, according to State law.
(1988 Code, § 9-10-32)

§ 155.022 PLANNING OFFICER; ENFORCEMENT PROCEDURES; ZONING PERMIT; CERTIFICATE OF ZONING COMPLIANCE.

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

(B) *General duties of Planning Officer.* It shall be the duty of the Planning Officer 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 building official after review by the Planning Officer.

(2) Advise and recommend to the Planning Commission and the 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 Planning Officer.* The Planning Officer 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 Planning Officer 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 or any of the regulations promulgated thereunder, the Council, City Attorney, administrative official or any other proper City official 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 administrative official. 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 Officer. A zoning permit shall not be issued by the Planning Officer except in conformity with the provisions of this chapter, unless he or she receives a written order from the 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 Officer, 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 copy of the plan shall be returned to the applicant by the Planning Officer, 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 Planning Officer 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 Officer.

(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 Planning Officer 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 Planning Officer; 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 Planning Officer 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 cancelled by the Planning Officer. Written notice thereof shall be given to the persons affected, and in the case of planned unit development rezoning, to the Council and the Planning 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 cancelled by the Planning Officer. Written notice thereof shall be given to the persons affected, including notice that further work as described in the cancelled permit shall not proceed unless and until a special zoning permit has been obtained. In the case of planned unit development rezoning, the Council and the Planning 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 issued on the basis of plans and applications approved by the Planning Officer and other officers 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)

§ 155.023 AMENDMENTS.

(A) *Generally; initiation.* In accordance with the provisions of State statutes, the 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 Council, by the Planning 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 a form provided by the Planning Officer. 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 Planning Officer and the processing fee paid at least 30 days prior to the date of the public hearing by the Planning 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 Planning Commission and the 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 Planning Commission, and at least 15 days prior to a subsequent hearing by the Council; or

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

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

(1) Referred to the Planning 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 Council, in writing, of its recommendation; or

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

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

(F) *Hearing and decision by the Council of 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 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 Council will notify the Planning Commission of the changes.
(1988 Code, § 9-10-34)

§ 155.024 REZONING.

(A) *Generally; initiation.* In accordance with the provisions of State statutes, the 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 Council, by the Planning 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 a form provided by the Planning Officer. 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 Planning Officer 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 Planning Officer at least 30 days prior to the public hearing by the Planning Commission.

(C) *Notice of hearing.*

(1) No rezoning may be adopted until public hearings have been held on the matter by the Planning Commission and by the 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 Officer shall be responsible for placing and

mailing such notices. For the purpose of giving mailed notice, the Planning Officer 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 Planning Officer 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 Planning Commission.* A rezone not initiated by the Planning Commission shall be referred to the Planning 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 more than two meetings in succession. The Planning Commission shall notify the Council, in writing, of its recommendation.

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

(G) *Resubmittal of application.* Application for a zoning district change which has been rejected by the Planning 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 Planning 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)

§ 155.025 VARIANCES.

(A) *Generally.* The Planning 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 land and should normally be limited to regulations pertaining to height or width of structures or the size of yard 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 Planning 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 Planning 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) *Application.* A request for variance shall be made by filing a completed application with the Planning Officer at least 30 days prior to the Planning Commission meeting. The application shall be accompanied by a development plan showing such information as the Planning Officer may reasonably require for purposes of this chapter. The plans shall contain sufficient information for the Planning 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.

(C) *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 Planning 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.

(D) *Review and decision by Planning Commission.* In considering applications for variance, the Planning 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, risk to the public safety, and the safety and the effect on values of property in the surrounding area. The Planning Commission shall hear oral or written statements from the applicant, the public, City staff or its own members. If the Planning 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 Planning Commission may grant such variance and impose conditions and safeguards therein. A variance shall not be approved except upon the affirmative vote of two-thirds of all the members of the Planning Commission present. The Planning Commission shall be required to make findings supporting its decision based on divisions (A) through (D) of this section.

(E) *Hearing and decision by Council.* A variance which has been recommended for denial by the Planning Commission shall not be reviewed by the Council except upon written request by the applicant. The 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 Council may approve or disapprove the request for variance. The variance shall not be approved except upon the affirmative vote of two-thirds of the Council. If approved, the Council shall be required to make findings supporting its decision based on divisions (A) through (D) of this section.

(F) *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).

(G) *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 Planning Officer within 90 days from date of approval by the Planning Commission. Variance agreements shall not be recorded until the time for filing an appeal has expired or until the appeal is decided if filed.

(H) *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 Planning Commission sets alternate dates for commencement and completion of work.

(3) The Planning 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)

§ 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 Planning 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 a form provided by the Planning Officer. The application shall be accompanied by development plans showing sufficient information for the Planning Commission or City staff 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 Planning 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 Code, which is on file in the City offices and incorporated herein by reference.

(2) *Single-family and duplex development.* Site plans for single-family and duplex development shall be reviewed and acted on by the Planning Officer 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 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) *Notice of site plan review.* A notice of site plan review shall be mailed at least seven days prior to the Planning Commission meeting to each owner of property situated wholly or partly within 200 feet of the property, excluding rights of way and alleys, to which the site plan relates. The Planning Officer shall be responsible for mailing such notices. For the purpose of giving mailed notice, the Planning Officer shall require the owner of the property affected to

furnish the names and addresses of all property owners within 200 feet, excluding rights of way and alleys, of the property.

(E) *Review criteria; action by Planning Commission.*

(1) In considering applications for site plan review under this chapter, the Planning Commission 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) The Planning Commission shall consider oral or written statements from the applicant, the public, City staff members or its own members. It may question the applicant and approve, deny or postpone the development proposal. The application may not be postponed for more than two regular meetings of the Planning Commission.

(3) If the Planning Commission determines by motion that 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 comprehensive plan, the Planning Commission may grant such site plan approval and impose such conditions and safeguards as it deems necessary.

(4) Site plan review applications may be denied by motion of the Planning Commission when such motion or consent shall constitute a finding and determination by the Planning Commission or staff that the conditions required for approval do not exist.

(F) *Concept approval.*

(1) The applicant(s) shall be notified that they may seek an 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 unimproved property with all the proposed construction and land uses sketched in. It should include all measurements necessary for the Commission 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 Planning Officer to determine areas of the code that are applicable to the proposed plan. The Planning Officer shall provide in writing to the applicant a list of those items required under § 155.024(C) of this

Code and other information that would help the Planning Commission make an accurate decision. The Planning Commission, following notice and hearing pursuant to the provisions of divisions (D) and (E) herein shall approve, disapprove or request additional information based on the sketch plan provided by the applicant. Upon sketch plan approval, the applicant will be responsible for ordering all documentation required for final site plan approval and submit the final application in accordance with § 155.026(B) through (D) of this section.

(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 Officer and approved by the Planning 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 lead 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.

(G) *Minor amendments.* Minor amendments to approved site plans may be approved by the chairperson and secretary of the Planning Commission upon a finding by the Planning Officer 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 Planning Officer shall include all items listed under divisions (E)(1)(a) through (g) of this section. Any amended site plan recommended for denial by the Planning Officer shall automatically be scheduled for review by the Planning Commission at the next possible meeting.

(H) *Minor variances.* Minor design standard variances may be granted by the concurrence of the Mayor, City Manager, Chairperson of the Planning Commission, and Planning Officer for site plans submitted and found by the Planning Officer 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)

§ 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 Officer 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 Planning 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 Officer shall be responsible for mailing such notices. For the purpose of giving mailed notice, the Planning Officer 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 Planning 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 comprehensive plan. The Planning 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 Planning 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 Planning Commission present. 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 change of conditions found to be valid by the Planning Commission.

(E) *Notice of decision; contents of permit.* The applicant shall be notified in writing of the action taken by the Planning Commission. If the application has been granted, the permit shall be issued upon the signature of the chairman of the Planning Commission and the Planning Officer, 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 Planning Commission are violated, the conditional use permit, after due process, may be revoked by a majority vote of the Planning Commission. Appeals may be made in accordance with § 155.021.
(1988 Code, § 9-10-38)

§ 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 Planning Commission and the Council prior to any physical development on the subject property.

(B) *Application.*

(1) Prior to making 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 Officer. Application forms properly completed and accompanied by the required fee shall be submitted to the Planning Officer. Concept plan exhibits shall accompany the application. The concept plan shall be

submitted at least ten days prior to a regularly scheduled Planning 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) *Planning Commission review.*

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

(b) The Planning Commission shall review the concept plan and shall determine whether the plan is in conformance with the comprehensive plan. The Planning 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 Council.* It is not required that the Council review planned unit development concept plans. However, the applicant may request a concept plan review by the Council following Planning Commission review and comment. The scope of review and comment by the Council shall be the same as that of the Planning 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 Planning Commission. The following information shall be submitted to the Planning Officer:

(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 Planning 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) *Planning Commission review and hearing.*

(a) *Notice of hearing.*

1. The Planning 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 Planning 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 Planning 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 Planning Commission.

3. If the Planning 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 comprehensive plan, the Planning Commission may recommend granting preliminary development plan approval along with conditions and safeguards it deems necessary in the public interest.

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

(3) *Review and hearing by Council.*

(a) *Hearing required; notice.*

1. The 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 Planning Commission shall not be reviewed by the 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 affirmative vote of a majority of all members of the Council.

(E) *Final development plan.*

(1) *Approval.* Final development plan approval by the 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 Planning Officer 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 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 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 physical implementation of the approved permit, such as the commencement of construction on the permit site, upon written notification to the Planning Officer and the City Clerk. 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 Planning Officer and City Engineer where unforeseen circumstances such as engineering requirements dictate such change. When in question, the Planning Officer and the City Engineer may determine whether the changes shall be classified as a minor or major change, or may refer the question to the Planning 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 Planning Commission for report and recommendation to the Council, after which the 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 Planning Officer and shall be accompanied by the required fee and exhibits as required by the Planning Officer.

(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)

§ 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 a 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 Planning 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).

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(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 at a scale of one inch equals 100 feet 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.

(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 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.

ANNEXATION PROCESS
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).

ANNEXATION PROCESS
Notice of public hearing published 15 days prior to Planning Commission meeting.
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)

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)

§ 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.

(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) *Granny flat (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) Granny flats 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.

(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 Planning 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 replatting 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.

(F) *Encroachments into yards.*

(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)

§ 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 all conditional uses of the R-1 district.

(D) *Permitted accessory uses.* Permitted accessory uses in the R-2 district are: All accessory uses permitted in the R-1 district.

(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.

(F) *Encroachments into yards.*

(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)

§ 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.

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

- (1) All conditional uses of the R-1 district.
- (2) Group homes.

(D) *Permitted accessory uses.* Permitted accessory uses in the R-3 district are: All accessory uses permitted in an R-1 district.

(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:

	<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.		
* 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.			

(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:

[Table on following page]

		<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 that 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 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.*

(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)

§ 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) All conditional uses in the R-1 district.

(2) Group homes.

(D) *Permitted accessory uses.* Permitted accessory uses in the R-4 district are: All accessory uses permitted in the R-1 district.

(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

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

(K) *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.

(L) *Encroachments into yards*.

(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.

(M) *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.

(N) *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)

§ 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 livestock except horses. Up to two horses per acre are permitted. No Confined Animal Feeding Operations are permitted. Nanny goats are permitted in conjunction with horses.

(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) Nonconforming uses subject to § 155.078.

(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

(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.

(F) *Encroachments into yards.* No encroachments shall be permitted into any yard.

(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)

§ 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 livestock except horses. Up to eight horses per acre are permitted. No confined animal feeding operations. Nanny goats are permitted in conjunction with horses.

(B) *Principal permitted uses.* Principal permitted uses in the AR-2 district are the same as in the AR-1 district.

(C) *Conditional uses.* Conditional uses in the AR-2 district are the same as in the AR-1 district.

(D) *Permitted accessory buildings.* Permitted accessory buildings in the AR-2 district are the same as in the AR-1 district.

(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.

(F) *Encroachments into yards.* No encroachments shall be permitted into any yard.(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)**§ 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.(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.* 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:

[Table on following page]

		<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) *Encroachments into yards.*

(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.

(I) *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.

(J) *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.

(K) 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 Planning Services Director or code compliance officer free access to such premises at reasonable times for the purpose of inspections.

(L) *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.

(M) *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)

§ 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: All accessory uses permitted in the R-1 district.

(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.*

(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) *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.

(J) *Screening.* All principal and accessory uses shall be screened from adjacent residential zones (except M-2 districts) as described in § 155.069.

(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. 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.

(L) *Inspections; access by owner.*

(1) The Planning Services Director or code compliance 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 Planning Services Director or code compliance 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.

(M) *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.

(N) *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)

§ 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) Commercial stables and outfitters.

(9) Mobile home parks.

(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.
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)

§ 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 washwater 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.

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(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.

(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.*

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)

§ 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.

(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)

§ 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.

(9) 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.

(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) 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)

§ 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.)

(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) 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:

feet.

Three feet.

(2) Maximum height of structures shall be 55 feet, except that 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) *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 I-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 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)

§ 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)

§ 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 Planning Commission shall be utilized to control drainage and erosion during construction.

(1988 Code, § 9-10-103.1)

§ 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, then the City Mayor and/or Manager will make the final determination.

(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 Planning 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 Officer at least 30 days prior to the Planning Commission meeting. The application shall be accompanied by a development plan showing such information as the Planning Officer may reasonably require for purposes of this chapter. The plans shall contain sufficient information for the Planning 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)

§ 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 ACCESSORY BUILDINGS, USES AND EQUIPMENT.

(A) An accessory building shall be considered an integral part of the principal building if it is connected to the principal building by a covered passageway.

(B) Accessory buildings and garages in residential districts shall not be located within a utility easement.

(C) 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. Garages which exceed this maximum may be allowed a conditional use permit.

(D) No permit shall be issued for the construction of more than one accessory detached private garage structure for each dwelling.

(E) No accessory building or temporary use shall be constructed or developed on a lot prior to the time of construction of the principal building to which it is accessory, except by conditional use permit.

(F) Accessory buildings in the C-1, C-2, C-3 and I-1 districts may be located any place to the rear of the principal building.

(G) No accessory building in a commercial or industrial district shall exceed the height of the principal building except by conditional use permit.
(1988 Code, § 9-10-108)

§ 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 Planning Officer shall commence proper proceedings for the abatement thereof.

(2) *Restricted materials.* Site development approval is required by the Planning 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 Planning 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)

§ 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 Planning 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 Planning Officer subject to

concurrence by the City Council. Following site development plan approval, a building permit shall be obtained from the building official.

(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 Planning Officer 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 Planning Officer 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 Officer for inspection prior to issuance of the necessary building permit.

(1988 Code, § 9-10-110)

§ 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 and do not require site development approval unless more than one such storage building is placed on a lot.

(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)

§ 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 Planning 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 Planning 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 Highway and Transportation Department may require a lesser grade for driveways to N.M. Highway 48 and 70. Commercial and industrial 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%.

(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 Highway and Transportation Department 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 Planning Officer with approval by the chairperson and vice-chairperson of the Planning Commission. Variance requests not approved under § 155.026(F) will automatically be appealed to the full Planning 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 Planning Commission for review, and the final drainage plan shall be subject to the written approval of the Planning Officer.

(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 Officer.

(17) *Vehicles not to protrude over property lines.* All of 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 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 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 Planning Officer and filed with the application for site development approval. The Planning Commission shall determine the extent of allowable joint use parking based on the owners' submission and staff recommendation.

(J) *Variances.*

(1) The Planning 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 Planning 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)

§ 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 Planning Officer.

(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 Planning and Zoning 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 Planning 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 Planning 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 Planning 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 Planning 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 Planning 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)

§ 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 City Planning Commission.

(B) The Planning Officer 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)

§ 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 Planning 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 Planning Commission.
(1988 Code, § 9-10-118)

§ 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 Planning 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 Planning 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 Planning 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)

§ 155.084 ARCHITECTURAL DESIGN STANDARDS.

(A) *Purpose; objectives.* The architectural design standards set forth in this section are intended to encourage innovative design with a reasonable degree of freedom of choice while showing a concern for visual amenities and preserving 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. Objectives of architectural design standards are to:

(1) Protect property;

(2) Maintain the high character of community development; and

(3) Protect real estate from impairment or destruction of value.

(B) *Definitions.* As used in this section, the following terms shall have the meanings designated in this subsection:

(1) **ACCESSORY BUILDING** is as defined in § 155.006. For purposes of this section, an accessory building shall be of a size not greater than 50% of the size of the principal building.

(2) **ENAMEL** means a glassy, opaque substance fused to metal as a protective coating.

(3) **EXPOSED** means open to view.

(C) *Metal siding, cinderblock and cement.* Exposed metal siding, cinderblock and cement on buildings is prohibited in all districts except as follows:

(1) Exposed metal siding and painted or tinted cinderblock and cement are permitted in I-1 districts.

(2) The Planning Commission may approve metal siding and painted or tinted cinderblock and cement on all buildings in C-1 through C-4 districts and on accessory buildings in all districts upon finding 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.

(3) Unpainted and untinted cement is allowed on sidewalks and other walkways.

(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, except that raised rib metal, v-rib metal, R-panel siding and similar siding is prohibited;

(c) On prefabricated storage buildings meeting the requirements of § 155.041(D)(3) and provided that the storage building does not exceed 120 square feet or 10% of the size of the residence whichever is larger.

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

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

(2) The metal is consistent with the architectural style of the building; and

(3) The metal is consistent with the provisions of division (A) of this section.

(E) *Temporary or portable carports.* Temporary or portable carports as defined in § 155.006 are prohibited in all districts.
(1988 Code, § 9-10-120)

§ 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)

SIGNS

SIGNAGE. The eligible area allowed.
(Prior Code, § 9-10-153)

§ 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.

§ 155.097 PERMIT REQUIRED.

All signs erected within the City must be reviewed and approved by the appropriate officer of the City 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)

§ 155.098 ENFORCEMENT OFFICERS.

This subchapter shall be enforced by any employee designated by the Mayor and/or City Manager.

(1988 Code, § 9-10-154)

§ 155.099 APPLICATION FOR PERMIT.

The application form for a sign permit shall be obtained from the enforcement officer 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)

§ 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 building inspector 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)

§ 155.102 APPEALS.

(A) Any sign permit application which is rejected, for any reason, by the Enforcement Officer may be appealed to the Planning Commission. The applicant shall submit, in writing, a request to be placed on the Planning Commission agenda within five working days of the rejection. The appeal will be scheduled for the next Planning Commission meeting, provided the Planning Commission agenda deadline has not passed, in which event the matter will be scheduled for the next regularly scheduled Planning Commission meeting.

(B) Any denial by the Planning Commission may be appealed to the Council by submitting a written request to the City Clerk within 15 days of the rejection.

(1988 Code, § 9-10-159)

§ 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 enforcement 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)

§ 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 appropriate enforcement officer 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 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 Highway and Transportation Department, 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)

§ 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 Planning 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 Planning 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 Council and the State Highway and Transportation Department 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 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 City Manager at least 90 days prior to the event. The City Manager shall develop policies, and the manager (or designee) shall resolve conflicting requests in a fair and equitable manner.

(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 Planning 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)

§ 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 Planning 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 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)

(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.

§ 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).

(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 Planning and Zoning Commission subject to conditions in divisions (R)(1) through (6) above.
(1988 Code, § 9-10-165)

§ 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 Code Enforcement 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 Code Enforcement 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 Code Enforcement Officer. Such signs shall be disposed of or destroyed if not claimed within 15 days of removal.

(1988 Code, § 9-10-166)

§ 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 City Clerk. 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 Clerk 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)

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 Code Enforcement 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 Planning Officer may be appealed to the Planning Commission and then to the 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 Planning Officer, building official or City Engineer, 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)

CHAPTER 156: SUBDIVISIONS

Section

- 156.01 General provisions
- 156.02 Definitions
- 156.03 Platting procedures and requirements
- 156.04 Administration and enforcement
- 156.05 Design standards
- 156.06 Completion of improvements
- 156.07 Fees
- 156.08 Specification standards

Statutory reference:

Subdivisions, see §§ 3-20-1 et seq. NMSA 1978

§ 156.01 GENERAL PROVISIONS.

(A) *Policy.*

(1) It is hereby declared to be the policy of the City to consider the subdivision of land and the subsequent development of the subdivided plat as subject to the control of the City, pursuant to the City comprehensive master plan and zoning code, for the orderly, planned, efficient and economical development of the City.

(2) Land to be subdivided shall be of such character that it can be used safely for building without danger to health or peril from fire, flood or other menace, and land shall not be subdivided until available public facilities and improvements exist and proper provision has been made for drainage, water, sewerage, protection of trees and hillsides, and capital improvements such as schools, parks, recreation facilities, transportation facilities and other public improvements.

(B) *Purpose.* The purpose of this chapter is that of ensuring sites suitable for building purposes and human habitation, of providing for the harmonious development of the City, of providing adequate open spaces for traffic, recreation, light and air, of providing proper distribution of population, and of creating conditions favorable to the health, safety, morals and general welfare of the citizens.

(C) *Statutory authority; territorial jurisdiction.*

(1) Authorization for the City to adopt subdivision regulations is given in § 3-19-6 NMSA 1978.

(2) Platting jurisdiction for the City encompasses all the territory within the City and all territory within three miles of the City limits, as provided in § 3-19-5 NMSA 1978.

(D) *Interpretation; conflicting provisions.*

(1) *Minimum requirements.* In their interpretation and application, the provisions of this chapter shall be held to be the minimum requirements necessary for the promotion of the public health and general welfare.

(2) *Conflicting provisions.*

(a) *Public provisions.* This chapter is not intended to interfere with, abrogate or annul any other ordinance, rule or regulation, statute or other provision of law except as noted in this chapter. Where any provisions of this chapter impose restrictions different from those imposed by any other

ordinance, rule or regulation or other provision of law, whichever provisions are more restrictive or impose higher standards shall control.

(b) *Private provisions.* This chapter is not intended to abrogate any easement, covenant, or other private agreement or restriction, provided that, where the provisions of this chapter are more restrictive or impose higher standards or regulations than such easement, covenant, or other private agreement or restriction, the requirements of this chapter shall govern. Where the provisions of the easement, covenant, or private agreement or restriction impose duties and obligations more restrictive than this chapter, and such private provisions are not inconsistent with this chapter or determinations thereunder, then such private provisions shall be operative and supplemental to this chapter and determinations made thereunder.

(E) *Prior penalties, actions, liabilities or rights.* This chapter shall not be construed as abating any action now pending under or by virtue of prior existing subdivision regulations, or discontinuing, abating, modifying or altering any penalty accruing or about to accrue, or as affecting the liability of any person, or as waiving any right of the City under any section or provision existing at the time of adoption of the ordinance from which this chapter is derived, or as vacating and annulling any rights obtained by any person by lawful action of the City, except as shall be expressly provided for in this chapter.

(F) *Amendments.* For the purpose of providing for the public health, safety and general welfare, the Council may from time to time amend the provisions imposed by this chapter.

(Ord. 2009-02, passed 1-26-2009)

§ 156.02 DEFINITIONS.

(A) For purposes of this chapter, unless the context clearly indicates to the contrary, words used in the present tense include the future tense. Words used in the plural number include the singular. The word "herein" means "in." The word "person" includes a corporation, a partnership and an

incorporated association of persons such as a club. The term "shall" is always mandatory. The term "building" includes "structure." The term "building" or "structure" includes any part thereof. The term "used" or "occupied," as applied to any land or building, shall be construed to include the words "intended, arranged or designed to be used or occupied."

(B) 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

ALLEY. A public or private right-of-way primarily designed to serve as secondary access to the side or rear of those properties whose principal frontage is on some other street.

APPLICANT. The owner of land proposed to be subdivided, or his or her representative.

BLOCK. A tract of land bounded by streets, or by a combination of streets and public parks, cemeteries, railroad rights-of-way, or boundary lines of municipalities.

BOND. Any form of security, including a cash deposit, surety bond, collateral, property or instrument of credit, in an amount and form satisfactory to the Council.

BUILDING. Any structure built for support, shelter or enclosure of persons, animals, chattels or movable property of any kind.

CAPITAL IMPROVEMENTS PROGRAM. A proposed schedule of all future municipal improvement projects listed in order of construction priority, together with cost estimates and the anticipated means of financing each project.

COMMISSION. The Planning Commission.

COMPREHENSIVE PLAN. The document (the Ruidoso Downs Comprehensive Master Plan), or part thereof, officially adopted by the Council, which provides for the development of the City and which

indicates the general locations recommended for major roadways, parks, public utilities and buildings, and land uses.

CONSTRUCTION PLAN. The maps or drawings accompanying a subdivision plat, and showing the specific location and design of improvements to be installed in the subdivision, in accordance with the requirements of the Council as a condition of the approval of the plat.

CUL-DE-SAC. A local street with only one outlet and having an appropriate terminal for the safe and convenient reversal of traffic movement.

DEVELOPER. The owner of land proposed to be subdivided, or his or her representative.

EASEMENT. Authorization by a property owner for the use by another, and for a specified purpose, of any designated part of his or her property.

ENGINEER, CITY. The professional engineer engaged by the Council.

ESCROW. A deposit of cash with the local government in lieu of an amount required and still in force on a performance or maintenance bond.

FINAL PLAT. The map, plan or record of a subdivision and any accompanying material, as described in this chapter.

FRONTAGE. That side of a lot abutting on a street or way and ordinarily regarded as the front of the lot, but it shall not be considered as the ordinary side of a corner lot.

GRADE. The slope of a road, street or other public way, specified in percentage terms.

LOT IMPROVEMENT. Any building, structure, place, work of art or other object, or improvement of the land on which they are situated, constituting a physical betterment of real property.

MAJOR SUBDIVISION. All subdivisions not classified as minor subdivisions, including but not

limited to, subdivisions of four or more lots, or any size subdivision requiring any new street or extension of City facilities or the creation of any public improvements.

MINOR SUBDIVISION. Any subdivision containing not more than three lots fronting on an existing street, not involving any new street or road or the creation of any public improvements, and not adversely affecting the remainder of the parcel or adjoining property, and not in conflict with any provision or portion of the comprehensive plan, the zoning code (Chapter 155 of this Code), the official zoning map or this chapter.

MODEL HOME. A dwelling unit used initially for display purposes which typifies the units that will be constructed in the subdivision.

MUNICIPALITY. The City, as incorporated by State law.

NEIGHBORHOOD PARK AND RECREATION IMPROVEMENT FUND. A special fund established by the City to retain monies contributed by developers in accordance with the "fee in lieu of land" provisions of this chapter, within reasonable proximity of the land to be subdivided so as to be of local use to the future residents of the subdivision.

NONRESIDENTIAL SUBDIVISION. A subdivision whose intended use is other than residential, such as commercial or industrial subdivisions.

OFF-SITE. Any premises not located within the area of the property to be subdivided, whether or not in the same ownership of the applicant for subdivision approval.

ORDINANCE. Any legislative action of a local government that has the force of law, including any amendment or repeal of any ordinance.

OWNER. Any person, group of persons, firm, corporation or other legal entity having legal

title to or sufficient proprietary interest in the land sought to be subdivided under this chapter.

PERIMETER STREET. Any existing street to which the parcel of land to be subdivided abuts on only one side.

PLANNING AUTHORITY. The **PLANNING AUTHORITY** for the City shall be the Planning Commission.

PLANNING DEPARTMENT. The department authorized by the Council to administer this chapter.

PLAT. A map, chart, survey, plan or replat, certified by a licensed registered land surveyor, containing a description of the subdivided land with ties to permanent monuments.

PRELIMINARY PLAT. The preliminary drawings, described in this chapter, indicating the proposed manner of layout of the subdivision.

PUBLIC IMPROVEMENT. Any drainage ditch, roadway, parkway, sidewalk, pedestrian way, tree, lawn, off-street parking area, lot improvement or other facility for which the City may ultimately assume the responsibility for maintenance and operation, or which may effect an improvement for which the City's responsibility is established.

PUBLIC WORKS DEPARTMENT. The City of Ruidoso Downs Public Works Department.

REGISTERED ARCHITECT. An architect licensed and registered in the State.

REGISTERED ENGINEER. An engineer licensed and registered in the State.

RESUBDIVISION. A change in a map of an approved or recorded subdivision plat, if such change affects any street layout on such map or area reserved thereon for public use, or any lot line, or if it affects any map or plan legally recorded prior to the adoption of any regulations controlling subdivisions.

RIGHT-OF-WAY. A strip of land occupied or intended to be occupied by a street, crosswalk, railroad, road, electric transmission line, oil or gas pipeline, water main, sanitary or storm sewer main, or trees, or for another special use.

ROADWAY. That portion of a street right-of-way intended for driving or parking.

SALE AND LEASE. Any immediate or future transfer of ownership or any possessory interest in land, including a contract for sale, lease, intestate succession, or other written instrument.

SKETCH PLAT. A sketch preparatory to the preparation of the preliminary plat (or final plat in the case of minor subdivisions) to enable the subdivider to save time and expense in reaching general agreement with the Planning Commission as to the form of the plat and the objectives of this chapter.

STREET. A general term used to describe a paved right-of-way, municipally or privately owned, serving as a means of vehicular travel. Streets are classified by function as follows:

(a) **LOCAL STREET.** A street intended to serve and provide access exclusively to the properties abutting thereon, and not connecting with other streets in such a manner as to encourage through traffic.

(b) **COLLECTOR STREET.** A street connecting local residential streets to each other, to community facilities, and to principal or minor arterial streets.

(c) **PRINCIPAL AND MINOR ARTERIAL STREETS.** Streets designed to carry large amounts of traffic across or through the City, and designated as such by the comprehensive plan.

(d) **SERVICE STREET.** A street running parallel to a freeway, expressway or other roadway, and serving abutting properties, also called a frontage road.

(e) **STREET, DEAD-END.** A street or a portion of a street with only one vehicular traffic outlet.

SUBDIVIDE or SUBDIVISION. For the purpose of approval by the Planning Commission, means:

(a) For the area of land within the corporate boundaries of the City, the division of land into two or more parts, by platting or by metes and bounds descriptions, into tracts for the purposes set forth in this definition; and

(b) For the area of land within the City extraterritorial subdivision and platting jurisdiction, the division of land into two or more parts, by platting or by metes and bounds description, into tracts of less than five acres, in any one calendar year, for the purposes set forth in this definition.

(c) The division of land pursuant to this definition shall be for the purpose of:

1. Sale for building purposes;
2. Laying out a municipality or any part thereof;
3. Adding to a municipality;
4. Laying out suburban lots; or
5. Resubdivision.

Statutory reference:

Similar provisions, see § 3-20-1 NMSA 1978

SUBDIVIDER. Any person who, having an interest in land, causes it, directly or indirectly, to be divided into a subdivision; or who, directly or indirectly, sells, leases or develops, or offers to sell, lease or develop, or advertises for sale, lease or development, any interest, lot, parcel, site, unit or plat in a subdivision; or who engages, directly or through an agent, in the business of selling, leasing, developing or offering for sale, lease or development

a subdivision or any interest, lot, parcel, site or plat in a subdivision; and who is directly or indirectly controlled by or under direct or indirect common control with any of the persons mentioned in this definition.

SUBDIVISION AGENT. Any person who represents or acts for or on behalf of a subdivider.

SUBDIVISION PLAT. The final map or drawings, described in this chapter, on which the subdivider's plan of subdivision is presented to the Planning Commission and the Council for approval and which, if approved, may be submitted to the county clerk or recorder of deeds for filing.

TEMPORARY IMPROVEMENT. Improvements built and maintained by a subdivider during construction of the subdivision and prior to release of the performance bond.
(Ord. 2009-02, passed 1-26-2009)

§ 156.03 PLATTING PROCEDURES AND REQUIREMENTS.

(A) *Pre-application contact and sketch plat.*

(1) Prior to the submission of a sketch plat as required by this chapter, the subdivider shall contact the Planning Officer and any other administrative personnel or private agencies to determine:

(a) Procedures and requirements for filing the sketch plat and preliminary and final plat.

(b) Availability of public water and sewer, or requirements when public systems are not readily available.

(c) Zoning requirements on the property.

(d) Requirements of the duly adopted comprehensive plan for major streets, land use, schools, parks and other public open space.

(e) The location and extent of any floodplains.

(f) The location of forested areas and steep slopes as defined in Chapter 155 of this Code.

(2) As a part of this contact, the subdivider may discuss with the Planning Department, or any other appropriate agency, its tentative proposals for the development of the property.

(3) The subdivider shall submit, and the Planning Commission shall review and comment on, a sketch plat prior to the preparation of a preliminary plat. The Planning Commission shall make such a review and make its comments known to the subdivider, in writing, within five days from the date of the review. The sketch plat shall contain or show five-foot contours and the requirements of divisions (A)(1)(a) through (f) above.

(4) The purpose of this pre-application procedure is to determine any problems with the proposed development before expenses are incurred in the preparation of a preliminary plat. No official action is required of the Planning Commission or other agencies, other than offering appropriate comments on the proposal and indicating suitability for proceeding through the platting process.

(B) Preliminary plat.

(1) Preliminary plats shall be submitted in 15 copies and, if requested, a reproducible copy to the Planning Department. The preliminary plat shall consist of drawings and accompanying material and information as prescribed by this chapter.

(2) The preliminary plat drawing shall be prepared at a scale of one inch equals 100 feet or larger for subdivisions where the majority of lots are less than five acres in size. The scale may be reduced to one inch equals 200 feet for subdivisions in which the minimum lot size is five acres or more. The face of the drawing shall contain the following information:

(a) The name of the subdivision. The name shall not duplicate or too closely resemble the

name of any subdivision previously filed in the county.

(b) Date of preparation, scale and north arrow. Wherever possible, the top or left side of each sheet shall represent north.

(c) A vicinity map, drawn at a scale of one inch equals 1,000 feet or one inch equals 2,000 feet, showing the location of the proposed subdivision in the City and its relationship to surrounding development.

(d) The name, address and telephone number of the developer or subdivider, and the individual or firm responsible for the preparation of the preliminary plat.

(e) A legal description of the subdivision boundary.

(f) The boundary lines of the subdivision in a heavy solid line, referenced to section or quarter section lines.

(g) A description of all monuments, both found and set, which mark the boundary of the subdivision, and a description of all control monuments used in the survey.

(h) Existing contours at a maximum interval of five feet, unless waived by the Planning Department.

(i) General location and extent of any significant natural features such as streams, drainageways, forested areas or steep slopes.

(j) Floodplains as delineated on maps available in the Planning Department.

(k) Location, dimensions and names of existing roads, streets, alleys, railroad rights-of-way and structures within 100 feet immediately adjacent to the property, showing how they relate to the proposed subdivision layout.

(l) Location, size and grades of existing sanitary and storm sewers and location and size of water mains, gas lines, pipelines or other underground utilities or installations within the proposed subdivision and within 100 feet immediately adjacent thereto.

(m) Location and dimension of all easements of record.

(n) Existing zoning and land use of the proposed subdivision and immediately adjacent areas.

(o) Location and width of proposed streets, alleys, pedestrian ways and easements.

(p) Layout, numbers and approximate dimensions of proposed lots and blocks.

(q) Location, dimension and size in acres of all sites proposed to be used for commercial, industrial, multi-family residential, public or quasipublic use, with the use noted.

(r) A summary of the total number of acres, number of lots, acreage of commercial or industrial areas, acreage of open space, and amount of land in rights-of-way, and other descriptive material useful in reviewing the proposed subdivision.

(3) The following information and material shall be a part of any preliminary plat submittal and shall accompany the preliminary plat drawing:

(a) Payment of the total amount of the preliminary plat fee.

(b) A statement explaining the proposed design and function of the water, sewage, paving, sidewalk and drainage systems, their compatibility with existing systems, and the timing and/or phasing of installation.

(c) A statement describing the development and maintenance responsibility for any private streets, ways or open space.

(d) The recommendations of a qualified professional engineer of the affected soil conservation district regarding soil suitability, erosion control, sedimentation and flooding problems.

(e) A description of the phasing and scheduling of phases for the development, if the final plat is to be submitted in separate phases.

(f) A petition for annexation to the City if the land to be subdivided is contiguous to and outside (either by itself or as part of a larger tract) the boundaries of the City.

(g) An application for appropriate zoning for the subdivided area if the area is to be annexed or if the existing zoning district does not allow the types of uses proposed.

(h) The names and addresses of all owners of subdivided lots and unplatted land contiguous to or within 200 feet of the boundary of the proposed subdivision.

(i) A completed preliminary plat checklist on the standard forms provided.

(4) After receipt of the preliminary plat and all required supporting material, the Planning Department shall schedule the plat for consideration at the next regular meeting of the Planning Commission which occurs after 23 days from the date on which the plat was submitted, and shall, within three days, transmit copies to appropriate agencies and officials for their review and comment.

(5) Agencies receiving referral copies of the preliminary plat should return written comments on the plat to the Planning Department within ten days after receipt of the plat. Agencies may also present comments on the plat at the Planning Commission meeting at which the plat is considered.

(6) Upon receipt of all agency comments, or at the end of the ten-day period, the Planning Department will summarize the agency comments, add written comments and recommendations from the

department itself, and present the material and recommendations to the Planning Commission for its consideration.

(7) At least seven days prior to the date of the Planning Commission meeting at which the plat is to be considered, the Planning Department shall, from information provided by the subdivider as a part of the preliminary plat submittal, notify the owners of subdivided lots and owners of unplatted land within 200 feet of the boundaries of the proposed subdivision of the time and date of the meeting.

(8) The subdivider, or his or her duly authorized representative, shall attend the Planning Commission meeting at which the proposal is scheduled for consideration.

(9) At the Planning Commission meeting, the subdivider and all other interested or affected parties shall be allowed to offer comments. Within 30 days of the meeting, the Commission shall approve or disapprove the preliminary plat. Within ten days after the date of the meeting at which final action was taken, the Commission shall notify the subdivider and the Council of its decision. If conditions are attached to its approval, the subdivider and Council shall be informed of such conditions.

(10) Within 30 days of receipt of the Planning Commission's recommendation, the Council shall, by motion, act on the preliminary plat and the Commission's recommendation, and shall send notices of its action to the Commission and the subdivider. Upon approval of the preliminary plat, a 24-inch by 36-inch Mylar of the preliminary plat shall be submitted to the City.

(11) Approval of the preliminary plat by the Council shall be effective for six consecutive calendar months from the date of approval. The subdivider may apply in writing for, and the Planning Commission may, for cause shown, grant up to a six-month extension. If a final plat has not been submitted within this specified period on all or a portion of the land area included in the preliminary plat, a preliminary plat must again be submitted for approval. In a phased development, if there is any land area for which a

preliminary plat has been approved and for which a final plat has not been submitted within 24 months from the date of the approval of the preliminary plat, the applicant shall not be allowed to proceed with final platting until a new preliminary plat is submitted and approved.

(C) Approval and contents of final plat.

(1) After approval of the preliminary plat, a final plat may be prepared and submitted. The final plat shall be prepared and certified as to its accuracy by a registered land surveyor licensed to do such work in the State. The final plat and required supporting material shall conform to the design and engineering standards set forth in this chapter and to any conditions of approval specified by the Planning Commission and Council.

(2) Final platting may be accomplished in stages covering reasonable portions of the area of an approved preliminary plat. When this is done, each sheet of the final plat shall contain a vicinity map showing the location of the portion being submitted in relationship to the area for which the preliminary plat was submitted. All final plats so submitted shall be of the same scale, shall have identical titles, legends and other information, and shall have match lines so that mosaics of the entire subdivision can be developed. Each stage of the subdivision shall be as nearly self-sustaining and complete as possible and shall by itself, or in conjunction with previous stages, meet the design standards set forth in this chapter so that, if development of the entire subdivision is interrupted or discontinued after one or more stages are completed, a viable development will result.

(3) The final plat shall be clearly and legibly drawn in black waterproof India ink upon tracing linen, Mylar of 0.004 inch in thickness (minimum), or some similar stable base material. Required affidavits, certificates and acknowledgments shall be legibly printed on the plat in opaque ink. The sheet size of all final plats shall be 24 inches high by 36 inches wide. Information on the plat should be so positioned that a one and one-half-inch margin is on the lefthand side and a one-half-inch margin is shown on the remaining sides. The final plat shall be

prepared at a scale of one inch equals 100 feet, or at a scale of one inch equals 200 feet for subdivisions in which the minimum lot size is five acres or more. Each sheet of the final plat shall be numbered, and the total number of sheets comprising the plat shall be stated on each sheet (for example, "Sheet 2 of 4"). The relationship of one sheet to the other shall be shown by key maps and by match lines.

(4) The original linen or Mylar, one reproducible copy (sepia not acceptable), and nine prints of the final plat and two copies of all required supporting material, shall be submitted to the Planning Department at least 14 days prior to the Planning Commission meeting at which the final plat is to be considered.

(5) The submitted final plat shall contain the notarized signatures of the owners of any and all equitable or legal interest in the land, of whatever nature, and the signature of the registered land surveyor who prepared the plat.

(6) All final plats shall include the following information on the face of the plat:

(a) The name of the subdivision, centered at the top of each sheet.

(b) General location of the subdivision by section, township, range, county and State, entered under the name of the subdivision.

(c) North arrow, date and scale.

(d) Boundary lines of the subdivision in a heavy solid line.

(e) The location and description of the point of beginning and its proper reference to the monumented boundary survey.

(f) The location and description of all monuments.

(g) Bearings, distances and curve data of all perimeter boundary lines indicated outside of the boundary lines.

(h) On curved boundaries and on all curves within the plat, sufficient data to allow the reestablishment of the curves on the ground.

(i) The location and layout of lots, blocks, tracts, streets, alleys, easements and other public grounds within and immediately adjoining the plat, with accurate dimensions in feet and hundredths of feet, bearings, curve data, length of radii and/or arcs of all curves.

(j) Drainage easements, clearly labeled as such.

(k) The names of all streets.

(l) All lots logically and consecutively numbered in the center of the lot.

(m) All dimensions shown on irregularly shaped lots.

(n) Parcels completely or partially surrounded by the area being subdivided, clearly marked "Excepted," and the common boundary with the subdivision shown in a heavy solid line with bearings and distances.

(o) A notation of the total acreage of the subdivision and the total number of lots.

(p) A notarized certificate by all parties having any titled interest in or lien upon the land, consenting to the recording of the plat and dedicating public ways, grounds and easements.

(q) A notarized certificate of a registered land surveyor, registered under the laws of the State, stating that the plat is true, accurate and complete.

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(r) Certificate of approval by the City Planning Commission, as follows:

This plat approved by the City of Ruidoso Downs Planning Commission this ____ day of _____, A.D., ____.

Chairperson

ATTEST:

Secretary

(s) Certificate of acceptance and approval by the City Council, as follows:

Approved by the Governing Body of the City of Ruidoso Downs, New Mexico, this ____ day of _____, A.D., ____.

Mayor

ATTEST:

City Clerk

(t) Certificate for recording by the county clerk and recorder, as follows:

*This plat was filed for record in the Office of the County Clerk and Recorder at ____ o'clock _
_.m., _____, _____, and is duly recorded in Slide _____, Sheet No. _____.*

County Clerk

(7) The final plat shall be accompanied by the total amount of the final plat fee.

(8) After receipt of the final plat, the Planning Department shall review the submittal for completeness and for conformance with the approved preliminary plat. The department may refer copies of the final plat to and seek comment from other officials and agencies. Any such comments should be made known to the department within ten days after the date of submittal of the final plat.

(9) The final plat shall be scheduled for the consideration of the Planning Commission at its next regular meeting after the 14-day review period. After due deliberation, the Planning Commission shall approve, conditionally approve, or disapprove the final plat. Approval of a final plat by the Planning Commission shall remain effective for 18 calendar months.

(10) Within ten days after the date of the meeting at which final action was taken, the Planning Commission shall notify the subdivider and the Council of its action. If the final plat is approved, the subdivider may proceed in accordance with division (D) of this section. If the final plat is disapproved by the Commission or conditionally approved, and the subdivider wishes to appeal the conditions, the subdivider may request a hearing before the Council appealing the action of the Commission. The request shall be submitted in writing within 30 days of the action or decision appealed from, and shall state the specific relief which the subdivider or landowner seeks. Within 30 days of the receipt of such a request, the Council shall hold a hearing to determine the proper disposition of the matter. At the hearing, the Council shall consider not only the subdivider's appeal, but also the written or verbal comments of the Commission. The Council shall either reaffirm or modify the decision of the Commission, and shall note the decision in the record of its hearing. The subdivider or landowner may then proceed with the subdivision of his or her land, based upon the decision of the Council. This decision shall be binding upon all agencies and administrative personnel of the City.

(D) *Supporting materials for final plat; recording of final plat.*

(1) *Required submittals.* A complete final plat submittal shall consist of the final plat as approved by the Planning Commission and all required supporting materials. Following approval of the final plat by the Planning Commission, the subdivider shall submit the following supporting material relating to the final plat to the Planning Department:

(a) *Final plat checklist.* A final plat checklist shall be submitted on the standard forms provided.

(b) *Drainage report.* A drainage report for the site in question and all pertinent off-site areas shall be prepared by a licensed engineer or hydrologist. The report shall examine 100-year storm flows (Q 100's), and the 100-year high-water mark of any river, creek, arroyo, gully, diversion ditch, spillway, reservoir, and the like, that may in any way affect the project area, along with the depth of flow for 100-year runoff. The watershed in all off-site areas shall be considered fully developed. Intensities shall be for the area's one-hour, 100-year storm, based upon two inches per hour. Times of concentration (TC) used in the study shall provide for "C" to be 0.5 or greater, and the overlot flow time to gutters to be eight minutes, unless adequate evidence is provided to the contrary. A certificate shall be provided, signed and sealed by a registered professional engineer, that all drainage facilities utilizing gutters and streets are designed and sized to handle 100% of the Q 100 runoff.

(c) *Soils report.* A soils report for the site in question and pertinent off-site areas shall be prepared by a licensed engineer or soil scientist. The report shall indicate the type and location of soils, using the unified soil classification system, shall contain drill logs and swell consolidation curves, and shall contain a discussion of any present or potential hazards associated with soils on the site, along with measures which could be taken to mitigate such hazards. In addition, the soils report shall contain recommendations on subsurface area drains and peripheral drains, foundation design, erosion control measures and surface drainage.

(d) *Grading, drainage and development plan.*

1. A grading, drainage and development plan shall be prepared, at a scale of one inch equals 100 feet or larger, showing rights-of-way,

casements, walkways, parks, common areas, roadways, water lines and reservoirs, sewer lines, manholes and treatment facilities, curbs and gutters, culverts, drains, stormwater detention and retention basins, swales, ditches and other drainage devices, spot top of curb elevations, high and low street points, drainage arrows, street plans, all drainage areas and acreage, all 100-year storm flows (Q 100's) adjacent to and/or flowing onto the development and on-site at each surface flow junction, stormwater pickup and take-off points designed to handle 100-year flow on the surface, and cross sections and high water elevations for all 100-year flows. Spot elevations shall be given for all inverts, low points and flowing entry and exit points.

2. For residential subdivisions, all minimum building setbacks shall be shown. No 100-year flow line shall encroach upon any minimum setback line.

3. The following standards shall be used in preparation of the grading, drainage and development plan: 100-year storm flows shall not exceed 200 cfs per half street, when feasible; pipes into which surface water flows will have a minimum diameter of 15 inches; and a capability for handling all Q 100's on the surface within the roadway. Exceptions and variations to these standards must be recommended by a licensed engineer and approved by the City Engineer or acting City Engineer.

(e) *Construction plans and details.* Construction plans and details must be prepared by a registered professional engineer in the State, and shall provide for all improvements indicated on the grading, drainage and development plan, including right-of-way and easement cross sections showing construction and placement of streets, walks, curbs, gutters, medians, swales, ditches, utilities, planting strips and property lines; details of hydrants, valves, manholes, pipe junctions, pumps, thrust-blocking, catchbasins, and the like; street profiles showing natural and finish grades, centerlines and both curbs, with a recommended minimum vertical scale of one

inch equals 50 feet; sanitary sewer line and manhole profiles with natural and finished grades, showing area underdrains, if applicable, and the location of gravity outfall lines; storm drainage system profiles showing natural and finished grade; erosion control and revegetation details; and other details as necessary to adequately convey the design intent. Quantity take-offs shall also be provided.

(f) *Deeds.* When required by the City, assurance of a warranty deed or other acceptable instrument conveying to the City any public lands other than streets, alleys or easements shown on the final plat, and title insurance on the subject parcel, shall be presented to the City upon approval of the final plat. The method of assurance will be approved by the City Attorney.

(g) *Fees in lieu of land.* Payment of any fees in lieu of public land dedication, or any initial payment and a payment schedule keyed to subdivision development, if the subdivision is to be phased, shall be submitted.

(h) *Title opinion.* Evidence satisfactory to the City must be submitted, showing all taxes and assessments due on the property to be subdivided to be paid in full, showing title or control of the property to be subdivided, and showing the property to be subdivided as free and clear of any liens. An attorney's title opinion or ownership and encumbrance report from a land title company shall be considered satisfactory evidence.

(i) *Floodplain statement.* If a subdivision lies within the 100-year floodplain, the following statement shall appear on the face of the final plat and all contracts and agreements relating to the subdivision: "This subdivision is (or the following lots are) located in the 100-year floodplain as defined by the Department of Housing and Urban Development."

(j) *Performance bond.* A contractor's performance bond to guarantee the complete and

timely development of any facilities or improvements which are the subdivider's responsibility, subject to § 156.06(A)(1), shall be submitted.

(2) *Agency review.* Upon submittal of all required supporting material to the final plat, the Planning Department shall review such material for completeness to determine whether a complete final plat submittal has been made, and shall refer the material to appropriate agencies for review and comment. Upon being notified of the comments and any necessary approvals of reviewing agencies, the Planning Department shall forward the final plat, comments and approvals of reviewing agencies, pertinent supporting materials, and the recommendations of the Planning Commission to the Council. Incomplete final plats, or final plats for which necessary approvals have not been secured, shall not be forwarded to the Council for action.

(3) *Council action.* Following receipt of the recommendation of the Planning Commission, along with the final plat and accompanying materials, the Council shall either approve the final plat or disapprove the final plat and notify the subdivider of the conditions to be met to gain approval. If a disapproved final plat is modified and resubmitted to the Council at a later date for its consideration, the Council may require the concurrent submittal of an updated ownership and encumbrance report or title opinion.

(4) *Filing with county clerk.* Upon approval of the final plat by the Council, the subdivider shall be notified to submit payment for the recording fee to the Planning Department, and the department shall transmit the subdivider's recording fee and the duly approved and executed final plat to the county clerk and recorder for the filing of the final plat among the official records of the county.

(5) *Alternate approval procedure.* As an alternate procedure and at the request of the subdivider, the Council may approve a final plat and instruct the Planning Department to withhold the

approved final plat from recording for a period of time to allow the subdivider to install all of the required public improvements according to the plans and specifications approved by the City. This procedure, when approved by the Council, shall be in lieu of the guarantees for installation of improvements as set forth in § 156.06(A)(1). An executed standard contract, as approved by the City, regarding installation of improvements shall be submitted with the final plat. The contract shall require that all improvements be completed no later than 12 months from the date the final plat was approved by the Council and that no lot may be sold. When the completed improvements are inspected and approved by the City, the plat shall be recorded by the Planning Department, and the sale of lots may proceed according to the approved and recorded plat, provided that a one-year warranty shall be submitted covering the completed improvements as per section § 156.06(B)(2)(c)2.

(E) *Simultaneous submittal of preliminary and final plats.* For certain subdivisions, the subdivider may, after discussion with the Planning Department, simultaneously submit both the preliminary plat and the final plat. Depending on the size and complexity of the subdivision and the amount of street dedication, any or all of the information required in the preliminary and final plat processes may be submitted. The Planning Department shall determine which information must be submitted for adequate review of the subdivision. The preliminary and final plats may then be processed concurrently. It is possible for the preliminary and final plats to be one and the same instrument.

(F) *Corrected plats and resubdivision.*

(1) If, after the approval and recording of a final plat, errors are found in the language or numbers on the recorded plat, the subdivider shall file a properly signed, corrected or revised original Mylar or linen with the department. The plat shall be noted "Corrected Plat" under the name of the subdivision. Notations shall be made on the face of the plat, listing

all corrections made and the book and page numbers where the original plat was recorded. The department shall review the plat for corrections, secure the signatures of the proper public officials on the corrected plat, and present the plat to the Council for the reaffirmation of its approval and to the county clerk for recording. The recording of the corrected plat shall void the incorrect original plat, and the county clerk shall note "Void" across the face of the incorrect plat.

(2) If, after the approval and recording of a final plat, a subdivider wishes to modify the location of lot lines on part or all of the recorded plat, and if there is no change in the location or size of dedicated streets, the subdivider shall submit a new final plat drawing with the lotting arrangement revised. The Planning Department shall determine which of the required supporting documents shall be resubmitted with the revised final plat. The plat shall be marked "Re-subdivision of _____," under the name of the subdivision and shall be processed as a final plat.

(3) If, after the approval and recording of a final plat, a subdivider wishes to substantially change the street and lotting arrangement of a part or all of the platted area, the resulting subdivision shall be treated as a new submittal, with both a preliminary plat and a final plat required. Based on the current accuracy of the information submitted with the original plat and the magnitude of the change, the procedure described in division (E) of this section may be applied. The subdivision shall be identified as: "Resubdivision of _____." (Ord. 2009-02, passed 1-26-2009)

§ 156.04 ADMINISTRATION AND ENFORCEMENT.

(A) Administration generally.

(1) This chapter shall be administered and enforced by the Planning Department or other agency as designated by the Council.

(2) All subdivision plats submitted to the City shall first have been examined by the Planning Department and the Planning Commission in accordance with the procedures established by this chapter. As part of their examination, the Planning Department and the Planning Commission may consult with other public or private agencies to determine whether or not the plat, as proposed, will contribute to the orderly growth and development of the City. The actions of the Planning Department, the Planning Commission and the Council shall be governed by the procedures and schedules set forth in this chapter.

(3) Pursuant to the provisions of §§ 3-20-5 and 3-20-7 NMSA 1978, when any part of a subdivision lies outside of but within three miles of the City, that subdivision shall be approved by the Planning Commission and the Council before it is finally approved by the county board of commissioners.

(B) Alternate summary procedure for minor subdivisions.

(1) *Applicability.* In lieu of the requirements of § 3-20-7 NMSA 1978, the following procedure may be followed pursuant to § 3-20-8 NMSA 1978. Alternate summary procedures shall only apply to the following:

(a) Subdivisions of not more than two parcels of land;

(b) Resubdivisions where the combination or recombination of portions of previously platted lots does not increase the total number of lots; or

(c) Subdivisions of two or more parcels of land in areas zoned for industrial use.

(2) *Survey.* The filing of a survey certified by any licensed or registered surveyor, which contains a description of the subdivided land with ties to permanent monuments, shall satisfy the requirements of § 3-20-7 NMSA 1978.

(3) *Review by Planning Officer.* All minor subdivisions submitted to the City shall first be examined by the Planning Officer, who may consult with other public or private agencies to determine whether or not the plat, as proposed, will in any way affect the orderly growth of the City.

(4) *Conformance with subdivision regulations.* Any subdivision approved as authorized in this division shall be in substantial conformity with this chapter.

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

(a) Minor subdivision under the alternate summary procedure may be approved by the Planning Officer, with concurrence of the chairperson and vice-chairperson of the Planning Commission. Review by the Planning Commission shall not be required except for those subdivisions which have been recommended for denial by the Planning Officer and upon written request by the applicant.

(b) Approval by this summary procedure shall be endorsed on the plat or on the instrument of conveyance in lieu of a plat, and such approval shall be conclusive evidence of the approval of the Planning Commission. The City Clerk shall then accept the instrument of conveyance for filing or recording.

(6) *Review by Council.* Review of minor subdivisions shall not be required by the Council, except for those which have been recommended for denial by the Planning Commission, and upon written request by the applicant.

(C) *Variances.*

(1) A request for variance may be submitted only after the Planning Commission has formally reviewed the preliminary plat and has either recommended disapproval because the plat does not conform to this chapter, or has conditionally approved

the plat, specifying those amendments which must appear on the final plat in order for it to be approved. The subdivider may then seek relief from the specific provisions of this chapter with which he or she cannot comply.

(2) When it can be shown that, in the case of a particular subdivision, strict compliance with the provisions of this chapter would cause undue hardship, the Council may authorize a variance to this chapter provided that the general intent of this chapter is preserved, that the public interest is protected, and that such variances do not have the effect of nullifying the intent and purpose of the comprehensive plan or the zoning code (Chapter 155 of this Code). The granting of a variance shall be based upon findings by the Council that:

(a) The subdivider is proceeding in good faith.

(b) There are unusual topographical or other special circumstances associated with the property which are not the result of any action of the subdivider, and which prohibit the use of the property in a manner similar to the use of adjacent or nearby properties.

(c) The variance is necessary for reasonable development of the property in question and will alleviate a clearly demonstrable hardship.

(d) The variance will not nullify the intent or purpose of this chapter.

(e) Granting the variance will not be detrimental to the general public health, safety and welfare.

(3) Any variance granted shall constitute the minimum adjustment necessary to alleviate the hardship.

(4) All requests for variances shall be submitted in writing to the Council and shall be

referred to the Planning Commission for comments and recommendations prior to any action taken by the Council. In granting a variance, compliance with the objectives and standards of this chapter must be ensured. The findings and action on each variance and any conditions imposed shall be recorded in the minutes of the Council, and a copy thereof provided to the Planning Department.

(5) If the Council grants the subdivision variance, the subdivider may incorporate the provisions of the variance into the final plat to be submitted to the Planning Commission and to the Council for approval. In its review of the final plat, the Planning Commission shall be bound by the decision of the Council regarding the variance and shall review and approve the final plat with the variance if the plat in all other respects conforms to the preliminary plat and any other conditions imposed by the Planning Commission.

(D) *Plat vacations.*

(1) Any plat may be vacated by the owners or proprietors thereof at any time before sale of any lots, or before any substantial improvements have been made in the subdivision, by submitting a copy of the plat to the Planning Commission along with a written request for a vacation. In the case where lots have been sold, the written request shall be by all of the owners of lots within the plat. The Planning Commission shall make a recommendation on the vacation to the Council, and the Council shall approve or disapprove the vacation. The recording of an instrument vacating the plat shall operate to destroy the force and effect of the recording of the original plat, and to divest all public rights in the streets, alleys, and common and public grounds laid out or described in such a plat.

(2) Streets and alleys platted and laid out under the provisions of this chapter, or laid out under any prior law of the State, may be altered or vacated in the manner provided by law for the alteration or discontinuance of streets and highways.

(3) Any part of a plat may be vacated under the provisions and subject to the conditions of division (D)(1) of this section, provided such vacating does not abridge or destroy any of the rights and privileges of other proprietors in the plat, and provided further that nothing contained in this section shall authorize the closing or obstruction of any public highways laid out according to law. The request for vacation shall be made by all of the owners of lots within that portion of the overall plat sought to be vacated.

(4) When any part of a plat shall be vacated as provided in this section, streets, alleys and other public grounds shall be assigned to all lots or parcels adjacent to the public area being vacated in equal proportions.

(5) The county clerk shall write in plain, legible letters, across that part of the plat so vacated, the word "vacated," and also make a reference on the plat to the volume and page in which the instrument of vacation is recorded.

(6) Land covered by a vacated plat may be replatted as described by this chapter. Any replatting of an area already platted and not vacated shall be construed to be a request for the vacation of the original plat or portion thereof. Any such plat, once approved and recorded, shall act to vacate the original plat which it replaces.

(E) *Penalty.* Any person who violates any provision of this chapter, and any person who, as an agent for a subdivider, developer or owner of subdivided lands, offers for sale any subdivided lands or subdivisions without first complying with the provisions of this chapter, shall, upon conviction, be punished in accordance with § 155.135.

(F) *Exemption from liability.* The City shall hold harmless the Planning Department, other City agencies and officials, and their official agents and representatives, when acting in good faith and without malice, from all personal liability for any damage that may accrue to any person or property as a result of

any act required by this chapter, or for the omission of any act on the part of the department, agency or official or their authorized agents in the discharge of their duties under this chapter. Any suit brought against the City or City administration because of any such act or omission in the carrying out of the provisions of this chapter shall be defended by the City Attorney through final determination of such proceedings.

(Ord. 2009-02, passed 1-26-2009)

§ 156.05 DESIGN STANDARDS.

(A) *Generally.*

(1) *Conformance to applicable rules and regulations.* Subdivision design shall conform to the following:

(a) The City zoning code (Chapter 155 of this Code);

(b) The comprehensive master plan of the City, including all streets, drainage systems and parks shown on the comprehensive master plan as adopted;

(c) The rules of the State Highway Department, if a subdivision or any lot contained therein abuts a State highway or connecting street; and

(d) *New Mexico Standard Specifications for Public Works*, as amended.

(2) *Restrictions imposed by owner.* If the owner places restrictions on any of the land contained in the subdivision greater than those required by the zoning code (Chapter 155 of this Code) or this chapter, such restrictions or reference thereto may be required to be indicated on the subdivision plat, or the Planning Commission may require that restrictive covenants be recorded with the county recorder of deeds.

(3) *Monuments.* The applicant shall place permanent reference monuments in the subdivision as approved by a registered land surveyor and the City Engineer or acting City Engineer.

(4) *Land unsuitable for development.* Land which the Planning Commission finds to be unsuitable for subdivision or development because of flooding, improper drainage, steep slopes, rock formations, adverse earth formations or topography, utility easements or other features which will reasonably be harmful to the safety, health and general welfare of the present or future inhabitants of the subdivision and/or its surrounding areas shall not be subdivided or

developed unless adequate methods are formulated by the developer and approved by the Planning Commission, upon recommendation of the City Engineer, to solve the problems created by the unsuitable land conditions. Such land shall be set aside for uses that shall not involve such a danger.

(5) *Subdivision name.* The proposed name of the subdivision shall not duplicate, or too closely approximate phonetically, the name of any other subdivision in the area covered by this chapter. The Planning Commission shall have final authority to designate the name of the subdivision, which shall be determined at the time of sketch plat approval.

(B) *Lots and lot improvements.*

(1) *Lot arrangement.* The lot arrangement shall be such that there will be no foreseeable difficulties, for reasons of topography or other conditions, in securing building permits to build on all lots in compliance with the zoning code (Chapter 155 of this Code) or in providing driveway access to buildings on such lots from an approved street.

(2) *Lot dimensions.* Lot dimensions shall comply with the minimum standards of the zoning code (Chapter 155 of this Code). Where lots are more than double the minimum required area for the zoning district, the Planning Commission may require that such lots be arranged so as to allow further subdivision and the opening of future streets where they would be necessary to serve such potential lots, all in compliance with the zoning code and this chapter. In general, side lot lines shall be at right angles to street lines, or radial to curving street lines, unless a variation from this rule will give a better street or lot plan. Dimensions of corner lots shall be large enough to allow for erection of buildings, observing the minimum setback from both streets. Depth and width of properties reserved or laid out for business, commercial or industrial purposes shall be adequate to provide for the off-street parking and loading facilities required for the type of use and development contemplated, as established in the zoning code.

(3) *Double frontage and reserved lots; access from arterial streets.*

(a) *Double frontage and reserved lots.* Double frontage and reserved lots shall be avoided except where necessary to provide separation of residential development from traffic arterials or to overcome specific disadvantages of topography and orientation.

(b) *Access from arterial streets.* Lots shall not, in general, derive access exclusively from an arterial street. Where driveway access from an arterial street may be necessary for several adjoining lots, the Planning Commission may require that such lots be served by a combined access drive in order to limit possible traffic hazards on such streets. Where possible, driveways should be designed and arranged so as to avoid requiring vehicles to back into traffic on arterial streets.

(4) *Grading and drainage.*

(a) *Final grading.* No certificate of occupancy shall be issued until final grading has been completed in accordance with the approved final subdivision plat.

(b) *Lot drainage.* Lots shall be laid out so as to provide positive drainage away from all buildings, and individual lot drainage shall be coordinated with the general storm drainage pattern for the area. Drainage shall be designed so as to avoid concentration of storm drainage water from each lot onto adjacent lots.

(5) *Removal of debris and waste.* No cut trees, debris, rubbish or other waste materials of any kind shall be buried in any land, or left or deposited on any lot or street at the time of the issuance of a certificate of occupancy.

(6) *Fencing.* Each subdivider and/or developer shall be required to furnish and install fences wherever the Council determines that a hazardous condition may exist. The fences shall be constructed according to standards established by the

zoning code (Chapter 155 of this Code) and shall be noted as to height and material on the final plat. No certificate of occupancy shall be issued until the fence improvements have been duly installed.

(7) *Performance bond.*

(a) The performance bond shall include an amount to guarantee completion of all requirements contained in division (B) of this section, including but not limited to soil preservation, final grading, lot drainage, removal of debris and waste, fencing and all other lot improvements required by the Council.

(b) Whether or not a certificate of occupancy has been issued, at the expiration of the performance bond, the City may enforce the provisions of the bond where the provisions of this section or any other applicable law, ordinance or regulation have not been satisfied.

(C) *Roads.*

(1) *General requirements.*

(a) 1. Frontage on improved street required. No subdivision shall be approved unless the area to be subdivided shall have frontage on and access from an existing street indicated in the comprehensive plan or unless such street is:

a. An existing State, county or township highway; or

b. A street shown upon a plat approved by the Council and recorded in the county clerk's office.

2. Such street or highway must be suitably improved as required by the highway rules, regulations, specifications or orders, or be secured by a performance bond as required under this chapter, with the width and right-of-way required by this chapter or the comprehensive plan. Wherever the area to be subdivided is to utilize existing road frontage, such road shall be suitably improved as provided in this subsection.

(b) *Grading and improvement plan.*

Roads shall be graded and improved and conform to the City construction standards and specifications and shall be approved as to design and specifications by the City Engineer, in accordance with the construction plans required to be submitted prior to final plat approval.

(c) *Topography and arrangement.*

1. Roads shall be related appropriately to the topography. All streets shall be arranged so as to obtain as many as possible of the building sites at or above the grades of the streets. Grades of streets shall conform as closely as possible to the original topography. A combination of steep grades and curves shall be avoided. Specific standards are contained in the design standards of this chapter.

2. All streets shall be properly integrated with the existing and proposed system of thoroughfares and dedicated rights-of-way as established in the comprehensive plan.

3. Local streets shall be laid out to conform as much as possible to the topography, to discourage use by through traffic, to permit efficient drainage and utility systems, to require the minimum number of streets necessary to provide convenient and safe access to property, and to maximize the preservation of trees and vegetation.

4. Proposed streets shall be extended to the boundary lines of the tract to be subdivided, unless prevented by topography or other physical conditions, or unless, in the opinion of the Council, such extension is not necessary or desirable for the coordination of the layout of the subdivision with the existing layout or the most advantageous future development of adjacent tracts.

(d) *Blocks.*

1. Blocks shall have sufficient width to provide for two tiers of lots of appropriate depths. Exceptions to this prescribed block width shall

be permitted in blocks adjacent to major streets, railroads, waterways, parks, or areas that will remain undeveloped such as steep slopes or forested areas.

2. The lengths, width and shapes of blocks shall be such as are appropriate for the locality and the type of development contemplated, but block lengths in residential areas shall not exceed 600 feet or 12 times the minimum lot width required in the zoning district.

3. In long blocks, the Council may require the reservation of an easement through the block to accommodate utilities, drainage facilities, emergency access or pedestrian traffic.

(e) *Limitation of access to arterial streets.* Where a subdivision borders on or contains an existing or proposed arterial street, the Council may require that access to such street be limited by one of the following means:

1. The subdivision of lots so that the lots back onto the arterial street and front onto a parallel local street. No direct access shall be provided from the arterial street.

2. A series of culs-de-sac, U-shaped streets or short loops entered from and designed generally at right angles to such a parallel street, with the rear lines of their terminal lots backing onto the arterial street.

3. A marginal access or service road, separated from the arterial street by a planting or grass strip and having access thereto at suitable points.

(f) *Street names.* Street names shall be sufficiently different in sound and in spelling from other street names in the City so as not to cause confusion. A street which exists or is planned as a continuation of an existing street shall bear the same name.

(g) *Street signs.* The applicant shall deposit with the City, at the time of final subdivision approval, an amount equal to the cost of each street

sign required by the City Engineer at all road intersections. The City shall install all street signs before issuance of an occupancy permit for any residence on the streets approved. Street name signs are to be placed at all intersections within or abutting the subdivision. The type and location of signs are to be approved by the City Engineer.

(h) *Streetlights.* Installation of streetlights shall be required in accordance with design and specification standards approved by the City Engineer.

(i) *Continuation of streets between adjacent properties; dead-end streets.*

1. *Continuation of streets; temporary dead-end streets.* The arrangement of streets shall provide for the continuation of principal streets between adjacent properties when such continuation is necessary for convenient movement of traffic, effective fire protection or efficient provision of utilities, and where such continuation is in accordance with the City comprehensive plan. If the adjacent property is undeveloped and the street must be a dead-end street temporarily, the right-of-way shall be extended to the property line. A temporary T- or L-shaped turnabout shall be provided on all temporary dead-end streets, with the notation on the subdivision plat that land outside the normal street right-of-way shall revert to abutters whenever the street is continued. The Council may limit the length of temporary dead-end streets in accordance with the design standards of this chapter.

2. *Permanent dead-end streets.* Where a street does not extend to the boundary of the subdivision and its continuation is not required by the Council for access to adjoining property, its terminus shall normally not be nearer to such boundary than 50 feet. However, the Council may require the reservation of an appropriate easement to accommodate drainage facilities, pedestrian traffic or utilities. A cul-de-sac shall be provided at the end of a permanent dead-end street in accordance with construction standards and specifications. For greater convenience to traffic and more effective police and

fire protection, permanent dead-end streets shall, in general, be limited in length in accordance with the design standards of this chapter.

(2) *Design standards.*

(a) *Dimensions.* In order to provide for streets of suitable location, width and improvement to accommodate prospective traffic and afford satisfactory access to police, fire protection, sanitation and street maintenance equipment, and to coordinate streets so as to compose a convenient system and avoid undue hardships to adjoining properties, Table 1, below, sets forth design standards for streets.

TABLE 1. DESIGN STANDARDS FOR STREETS	
<i>Improvement</i>	<i>Dimensions</i>
<i>Minimum width of right-of-way</i>	
Local	50 feet
Collector	60 feet
Minor arterial	80 feet
Principal	100 feet
<i>Minimum pavement width (defined as face of curb to face of curb)</i>	
Local	24 feet
Collector	32 feet
Minor arterial	41 feet
Principal	49 feet
<i>Minimum radius of curve</i>	
Local	273 feet
Collector	273 feet
Minor arterial	508 feet
Principal	833 feet

<i>Improvement</i>	<i>Dimensions</i>
<i>Minimum centerline degree of circular curve</i>	
Local	21.0 degrees
Collector	21.0 degrees
Minor arterial	11.3 degrees
Principal	6.9 degrees
<i>Minimum length of tangents between reserve curves</i>	
Local	150 feet
Collector	150 feet
Minor arterial	250 feet
Principal	350 feet
<i>Minimum sight distance</i>	
Local	200 feet
Collector	240 feet
Minor arterial	275 feet
Principal	300 feet
<i>Minimum turnaround (local streets only)</i>	
Right-of-way diameter	100 feet
Pavement	80 feet
<i>Maximum length of cul-de-sac</i>	
Permanent	600 feet
Temporary	100 feet
<i>Minimum street grade</i>	12%

(b) *Street surfacing and improvements.*
After sewer and water utilities have been installed by the developer, the applicant shall construct curbs and gutters and shall surface, or cause to be surfaced, roadways to the widths prescribed in this chapter. The surfacing shall be of such character as is suitable for

the expected traffic and in harmony with similar improvements in the surrounding areas. Types of pavement shall be as determined by the City Public Works Department. Adequate provision shall be made for culverts, drains and bridges.

(c) *Railroads and limited access highways.* (At this point in time there are no railroads in the City, but there have been numerous discussions on the possibility of a recreational railroad.) Railroad rights-of-way and limited access highways, where so located as to affect the subdivision of adjoining lands, shall be treated as follows:

1. In residential districts, a buffer strip, at least 25 feet in depth, in addition to the normal depth of the lot required in the district, shall be provided adjacent to the railroad right-of-way or limited access highway. This strip shall be part of the platted lots and shall be designated on the plat as follows: "This strip is reserved for screening. The placement of structures hereon, except for street signs and lighting, is prohibited."

2. In districts zoned for business, commercial or industrial uses, the nearest street extending parallel or approximately parallel to the railroad shall, wherever practicable, be at a sufficient distance therefrom to ensure suitable depth for commercial or industrial sites.

3. Streets parallel to the railroad, when intersecting a street which crosses the railroad at grade, shall, to the extent practicable, be a distance of at least 150 feet from the railroad right-of-way. Such distance shall be determined with due consideration of the minimum distance required for future separation of grades by means of appropriate approach gradients.

(d) *Intersections.*

1. Streets shall be laid out so as to intersect as nearly as possible at right angles. A proposed intersection of two new streets at an angle of less than 75 degrees shall not be acceptable. An

oblique street should be curved approaching an intersection and should be approximately at right angles for at least 100 feet therefrom. Not more than two streets shall intersect at any one point unless specifically approved by the Planning Commission.

2. A proposed new intersection along one side of an existing street shall, wherever practicable, coincide with any existing intersection on the opposite side of such street. Street jogs with centerline offsets of less than 150 feet shall not be permitted, except where the intersected street has separated dual drives without median breaks at either intersection. Where streets intersect major streets, their alignment shall be continuous. Intersections of major streets shall be at least 800 feet apart.

3. The minimum curb radius at the intersection of two local streets shall be 20 feet, and the minimum curb radius at an intersection involving a collector street shall be 25 feet. Alley intersections and abrupt changes in alignment within a block shall have the corners cut off in accordance with standard engineering practice to permit safe vehicular movement.

4. Where any street intersection will involve earth banks or existing vegetation inside any lot corner that would create a traffic hazard by limiting visibility, the developer shall cut such ground and/or vegetation (including trees) in connection with the grading of the public right-of-way, to the extent deemed necessary to provide an adequate sight distance.

5. The cross-slopes on all streets, including intersections, shall be 3% or less.

(e) *Bridges.* Bridges of primary benefit to the applicant, as determined by the Council, shall be constructed at the full expense of the applicant without reimbursement from the City. The sharing of expenses for the construction of bridges not of primary benefit to the applicant, as determined by the Council, will be fixed by special agreement between the Council and the applicant. The cost shall be

charged to the applicant pro rata as the percentage of his or her land develops and is so served.

(3) *Street dedications and reservations.*

(a) *New perimeter streets.* Street systems in new subdivisions shall be laid out so as to eliminate or avoid new perimeter half streets. Where an existing half street is adjacent to a new subdivision, the other half of the street shall be improved and dedicated by the subdivider. The Council may authorize a new perimeter street where the subdivider improves and dedicates the entire required street right-of-way width within his or her own subdivision boundaries.

(b) *Widening and realignment of existing streets.* Where a subdivision borders an existing narrow street, or when the comprehensive plan or zoning regulations indicate plans for realignment or widening a street that would require the use of some of the land in the subdivision, the applicant shall be required to improve and dedicate, at his or her expense, such areas for widening or realignment of such streets. Such streets shall be improved and dedicated by the applicant, at his or her own expense, to the full width as required by this chapter. Land reserved for any road purposes may not be counted in satisfying yard requirements of the zoning code (Chapter 155 of this Code), whether the land is to be dedicated to the City in fee simple or as an easement.

(D) *Drainage and storm sewers.*

(1) *General requirements.* The Planning Commission shall not recommend for approval any plat of a subdivision which does not make adequate provision for stormwater or floodwater runoff channels or basins. The stormwater drainage system shall be separate and independent of any sanitary sewer system. Storm drainage shall be accommodated in the streets and gutters unless otherwise indicated by the City Engineer. Where storm sewers are required, the cost shall be borne by the developer for storm sewers to a size of eight inches. If over eight inches in

size and determined to be for benefit outside of the subdivision, the costs may be shared, as determined by the Council.

(a) *Accommodation of upstream drainage areas.* A culvert, gutter or other drainage facility shall in each case be large enough to accommodate potential runoff from its entire upstream drainage area, whether inside or outside the subdivision. The City Engineer shall determine the necessary size of the facility, based on the provisions of the construction standards and specifications, assuming conditions of maximum potential watershed development permitted by the zoning code (Chapter 155 of this Code).

(b) *Effect on downstream drainage areas.* The City Engineer shall also study the effect of each subdivision on existing downstream drainage facilities outside the area of the subdivision. Local government drainage studies, together with such other studies as shall be appropriate, shall serve as a guide to needed improvement. Where it is anticipated that the additional runoff incident to the development of the subdivision will overload an existing downstream drainage facility, the Council may withhold approval of the subdivision until provision has been made for the improvement of the potential condition in such sum as the Council shall determine. No subdivision shall be approved unless adequate drainage will be provided to an adequate drainage watercourse or facility.

(c) *Areas of poor drainage.* Whenever a plat is submitted for an area subject to flooding, the Council may approve such subdivision, provided that the applicant fills the affected area of the subdivision to an elevation sufficient to place the elevation of streets and lots at a minimum of 12 inches above the elevation of the maximum probable flood, as determined by the City. The plat of such subdivision shall provide for an overflow zone along the bank of any stream or watercourse, of a width which shall be sufficient in times of high water to contain or move the water, and no fill shall be placed in the overflow zone, nor shall any structure be erected or placed

therein. The boundaries of the overflow zone shall be subject to approval by the City.

(d) *Floodplain areas.* The Council will, when it deems it necessary for the health, safety or welfare of the present and future population of the area, and necessary to the conservation of water, drainage and sanitary facilities, prohibit the subdivision of any portion of the property which lies within the 100-year floodplain of any stream. These floodplain areas shall be preserved from any and all destruction or damage resulting from clearing, grading or dumping of earth, waste material or stumps.

(2) *Drainage easements.*

(a) *Required.* Where a subdivision is traversed by a watercourse, drainageway, channel or stream, a stormwater easement or drainage right-of-way shall be provided, conforming substantially to the lines of such watercourse, and of such width and construction, or both, as will be adequate for the purpose. Wherever possible, it is desirable that the drainage be maintained by an open channel with landscaped banks and adequate width for maximum potential volume of flow.

(b) *Extent; dedication; preservation of drainageways.*

1. Where topography or other conditions are such as to make impractical the inclusion of drainage facilities within road rights-of-way, perpetual unobstructed easements of at least 15 feet in width for such drainage facilities shall be provided across property outside the road lines, and with satisfactory access to the road. Easements shall be indicated on the plat. Drainage easements shall be carried from the road to a natural watercourse or to other drainage facilities.

2. When a proposed drainage system will carry water across private land outside the subdivision, appropriate drainage rights must be secured and indicated on the plat.

3. The applicant shall dedicate, either in fee simple or by drainage or conservation easement, land on both sides of existing watercourses, to a distance to be determined by the Council.

4. Low-lying lands along watercourses subject to flooding or overflowing during storm periods, whether or not included in areas for dedication, shall be preserved and retained in their natural state as drainageways. Such land subject to periodic flooding shall not be computed in determining the numbers of lots to be utilized for average density procedures, or for computing the area requirement of any lot.

(E) *Water facilities.*

(1) *General requirements.*

(a) When necessary, action shall be taken by the applicant to extend or create a water supply district for the purpose of providing a water supply system capable of providing domestic water use and fire protection.

(b) Where a public water main is accessible, the subdivider shall install adequate water facilities, including fire hydrants, subject to the specifications of the City. All water mains shall be at least six inches in diameter.

(c) Water main extensions shall be approved by the City Public Works Department.

(d) To facilitate these requirements, the location of all fire hydrants, all water supply improvements, and the boundary lines of proposed districts, indicating all improvements proposed to be served, shall be shown on the preliminary plat, and the cost of installing such improvements shall be included in the performance bond to be furnished by the developer.

(2) *Fire hydrants.* Fire hydrants shall be required for all subdivisions. Fire hydrants shall be

located no more than 360 feet apart. Any structure shall be located within 300 feet of a fire hydrant, and shall be approved by the City Fire Chief. To eliminate future street openings, all underground utilities for fire hydrants, together with the fire hydrants themselves, and all other supply improvements shall be installed before any final paving of a street shown on the subdivision plat.

(3) *Community or individual water systems; water availability plan.* Where a public water system is not available, and the Planning Commission determines that the public system cannot be reasonably extended, a water availability plan shall be submitted for approval by the Planning Commission as provided in this subsection. Water quality and the water system location shall be approved by the Environmental Improvement Division of the State.

(a) *Compliance with New Mexico Water Law.* Under § 72-12-1 NMSA 1978, it is the State Engineer's policy to grant a domestic permit only to the person who, in good faith, intends to use the water for household or other domestic purpose. The permit is limited to a diversion of three acre-feet per annum, which may be used to irrigate not more than one acre of noncommercial trees, lawn or garden, and for household or other domestic use. If more than one household use per well is proposed, then no more than one acre of noncommercial trees, lawn or garden may be irrigated from the well, and the total withdrawal from the well shall be metered and limited to three acre-feet per year for all uses. If two or more wells, obtained under provisions of § 72-12-1 NMSA 1978, are tied into the same distribution system, the total withdrawals shall be limited to three acre-feet per annum. If the total withdrawal is to exceed three acre-feet per annum from any well or group of wells that supply a common system, it will be necessary for the subdivider or users to obtain water rights.

(b) *Water availability plan; documentation of water availability.* Any person seeking approval of a subdivision plat must submit a

water availability plan for either a community water system or individual wells.

1. The subdivider shall provide information showing the fire flow the proposed water supply system can deliver throughout the subdivision, in gallons per minute, and the time duration such flow can be maintained.

2. The subdivider shall provide the following documentation, where applicable:

a. If the subdivider proposes that a utility certified by the State Public Service Commission provide water, the subdivider shall provide documentation that the subdivision is located within the service area of the utility or that the utility is ready, willing and able to provide water to the subdivision.

b. If the subdivider proposes that a municipality, private utility company or any other private party provide water, the subdivider shall provide documentation that the municipality, company or party is ready, willing and able to provide water to the subdivision. The documentation shall contain a statement from the municipality, company or party indicating the quantity of water available to the subdivider and any conditions or limitations pertaining to the use of water.

(c) *Standards for community water systems.*

1. The subdivider shall provide water from existing or proposed water supply systems for domestic use, fire protection and any other use that the subdivider proposes.

2. The subdivider shall provide for the completion of the proposed water supply systems in accordance with applicable minimum design standards of the State Environmental Improvement Division, and as approved by the City.

3. The provisions for fire flow shall be in accordance with the guidelines of the insurance services office and good engineering practice.

4. The subdivider shall ensure the availability of sufficient potable water for the fully developed subdivision.

(d) *Submittal requirements for community water systems.* The following shall be prepared by or under the supervision of a registered professional engineer and shall be adequate for the purpose of division (E)(3)(c) of this section:

1. Plans and specifications for diversion, storage and distribution facilities, and a time schedule for their completion.

2. Information showing the volume and peak rate of production of water required in each month to supply each use at full development of the subdivision.

3. A geohydrologic report, if part or all of the supply is to be obtained from groundwater sources, containing the following information:

a. Geologic maps, cross sections and descriptions of the aquifer systems proposed for production, including information concerning the hydrogeologic boundaries, intake areas and locations of discharge of those aquifers.

b. Maps and cross sections showing the depth to water, water level contours, direction of groundwater movement and the estimated thickness of saturation in the aquifers.

c. Probable yields of the proposed wells, in gallons per minute and acre-feet per year, and probable length of time that the aquifer system will produce water at rates sufficient to meet the demands under full development of the

subdivision. This information shall be based on pump test analysis, hydrogeologic boundaries, aquifer leakage and historic water level changes, logs and yields of existing wells and, when the Planning Commission deems necessary, test wells and aquifer performance tests. This information will give consideration to mutual interference of the proposed wells, and the interference of existing wells.

d. A 40-year schedule of the effects of the projected water withdrawals for the subdivision on water levels and natural discharge.

e. A water quality analysis, which shall conform to State standards of the Environmental Improvement Division.

4. A hydrologic report, if part or all of the supply is to be obtained from surface water sources, containing the following information:

a. Source of water supply.

b. Drainage area above the point of diversion.

c. Analysis of relevant historical runoff records.

d. Projected water supply available for the subdivision requirements.

(e) *Individual water systems.*

1. Domestic water supply may be provided by the subdivider or by the purchaser or lessee of each parcel at his or her own expense.

2. If the water supply is to be provided by the subdivider, the regulations of division (E)(3)(b) and (d) of this section shall apply.

3. If the water supply is provided by the owner or lessee of each parcel, the regulations division (E)(3)(d)3. and 4. of this section shall apply.

(f) *Potable water supply required; approval by State.* Where a public water system is not available and the Planning Commission determines that the public water system cannot be reasonably extended to any lot, group of lots or subdivision, the subdivider or developer shall install a community or individual water supply system capable of providing safe potable water for domestic use. System design and water quality shall be approved by the Environmental Improvement Division of the State.

(F) *Sewage facilities.*

(1) *Required.* The applicant shall install sanitary sewer facilities in a manner prescribed by the construction standards and specifications. All plans shall be designed in accordance with the rules, regulations and standards of the City.

(2) *General standards.* Sanitary sewage facilities shall connect with the public sanitary sewage system unless such connection is not available. Sewers shall be installed to serve each lot, and to grades and sizes required by approving officials and agencies. Sanitary sewage facilities, including the installation of laterals in the right-of-way, shall be subject to the specifications, rules, regulations and guidelines of the City.

(3) *Private sewage systems.*

(a) Where public sanitary sewage systems are not reasonably accessible, but will become available within a reasonable time, not to exceed 20 years, the City may allow one of the following alternatives:

1. A central sewage system, with the maintenance cost to be assessed against each properly benefitted. Where plans for future public sanitary sewage systems exist, the applicant shall install the sewer lines, laterals and mains to be in permanent conformance with such plans and ready for connection to such public sewer mains; or

2. Individual disposal systems, provided the applicant shall install sanitary sewer

lines, laterals and mains from the street curb to a point in the subdivision boundary where a future connection with the public sewer main shall be made. Sewer lines shall be available in the home to connect from the individual disposal system to the sewer system when the public sewers become available. Such sewer systems shall be capped until ready for use and shall conform to all plans for installation of the public sewer system, where such exists, and shall be ready for connection to such public sewer main.

(b) Where sanitary sewer systems are not reasonably accessible and will not become available for a period in excess of 20 years, the City may allow the installation of sewage systems as follows:

1. Medium-density residential district: A central sewage system only shall be used. No individual disposal system will be permitted. Where plans exist for a public sewage system to be built, for a period in excess of 15 years, the applicant shall install all sewer lines, laterals and mains to be in permanent conformance with such plans and ready for connection to such public sewer main.

2. Low-density residential district (less than one dwelling unit per acre): Individual disposal systems or central sewage systems shall be used.

(4) *Connection to public system.* If a public sanitary sewer is accessible and a sanitary sewer is placed in a street or alley abutting upon property, the owner thereof shall be required to connect to the sewer for the purpose of disposing of waste, and it shall be unlawful for any such owner or occupant to maintain upon any such property an individual sewage disposal system.

(5) *Use of individual sewage disposal systems.* If public sewer facilities are not available and individual disposal systems are proposed, minimum lot areas shall conform to the requirements of the zoning code (Chapter 155 of this Code), and percolation tests and test holes shall be made as directed by the City, and the results submitted to the

City. The individual disposal system, including the size of septic tanks and size of the tile fields or other secondary treatment devices, shall also be approved by the City.

(6) *Design criteria for sanitary sewers.*

(a) *Deviations from standards.* These design criteria are not intended to cover extraordinary situations. Deviations will be allowed and may be required in those instances where considered justified by the City Public Works Department.

(b) *Design factors.* Sanitary sewage systems should be designed for the ultimate tributary population. Consideration should be given to current zoning regulations and approved planning and zoning reports where applicable. Sewer capacities should be adequate to handle the anticipated maximum hourly quantity of sewage and industrial waste, together with an adequate allowance for infiltration and other extraneous flow. The unit design flows presented in this subsection should be adequate in each case for the particular type of development indicated. Sewers shall be designed for the total tributary area using the following criteria:

<i>Type of Development</i>	<i>cfs/acre*</i>
One- and two-family dwellings	0.02
Apartments, townhouses and condominiums	
One- and two-story	0.02
Three- through six-story	0.03
Commercial: small stores, offices and miscellaneous businesses	0.02
Shopping centers	0.02
High-rise and industrial buildings	As directed by the City
*cubic square feet per acre	

These design factors shall apply to watersheds of 300 acres or less. Design factors for watersheds larger

than 300 acres and smaller than 1,000 acres shall be computed on the basis of a linear decrease from the applicable design factor for an area of 300 acres to a design factor of 0.01 cfs/acre for an area of 1,000 acres, unless otherwise directed by the City. Design factors for watersheds larger than 1,000 acres shall be 0.01 cfs/acre unless otherwise directed by the City.

(c) *Maximum size.* The diameter of sewers proposed shall not exceed the diameter of the existing or proposed outlet, whichever is applicable, unless otherwise approved by the City.

(d) *Minimum size.* No public sewer line shall be less than eight inches in diameter.

(e) *Minimum slope.* All sewers shall be designed to give mean velocities, when flowing full, of not less than 2.7 feet per second. All velocity and flow calculations shall be based on the Manning Formula using an "N" value of 0.013. The design slopes shall be evenly divisible by four. The slopes shall be a minimum for the size indicated. Exceptions to these minimum slopes shall be made at the upper end of lateral sewers serving less than 30 houses. The sewers shall have a minimum slope of 0.76%. Where lateral sewers serve less than ten houses, the minimum slope shall be not less than 1%. The following table lists minimum slopes for various sewer sizes:

TABLE 2. MINIMUM SLOPES BY SEWER SIZE	
<i>Sewer Size (inches)</i>	<i>Minimum Slope (feet per 100 feet)</i>
8	0.6
10	0.44
12	0.36
15	0.28
18	0.24
21	0.2
24	0.16

(f) *Alignment.* All sewers shall be laid with straight alignment between manholes, unless otherwise directed or approved by the City Public Works Department.

(g) *Manhole location.* The difference in elevation between any incoming sewer and the manhole invert shall not exceed 12 inches, except where required to match crowns. The use of drop manholes will require approval by the City Engineer. The minimum inside diameter of the manholes shall conform to those specified by the City Public Works Department. Inside drop manholes will require special consideration; however, in no case shall the minimum clear distance be less than that indicated in this subsection. When a smaller sewer joins a larger one, the crown of the smaller sewer shall not be lower than that of the larger one. The minimum drop through manholes shall be 0.2 feet.

(h) *Sewer locations.* Sanitary sewers shall be located within streets or alley rights-of-way unless topography dictates otherwise. When located in easements on private property, access shall be provided to all manholes. A manhole shall be provided at each street or alley crossing. End lines shall be extended to provide access from street or alley rights-of-way where possible. Imposed loading shall be considered in all locations. Not less than six feet of cover shall be provided over the top of the pipe in street and alley rights-of-way, or three feet in all other areas.

(i) *Cleanouts and lampholes.* Cleanouts and lampholes will not be permitted, except as permitted.

(j) *Water supply interconnections.* There shall be no physical connection between a public or private potable water supply system and sewer, which will permit the passage of any sewage or polluted water into the potable supply. Sewers shall be kept removed from water supply wells or other water supply sources and structures.

(k) *Relationship of sewers to water mains.* A minimum horizontal distance of ten feet shall be maintained between parallel water and sewer lines. At points where sewers cross water mains, the sewer shall be constructed of cast iron pipe or encased in concrete for a distance of ten feet in each direction from the crossing, measured perpendicular to the water line. This will not be required when the water main is at least two feet above the sewer line.

(7) *Liquid waste management plan; community and individual liquid waste systems.* Where a public sewer system is not available, and the Planning Commission determines that the public system cannot be reasonably extended, a liquid waste management plan approved by the Environmental Improvement Division of the State Health and Environment Department shall be submitted for approval of the Planning Commission.

(a) *Plan required.* Any person seeking approval of a subdivision plot must submit a liquid waste management plan to the Planning Commission, for either a community or individual liquid waste (sewer) system.

(b) *Standards for community systems.* Requirements for community liquid waste systems are as follows:

1. Design and complete construction of the community system, by the time required in the approved plan, in compliance with all applicable water quality control regulations in effect at the time of final plat approval.

2. Connection to the community system for the occupants within the subdivision in accordance with the requirements of the approved plan.

3. Provisions for the operation, maintenance and expansion of the community system, to meet the growth in population of the subdivision in a manner consistent with the approved plan, and

consistent with all applicable water quality control regulations in effect at the time of final plat approval.

(c) *Required submittals for community systems.* Information requirements for community liquid waste systems are as follows:

1. A legal description of the location of all construction, easements and rights-of-way necessary for the installation of the community liquid waste treatment system.

2. Plans and specifications, prepared by a professional engineer registered in the State, for the construction of the system.

3. The time when the community system is to be completed.

4. If the proposal is to connect to an existing community liquid waste system, plans and specifications for the liquid waste collection system within the subdivision and the connecting system, and a description of the existing system.

5. The projected population of the subdivision, based upon four persons per household.

6. A subdivision improvements agreement which guarantees:

a. The construction and operation of any liquid waste treatment system required as shown in the final plat documents and plans.

b. Collateral in the form of a performance bond or other means to adequately ensure the complete construction and operation of the system in accordance with design and time specifications.

c. Certification of the operator of the system.

d. Involvement, as prescribed in the final plat documents, of a homeowners' association or community association.

(d) *Standards for individual systems.* Individual liquid waste disposal systems and privies may not be approved by the Planning Commission for use within a subdivision unless the following standards are met:

1. Such systems shall be located so as not to potentially contaminate or pollute any drinking water supply, watercourse or body of water.

2. Such systems shall be located so as not to potentially degrade any recreational resources.

3. Such systems shall not create a nuisance.

4. Such systems shall not be located in areas where there is evidence that similar individual systems have caused significant groundwater contamination or high nutrient levels in any body of water.

5. Such systems shall not be located in areas where there is evidence that they will cause hazards to health or to the environment.

6. The distance between a well and an absorption field or a tank used as part of an individual liquid waste disposal system must be no less than 100 feet.

7. The distance between a well or body of water used as a public water supply and an absorption field or tank used as part of an individual liquid waste disposal system must be no less than 200 feet.

8. The distance between an absorption field or tank used as a part of an individual liquid waste disposal system and the nearest boundary of a floodway must be no less than 100 feet.

9. Privies may not be approved by the Planning Commission for use within a subdivision unless the subdivider demonstrates to the satisfaction of the Planning Commission, in consultation with the State Environmental Improvement Division, that they will be located and operated in a manner which will not potentially contaminate any drinking water supply, potentially pollute any body of water, create a nuisance or cause a potential danger to public health.

(e) *Soil limitations for individual systems.* Individual liquid waste disposal systems may not be approved for use within a subdivision characterized by severe limitations under standards prescribed by the EID and CID of the State. In addition, individual liquid disposal systems shall not be approved for use within a subdivision where a percolation rate of less than six minutes per inch and a seasonal high water table of less than 20 feet exist together.

(f) *Minimum lot size for individual systems.* Individual liquid waste disposal systems may not be approved by the Planning Commission for use within a subdivision unless the parcels on which they will be used conform to the minimum lot sizes required by the EID and CID of the State.

(g) *Submittal requirements for individual systems.* Submittals for individual liquid waste disposal systems are as follows:

1. A copy of the subdivider's disclosure statement relating to liquid waste disposal.

2. The location of all proposed and existing wells, sewage absorption areas, community sewage systems and community water supply systems within the proposed subdivision, and within 300 feet of the proposed subdivision boundary.

3. The location of all arroyos, drainage areas and bodies of water within the proposed subdivision, and within 300 feet of the proposed subdivision boundary.

4. The soil depth throughout the area of the proposed subdivision.

5. Soil classification or percolation tests, or both.

6. The depth to the seasonal high water table.

7. The slope of the ground within the proposed subdivision.

8. The flood frequency of areas within the proposed subdivision.

9. A detailed description of the kind of individual liquid waste disposal system that is to be used by the occupants of the subdivision.

10. The projected population of the subdivision, based upon four persons per household.

(G) *Sidewalks and curbs.*

(1) Sidewalks shall be included within the dedicated non-pavement right-of-way of all streets as illustrated in Table 3.

TABLE 3. SIDEWALK REQUIREMENTS	
Type of Street	Sidewalk Requirement
Local	Optional (at Council directive)*
Collector	Both sides, 4 feet wide
Arterial	Both sides, 5 feet wide
* But where provided, four feet wide	

(2) Concrete curbs and gutters are required for all streets where sidewalks are required by this chapter or where required at the discretion of the Planning Commission and Council.

(3) Sidewalks shall be improved as required in division (C)(2)(b) of this section.

(H) *Underground installation of utilities: utility easements.*

(1) *Underground installation.* All utility facilities, including but not limited to gas, electric power, telephone and cable television facilities, shall be located underground throughout the subdivision. Wherever existing utility facilities are located above ground, except where existing on public roads and rights-of-way, they shall be removed and placed underground. All utility facilities existing and proposed throughout the subdivision shall be shown on the preliminary plat. Underground service connections to the street property line of each platted lot shall be installed at the subdivider's expense. At the discretion of the Council, the requirement for service connections to each lot may be waived in the case of adjoining lots to be retained in single ownership and intended to be developed for the same primary use.

(2) *Easements.*

(a) Easements centered on rear lot lines shall be provided, where necessary, for utilities (private and municipal). Such easements shall be at least ten feet wide. Proper coordination shall be established between the subdivider and the applicable utility companies for the establishment of utility easements established in adjoining properties.

(b) Where topographical or other conditions are such as to make impractical the inclusion of utilities within the rear lot lines, perpetual unobstructed easements of at least ten feet in width shall be provided along side lot lines, with satisfactory access to the road or rear lot lines. Easements shall be indicated on the plat.

(I) *Public land dedication, parks and open space.*

(1) *Public uses shown on comprehensive plan.* Where a proposed park, playground, open space or other public use shown on the comprehensive plan is located, in whole or in part, in a subdivision, the Planning Commission and Council shall require that such area be shown on plats in accordance with the requirements specified in this section. Such area shall be dedicated to the City by the subdivider if the Council approves such dedication.

(2) *Public uses not shown on comprehensive plan.* Where such other areas or sites of a character, extent and location suitable to the needs created by the type of development proposed for a subdivision are deemed essential by the Planning Commission for the orderly provision of areas or sites for public services or facilities, and which development was not anticipated by the master plan, the Planning Commission shall require the subdivider to indicate such areas or sites on the subdivision plat, and, if deemed necessary by the Planning Commission and the Council, such area shall be dedicated to the City by the subdivider.

(3) *Dedication of recreation space required.* Before any subdivider shall receive final plat approval for a subdivision of land lying within the corporate limits of the City, or land to be annexed to the City prior to the approval of the final plat, the subdivider shall dedicate to the City an area of land to be used by the City for a neighborhood recreation space. The provisions of this subsection shall not apply to replats of land already subdivided.

(4) *Calculation of required recreation space.* The amount of land to be dedicated shall be equal to the recreation space demand created by the subdivision and development of the land subdivided. The recreation space demand shall be computed on the projected requirement of 3.75 acres per 1,000 population generated. The number of persons the development of the subdivided land would generate, as future residents of the area, will be computed on the following formula:

(a) For subdivision of land lying within an R-1 or R-2 residential zoning district or single-family lots platted in an R-2 residential zoning district, the population shall be computed as the number of single-family lots contained in the subdivision multiplied by 3.11 persons.

(b) If the subdivider of property within an R-3 residential zoning district has building plans ready to submit to the building official, showing the units to be built on the subdivided property or any portion thereof, the following formula shall be used to determine the population to be generated by this property: the number of family units contained multiplied by 2.60 persons.

(c) If the subdivider of property within an R-4 multiple-family zoning district has building plans ready to submit to the building official, showing the units that will be built on the subdivided property or any portion thereof, the following formula shall be used to determine the population generated by this property:

1. The number of studio units multiplied by 1.30 persons; plus
2. The number of one-bedroom units multiplied by 1.73 persons; plus
3. The number of two-bedroom units multiplied by 2.60 persons; plus
4. The number of three- or more bedroom units multiplied by 3.46 persons; plus
5. The number of townhouse units multiplied by 2.60 persons.

(d) For subdivision of land lying within an M-1 low-density mobile home district, the population shall be computed as the number of lots in the mobile home subdivision multiplied by 3.11 persons.

(e) For subdivision of land lying within an M-2 medium-density mobile home district, the population shall be computed as the number of lots in the mobile home subdivision multiplied by 2.60 persons.

(f) If the subdivider of property within a multiple-family zoning district does not have plans ready to submit to the building official showing the units to be built on the subdivided property or any portion thereof, the following formula shall be used to determine the population to be generated by this property:

1. If the property is in an R-2 residential district, the number of persons generated will be calculated by multiplying 3.11 persons times 6.20 units per acre, times the number of net acres in the subdivision for single-family development, and times 9.70 units per acre for duplexes. Net acreage shall include all acreage, including public easements not dedicated to the City, in fee simple.

2. If the property is located in an R-3 residential district or R-4 multiple-family district, the number of persons generated by the development will be calculated by multiplying 2.60 persons times 16.0 units per acre, times the number of acres in the subdivision for R-3 development, and times 22.0 units per acre for R-4 development.

(5) *Payment of recreation space demand fee in lieu of dedication of land.* In lieu of the land required to be dedicated by division (I)(3) of this section, the subdivider may choose to pay the City a recreation space demand fee. The amount of the fee shall equal the number of persons the future development of the subdivision will generate as calculated under division (I)(4) of this section, multiplied by the per-person fee based on per-acre value of land being subdivided within the City.

(6) *Appraisal of value of land for purpose of recreation space demand fee.* For the purpose of computing the recreation space demand fee, the fair

market value of the raw land lying within the subdivision shall be an amount determined in an appraisal obtained by the City from a qualified appraiser who is a resident of the county. If the developer does not feel the amount so determined fairly reflects the market value of the raw land lying within the subdivision, the developer may obtain, at his or her own expense, an additional appraisal from a qualified professional appraiser approved by the City. The appraisal done by such approved appraiser shall be binding on the City.

(7) *Payment of recreation space demand fee when proposed land is unsuitable.* If the Council, prior to approving the final plat, finds that the land offered to be dedicated by the developer is inappropriate for use as recreation space because the land offered for dedication does not lie within the designated planned park sites for the area, or is not usable as a City park because of rough topography, susceptibility to flooding, inaccessibility or limited size, or does not meet other reasonable standards for land to be used as recreation space, the developer will be required to pay the fee in lieu of land as provided in division (I)(5) of this section.

(8) *Deferral of dedication or fee payment.* Ordinarily, the recreation space demand fee shall be deposited with the City Clerk prior to the approval of the final plat. However, if the Council determines that immediate payment of the fee will work a hardship on the developer, or other circumstances so dictate, it may allow the developer to enter into an agreement with the City providing for future dedication of land or payment of the fee, provided that such agreement is accompanied by a good and sufficient surety bond in the amount of the required fee ensuring faithful performance of the agreement for future dedication or payment.

(9) *Disposition and use of recreation space demand fees; refunds.* All fees collected pursuant to this subsection shall be deposited by the City in a fund known as the City of Ruidoso Recreational Space Purchase and Improvement Fund. Monies deposited

into the fund shall not be expended for any purpose other than to purchase and/or make improvements on land to be used as public recreational area located within one mile from an exterior boundary of the subdivision for which the fees were paid. If the City does not either purchase property or make improvements on property designated as public recreational area within one mile from the exterior boundary of the subdivision for which the fee was paid within a ten-year period from the date of such payment, the developer shall be refunded, at the expiration of the ten-year period, an amount equal to the fee, plus interest at the rate of 6%. Such refund, however, shall only be made after the developer, or his or her entire heirs or assigns, presents the City with a written request for such refund, containing a statement as to the name of the subdivision for which the fee was paid, the date the fee was paid, and such other information as may be necessary to establish that a refund is due.

(10) *Recovery of dedicated property by donor.* If land dedicated to the City for use as public recreation space is not improved or dedicated as natural open space and used as public recreation space within a period of ten years, the donor of the property or his or her successors in interest may institute an action to recover the property pursuant to § 70-1-45 NMSA 1978.

(11) *Form of dedication.*

(a) The dedication of land required by this subsection shall be by warranty deed or dedication on a plat of the subdivision filed of record with the county clerk. All deeds and dedications purporting to dedicate land to the City pursuant to this subsection shall be approved by the City Attorney.

(b) This subsection shall not apply to subdivisions for which preliminary plat approval has been obtained prior to the effective date of the subdivision regulations in this chapter, adopted January 26, 2009.
(Ord. 2009-02, passed 1-26-2009)

§ 156.06 COMPLETION OF IMPROVEMENTS.

(A) *Generally; performance bond; acceptance of dedication offers.*

(1) *Performance bond.*

(a) The Council shall require that the applicant post a bond at the time of application for final subdivision approval in the amount sufficient to secure to the City the satisfactory construction, installation and dedication of the required improvements. The performance bond shall also secure all lot improvements on the individual lots of the subdivision as required in this chapter. The amount of the bond shall be 100% of the cost of the installation and materials necessary to complete the subdivision.

(b) Such performance bond shall comply with all statutory requirements and shall be satisfactory to the City Attorney as to form, sufficiency and manner of execution, as set forth in this chapter. The period within which required improvements must be completed shall be specified by the Council in the resolution approving the final subdivision plat and shall be incorporated in the bond, and shall not in any event exceed two years from the date of final approval.

(c) Such bond shall be approved by the Council as to amount and surety and conditions satisfactory to the Council. The Planning Commission may, upon proof of difficulty, recommend to the Council extension of the completion date set forth in such bond for a maximum period of one additional year. The Council may at any time during the period of such bond accept a substitution of principal or sureties on the bond upon recommendation of the Planning Commission.

(2) *Alternative to performance bond.* As an alternative to requiring a contractor's performance bond, the Council, at its discretion, may allow the procedures for completion of improvements described in § 156.03(D)(5).

(3) *Temporary improvements.* The applicant shall build and pay for all costs of temporary improvements required by the Council, and shall maintain the temporary improvements for the period specified by the Council. Prior to construction of any temporary facility or improvement, the developer shall file with the City Engineer a separate suitable bond for temporary facilities, which bond shall ensure that the temporary facilities will be properly constructed, maintained and removed.

(4) *Payment of costs of improvements.* All required improvements shall be made by the applicant, at his or her expense, without reimbursement by the City or any improvement district therefor.

(5) *Guarantees by governmental units.* Governmental units to which the bond and contract provisions of this section apply may file, in lieu of the contract or bond, a certified resolution or ordinance from officers or agencies authorized to act in their behalf, agreeing to comply with the provisions of this section.

(6) *Failure to complete improvements.* For subdivisions for which no performance bond has been posted, if the improvements are not completed within the period specified by the Council in the resolution approving the plat, the approval shall be deemed to have expired. In those cases where a performance bond has been posted and required improvements have not been installed within the terms of such performance bond, the City may thereupon declare the bond to be in default, call on the bond, and require that all the improvements be installed regardless of the extent of the building development at the time the bond is declared to be in default.

(7) *Acceptance of dedication offers.* Acceptance of formal offers of dedication of streets, public areas, easements and parks shall be by resolution of the Council. The approval by the Council of a subdivision plat shall not be deemed to constitute or imply the acceptance or maintenance by the Council of any street, easement or park shown on the plat. The Council may require the plat to be endorsed with appropriate notes to this effect.

(B) *Inspection of improvements.*

(1) *Required; fees; liability of applicant and bonding company.* The Council shall provide for inspection of required improvements during construction and to ensure their satisfactory completion. The applicant shall pay to the City an inspection fee of 2% of the amount of the performance bond or the estimated cost of required improvements, and the subdivision plat shall not be signed by the Mayor unless such fee has been paid at the time of approval. If the City Public Works Department finds upon inspection that any of the required improvements have not been constructed in accordance with the City's construction standards and specifications, the applicant shall be responsible for completing the improvements. Wherever the cost of improvements is covered by a performance bond, the applicant and the bonding company shall be severally and jointly liable for completing the improvements according to the specifications.

(2) *Release or reduction of performance bond; maintenance of improvements.*

(a) *Certificate of satisfactory completion.* The Council will not accept dedication of required improvements, or release or reduce a performance bond, until the City Public Works Department has submitted a certificate stating that all required improvements have been satisfactorily completed, and until the applicant's engineer or surveyor has certified to the City Public Works Department, through submission of a detailed as-built survey plat and construction plans of the subdivision, prepared on Mylar, indicating location, dimensions, materials and other information required by the City Council, that the layout of the line and grade of all public improvements is in accordance with the construction plans for the subdivision, and that a title insurance policy has been furnished to and approved by the City Attorney, indicating that the improvements have been completed, are ready for dedication to the City, and are free and clear of any and all liens and encumbrances. Upon such approval and

recommendation, the Council shall thereafter accept the improvements for dedication in accordance with the established procedure.

(b) *Reduction of performance bond.* A performance bond may be reduced upon actual dedication of public improvements, and then only to the ratio that the public improvement dedicated bears to the total public improvements for the plat. In no event shall a performance bond be reduced below 25% of the principal amount unless all improvements have been dedicated, in which case the bond may be reduced to zero, provided a maintenance bond is posted.

(c) *Maintenance of improvements; maintenance bond.*

1. The applicant shall be required to maintain all improvements within the subdivision and/or on the individual subdivided lots until acceptance of the improvements by the Council. If there are any certificates of occupancy on a street where improvements have not been dedicated to the City, the City may, on 12 hours' notice, effect emergency repairs and charge the costs to the applicant.

2. The applicant shall be required to file a maintenance bond with the Council prior to dedication in the amount of 10% of the improvement costs, in a form satisfactory to the City Attorney, in order to ensure the satisfactory condition of the required improvements, including all lot improvements on the individual subdivided lots, for a period of one year after the date of their acceptance by the Council and dedication of the improvements to the City.

(C) *Deferral or waiver of required improvements.*

(1) The Council may defer or waive, at the time of final approval, subject to appropriate conditions, the provision of any or all such

improvements as, in its judgment, are not requisite in the interest of the public health, safety and general welfare, or which are inappropriate because of inadequacy or lack of connecting facilities.

(2) Whenever it is deemed necessary by the Council to defer the construction of any improvement required in this chapter because of incompatible grades, future planning, or inadequacy or lack of connecting facilities, or for other reasons, the applicant shall pay his or her share of the costs of the future improvements to the City prior to signing of the final subdivision plat, or the applicant may post a bond ensuring completion of the improvements upon demand by the Council.

(D) *Issuance of building permits and certificates of occupancy.*

(1) Where a performance bond has been required for a subdivision, no certificate of occupancy for any building in the subdivision shall be issued prior to the completion of the improvements and dedication of the improvements to the City, as required in the Council's final approval of the subdivision plat.

(2) No certificate of occupancy for any building in the subdivision shall be issued prior to completion, inspection and approval by the City, and dedication to the City of all utilities required to serve the building for which a certificate of occupancy is requested.

(3) The extent of street improvements shall be adequate for vehicular access by the prospective occupant and by police and fire protection equipment, prior to the issuance of an occupancy permit.

(4) No building permit shall be issued for the final 10% of lots in a subdivision (or, if 10% is less than two, for the final two lots of a subdivision) until all public improvements required by the Council for the plat have been fully completed and dedicated to the City.

(5) For the purpose of allowing the early construction of model homes in a subdivision, the Planning Commission, at its discretion, may permit a portion of a major subdivision involving no more than four lots to be created in accordance with the procedures of § 156.03(E), provided such portion derives access from an existing City, township, county or State highway, and provided no future road or other improvement is anticipated where the lots are proposed. The subdivision plat for the "minor" portion shall be submitted to the Planning Commission simultaneously with the preliminary plat for the entire major subdivision. Subsequent to preliminary plat approval, the model may be constructed, subject to such additional requirements that the Planning Commission may require.

(Ord. 2009-02, passed 1-26-2009)

§ 156.07 FEES.

Required subdivision fees shall be set from time to time and are listed in the fee schedule in Appendix A to this Code, which is adopted by reference as if appearing in total and on file in the City offices.

(Ord. 2009-02, passed 1-26-2009)

§ 156.08 SPECIFICATION STANDARDS.

(A) The City uses *New Mexico Standard Specifications*, published by APWA, New Mexico Chapter. The City also reserves the right to have local standards observed on all construction projects.

(B) *Water.*

(1) C-900 piping shall be used on all main lines.

(2) Minimum of six-inch C-900 piping shall be used on all main lines.

(3) Water mains shall be a minimum of 36-inch depth.

(4) Fire hydrants shall be a maximum of 360-foot spacing within subdivisions and have a valve control installed.

(5) Thrust blocking shall be done on all fire hydrant installations.

(6) Twelve inches of bedding materials (sand or gravel) shall be used on the bottom of trenches as well as on top of utility structures.

(7) Marking tap and signal cable shall be installed eight inches above all main water lines.

(8) Thrust blocking shall be used on all tees, elbows and dead ends on main water lines.

(9) Disinfection of all water lines on Bac-T sample reports shall be provided to Public Works Department prior to any use of new lines.

(10) Pressure testing reports shall be provided to the Public Works Department.

(11) Lifts of eight inches of material shall be compacted, and compaction testing shall be done every 300 feet. Compaction data shall be given to the Public Works Department.

(12) Compaction shall be a minimum of 95% of maximum density in lifts not to exceed eight inches. Test results from a licensed company shall be provided to the Public Works Department.

(13) Water lines shall not be within ten feet (horizontally) of sewer lines when side-by-side. If the water line crosses the sewer line, the water line must be on top and the lines separated by a vertical distance of at least 18 inches. If the sewer line crosses over the water line, it must be separated by a minimum of 18 inches vertical, and have a 20-foot, watertight casing around it, with the water line being ten feet from either casing end.

(14) No organic materials shall be used for fill.

(15) Public Works Department must do visual inspections, and at the close of the project, the contractor must provide a complete report of those inspections.

(16) All customers shall have a private utilities shut off located outside of their meter box.

(17) There shall not be any private water supplies connected to public water systems.

(18) Three copies of as-builds shall be provided to the City.

(C) *Streets.* Street rights-of-way for residential streets shall be 50 feet. Road construction shall be as follows:

(1) Twenty-foot paving width, two-foot curb and gutter each side (24 feet back to back).

(2) Compacted subgrade at 95%, with 12-inch base course compacted to 95%, and two-inch concrete asphaltic paving surface with 1% slope from center crown. Tack coat shall be applied over compacted base course area prior to paving.

(3) Street grade shall not exceed 12%.

(4) Cul-de-sac shall have 50-foot-radius right-of-way and 40-foot-radius paving area.

(D) *Sewer.*

(1) Mains, trunks and lateral shall be constructed of SDRT 35 PVC piping minimum.

(2) Mains, trunks and laterals shall be a minimum of 24-inch depth, with a minimum of two-feet-per-second flow, maximum of eight feet per second.

(3) Twelve inches of bedding (sand or gravel) shall be used on bottom of trenches as well as over the top of utilities structures.

(4) Marking tape shall be installed at eight inches above all main and trunk lines.

(5) Lifts of eight inches of material shall be compacted, and compaction testing shall be done every 300 feet. Compaction data shall be given to the Public Works Department.

(6) Compaction shall be a minimum of 95 % of maximum density in lifts not to exceed eight inches. Test results from a licensed company shall be provided to the Public Works Department. No organic materials shall be used for fill.

(7) The Public Works Department must do a visual inspection. Testing shall include camera test of sewer trunks and main that will be provided by the developer. Exfiltration testing shall be done on all manholes.

(8) Manholes shall be no more than 300 feet apart.

(9) Sewer lines shall not cross over the top of any water line and must have an 18-inch minimum vertical separation. If by construction constrictions, the sewer line does cross over a water line, a 20-foot, watertight casing shall be around the line, with the water line being ten feet from either casing end.

(10) At the close of the project, the contractor shall provide complete reports of inspections.

(11) Three sets of as-builds shall be provided to the City at the close of the project.

(E) *As built.* All developers shall submit post construction plans (as built) for all improvements within the development, containing the following:

(1) The developer's survey central points established for all improvements tied to survey monuments for the project, with established elevations.

(2) Measured horizontal and vertical locations of underground utilities and appurtenances on plan and profile sheets, with stationing referenced to permanent survey control monuments.

(3) Street centerlines and grades on plan and profile sheets, with stationing referenced to permanent survey control monuments.

(4) Survey and plot drainage structure and system for the project, with flow lines, elevation and detention capacities and duration not to exceed 72 hours.

(5) All build notes shall be edited, identifying changes made to original plans.
(Ord. 2009-02, passed 1-26-2009)