

**CODE OF ORDINANCES
City of
TRUTH OR CONSEQUENCES, NEW MEXICO**

**Codified through
Ordinance No. 667, enacted November 10, 2015.
(Supp. No. 97)**

**CODE OF ORDINANCES
CITY OF
TRUTH OR CONSEQUENCES, NEW MEXICO**

Adopted, July 13, 1992
Effective, August 1, 1992

Published in 1992 by Order of the City Commission



OFFICIALS
of the
CITY OF
TRUTH OR CONSEQUENCES, NEW MEXICO
AT THE TIME OF THIS CODIFICATION

Elmer E. Darr
Mayor

Stephen Janos, Mayor Pro Tem
Bobby J. Allen

Peggy "Cookie" Johnson

Freddie Torres

City Commission

Walter C. Armijo

City Manager

Jay Rubin

City Attorney

Evelyn B. Renfro

City Clerk

CURRENT OFFICIALS

of the

CITY OF

TRUTH OR CONSEQUENCES, NEW MEXICO

Trey Campbell

Mayor

Lois Reafer-Black, Mayor Pro Tem

Scott Eckman

Ronald Sullivan

Freddie Torres

City Commission

Evelyn B. Renfro

City Manager

Jay Rubin
City Attorney

Kathleen A. Terrazas
City Clerk

PREFACE

This Code constitutes a complete recodification of the general and permanent ordinances of the City of Truth or Consequences, New Mexico.

Source materials used in the preparation of the Code were the 1962 Code, as supplemented through January 1, 1990, and ordinances subsequently adopted by the City Commission. The source of each section is included in the history note appearing in parentheses at the end thereof. The absence of such a note indicates that the section is new and was adopted for the first time with the adoption of the Code. By use of the comparative tables appearing in the back of this Code, the reader can locate any section of the 1962 Code, as supplemented, and any subsequent ordinance included herein.

The chapters of the Code have been conveniently arranged in alphabetical order, and the various sections within each chapter have been catchlined to facilitate usage. Notes which tie related sections of the Code together and which refer to relevant state law have been included. A table listing the state law citations and setting forth their location within the Code is included at the back of this Code.

Numbering System

The numbering system used in this Code is the same system used in many state and local government codes. Each section number consists of two parts separated by a dash. The figure before the dash refers to the chapter number, and the figure after the dash refers to the position of the section within the chapter. Thus, the second section of Chapter 1 is numbered 1-2, and the first section of Chapter 4 is 4-1. Under this system, each section is identified with its chapter, and at the same time new sections or even whole chapters can be inserted in their proper place by using the decimal system for amendments. For example, if new material consisting of one section that would logically come between sections 3-1 and 3-2 is desired to be added, such new section would be numbered 3-1.5. New chapters may be included in the same manner. If the new material is to be included between Chapters 12 and 13, it will be designated as Chapter 12.5. Care should be taken that the alphabetical arrangement of chapters is maintained when including new chapters. New articles and new divisions may be included in the same way or, in the case of articles, may be placed at the end of the chapter embracing the subject, and, in the case of divisions, may be placed at the end of the article embracing the subject. The next successive number shall be assigned to the new article or division.

Index

The index has been prepared with the greatest of care. Each particular item has been placed under several headings, some of which are couched in lay phraseology, others in legal terminology, and still others in language generally used by local government officials and employees. There are numerous cross references within the index itself which stand as guideposts to direct the user to the particular item in which the user is interested.

Looseleaf Supplements

A special feature of this publication is the looseleaf system of binding and supplemental servicing of the publication. With this system, the publication will be kept up-to-date. Subsequent amendatory legislation will be properly edited, and the appropriate page or pages affected will be reprinted. These new pages will be distributed to holders of copies of the publication, with instructions for the manner of inserting the new pages and deleting the obsolete pages.

Keeping this publication up-to-date at all times will depend largely upon the holder of the publication. As revised sheets are received, it will then become the responsibility of the holder to have the amendments inserted according to the attached instructions. It is strongly recommended by the publisher that all such amendments be inserted immediately upon receipt to avoid misplacing them and, in addition, that all deleted pages be saved and filed for historical reference purposes.

Acknowledgments

This publication was under the direct supervision of Jan Shekitka, Supervising Editor, and Robert MacNaughton, Editor, of the Municipal Code Corporation, Tallahassee, Florida. Credit is gratefully given to the other members of the publisher's staff for their sincere interest and able assistance throughout the project.

The publisher is most grateful to Mr. Jay Rubin, City Attorney, and Ms. Evelyn B. Renfro, City Clerk, for their cooperation and assistance during the progress of the work on this publication. It is hoped that their efforts and those of the publisher have resulted in a Code of Ordinances which will make the active law of the city readily accessible to all citizens and which will be a valuable tool in the day-to-day administration of the city's affairs.

MUNICIPAL CODE CORPORATION
Tallahassee, Florida

ADOPTING ORDINANCE

ORDINANCE NO. 392

AN ORDINANCE ADOPTING AND ENACTING A NEW CODE FOR THE CITY OF TRUTH OR CONSEQUENCES; PROVIDING FOR THE REPEAL OF CERTAIN ORDINANCES NOT INCLUDED THEREIN; PROVIDING A PENALTY FOR THE VIOLATION THEREOF; PROVIDING FOR THE MANNER OF AMENDING SUCH CODE; AND PROVIDING WHEN SUCH CODE AND THIS ORDINANCE SHALL BECOME EFFECTIVE.

BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF TRUTH OR CONSEQUENCES:

Section 1. The Code entitled "City Code, Truth or Consequences, New Mexico," published by Municipal Code Corporation, consisting of Chapters 1 through 14, each inclusive, is adopted.

Section 2. All ordinances of a general and permanent nature enacted on or before November 12, 1991, and not included in the Code or recognized and continued in force by reference therein, are repealed.

Section 3. The repeal provided for in Section 2 hereof shall not be construed to revive any ordinance or part thereof that has been repealed by a subsequent ordinance that is repealed by this ordinance.

Section 4. Unless another penalty is expressly provided, every person convicted of a violation of any provision of the Code or any ordinance, rule or regulation adopted or issued in pursuance thereof, shall be punished by a fine of not more than \$500.00 or by imprisonment not to exceed 90 days or by both such fine and imprisonment. Each act of violation and each day upon which any such violation shall occur shall constitute a separate offense. The penalty provided by this section, unless another penalty is expressly provided, shall apply to the amendment of any Code section whether or not such penalty is reenacted in the amendatory ordinance. In addition to the penalty prescribed above, the City Commission may pursue other remedies such as abatement of nuisances, injunctive relief and revocation of licenses or permits.

Section 5. Additions or amendments to the Code, when passed in the form as to indicate the intention of the City Commission to make the same a part of the Code shall be deemed to be incorporated in the Code, so that reference to the Code includes the additions and amendments.

Section 6. Ordinances adopted after November 12, 1991, that amend or refer to ordinances that have been codified in the Code, shall be construed as if they amend or refer to like provisions of the Code.

Section 7. This ordinance shall become effective August 1, 1992.

Passed and Adopted by the City of Truth or Consequences this 13th day of July, 1992.

/s/ Fred J. Torres

Mayor

/s/ Kathleen A. Terrazas

Deputy City Clerk

Certificate of Adoption

I hereby certify that the foregoing is a true copy of the ordinance passed at the regular meeting of the City Commission of the City of Truth or Consequences, held on the 13th day of July, 1992.

/s/ Kathleen A. Terrazas

Deputy City Clerk

SUPPLEMENT HISTORY TABLE

The table below allows users of this Code to quickly and accurately determine what ordinances have been considered for codification in each supplement. Ordinances that are of a general and permanent nature are codified in the Code Book and are considered "Included." Ordinances that are not of a general and permanent nature are not codified in the Code Book and are considered "Omitted."

In addition, by adding to this table with each supplement, users of this Code of Ordinances will be able to gain a more complete picture of the Code's historical evolution.

Ord. No.	Date Adopted	Included/ Omitted	Supp. No.
604	12-14-10	Included	75
605	3-22-11	Included	76
606	6-14-11	Included	77
607	8-30-11	Included	78
608	8-30-11	Included	78
609	8-30-11	Included	78
610	8-30-11	Included	78
611	8-30-11	Included	78
612	8-30-11	Included	78
613	8-30-11	Included	78
614	8-30-11	Included	78
615	8-30-11	Included	78
616	8-30-11	Included	78
617	8-30-11	Included	78
618	8-30-11	Included	78
619	9-27-11	Included	79
621	11-22-11	Included	80
622	12-13-11	Omitted	81
624	7-10-12	Omitted	81
626	6-26-12	Included	81
627	8-14-12	Included	81
628	8-14-12	Included	81
630	11-13-12	Included	82
631	11-27-12	Included	83
632	11-27-12	Included	83
633	1- 8-13	Included	84

634	1- 8-13	Included	84
635	4- 9-13	Included	85
35-12/13(Res.)	5-14-13	Omitted	86
637	5-28-13	Included	86
638	8-13-13	Included	87
636	4- 9-13	Included	88
639	9-24-13	Included	88
640	9-24-13	Included	88
641	10-22-13	Omitted	89
642	10-22-13	Included	89
643	10-22-13	Included	89
648	11-12-13	Included	89
649	11-12-13	Included	89
650	11-21-13	Included	90
651	2-11-14	Included	91
644	11-12-13	Included	92
645	11-12-13	Included	92
646	11-12-13	Included	92
647	11-12-13	Included	92
653	4-22-14	Included	92
654	5-13-14	Included	93
655	9- 9-14	Omitted	94
656	11-22-14	Included	94
657	8-14-14	Included	94
658	1-13-15	Omitted	94
662	3-10-15	Included	95
659(1), (2)	1-13-15	Included	96
660	3-10-15	Included	96
661	3-10-15	Omitted	96
663	5-12-15	Included	96
666	7-14-15	Omitted	96
667	11-10-15	Included	97

CODE OF ORDINANCES

Chapter 1 GENERAL PROVISIONS

Sec. 1-1. How Code designated, cited.

Sec. 1-2. Rules of construction, definitions.

- Sec. 1-3. Incorporation by reference.
- Sec. 1-4. Parenthetical and reference matter.
- Sec. 1-5. Catchlines of sections.
- Sec. 1-6. Reference to Code, conflicts.
- Sec. 1-7. Police power extended to City property.
- Sec. 1-8. Supplementation of Code.
- Sec. 1-9. Altering Code.
- Sec. 1-10. General penalty; continuing violations.
- Sec. 1-11. Severability of parts of Code.
- Sec. 1-12. Effect of repeals.
- Sec. 1-13. Certain ordinances not affected by Code.

Sec. 1-1. How Code designated, cited.

The chapters, articles, divisions, and sections embraced in this Code shall constitute and be designated as the Code of Ordinances, City of Truth or Consequences, New Mexico, and may be so cited.

(Code 1962, § 1-1-1)

Authority to codify ordinances, NMSA 1978, § 14-16-4.

Sec. 1-2. Rules of construction, definitions.

In the construction of this Code and of all ordinances of this City, the following rules of construction and definitions shall be observed, unless such construction or definition would be inconsistent with the manifest intent of the City Commission or be repugnant to the context of the provisions or the context clearly requires otherwise.

Generally. All words and phrases shall be construed and understood according to the common and approved usage of language, but technical words and phrases and such others as may have acquired a peculiar and appropriate meaning in the law shall be construed and understood according to such peculiar and appropriate meaning.

City. The City of Truth or Consequences, in the County of Sierra, in the State of New Mexico.

Code. This Code of Ordinances as designated and cited in section 1-1 above.

Commission or City Commission. "Commission" or "City Commission" refers to the governing body of the City of Truth or Consequences.

County. The County of Sierra, in the State of New Mexico.

Delegation of authority. Whenever a provision appears in this Code requiring an officer of the City to do some act or make certain inspections, it is to be construed to authorize such

officer to designate, delegate, and authorize subordinates to perform the required act or make the required inspection, unless the terms of the provision or section expressly designates otherwise.

Easement. A right, liberty, privilege, or advantage without profit which the owner of one parcel of land may have in the lands of another. A right in the owner of one parcel of land, by reason of such ownership, to use the land of another for a special purpose not inconsistent with a general property right in the owner.

Gender. A word importing the masculine gender only shall extend and be applied to females and to firms, partnerships, associations, and corporations as well as to males.

In the City. The words "in the City" or "in this City" shall mean and include any territory within the corporate limits of this City and the police jurisdiction thereof, and any other territory over which regulatory power has been conferred on the City by general or special act, except as otherwise specified.

Joint authority. Words purporting to give authority to three or more officers or other persons shall be construed as giving such authority to a majority of such officers or other persons, unless it is otherwise specifically declared.

Law. Any statute, ordinance, or regulation promulgated by the United States, the state, the county, the City or any agencies thereof, as well as the rules and regulations of other bodies politic that may be appropriate.

Minor. Any person under 18 years of age with respect to all offenses, except those involving alcoholic beverages and firearms.

Month. The word "month" shall mean a calendar month.

Number. Any word importing the singular number shall include the plural, and any word importing the plural number shall include the singular.

Oath. The word "oath" shall be construed to include an affirmation in all cases in which, by law, an affirmation may be substituted for an oath, and in such cases the words "swear" and "sworn" shall be equivalent to the words "affirm" and "affirmed."

Official time standard. Whenever certain hours are named in this Code they shall mean standard time or daylight saving time as may be in current use in the City.

Officials, employees, boards, commissions, etc. Whenever reference is made to officials, employees, boards, commissions, or other agencies of the City by title only, e.g., "Mayor," "Clerk," "Manager," "Chief of Police," etc., they shall be deemed to refer to the officials, employees, boards, commissions, or other agencies of the City of Truth or Consequences.

Or, and. "Or" may be read "and" and "and" may be read "or" if the context of the provision requires it.

Owner. The word "owner" shall, when applied to a building or land, include any part owner, joint owner, tenant in common, tenant in partnership, joint tenant, or tenant by the entirety of the whole or of a part of such building or land.

Person. The word "person" shall include and be applied to a firm, partnership, association, corporation, organization, club, society, group acting as a unit, or body politic and

corporate, as well as to an individual.

Personal property. The words "personal property" shall include money, goods, chattels, evidences of debt, things in action, and any other species of property, except real property.

Preceding, following. The words "preceding" and "following" shall mean next before and next after, respectively.

Property. The word "property" shall include real, personal, and mixed property.

Public place. Any public way, park, cemetery, schoolyard, or open space adjacent thereto; any public lake or stream; and any place or business open to the use of the public in general, open to public view, or to which the public has access.

Public way. Any street, alley, boulevard, parkway, highway, sidewalk, or other public thoroughfare.

Real property. The words "real property" shall include lands, tenements, and hereditaments.

Reasonable time. In all cases where any section of this Code or City ordinance shall require any act to be done in a reasonable time or reasonable notice to be given, such reasonable time or notice shall be deemed to mean such time only as may be necessary for the prompt performance of such duty, or compliance with such notice.

Residence. The place adopted by a person as his place of habitation, and to which, whenever he is absent, he has the intention of returning. When a person eats at one place and sleeps at another, the place where such person sleeps shall be deemed his residence.

Roadway. That portion of a street improved, designed, or ordinarily used for vehicular traffic.

Shall, may. The word "shall" is mandatory, and the word "may" is discretionary.

Sidewalk. The word "sidewalk" shall mean any portion of the street between the curb or the lateral line of the roadway and the adjacent property line intended for the use of pedestrians.

Signature, subscription. The word "signature" or "subscription" shall include a mark when the person cannot write, when his name is written near such mark and is witnessed by a person who writes his own name as witness.

State. The words "the state" or "this state" shall mean the state of New Mexico.

Street. The word "street" shall mean and include public streets, avenues, boulevards, highways, roads, alleys, lanes, viaducts, bridges, public ways and approaches thereto, and other public thoroughfares in the City devoted to public use.

Tenant, occupant. The words "tenant" and "occupant," applied to a building or land, shall mean any person who occupies the whole or a part of such building or land, whether alone or with others.

Tense. Words used in the past or present tense shall include the future as well as the past or present.

Writing, written. The words "writing" and "written" shall include typewriting, printing on paper, and any other mode of representing words and letters.

Year. The word "year" shall mean a calendar year.

(Code 1962, § 1-3-1)

Sec. 1-3. Incorporation by reference.

All standard codes, rules, regulations, and other subject matter in this Code or hereafter properly incorporated by reference, together with subsequent amendments thereto, pursuant to state law, and future incorporations by reference shall be kept and preserved in the office of the City Clerk.

Sec. 1-4. Parenthetical and reference matter.

The matter in parentheses at the end of sections is for information only and is not a part of the Code. Citations to ordinances indicate only the source of such section, and the text may or may not be changed by this Code. Reference matter not in parentheses is for information only and is not a part of this Code.

Sec. 1-5. Catchlines of sections.

The catchlines of the sections of this Code printed in boldface type are intended as mere catchwords to indicate the contents of the sections and shall not be deemed or taken to be titles of such sections, nor as any part of any section, nor, unless expressly so provided, shall they be so deemed when any section, including its catchline, is amended or reenacted.

Sec. 1-6. Reference to Code, conflicts.

In addition to the rules of construction and definitions specified in this chapter, the following rules shall be observed in the construction of this Code:

- (1) All references to chapters, articles, or sections are to the chapters, articles, and sections of this Code unless otherwise specified.
- (2) If the provisions of different chapters of this Code conflict with or contravene each other, the provisions of each chapter shall prevail as to all matters and questions growing out of the subject matter of such chapter.
- (3) If conflicting provisions are found in different sections of the same chapter, the provisions of the section which imposes the greater restriction shall prevail, unless such construction would be inconsistent with the meaning of such chapter.

Sec. 1-7. Police power extended to City property.

The police power of the City is hereby extended to include all lands or property owned or leased by the City or any agency of the city and the general ordinances of the City shall be applicable on such property.

Sec. 1-8. Supplementation of Code.

- (a) By contract or by City personnel, supplements to this Code shall be prepared

and printed whenever authorized or directed by the Commission. A supplement to the Code shall include all substantive parts of permanent and general ordinances passed by the Commission during the period covered by the supplement and all changes made thereby in the Code. The pages of a supplement shall be so numbered that they will fit properly into the Code and will, where necessary, replace pages which have become obsolete or partially obsolete, and the new pages shall be so prepared that, when they have been inserted, the Code will be current through the date of the adoption of the latest ordinance included in the supplement.

- (b) In preparing a supplement to this Code, all portions of the Code which have been repealed shall be excluded from the Code by the omission thereof from reprinted pages.
- (c) When preparing a supplement to this Code, the codifier (meaning the person, agency, or organization authorized to prepare the supplement) may make formal, nonsubstantive changes in ordinances and parts of ordinances included in the supplement, insofar as it is necessary to do so to embody them into a unified Code. For example, the codifier may:
 - (1) Organize the ordinance material into appropriate subdivisions;
 - (2) Provide appropriate catchlines, headings and titles for sections and other subdivisions of the Code printed in the supplement, and make changes in such catchlines, headings and titles;
 - (3) Assign appropriate numbers to sections and other subdivisions to be inserted in the Code and, where necessary to accommodate new material, change existing section or other subdivision numbers;
 - (4) Change the words "this ordinance" or words of the same meaning to "this chapter", "this article", "this division", etc., as the case may be, or to "sections _____
to _____"
(inserting section numbers to indicate the sections of the Code which embody the substantive sections of the ordinance incorporated into the Code); and
 - (5) Make other nonsubstantive changes necessary to preserve the original meaning of ordinance sections or the alphabetical arrangement of new chapters inserted into the Code; but, in no case, shall the codifier make any change in the meaning or effect of ordinance material included in the supplement or already embodied in the Code.

Sec. 1-9. Altering Code.

It shall be unlawful for any person to change or amend by additions or deletions, any part or portion of this Code, or to insert or delete pages, or portions thereof, or to alter or tamper with such Code in any manner whatsoever which will cause the law of the City to be misrepresented thereby; provided, that supplementation of this Code by authorized persons shall be permitted.

Sec. 1-10. General penalty; continuing violations.

- (a) Whenever in this Code or in any ordinance of the City an act is prohibited or is made or declared to be unlawful or an offense or a misdemeanor, or whenever in such Code or ordinance the doing of any act is required or the failure to do any act is declared to be unlawful, and no specific penalty is provided therefor, the maximum penalty for violation of any municipal ordinance shall be as follows:
 - (1) Except for those violations of ordinances described in paragraphs (2) and (3) of this section, a fine of not more than five hundred dollars (\$500.00) or imprisonment for not more than ninety (90) days, or by both such fine and imprisonment in the discretion of the court;
 - (2) For violations of an ordinance prohibiting driving a motor vehicle while under the influence of intoxicating liquor or drugs, a fine of not more than nine hundred ninety-nine dollars (\$999.00) or imprisonment for not more than one hundred seventy-nine (179) days or both; and
 - (3) For violations of an industrial user wastewater pretreatment ordinance as required by the United States Environmental Protection Agency, a fine of not more than nine hundred ninety-nine dollars (\$999.00) a day for each violation.
- (b) Each day any such violation or failure to perform such act shall continue shall constitute a separate offense, unless otherwise specifically provided.
- (c) The imposition of a penalty under the provisions of this Code shall not prevent the revocation or suspension of any license, franchise or permit issued or granted under the provisions of this Code.
- (d) If any violation of this Code is designated as a nuisance under the provisions of this Code, such nuisance may be summarily abated by the City in addition to the imposition of a fine or imprisonment.
- (e) Notwithstanding any other provision of this Code, where a defendant is charged with more than one offense arising out of a single transaction, act or occurrence, the maximum combined sentence that may be imposed for all such offenses shall not exceed 179 days.

(Ord. No. 415, § 1, 6-13-94; Ord. No. 426, § 1, 8-28-95)

Violations of municipal ordinances, NMSA 1978, ch. 38; penalty for violation of ordinances, NMSA 1978, § 14-16-1(c).

Sec. 1-11. Severability of parts of Code.

The sections, paragraphs, sentences, clauses and phrases of this Code are severable, and if any phrase, clause, sentence, paragraph or section of this Code shall be declared invalid, unenforceable or unconstitutional by the valid judgment or decree of a court of competent jurisdiction, such invalidity, unenforceability or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Code.

Sec. 1-12. Effect of repeals.

The repeal of an ordinance or any portion thereof shall not revive any ordinance in force before or at the time the ordinance repealed took effect. The repeal of an ordinance shall not affect any punishment or penalty incurred before the repeal took effect, nor any suit, prosecution or proceeding pending at the time of the repeal, for an offense committed or cause of action arising under the ordinance repealed.

Sec. 1-13. Certain ordinances not affected by Code.

- (a) Nothing in this Code or the ordinance adopting this Code shall affect any ordinance:
 - (1) Promising or guaranteeing the payment of money for the City, or authorizing the issuance of any bonds of the City or any evidence of the City's indebtedness, or any contract or obligation assumed by the City.
 - (2) Granting any right or franchise.
 - (3) Dedicating, naming, establishing, locating, relocating, opening, paving, widening, vacating, etc., any street or public way in the City.
 - (4) Making any appropriation.
 - (5) Levying or imposing taxes.
 - (6) Establishing or prescribing grades in the City.
 - (7) Providing for local improvements and assessing taxes therefor.
 - (8) Dedicating or accepting any plat or subdivision or otherwise relating to subdivisions.
 - (9) Extending or contracting the boundaries of the City.
 - (10) Prescribing the number, classification benefits or compensation of any City officers or employees, not inconsistent herewith.
 - (11) Pertaining to subdivisions, signs or zoning.
 - (12) Adopted for purposes that have been consummated.
 - (13) That is temporary, although general in effect.
 - (14) That is special, although permanent in effect.
- (b) All such ordinances are hereby recognized as continuing in full force and effect to the same extent as if set out at length in this Code. Such ordinances are on file in the City Clerk's office.

Chapter 2 ADMINISTRATION 1

ARTICLE I. IN GENERAL

Sec. 2-1. City limits.

Sec. 2-2. Official newspapers.

Sec. 2-3. Depository designated.

Sec. 2-4. Facsimile.

Sec. 2-5. [Rules and regulations during City Commission, Advisory Board and Commission meetings.]

Secs. 2-6—2-20. Reserved.

Sec. 2-1. City limits.

The corporate limits shall be as shown on the official map on file in the office of the City Clerk.

(Code 1962, § 1-16-1)

Sec. 2-2. Official newspapers.

Any and all newspapers complying with all legal requirements to be a legal publication of this City or county may be designated by the City Commission as a legal newspaper for the City.

(Code 1962, § 1-15-1)

Sec. 2-3. Depository designated.

The official depositories for the various funds of the City shall be determined by the City Commission.

(Code 1962, § 1-14-1; Ord. No. 663, § 1, 5-12-15)

Sec. 2-4. Facsimile.

The facsimile of the Corporate Seal for the City of Truth or Consequences shall be as follows:



Corporate Seal

(Code 1962, § 1-13-1)

Sec. 2-5. [Rules and regulations during City Commission, Advisory Board and

Commission meetings.]

The City Commissioners' desire to abide by State Statutes as well as their own rules while preserving the ability of those in attendance at the City Commission Chambers to reasonable views of whatever Board, Commission or Panel is seated; and the City Commissioners believe the safety of those in attendance at such Board, Commission or Panel is paramount.

It is therefore ordained that permanently attached, manned or non-manned video or audio recording devices may be in the Commission Chambers at locations agreed to by the City Manager or his/her designee. All removable video and audio recording devices will be placed behind the "press table" in such a manner that they do not interfere with the sight area of any visitor chair, except that unobtrusive audio recording devices may not be placed on the "press table." Audio or video recording of any portion of an executive session is not allowed.

(Ord. No. 605, 3-22-11)

Secs. 2-6—2-20. Reserved.

ARTICLE II. COMMISSION

Sec. 2-21. Governing Body.

Sec. 2-22. Meetings.

Sec. 2-23. Terms.

Sec. 2-24. Pecuniary interest.

Sec. 2-25. Compensation.

Sec. 2-26. Legislation.

Sec. 2-27. Ordinances.

Sec. 2-28. Publication of expenditures.

Sec. 2-29. Vacancies.

Secs. 2-30—2-45. Reserved.

Sec. 2-21. Governing Body.

The Governing Body of the City shall consist of a five-member Commission which shall be elected as provided by law and all legal powers of the City shall be vested in such Commission.

(Code 1962, § 1-5-1)

Sec. 2-22. Meetings.

The Commission will hold regular meetings on the second and fourth Tuesday of each month at the hour of 6:00 p.m. or upon such times as the Commission agrees to change the meeting date and proper notice is given to the public. When a regular meeting falls on a legal

holiday, the meeting will be held on the following Wednesday at 6:00 p.m.

(Code 1962, § 1-5-2; Ord. No. 485, § 1, 1-22-01; Ord. No. 550, 1-25-06)

Sec. 2-23. Terms.

The regular term of Commissioners shall be for a period of four years. The term of office for members of the Governing Body shall be staggered so that the terms of office for one-half of the members of the Governing Body will expire every two years, and the election of such Commissioners shall be held on the first Tuesday in March of each even-numbered year. The Governing Body, consisting of the newly elected and qualified officers, and the officers whose terms have not expired or whose successors have not been elected and qualified, must hold an organizational meeting between six and 21 days after the election.

(Code 1962, § 1-5-3)

Sec. 2-24. Pecuniary interest.

No Commissioner shall be interested directly or indirectly in any contract for the purpose of purchasing supplies or materials or the employment of labor.

(Code 1962, § 1-5-4)

Financial interests of municipal officers, NMSA 1978, § 3-10-4.

Sec. 2-25. Compensation.

Each Commissioner shall receive as annual compensation for services such an amount not to exceed the annual compensation paid to a member of the Board of County Commissioners of Sierra County, New Mexico.

(Code 1962, § 1-5-5)

Sec. 2-26. Legislation.

It shall be the duty of the Commission to pass all ordinances and other measures conducive to the welfare of the City, and to do and perform all acts required for the general welfare of the City. The Commission shall create all offices, in addition to those specified in this article, which may become necessary for the proper carrying on of the work of the City. The Commission shall appoint the City Manager as provided for in this article and shall hold him responsible for the proper and efficient administration of the City government.

(Code 1962, § 1-5-6)

Sec. 2-27. Ordinances.

In the passage or adoption of every bylaw, ordinance, and every resolution or order to enter into contract by the Commission, the ayes and nays shall be called and recorded, and to pass or adopt any bylaw, ordinance, or any such resolution or order, a concurrence of a majority of the whole number of members elected to the Commission shall be required.

(Code 1962, § 1-5-7)

Adoption of ordinances, NMSA 1978, § 3-17-4.

Sec. 2-28. Publication of expenditures.

On or before the tenth day of each month there may be published a summary of expenditures made during the preceding calendar month, which shall include a list of the total expenditures during the month, the amount spent in connection with each budgetary item, and a summary of all receipts; provided, however, that the publication mentioned in this section shall be made only at the discretion of the Commission if it shall deem such publication necessary in the public interest.

(Code 1962, § 1-5-8)

Sec. 2-29. Vacancies.

Vacancies in the Commission shall, by majority vote, be filled by the remaining Commissioners for the period intervening between the occurrence of the vacancy and the next regular election.

(Code 1962, § 1-5-9)

Vacancies in Commission, NMSA 1978, § 3-14-9.

Secs. 2-30—2-45. Reserved.

ARTICLE III. OFFICERS AND EMPLOYEES 2

DIVISION 1. GENERALLY

Secs. 2-46—2-70. Reserved.

Secs. 2-46—2-70. Reserved.

DIVISION 2. MAYOR

Sec. 2-71. Selection of Mayor.

Sec. 2-72. Powers.

Sec. 2-73. Meetings.

Secs. 2-74—2-90. Reserved.

Sec. 2-71. Selection of Mayor.

The Governing Body, at the first meeting after the election of Commissioners shall select one of its members as Mayor, who shall act as Mayor until the expiration of his term as Commissioner, or until a successor is appointed and qualified, unless sooner removed by

death, resignation, or removal from office.

(Code 1962, § 1-9-1)

Sec. 2-72. Powers.

The Mayor shall have all the powers and duties of the office of Commissioner, including the right to cast a vote upon all questions considered by the Governing Body. He shall be recognized as the official head of the City for all ceremonial purposes, by the courts for the purpose of civil process, and by the Governor for military purposes.

(Code 1962, § 1-9-2)

Sec. 2-73. Meetings.

The Mayor shall preside at all meetings of the Governing Body and perform such other duties that are consistent with his office as may be imposed by the Governing Body.

(Code 1962, § 1-9-4)

Secs. 2-74—2-90. Reserved.

DIVISION 3. CITY MANAGER

Sec. 2-91. Appointment.

Sec. 2-92. Responsibility.

Sec. 2-93. Authority.

Sec. 2-94. Salary.

Sec. 2-95. Budget and recommendations.

Sec. 2-96. Administration.

Sec. 2-97. Contracts.

Sec. 2-98. Purchases.

Sec. 2-99. Assistant Manager.

Sec. 2-100. Termination of employee incapable of operating motor vehicle.

Sec. 2-101. Termination authority; job performance.

Secs. 2-102—2-120. Reserved.

Sec. 2-91. Appointment.

There shall be employed by the Governing Body a chief administrative officer to be known as City Manager. He shall be employed for an indefinite term and shall hold office until a vacancy is created by death, resignation, or removal by the Governing Body. The City Manager shall be chosen solely on the basis of administrative qualifications, and the choice thereof shall

not be limited by reason of former residence.

(Code 1962, § 1-10-1)

Sec. 2-92. Responsibility.

The City Manager shall be responsible to the Governing Body for the proper administration of all the affairs of the City, and he shall be charged with the enforcement and carrying out of all ordinances, rules, and regulations passed or enacted by the Governing Body.

(Code 1962, § 1-10-2)

Sec. 2-93. Authority.

All persons engaged in the administrative service of the City shall be employed and discharged by the City Manager.

(Code 1962, § 1-10-3)

Sec. 2-94. Salary.

The City Manager shall receive an adequate salary to be fixed by the Governing Body.

(Code 1962, § 1-10-4)

Sec. 2-95. Budget and recommendations.

- (a) The City Manager shall prepare and submit the annual budget and make recommendations to the Governing Body on all matters concerning the welfare of the City, and in all cases, except when clearly undesirable or unnecessary, it shall be the duty of the Governing Body to request the opinion of the City Manager on any proposed measure. The City Manager shall have a seat, but no vote, at every meeting of the Governing Body.
- (b) Each year the City Manager shall include amounts which shall be earmarked and used for emergencies and capital improvements within the annual budget transfers to an agency fund. The portion of the General, Golf Course, Airport, and Cemetery Funds earmarked for this purpose shall be 0.0463 times the total revenue. Total revenue shall be defined as total revenue per the City's annual audited financial statements less any revenue received which is legally restricted in its use by the entity from which it is derived.
- (c) A portion of this fund shall accumulate for emergency purposes exclusively, to a level of no less than \$150,000.00 to be accumulated or reimbursed at the rate of \$20,000.00 per year. Amounts therefrom shall become eligible for capital expenditure. Interest earned in such fund shall not be accounted as part of base but shall also be eligible for capital expenditure.

(Code 1962, § 1-10-5; Ord. No. 398, § 1, 10-13-92)

Sec. 2-96. Administration.

The administration of the affairs of the City shall be divided into as many departments as may be deemed desirable by the Governing Body, each under the charge of a director employed by the City Manager.

(Code 1962, § 1-10-6)

Sec. 2-97. Contracts.

The City Manager shall examine all proposed contracts to which the City may be a party and may sign on behalf of the City any contract authorized by the Governing Body, excepting where the Governing Body directs that some other officer shall do so. It shall

be the duty of the City Manager to see to it that all terms of any contract to which the City is a party are fully performed by all parties thereto.

(Code 1962, § 1-10-7)

Sec. 2-98. Purchases.

The City Manager shall be general purchasing agent of the City and, except where specific provision to the contrary is made by law or by the Governing Body, he shall make all purchases of supplies, materials, and equipment authorized by the Governing Body, in the manner prescribed by and subject to the limitations imposed by law.

(Code 1962, § 1-10-8)

Sec. 2-99. Assistant Manager.

There shall be employed by the City Manager with the approval of the Governing Body an assistant chief administrative officer to be known as the Assistant to the City Manager. He shall be employed upon recommendation of the City Manager under the terms and conditions specified in section 2-91 and shall be responsible for duties delegated by the City Manager, and in the absence of the City Manager shall be Acting Manager and shall fulfill all the functions, duties, and responsibilities of the City Manager.

(Code 1962, § 1-10-9)

Sec. 2-100. Termination of employee incapable of operating motor vehicle.

Notwithstanding any provisions of this Code to the contrary, the City Manager shall be empowered to terminate the employment of any City employee who is incapable of operating a motor vehicle pursuant to the laws of the state and where the position for which he is or has been employed requires that the employee drive a vehicle.

(Code 1962, § 1-10-10)

Sec. 2-101. Termination authority; job performance.

Notwithstanding any provisions of this Code to the contrary, the City Manager shall be empowered to terminate the employment of any City employee who is incapable of adequately performing his job.

(Code 1962, § 1-10-11)

Secs. 2-102—2-120. Reserved.

DIVISION 4. CITY CLERK

Sec. 2-121. Appointment.

Sec. 2-122. Bond required.

Sec. 2-123. Duties.

Sec. 2-124. Ex officio Treasurer.

Sec. 2-125. Salary.

Sec. 2-126. Records custodians.

Secs. 2-127—2-140. Reserved.

Sec. 2-121. Appointment.

There is hereby created the office of Clerk, an executive office of the City. The Clerk shall be employed by the City Manager, and he shall be subject to the City's personnel rules and procedures, and can only be dismissed for cause.

(Code 1962, § 1-6-1; Ord. No. 467, § 1, 6-14-99)

Sec. 2-122. Bond required.

The Clerk, when so appointed, shall qualify and take office by taking the oath required of public officers and shall also give a bond in the penal sum of \$10,000.00, conditioned for the faithful discharge of the duties of such Clerk and the accounting for any and all sums of money that may come into the possession of such Clerk by virtue of the office.

(Code 1962, § 1-6-2)

Sec. 2-123. Duties.

The Clerk shall perform and discharge all the duties of Clerk now prescribed by law, and as shall be fixed from time to time by the provisions of this Code or by the City Manager.

(Code 1962, § 1-6-3; Ord. No. 467, § 2, 6-14-99)

Sec. 2-124. Ex officio Treasurer.

The Clerk shall, in addition to the duties of Clerk, perform the duties of Treasurer, and is hereby designated as ex officio Treasurer of the City and shall be the custodian of the funds of the City and account therefor as may be required by the City Manager. The bond of such Clerk shall be answerable for any and all moneys coming into the hands of such Clerk and as such ex officio Treasurer, and for the lawful disbursement of the funds of the City as may be directed

and authorized by the City Manager.

(Code 1962, § 1-6-4; Ord. No. 467, § 3, 6-14-99)

Sec. 2-125. Salary.

The salary of the Clerk and ex officio Treasurer shall be fixed by the City Manager from time to time.

(Code 1962, § 1-6-5; Ord. No. 467, § 4, 6-14-99)

Sec. 2-126. Records custodians.

- (a) The following are hereby designated as the records custodians for the City:
 - (1) The Municipal Court Clerk as the records custodian for the Truth or Consequences Municipal Court.
 - (2) The Chief of Police as the records custodian for the Truth or Consequences Police Department with the highest ranking senior officer serving as alternate.
 - (3) The City Clerk as the records custodian for all other departments within the City. In the event the City Clerk is unable to serve due to absence or other excusable cause, the following officials shall serve as alternates:
 - a. Deputy City Clerk;
 - b. City Manager;
 - c. Assistant City Manager.
- (b) The records custodians shall serve in accordance with the Inspection of Public Records Act, NMSA 14-2-1 et seq. The duties of the records custodian shall include the following:
 - (1) Receive and respond to requests to inspect public records.
 - (2) Provide proper and reasonable opportunities to inspect public records.
 - (3) Provide reasonable facilities to make or furnish copies of the public records during usual business hours.
- (c) The records custodian may charge a reasonable fee for copying the public records in accordance with the Inspection of Public Records Act.

(Ord. No. 486, § 1, 3-12-01)

Secs. 2-127—2-140. Reserved.

DIVISION 5. CITY ATTORNEY

Sec. 2-141. Appointment.

Sec. 2-142. Suits and actions.

Sec. 2-143. Judgments.

Sec. 2-144. Advice.

Sec. 2-145. Special assessments.

Sec. 2-146. Compensation.

Secs. 2-147—2-165. Reserved.

Sec. 2-141. Appointment.

There is hereby created the office of City Attorney, an executive office of the City. The Attorney shall be appointed by the Governing Body and shall hold office for the duration of his appointment or until such time as he may be removed by the Commission.

(Code 1962, § 1-7-1)

Sec. 2-142. Suits and actions.

The Attorney shall prosecute or defend any and all suits or actions at law or equity to which the City may be a party, or in which it may be interested, or which may be brought against, or by, any officer of the City on behalf of the City, or in the capacity of such person as an officer of the City.

(Code 1962, § 1-7-2)

Sec. 2-143. Judgments.

It shall be the duty of the City Attorney to see to the full enforcement of all judgments or decrees rendered or entered in favor of the City, and all similar interlocutory orders.

(Code 1962, § 1-7-3)

Sec. 2-144. Advice.

The Attorney shall be the legal advisor of the City and shall render advice on all legal questions affecting the City, whenever requested to do so by any City official. Upon request by the Manager or by the Commission, he shall reduce any such opinion to writing.

(Code 1962, § 1-7-4)

Sec. 2-145. Special assessments.

It shall be the duty of the Attorney to see to the completion of all special assessment proceedings and condemnation proceedings.

(Code 1962, § 1-7-5)

Sec. 2-146. Compensation.

The Attorney shall receive such compensation as shall be set from time to time by the

Commission.

(Code 1962, § 1-7-6)

Secs. 2-147—2-165. Reserved.

DIVISION 6. CHIEF OF POLICE 3

Sec. 2-166. Appointment.

Sec. 2-167. Rank.

Sec. 2-168. Duties.

Secs. 2-169—2-185. Reserved.

Sec. 2-166. Appointment.

There is hereby created the office of Chief of Police, an executive office of the City. The Chief of Police shall be appointed by the Manager, and he/she shall hold office for the duration of his/her appointment or until such time as he/she may be removed by the Manager. The Chief of Police holds office at the pleasure of the City Manager and may be removed by the City Manager without the City Manager having to provide notice and hearing prior to removal.

(Code 1962, § 1-8-1; Ord. No. 431-96, § 1, 2-12-96)

Sec. 2-167. Rank.

The Chief of Police shall be head of the Police Department and have supervision over all officers and members thereof. Following him in rank shall be the Captain, the Lieutenants, and the police officers in order of seniority in each group.

(Code 1962, § 1-8-2)

Sec. 2-168. Duties.

The Chief of Police shall keep such records and make such reports concerning the activities of the Police Department as may be required by statute or by the Manager. The Chief of Police shall be responsible for the performance by the Police Department of its functions, and all persons who are members of the Police Department shall serve subject to the orders of the Chief of Police.

(Code 1962, § 1-8-3)

Duties of police officers, NMSA 1978, § 3-13-2.

Secs. 2-169—2-185. Reserved.

DIVISION 7. BUILDING INSPECTOR 4

Sec. 2-186. Appointment.

Sec. 2-187. Duties.

Sec. 2-188. Ex officio Electrical Inspector.

Sec. 2-189. Stop order.

Sec. 2-190. Entry powers.

Sec. 2-191. Penalty.

Secs. 2-192—2-201. Reserved.

Sec. 2-186. Appointment.

There is hereby created the position of Building Inspector who shall be appointed by the Manager. He shall hold office for the duration of his appointment or until such time as he may be removed by the Manager.

(Code 1962, § 1-11-1)

Sec. 2-187. Duties.

It shall be the duty of the Building Inspector to see to the enforcement of all lawful provisions relating to buildings or zoning and to inspect all buildings or structures being erected or altered, as frequently as may be necessary to ensure compliance with this Code.

(Code 1962, § 1-11-2)

Sec. 2-188. Ex officio Electrical Inspector.

The Building Inspector shall act as ex officio Electrical Inspector and shall have all the powers and perform all the duties connected with that office.

(Code 1962, § 1-11-3)

Sec. 2-189. Stop order.

The Building Inspector shall have the power to order all work stopped on construction or alteration or repair of buildings in the City when such work is being done in violation of any provision of this Code relating thereto, or in violation of the zoning regulations. Work shall not be resumed after the issuance of such an order except on the written permission of the Building Inspector; provided that, if the stop order is an oral one, it shall be followed by a written stop order. Such written stop order may be served by any police officer.

(Code 1962, § 1-11-4)

Sec. 2-190. Entry powers.

The Building Inspector shall have the power to make or cause to be made an entry into any building or premises where the work of altering, repairing, or constructing any building or structure is going on, for the purpose of making inspections, at any reasonable hour.

(Code 1962, § 1-11-5)

Sec. 2-191. Penalty.

Any person who shall continue to work in violation of a stop order of the Building Inspector shall be deemed guilty of a misdemeanor.

(Code 1962, § 1-11-6)

Secs. 2-192—2-201. Reserved.

DIVISION 8. THE RETIREE HEALTH CARE ACT

Sec. 2-202. Notification of public hearing.

Sec. 2-203. Inclusion in coverage.

Secs. 2-204, 2-205. Reserved.

Sec. 2-202. Notification of public hearing.

Thirty days prior to public hearing on this ordinance the Retiree Health Care Authority was notified by certified mail of the public hearing on this ordinance.

(Ord. No. 446, § 1, 6-9-97)

Sec. 2-203. Inclusion in coverage.

Pursuant to Section 9(G) of the Act the City of Truth or Consequences determines to be included in coverage under the Retiree Health Care Act.

(Ord. No. 446, § 2, 6-9-97)

Secs. 2-204, 2-205. Reserved.

DIVISION 9. POLITICAL ACTIVISM

Sec. 2-206. Political activities.

Sec. 2-207. Penalty.

Secs. 2-208—2-210. Reserved.

Sec. 2-206. Political activities.

- (a) No City employee shall campaign, distribute literature or solicit political contributions while on the job. City employees will be prohibited from using or authorizing use of any City equipment or property for political campaigning. No City employee shall prohibit the right of another employee to have and express a

personal choice or commitment.

- (b) No City employee shall solicit contributions, votes or assessments for any political party, issue or candidate on City premises, during working hours. No City employee shall solicit contributions, votes or assessments for any political party, issue or candidate while wearing a City uniform or using City equipment. No City employee shall ever be expected, required or coerced to contribute to any campaign.
- (c) No City employee shall purport to represent the City at any political meeting or in political publicity.
- (d) No one shall prohibit any City employee from voting or from exercising their political rights as a private citizen during non-working hours and in compliance with these regulations.
- (e) A City employee who chooses to run and campaign for political office shall take vacation leave or leave without pay if the employee wishes to campaign during working hours. An employee elected to a post may retain City employment after election if the elective post does not present a conflict of interest with City employment in the sole judgment of the City Commission. A City employee contemplating to run for political office should first ask the City Commission for a determination on whether or not that political position will constitute a conflict of interest.
- (f) A City employee that has been successful in attaining a political office must take vacation time or time off without pay when serving the political office in question.
- (g) No person or candidate shall solicit a vote of City employees during those employees' working hours.
- (h) The Federal "Hatch Act" will apply to those City employees who seek a partisan political office as defined by the Act.

(Ord. No. 583, 5-27-08)

Sec. 2-207. Penalty.

Any person found guilty of violating any provisions of this division shall be punished by a fine of not more than \$300.00 or by imprisonment in jail not exceeding 90 days or by both such fine and imprisonment. Each day there is a violation of this division shall constitute a separate offense.

(Ord. No. 583, 5-27-08)

Secs. 2-208—2-210. Reserved.

ARTICLE IV. BOARDS, COMMISSIONS, AND COMMITTEES 5

DIVISION 1. GOLF COURSE ADVISORY BOARD

Sec. 2-211. Board created; members.

Sec. 2-212. Powers and duties.

Sec. 2-213. Meetings.

Sec. 2-214. Vacancies; election of officers.

Sec. 2-215. Reserved.

Secs. 2-216—2-225. Reserved.

Sec. 2-211. Board created; members.

- (a) There is hereby created a Golf Course Advisory Board for the City, consisting of five members, two of which must be female members. From these five members, a chairman, vice chairman and secretary/treasurer will be selected. The initial term for all members shall expire on June 30, 1994. Beyond the initial term, the chairman, vice chairman and secretary/treasurer shall all serve two years and the other two members shall serve one year.
- (b) The members of the Board shall be selected by the City Commission after receiving recommendations from the Board. The Board shall make its recommendations by a vote from its membership. Each term shall expire on June 30, provided, however, that any member of the Board shall continue to hold his office until his successor is appointed and qualified.
- (c) The City Commission shall fill vacancies on the Board. Prior to the filling of any vacancy, the Board shall make a recommendation to the City Commission based upon a majority vote of the Board membership.

(Ord. No. 406, 4-12-93; Ord. No. 456-97, § 3, 5-11-98)

Sec. 2-212. Powers and duties.

- (a) The Board shall make reasonable rules and regulations for the use and care of the facilities under its jurisdiction. Such rules, when adopted, shall not become effective until approved by the City Commission.
- (b) Working with the pro/manager, the Board shall make recommendations to the City Commission concerning the maintenance and supervision of the facilities as well as expenditures to be made in connection with the golf course. Such recommendations shall be made through the City Manager who shall then promptly refer the same to the City Commission.
- (c) The golf course pro/manager, with the assistance of the Board, shall annually, upon the request of the City Manager, prepare and submit a requested budget for the operation of the facilities.
- (d) The Board shall keep records and accounts of all the activities and make reports to the City Manager or to the City Commission upon request.

(Ord. No. 406, 4-12-93; Ord. No. 489, § 1, 3-12-01)

Sec. 2-213. Meetings.

In the performance of their duties and in the exercise of the powers set forth in this Chapter, the Board shall hold meetings at such time and place as may be specified in the notice for such meetings which may be called by the Chairman of the Board, the City Manager or by a majority of the City Commission.

(Ord. No. 406, 4-12-93)

Sec. 2-214. Vacancies; election of officers.

The City Commission may remove members of the Board. Prior to the removal of any officer, the Board shall make a recommendation to the City Commission based upon a majority vote of the Board membership. A chairman, vice chairman and secretary/treasurer shall serve for one calendar year upon being selected by the City Commission.

(Ord. No. 406, 4-12-93)

Sec. 2-215. Reserved.

Editor's note—

Section 1 of Ord. No. 657, adopted Aug. 14, 2014, repealed § 2-215, which pertained to term limits, and derived from Ord. No. 643, § 1, adopted Oct. 22, 2013.

Secs. 2-216—2-225. Reserved.

DIVISION 2. PLANNING AND ZONING COMMISSION 6

Sec. 2-226. Creation.

Sec. 2-227. Vacancies.

Sec. 2-228. Oath; organization.

Sec. 2-229. Meetings.

Sec. 2-230. Expenditures; duties.

Sec. 2-231. Reserved.

Secs. 2-232—2-245. Reserved.

Sec. 2-226. Creation.

There is hereby created a Planning and Zoning Commission consisting of five members to be appointed by the Governing Body, whose terms shall be for two years, except that three of the first appointees shall serve for two years and two for one year. There after all terms of the Planning and Zoning Commission members shall be for two years, so that there will be overlapping tenures of office. Each term shall expire on June 30, provided, however, that any member of the Board shall continue to hold his office until his successor is appointed and

qualified.

(Code 1962, § 2-1-1; Ord. No. 456-97, § 1, 5-11-98)

Sec. 2-227. Vacancies.

Vacancies in the office of Planning and Zoning Commission shall be filled by the City Commission. The City Commission shall have the authority to remove any member for cause, which cause shall be stated in writing and made a part of the hearing.

(Code 1962, § 2-1-2)

Sec. 2-228. Oath; organization.

The Planning and Zoning Commission shall take and subscribe to an oath of office within ten days after the notice of appointment. It shall elect a Chairman from among its members for a term of one year with eligibility for reelection and may fill such other offices as it may create, in the manner provided by the rules of the Planning and Zoning Commission.

(Code 1962, § 2-1-3)

Sec. 2-229. Meetings.

The Planning and Zoning Commission shall hold at least one regular meeting each month and shall adopt rules for the meetings and for the transaction of business. It shall keep a record of the resolutions, transactions, findings, and determinations, which shall be kept at City Hall and shall be a public record.

(Code 1962, § 2-1-4)

Sec. 2-230. Expenditures; duties.

The Planning and Zoning Commission shall serve without compensation. It shall incur no expenditure of money without previous authorization of the City Commission. It shall take over the duties of the Zoning Board, which is hereby abolished, and it shall perform all the activities and duties required by state law.

(Code 1962, § 2-1-5)

Sec. 2-231. Reserved.

Editor's note—

Section 1 of Ord. No. 657, adopted Aug. 14, 2014, repealed § 2-231, which pertained to term limits, and derived from Ord. No. 643, § 1, adopted Oct. 22, 2013.

Secs. 2-232—2-245. Reserved.

DIVISION 3. LIBRARY BOARD 7

Sec. 2-246. Created.

Sec. 2-247. Appointment.

Sec. 2-248. Powers and duties.

Sec. 2-249. Return of borrowed materials to Public Library.

Sec. 2-250. Reserved.

Secs. 2-251—2-270. Reserved.

Sec. 2-246. Created.

There is hereby created the Library Board as an advisory board of the City.

(Code 1962, § 2-6-1; Ord. No. 421, § 1, 12-12-94)

Sec. 2-247. Appointment.

The Library Board, referred to in this division as the Board, shall consist of five members, to be appointed by the City Commission. Each member shall be appointed for a period of three years. The original members appointed will serve staggered terms, and thereafter the terms of the members of the Board shall run for three years. The Chair of the Board will be elected by the appointed five members. Each term shall expire on June 30, provided, however, that any member of the Board shall continue to hold his office until his successor is appointed and qualified.

(Ord. No. 421, § 2, 12-12-94; Ord. No. 456-97, § 1, 5-11-98)

Sec. 2-248. Powers and duties.

- (a) The Board shall make recommendations to the City Commission concerning general rules and policies of the public library. Such recommendations shall be made through the City Manager who shall then refer the same promptly to the City Commission.
- (b) The Board shall, in conjunction with the Library Director, prepare and recommend an annual budget for the public library.
- (c) The Board shall endeavor to establish a comprehensive long-term plan establishing with the requirements of the public library over a ten-year period, with revisions as appropriate. The plan shall be submitted to the City Commission for inclusion in the City's long-term planning efforts.
- (d) The Board shall not be authorized or empowered to expend any funds of the City or create any indebtedness on behalf of the City without the prior approval of the City Commission.
- (e) The Board shall meet no fewer than ten times per year on a regular date to be designated by the Board; provided, however; that a special meeting may be called at any time by written request to the Chair of the Board by three members and personally served to the Library Director or on call by the Chair of the Board with the written consent of all members of the Board. All meetings whether

regular or special shall be open to the public as provided by the laws of the state and subject to the requirements of the Open Meetings Resolution of the City. Three members shall constitute a quorum, and no action can be taken in the absence of a quorum present.

- (f) A vacancy shall be deemed to exist upon the resignation of any member of the Board, by death or inability to act, or by removal of any member by a simple majority of the City Commission. Any member who fails to attend three consecutive, regular meetings of the Board, without excuse, shall be deemed to have resigned.
- (g) The members of the Board shall serve without compensation.
- (h) The Board may delegate the preparation of reports of its activities to the Library Director who shall submit said reports and any recommendations for consideration by the Commission to the City Manager monthly.

(Ord. No. 421, § 3, 12-12-94; Ord. No. 487, § 1, 3-12-01)

Sec. 2-249. Return of borrowed materials to Public Library.

- (a) It shall be unlawful for any person to detain, or fail to return to the Public Library, any book, magazine, newspaper, audio or video record, microform, equipment, or any other Library property in the custody of or belonging to the Public Library, or borrowed from any other Library through interlibrary loan services, after the date on which such person should have returned the property in accordance with the rules of such Library.
- (b) It shall be unlawful to give a fictitious or incorrect name or address at the Public Library in order to obtain possession or use of any property in the custody of or belonging to the Public Library.
- (c) It shall be unlawful for any person to cut, write upon, injure, deface, tear, damage, or destroy any book, magazine, newspaper, audio or video record, microform, equipment, or other property in the custody of or belonging to the Public Library without the consent of the Library.
- (d) It shall be unlawful for any person to remove any book, magazine, newspaper, audio or video record, microform, equipment, or other property in the custody of or belonging to the Public Library without the consent of the Library.
- (e) It shall be unlawful for any person to pay for any Library fines, fees, or services with a check drawn on a closed account or one with insufficient funds. Persons so doing shall be liable for any and all collection fees incurred by the Library.
- (f) A parent or guardian shall be responsible for Library material borrowed by their children under 18 years of age.
- (g) The Librarian, or a duly authorized representative, shall promptly notify by mail any person who is believed to have violated the rules and regulations of the Library or of this division, setting forth the violation complained of, and enter the information upon a record for this purpose. The person responsible shall correct the violation or make appropriate restitution within 15 working days. Should such correction not be made on time, the Librarian shall send by certified mail a

standard notice of violation specifying the violation and setting a final date for compliance, which shall be more than 15 working days thereafter. A monthly report shall be filed with the Municipal Court Clerk of the violations and notices.

- (h) Any person convicted of violating any of the provisions of this section shall be punished in accordance with section 1-10.

(Code 1962, § 2-6-8; Ord. No. 421, § 4, 12-12-94)

Sec. 2-250. Reserved.

Editor's note—

Section 1 of Ord. No. 657, adopted Aug. 14, 2014, repealed § 2-250, which pertained to term limits, and derived from Ord. No. 643, § 1, adopted Oct. 22, 2013.

Secs. 2-251—2-270. Reserved.

DIVISION 4. PUBLIC UTILITY ADVISORY BOARD 8

Sec. 2-271. Definitions.

Sec. 2-272. Established.

Sec. 2-273. Appointment.

Sec. 2-274. Powers and duties.

Sec. 2-275. Reserved.

Secs. 2-276—2-290. Reserved.

Sec. 2-271. Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Public utilities means the electrical utility, the water utility, and the sewer and garbage facilities furnished by the City.

(Code 1962, § 2-8-3)

Definitions and rules of construction generally, § 1-2.

Sec. 2-272. Established.

There is hereby established a Public Utility Advisory Board, referred to in this division as the Board, consisting of five members. In addition to the five members, the City Manager shall be an ex officio member. The Chairman of the Board will be elected by the appointed five members.

(Code 1962, § 2-8-1)

Sec. 2-273. Appointment.

The members of the Board with the exception of the City Manager shall be appointed by the City Commission. The original members shall serve staggered terms and thereafter there shall be appointed by the City Commission members of the Board who shall serve for a two-year term. The terms of the members of the Board shall expire on June 30; provided, however, that any member of the Board shall continue to hold his office until his successor is appointed and qualified. The City Commission shall appoint at least one person with an electrical utility background, one person with a financial background, and a general contractor as members of the Board. If such qualified persons are not available or willing to serve, then the Commission shall appoint other competent persons to serve.

(Code 1962, § 2-8-2)

Sec. 2-274. Powers and duties.

- (a) The Board may recommend general rules and policies of the municipal utility systems. The Board shall recommend rates and charges for electric power and energy, water or sewer utility service, or garbage collection service furnished by the City and shall recommend conditions of service applicable to the furnishing of such utilities.
- (b) The Board may recommend line extension policies to be followed by the municipal electric utility system and extension policies for municipal water and sewer utility services.
- (c) The Board may prepare and recommend an annual budget for the utility systems of the City conforming to the requirements of the ordinances of the City authorizing the issuance of electric, water, and sewer revenue bonds.
- (d) The Board may review from time to time all the rates and charges for electric, water, sewer, and garbage services furnished by the City and may submit the results of such review to the City Commission.
- (e) The Board may recommend to the City Commission any major extensions and improvements, not otherwise provided for by the City Commission, required to be made to or in connection with the utility systems, and not otherwise provided for in the annual budget. The Board shall include in such recommendations any engineering studies and other data obtained or prepared in connection with such proposed extensions and improvements.
- (f) The Board may endeavor to establish a comprehensive plan establishing the requirements of the City's utilities systems over the next ten-year period.
- (g) The Board may establish a procedure for setting rates for the utilities of the City which will guarantee a return sufficient to maintain the utility systems, expand them to meet growing needs, improve them to function in a modern manner, and guarantee a reasonable return on the City's investment therein.
- (h) The Board is authorized to use the facilities of the City offices and shall have access to all records pertaining to the utilities of the City; provided, however, the Board shall not be authorized or empowered to expend any funds of the City or

create any indebtedness on behalf of the City without the prior approval of the Commission.

- (i) The Board shall meet regularly at least once each month on a regular date to be designated by the Board; provided, however, that a special meeting may be called at any time by written request to the Chairman of the Board by three members or on call by the Chairman of the Board with the written consent of all members of the Board. All meetings whether regular or special shall be open to the public as provided by the laws of the state. Three members shall constitute a quorum, and no action can be had in the absence of a quorum present.
- (j) A vacancy shall be deemed to exist upon the resignation of any member of the Board, by his death or inability to act, or by removal of any member by four-fifths vote of the City Commission. Any member who fails to attend three consecutive, regular meetings of the Board, without excuse, shall be deemed to have resigned his office.
- (k) The members of the Board shall serve without compensation.
- (l) The Board shall appoint one of its members as Assistant Chairman and a Secretary to act as such at the pleasure of the Board. The Board shall adopt rules and regulations governing its proceedings.
- (m) The Board shall prepare reports of its activities and submit these reports and any recommendations for consideration by the Commission at least bimonthly at the second Commission meeting in the reporting month.
- (n) The Commission may furnish such administrative and clerical assistance to the Board as is reasonably necessary to accomplish its function.

(Code 1962, § 2-8-4)

Sec. 2-275. Reserved.

Editor's note—

Section 1 of Ord. No. 657, adopted Aug. 14, 2014, repealed § 2-275, which pertained to term limits, and derived from Ord. No. 643, § 1, adopted Oct. 22, 2013.

Secs. 2-276—2-290. Reserved.

DIVISION 5. AIRPORT ADVISORY BOARD

Sec. 2-291. Board created; members.

Sec. 2-292. Powers and duties.

Sec. 2-293. Meetings.

Sec. 2-294. Vacancies; election of officers.

Sec. 2-295. Reserved.

Secs. 2-296—2-310. Reserved.

Sec. 2-291. Board created; members.

There is hereby created a Municipal Airport Advisory Board consisting of five members. The members of the Board shall be appointed by the City Commission. The original members shall serve staggered terms and thereafter there shall be appointed by the City Commission members of the Board who shall each serve two-year terms. The terms of the members of the Board shall expire on June 30; provided, however, that any member of the Board shall continue to hold his office until his successor is appointed and qualified. Members of the Board shall make recommendations to the City Manager and the Commission for the operation of the Municipal Airport.

(Code 1962, § 2-12-1; Ord. No. 456-97, § 4, 5-11-98)

Sec. 2-292. Powers and duties.

- (a) The Board may make reasonable rules and regulations for the utilization and care of the Airport facilities. Such rules, when adopted, shall not become effective until approved by the Commission.
- (b) The Board shall make recommendations to the City Commission through the City Manager concerning the maintenance and supervision of the Airport facilities as well as expenditures to be made in connection with such facilities. Such recommendations shall be made through the City Manager who shall then promptly refer the same to the City Commission.
- (c) The Board shall keep records and accounts of all its activities and make reports to the City Manager or to the Commission upon request.

(Code 1962, § 2-12-2; Ord. No. 490, § 1, 3-26-01)

Sec. 2-293. Meetings.

In the performance of its duties and in the exercise of the powers set forth in this division, the Board shall hold meetings at least quarterly or at such other times as may be deemed necessary, at such time and place as may be specified in the notice for such meetings which may be called by the Chairman of the Board, the City Manager, or by a majority of the Commission.

(Code 1962, § 2-12-3)

Sec. 2-294. Vacancies; election of officers.

Members of the Board may be removed by a majority vote of the total membership of the Commission. Vacancies on the Board shall be filled by the Commission. The Board shall elect a Chairman, Vice-Chairman, and Secretary.

(Code 1962, § 2-12-4)

Sec. 2-295. Reserved.

Editor's note—

Section 1 of Ord. No. 657, adopted Aug. 14, 2014, repealed § 2-295, which pertained to term limits, and derived from Ord. No. 643, § 1, adopted Oct. 22, 2013.

Secs. 2-296—2-310. Reserved.

DIVISION 6. INDUSTRIAL AND ECONOMIC DEVELOPMENT ADVISORY BOARD

Sec. 2-311. Established.

Sec. 2-312. Appointment.

Sec. 2-313. Duties of board.

Sec. 2-314. Reserved.

Secs. 2-315—2-330. Reserved.

Sec. 2-311. Established.

There is hereby established an Industrial and Economic Development Advisory Board, referred to in this division as the Board, consisting of five members. In addition to the five members, the City Manager shall be an ex officio member. The Chairman of the Board will be elected by the appointed five members.

(Code 1962, § 2-13-1)

Sec. 2-312. Appointment.

The members of the Board, with the exception of the City Manager, shall be appointed by the Commission. The original members of the Board shall serve staggered terms, and thereafter there shall be appointed by the Commission, members of the Board who shall serve for a two-year term. The terms of the members of the Board shall expire on June 30; provided, however, that any member of the Board shall continue to hold his office until his successor is appointed and qualified.

(Code 1962, § 2-13-2; Ord. No. 456-97, § 2, 5-11-98)

Sec. 2-313. Duties of board.

- (a) The Board shall recommend an annual budget for the purpose of achieving industrial and economic development within and for the community and such expenditures as may be necessary and appropriate to achieve those purposes.
- (b) The Board shall endeavor to establish a comprehensive plan for industrial and economic development to include long-range development plans as well as those that would be of more immediate benefit to the community.
- (c) The Board is authorized to utilize the facilities of the City offices and shall have access to those records necessary to carry out the functions set forth in this

division; provided, however, the Board shall not be authorized or empowered to expend any funds of the City or create any indebtedness on behalf of the City without the prior approval of the Commission.

- (d) The Board shall meet regularly at least once each month on a regular date to be designated by the Board; provided, however, that a special meeting may be called at any time by written request to the Chairman of the Board by three members, or on call by the Chairman of the Board with the written consent of all members of the Board. All meetings, whether regular or special, shall be open to the public as provided by the laws of the state. Three members shall constitute a quorum, and no action can be had in the absence of a quorum present.
- (e) A vacancy shall be deemed to exist upon the resignation of any member of the Board, by his death or inability to act, or by removal of any member by four-fifths vote of the Commission. Any member who fails to attend three consecutive regular meetings of the Board, without excuse, shall be deemed to have resigned his office.
- (f) The members of the Board shall serve without compensation.
- (g) The Board shall appoint one of its members as Assistant Chairman and a Secretary to act as such at the pleasure of the Board. The Board shall adopt rules and regulations governing its proceedings.
- (h) The Board shall prepare reports of its activities and submit these reports and any recommendations for consideration by the Commission at least quarterly at the second Commission meeting in the reporting month.
- (i) The Commission shall furnish such administrative and clerical assistance to the Board as is reasonably necessary to accomplish its function.

(Code 1962, § 2-13-3)

Sec. 2-314. Reserved.

Editor's note—

Section 1 of Ord. No. 657, adopted Aug. 14, 2014, repealed § 2-314, which pertained to term limits, and derived from Ord. No. 643, § 1, adopted Oct. 22, 2013.

Secs. 2-315—2-330. Reserved.

DIVISION 7. CONVENTION AND ENTERTAINMENT BOARD

Sec. 2-331. Board created; members.

Sec. 2-332. Employment of personnel.

Sec. 2-333. Meetings.

Sec. 2-334. Removal of members; vacancies.

Sec. 2-335. Organization and officers.

Sec. 2-336. Reserved.

Secs. 2-337—2-350. Reserved.

Sec. 2-331. Board created; members.

There is hereby created a Convention and Entertainment Board for the City consisting of five members who shall serve a term of three years. On the initial Board, two members will be appointed for one year; two members will be appointed for two years; and one member will be appointed for three years. Vacancies on the Board shall be filled in the same manner as the original appointments are made. The members of the Board shall be appointed by the City Commission, shall have jurisdiction over the Convention Center, Recreation Center, and Civic/Activities Center for the purpose of recommending to the Commission programs to be carried on and carried out at these and other places or installations as may be specifically designated from time to time by the Commission. Each term shall expire on June 30, provided, however, that any member of the Board shall continue to hold his office until his successor is appointed and qualified.

- (1) The Board shall recommend reasonable rules and regulations for the use and care of the facilities under its jurisdiction. Such rules, when adopted, shall not become effective until approved by the Commission.
- (2) The Board shall make recommendations to the Commission concerning the maintenance, supervision, and management of the facilities under its jurisdiction as well as concerning expenditures to be made in connection with such facilities. Further, the Board shall make recommendation concerning policies, on usage, fees, and all aspects of the operation of facilities to ensure that they remain attractive, are utilized by the broadest possible numbers of people of all ages, and provide the maximum possible overall economic benefit to the area through meetings, conventions, and various forms of entertainment and recreation.
- (3) The Board shall annually, upon the request of the City Manager, prepare and submit a requested budget for convention and entertainment activities which will be carried on at the facilities under the Board's jurisdiction.
- (4) The Board shall keep records and accounts of all activities of the Board and make reports to the City Manager or to the Commission whenever requested.

(Code 1962, § 2-14-1; Ord. No. 456-97, § 1, 5-11-98)

Sec. 2-332. Employment of personnel.

The Board shall make recommendations to the City Manager concerning employment of personnel to conduct and direct the activities in and the use of the facilities under its jurisdiction.

(Code 1962, § 2-14-2)

Sec. 2-333. Meetings.

In the performance of its duties and in the exercise of the powers set forth in this division, the Board shall hold at least one regular meeting each month in the Commission

chambers of the City Hall or at the Civic and Activities Center. Meetings, with the time and place of the meeting specified, may be called by the Chairman of the Board or by majority of the Commission.

(Code 1962, § 2-14-3)

Sec. 2-334. Removal of members; vacancies.

Members of the Board may be removed by a majority vote of the total members of the Commission. Vacancies on the Board shall be filled by the Commission.

(Code 1962, § 2-14-4)

Sec. 2-335. Organization and officers.

The Board shall elect a Chairman, Vice-Chairman, and Secretary. The Commission shall furnish such administrative and clerical assistance to the Board as is reasonably necessary to carry out its functions.

(Code 1962, § 2-14-5)

Sec. 2-336. Reserved.

Editor's note—

Section 1 of Ord. No. 657, adopted Aug. 14, 2014, repealed § 2-336, which pertained to term limits, and derived from Ord. No. 643, § 1, adopted Oct. 22, 2013.

Secs. 2-337—2-350. Reserved.

DIVISION 8. PERSONNEL BOARD

Sec. 2-351. Creation.

Sec. 2-352. Composition; appointment of members; terms of members.

Sec. 2-353. Filling vacancies.

Sec. 2-354. Removal of members.

Sec. 2-355. Selection of officers; quorum.

Sec. 2-355.1. Reserved.

Sec. 2-351. Creation.

There is hereby created a Personnel Board.

(Ord. No. 379, 3-25-91)

Sec. 2-352. Composition; appointment of members; terms of members.

The Personnel Board shall be composed of five regular members and two alternate members to be selected as follows:

- (1) Three regular members are to be appointed by the Mayor with the consent of the Commission. These initial Mayor-appointed members shall be appointed for periods of one, two and three years respectively; thereafter, members appointed to serve in these positions shall serve for a period of five years. One alternate member also is to be appointed by the Mayor with the consent of the City Commission. The alternate member shall serve for a term of five years and shall attend Board meetings in the event of an emergency absence of a regular Board member who had been appointed pursuant to this section. Each term shall expire on June 30, provided, however, that any member of the Board shall continue to hold his office until his successor is appointed and qualified.
- (2) The remaining two regular members and one alternate member shall be chosen by the employees covered by this division and shall consist of one employee below the level of supervisor and one employee at the supervisor level or higher, to exclude the Chief of Police, to serve initial terms of four and five years respectively. After the completion of these initial terms, the newly-elected employee and department head shall serve terms of five years each. These selected members shall serve only so long as they remain employees of the City and occupy positions in accordance with the provisions of their appointment. One alternate member also is to be appointed by the employees covered by this division. The alternate member shall serve for a term of five years and attend Personnel Board meetings in the event of an emergency absence of a regular Board member who had been appointed pursuant to this section.

(Ord. No. 379, 3-25-91; Ord. No. 456-97, § 1, 5-11-98)

Sec. 2-353. Filling vacancies.

Vacancies on the Personnel Board shall be filled by the appointing or selecting authority in the same manner as the original member in such position was appointed or selected to serve and such appointee or selectee shall serve either for the remainder of the term of the position vacated or for five years if the appointment or selection of the new member corresponds with the expiration of a previous term.

(Ord. No. 379, 3-25-91)

Sec. 2-354. Removal of members.

Any member of the Personnel Board may be removed by a majority vote of the Commission for cause after a public hearing and may be suspended immediately by the Mayor for cause pending such hearing.

(Ord. No. 379, 3-25-91)

Sec. 2-355. Selection of officers; quorum.

- (a) The Personnel Board shall annually select a Chairman by majority vote of the full Personnel Board, such Chairman to be selected from the Mayor-appointees to

the Board.

- (b) The Personnel Board shall annually select a Vice-Chairman by majority vote of the full board, such Vice-Chairman to be selected from the Mayor-appointees to the board.
- (c) A majority, being three members of the board, shall constitute a quorum of the Personnel Board.

(Ord. No. 379, 3-25-91)

Sec. 2-355.1. Reserved.

Editor's note—

Section 1 of Ord. No. 657, adopted Aug. 14, 2014, repealed § 2-355.1, which pertained to term limits, and derived from Ord. No. 643, § 1, adopted Oct. 22, 2013.

DIVISION 8.5 RECREATION ADVISORY BOARD

Sec. 2-356. Board created; members.

Sec. 2-357. Powers and duties.

Sec. 2-358. Meetings.

Sec. 2-359. Vacancies; election of officers.

Sec. 2-360. Reserved.

Sec. 2-356. Board created; members.

There is hereby created a Recreation Advisory Board consisting of seven members. Two of the members shall be the City Recreation Director and the City Parks Director. Neither the City Recreation Director nor the City Park Director shall be voting members. The other five members of the Board shall be appointed by the City Commission and shall be voting members. These five original members shall serve staggered terms and thereafter there shall be appointed by the City Commission members of the Board who shall each serve two-year terms. The terms of the members of the Board (with the exception of City Recreation Director and City Park Director) shall expire on June 30; provided, however, that any member of the Board shall continue to hold his office until his successor is appointed and qualified. Members of the Board shall make recommendations to the City Manager and the Commission for City supported recreation opportunities and concerning City recreation facilities.

(Ord. No. 474, § 1, 7-10-00)

Sec. 2-357. Powers and duties.

- (a) The Board shall make recommendations to the City Commission concerning the facilities and recreation programs within its jurisdiction including budget and rates to be charged in connection with such facilities and programs. Specifically excluded from its jurisdiction are the Municipal Golf Course and Municipal

Airport. Such recommendations shall be made through the City Manager who shall then refer the same promptly to the City Commission.

- (b) The Board shall keep records and accounts of all its activities and make reports to the City Manager or to the Commission upon request.

(Ord. No. 474, § 2, 7-10-00; Ord. No. 488, § 1, 3-12-01)

Sec. 2-358. Meetings.

In the performance of its duties and in the exercise of the powers set forth in this division, the Board shall hold meetings at least quarterly or at such other times as may be deemed necessary, at such time and place as may be specified in the notice for such meetings which may be called by the Chairman of the Board, the City Manager, or by a majority of the Commission. A quorum requires at least three of the five voting members of the Board to be present. In order for a vote to be valid on a particular issue, a quorum must actually vote regarding the measure. For purposes of clarification, a member who abstains or recuses himself from voting is not deemed to have voted on that particular issue.

(Ord. No. 474, § 3, 7-10-00)

Sec. 2-359. Vacancies; election of officers.

Members of the Board may be removed by a majority vote of the total membership of the Commission. Vacancies on the Board shall be filled by the Commission. The Board shall elect a Chairman, Vice-Chairman, and Secretary.

(Ord. No. 474, § 4, 7-10-00)

Sec. 2-360. Reserved.

Editor's note—

Section 1 of Ord. No. 657, adopted Aug. 14, 2014, repealed § 2-360, which pertained to term limits, and derived from Ord. No. 643, § 1, adopted Oct. 22, 2013.

DIVISION 9. LODGER'S TAX ADVISORY BOARD 9

Sec. 2-361. Board created; members.

Sec. 2-362. Appointment; vacancy; term.

Sec. 2-362.1. Reserved.

Sec. 2-363. Duties.

Sec. 2-364. Meetings.

Sec. 2-361. Board created; members.

There is hereby created a Lodger's Tax Advisory Board consisting of five members, two of whom shall be owners or operators of lodgings subject to the occupancy tax within the

municipality, two of whom shall be owners or operators of industries located in the municipality that primarily provide services or products to tourists and one member who shall be a resident of the municipality and represents the general public.

(Code 1962, § 5-14-13; Ord. No. 383, 6-24-91; Ord. No. 444, § 1, 3-10-97)

Sec. 2-362. Appointment; vacancy; term.

Members shall be appointed and vacancies filled by appointment of the City Commission and shall serve at the pleasure of the City Commission. The terms shall be as follows: One member representing the lodging industry and one member representing the tourist industry shall each serve an initial term of three years. Thereafter, members appointed to serve in these positions shall serve for a period of four years. The second member representing the lodging industry and the second member representing the tourist industry shall each serve an initial term of four years. Thereafter, the member appointed to serve in these positions shall serve for a period of four years. The member at large representing the general public shall serve an initial term of one year. Thereafter, the member appointed to serve in this position shall serve for a period of four years.

(Code 1962, § 5-14-13; Ord. No. 383, 6-24-91; Ord. No. 444, § 1, 3-10-97)

Sec. 2-362.1. Reserved.

Editor's note—

Section 1 of Ord. No. 657, adopted Aug. 14, 2014, repealed § 2-362.1, which pertained to term limits, and derived from Ord. No. 643, § 1, adopted Oct. 22, 2013.

Sec. 2-363. Duties.

The Board shall advise the Governing Body on expenditure of Lodger's Tax Funds for advertising, publicizing and promoting tourist attractions and facilities in the municipality.

(Code 1962, § 5-14-13; Ord. No. 383, 6-24-91; Ord. No. 444, § 1, 3-10-97)

Sec. 2-364. Meetings.

The Board shall meet at least quarterly and shall adopt rules for the meetings and transaction of business and shall keep a record of the business conducted, which shall be kept at City Hall and which shall be a public record.

(Code 1962, § 5-14-13; Ord. No. 383, 6-24-91; Ord. No. 444, § 1, 3-10-97)

DIVISION 10. RESERVED 10

Secs. 2-365—2-368. Reserved.

Secs. 2-365—2-368. Reserved.

DIVISION 11. PUBLIC ARTS BOARD

Sec. 2-369. Board created; members.

Sec. 2-369.1. Powers and duties.

Sec. 2-369.2. Meetings and voting.

Sec. 2-369.3. Reserved.

Sec. 2-369. Board created; members.

There is hereby created a Public Arts Board consisting of five members. One of the members will be a City Government representative, one of the members will be a Tourism Advisory Board representative, one of the members will be a representative from the local business community, one of the members will be a representative from the local artist community, and one of the members will be a representative from the Sierra County Arts Council Board. All appointments to the Public Arts Board will be made by the Governing Body via public advertising and recommendations from the Tourism Advisory Board. The Chamber of Commerce, and the Sierra County Art Council.

(Ord. No. 579, 2-12-08)

Sec. 2-369.1. Powers and duties.

- (a) The Board will adopt reasonable By-Laws to be approved by the City Commission.
- (b) The Board will make recommendations to the City Commission through the Board Chairperson concerning the location, and type of public art work that will be erected in the City of Truth or Consequences.
- (c) The Board will investigate available sites for public art.
- (d) The Board will advertise county-wide for design submissions and will judge said submissions and make recommendations to the City Commission regarding these submissions.
- (e) The Board will advocate and search for additional funding for the purchase, reproduction and installation of public artwork.
- (f) The Board will make recommendations on future ordinances related to public art.
- (g) The Board will keep records and accounts of all its activities and make reports to the City Manager or to the City Commission upon request.

(Ord. No. 579, 2-12-08)

Sec. 2-369.2. Meetings and voting.

Regular Meetings will be scheduled as needed. Special Meetings may be called by any Member of the Board with notice given to each Member at least 24 hours in advance of the

meeting. Special Meetings may be scheduled only for dealing with vital, timely decisions which must be made in the best interest of the Community.

At least three Members of the Board must be present at any meeting to constitute a quorum.

Only Members of the Board may vote on issues pertaining to items directed by the Board. No proxy votes will be allowed.

(Ord. No. 579, 2-12-08)

Sec. 2-369.3. Reserved.

Editor's note—

Section 1 of Ord. No. 657, adopted Aug. 14, 2014, repealed § 2-369.3, which pertained to term limits, and derived from Ord. No. 643, § 1, adopted Oct. 22, 2013.

DIVISION 12. VETERANS MEMORIAL PARK ADVISORY BOARD

Sec. 2-370. Board created; members.

Sec. 2-370.1. Powers and duties.

Sec. 2-370.2. Meetings and voting.

Sec. 2-370.3. Reserved.

Sec. 2-370. Board created; members.

There is hereby created a Veterans Memorial Park Advisory Board consisting of seven members. One of the members will be a representative from VFW 3317 in Williamsburg, one of the members will be a representative from VFW 1389 in Elephant Butte, one of the members will be a representative from American Legion Post 44 in Elephant Butte, one of the members will be a representative from American Legion Riders Chapter 5, American Legion Post 44 in Elephant Butte, one of the members will be a representative from the New Mexico Veterans Home one of the members will be a representative from the City of Truth or Consequences and one of the members will be a representative of the City of Truth or Consequences Citizen at large. All appointments to the Veterans Memorial Park Advisory Board will be made by the Governing Body via public advertising and recommendations from the different Veterans Organizations named herein. The Governing Body may also appoint non-voting Ex-Officio members as may be recommended by the Board.

(Ord. No. 580, 3-25-08)

Sec. 2-370.1. Powers and duties.

- (a) The Board will adopt reasonable By-Laws to be approved by the City Commission.
- (b) The Board will make recommendations to the City Commission through the Board Chairperson concerning the operation, budget, maintenance, capital

improvements and events for the Veterans Memorial Park.

- (c) The Board will investigate available grants and other funding.
- (d) The Board will make recommendations on future ordinances related to the Veterans Memorial Park and other Veteran related issues.
- (e) The Board will oversee the expenditure of the approved budget for the Veterans Memorial Park.
- (f) It is intended that the powers of the Board be broad in nature and that not all Board business need be approved by the City Commission except on issues related to expenditure of funds.
- (g) The Board will keep records and accounts of all its activities and make reports to the City Manager or to the City Commission upon request.

(Ord. No. 580, 3-25-08)

Sec. 2-370.2. Meetings and voting.

Regular Meetings will be scheduled as needed. Special Meetings may be called by any Member of the Board with notice given to each Member at least 24 hours in advance of the meeting. Special Meetings may be scheduled only for dealing with vital, timely decisions which must be made in the best interest of the Community.

At least four Members of the Board must be present at any meeting to constitute a quorum.

Only Members of the Board may vote on issues pertaining to items directed by the Board. No proxy votes will be allowed.

(Ord. No. 580, 3-25-08)

Sec. 2-370.3. Reserved.

Editor's note—

Section 1 of Ord. No. 657, adopted Aug. 14, 2014, repealed § 2-370.3, which pertained to term limits, and derived from Ord. No. 643, § 1, adopted Oct. 22, 2013.

ARTICLE V. MUNICIPAL MAGISTRATE COURT 11

Sec. 2-371. Creation.

Sec. 2-372. Jurisdiction.

Sec. 2-373. Magistrate; qualifications; salary.

Sec. 2-374. Election; term; vacancy.

Sec. 2-375. Temporary incapacity or absence of a Municipal Judge—Appointment of Alternate Municipal Judge.

Sec. 2-376. Duties of temporary Magistrate.

Sec. 2-377. Monthly reports and remittances.
Sec. 2-378. Itemized statement.
Sec. 2-379. Proceedings.
Sec. 2-380. Suspension of sentence; probation.
Sec. 2-381. Reserved.
Secs. 2-382—3-390. Reserved.

Sec. 2-371. Creation.

There is hereby established a Municipal Magistrate Court in the City. The Court shall be presided over by a Municipal Magistrate.

(Code 1962, § 1-12-1)

Sec. 2-372. Jurisdiction.

The Municipal Court shall have jurisdiction over all offenses and complaints under the provisions of this Code and other laws of the City and may issue subpoenas and warrants and punish for contempt.

(Code 1962, § 1-12-2)

Sec. 2-373. Magistrate; qualifications; salary.

The qualifications of the Municipal Magistrate and any bond required by him, will be as prescribed by law. The salary of the Municipal Magistrate will be as follows:

- (1) For a Municipal Magistrate having no prior experience as a Municipal Magistrate in New Mexico: \$20,000.00;
- (2) For a Municipal Magistrate having one to five years experience as a Municipal Magistrate in New Mexico: \$30,000.00; and
- (3) For a Municipal Magistrate having in excess of five years experience as a Municipal Magistrate in New Mexico: \$42,000.00.

The above-described salary schedule will become effective upon the Municipal Magistrate taking office following the next regular Municipal election.

(Code 1962, § 1-12-3; Ord. No. 433-96, § 1, 2-12-96; Ord. No. 575, 10-9-07)

Sec. 2-374. Election; term; vacancy.

The Municipal Magistrate shall be elected for a term of four years. The Governing Body may fill vacancies by appointment of a Municipal Magistrate to serve until the next regular municipal election.

(Code 1962, § 1-12-4)

Sec. 2-375. Temporary incapacity or absence of a Municipal Judge—Appointment of Alternate Municipal Judge.

Any registered voter residing within the City limits may be appointed to serve as the Municipal Judge during such time as the Municipal Judge is temporarily incapacitated or absent. During such temporary incapacity or absence, that person shall hear and determine cases arising under the municipal ordinances, while sitting as Municipal Judge.

The Alternate Municipal Judge shall be appointed by the Municipal Judge from a pool of qualified applicants. All applicants will submit their names and qualifications to the City Clerk's office at a time prescribed by the City Commission. The City Commission shall then select five names of qualified applicants to be submitted to the Municipal Judge. From this pool of five applicants, the Municipal Judge shall utilize any one of these qualified individuals during his/her term.

(Ord. No. 473, § 1, 6-12-00)

Sec. 2-376. Duties of temporary Magistrate.

The requirements of law relating to money collected, monthly reports, itemized statements, and penalties apply to temporary Municipal Magistrates.

(Code 1962, § 1-12-6)

Sec. 2-377. Monthly reports and remittances.

The Municipal Magistrate shall make monthly written reports to the Governing Body of all money collected by him. The reports shall be filed and the money collected paid to the City not later than the tenth of the month following the collection, and the costs collected pursuant to section 2-381 shall be accounted for separately.

(Code 1962, § 1-12-7)

Sec. 2-378. Itemized statement.

All required reports shall include an itemized statement showing the different amounts collected, the purpose of collection, the name of the person paying, and the date of payment.

(Code 1962, § 1-12-8)

Sec. 2-379. Proceedings.

All actions brought to enforce any of the provisions of this Code shall be brought in the name of the City as plaintiff, and no prosecution, conviction, or acquittal for the violation of any of such provisions shall constitute a defense to any other prosecution of the same party for any other violation of any such provisions, although the different causes of action existed at the same time and, if united, would have exceeded the jurisdiction of the Court. Appeals by the plaintiff or defendant shall be allowed from the judgment of the Municipal Court to the District Court.

(Code 1962, § 1-12-9)

Sec. 2-380. Suspension of sentence; probation.

The Commission may provide that the Municipal Court may, upon entry of a plea of guilty or judgment of conviction:

- (1) Suspend in whole or part the execution of sentence;
- (2) Place the defendant on probation for a period not exceeding one year on terms and conditions the Court deems best, or both.

Suspension of execution of the sentence or probation, or both, shall be granted only when the Municipal Magistrate is satisfied it will serve the ends of justice and of the public, and that the defendant's liability for any fine or other punishment imposed is fully discharged upon successful completion of the terms and conditions of probation.

(Code 1962, § 1-12-10)

Sec. 2-381. Reserved.

Editor's note—

Ord. No. 540, § 1, adopted Sept. 27, 2004, repealed § 2-381, which pertained to court costs and derived from Code 1962, § 1-12-11.

Secs. 2-382—3-390. Reserved.

ARTICLE VI. RESERVED 12

Secs. 2-391—2-434. Reserved.

Secs. 2-391—2-434. Reserved.

ARTICLE VII. ECONOMIC DEVELOPMENT PLAN 13

Sec. 2-435. Findings.

Sec. 2-436. Economic development goals, strategies, and priorities.

Sec. 2-437. Targeted businesses and industry.

Sec. 2-438. Criteria determine eligibility for aid.

Sec. 2-439. Information required to determine that applicant is financially solvent and committed to the community.

Sec. 2-440. Procedure to verify application information.

Sec. 2-441. The project participation agreement.

Sec. 2-442. Project revenues.

Sec. 2-443. Other revenue sources.

Sec. 2-444. City resources available.

Sec. 2-445. Minimum benefit required from a qualifying entity.

Sec. 2-446. Safeguards of public resources.

Sec. 2-435. Findings.

It is in the public interest of the city to afford all reasonable assistance which is permitted by the authority vested in the city commission to assist the city to obtain new economic and industrial development projects. This assistance benefits the residents of Truth or Consequences by improving the economic environment of the city.

It is difficult for municipalities and counties in New Mexico to attract and retain business capable of enhancing the local and state economy without the resources necessary to compete with other states and localities. Municipalities and counties may need to be able to provide land, buildings, and infrastructure as a tool for basic business growth and the introduction of basic business ventures into the state. It is in the best interest of the state, counties and municipalities to encourage local or regional solutions to economic development. The access to public resources needs to be carefully controlled and managed for the continued and future benefit of the county residents.

It is the purpose of this article to implement the Local Economic Development Act (5-10-1 et seq NMSA 1978) which allows the pursuit of public resources for economic development purposes.

(Ord. No. 447, § 1, 6-23-97)

Sec. 2-436. Economic development goals, strategies, and priorities.

The goals, strategies, and priorities in the Sierra County Economic Development plan are:

- (1) *Goal.* Work with existing businesses to improve the general business climate in order that they may be successful in retaining employees and creating new jobs through expansion.
 - a. Strategies (short-term):
 1. Demonstrate regional support of local business.
 2. Develop a detailed database about local establishments.
 3. Address short-term local business problems.
 - b. Strategies (long-term):
 1. Retain and increase local employment base by increasing the competitiveness of local business.
 2. Develop a strategic plan for future economic development. (See Sec. 3-12)
 3. Identify expansion opportunities that bring new jobs to Truth or

Consequences.

- (2) *Goal.* Recruit business and industry to expand the local economy and increase employment.
 - a. Strategies:
 1. Target marketing efforts to prospective businesses that complement and diversify existing agriculture, outdoor recreation, retirement, and health industries.
- (3) *Goal.* Develop adequate infrastructure for growth and development.
 - a. Strategies:
 1. Develop plan to install basic infrastructure in area business parks.
 2. Continue to improve area surface transportation system.
 3. Improve waste water treatment facilities and solid waste disposal.

(Ord. No. 447, § 2, 6-23-97)

Sec. 2-437. Targeted businesses and industry.

The economy of Truth or Consequences is supported by five (5) basic industries: Service industry, agriculture, outdoor recreation, health care and retirement. Economic development efforts are focused on expanding these industries with warehousing, light manufacturing, exporting and telecommunications to diversify the Truth or Consequences economy.

(Ord. No. 447, § 3, 6-23-97)

Sec. 2-438. Criteria determine eligibility for aid.

Applicants for aid through this article must be a corporation, commercial enterprise licensed by the state, limited liability company, partnership, joint venture syndicate, association or other person that is one or a combination of two (2) or more of the following:

- (1) An industry for the manufacturing, processing, or assembling of any agricultural or manufactured products.
- (2) A commercial enterprise for storing, warehousing, distributing, exporting, or selling products of agriculture, mining, or industry. It may not include any enterprise for sale of goods or commodities at retail.
- (3) A business in which all or part of the activities of business involves the supplying of services to the general public or governmental agencies or to a specific industry or customer. This may not include businesses primarily engaged in the sale of goods and commodities at retail.
- (4) Health care businesses wishing to build in the area serving people in the area and outside people needing such services.

(Ord. No. 447, § 4, 6-23-97)

Sec. 2-439. Information required to determine that applicant is financially solvent and committed to the community.

The Sierra County Economic Development Finance Review Committee (Review Committee) will receive and evaluate proposals. Detailed report and recommendations will be prepared for the city commission of Truth or Consequences. The applicant shall prepare a detailed application in writing in the format established by the review committee and approved by the city commission. The application shall be accompanied by an application fee, in an amount to be established from time to time by resolution of the city commission. Proceeds from the application fees will be deposited with the city treasurer in a special account, which shall be used solely for the purposes of funding activities of the review committee, and which are hereby earmarked for that purpose. In no event shall any part of any application fee be refundable to the applicant, regardless of the cost of processing the application.

(Ord. No. 447, § 5, 6-23-97)

Sec. 2-440. Procedure to verify application information.

Upon receipt by the review committee of an application for county assistance completed in a manner satisfactory to it, the review committee shall forthwith commence an investigation of the applicant and of the matters contained in the application, which shall include an investigation of at least the following factors:

- (1) Determine whether the project can be lawfully instituted, constructed, or operated with county assistance proposed in the application.
- (2) Determine the financial and management ability of the applicant (and the parent firm if the applicant is a subsidiary of another firm owning a majority of stock in the applicant) and its ability to perform the duties which will be imposed upon the applicant as a result of the application.
- (3) Evaluate the financial feasibility of the project.
- (4) Verify the fact that the project will serve the public benefit of the citizens of the city by providing the citizens with job opportunities and with a source of additional income.
- (5) Prepare a cost benefit analysis of the project.
- (6) Insure that the project conforms to the Sierra County Economic Development Plan.
- (7) Develop any other information the review committee or city commission deems necessary for a full review of the economic development project application.

Upon completion of its investigation, the review committee shall formulate a written report concerning the application which it shall submit to the city commission. The written report shall summarize the findings of the review committee and shall conclude with a recommendation to the city commission. The decision to provide public resources for the proposed project shall be made solely by the city commission.

(Ord. No. 447, § 6, 6-23-97)

Sec. 2-441. The project participation agreement.

Upon approval by the city commission, the city and the applicant will enter into a project participation agreement which shall set out:

- (1) The contributions to be made by each party to the participation agreement.
- (2) The security provided to the city by the qualifying entity in the form of a lien, mortgage or other indenture and the pledge of the qualifying business's financial or material participation and cooperation to guarantee the qualifying entity's performance pursuant to the project participation agreement if the property of buildings owned or built by the city is involved.
- (3) A schedule for project development and completion, including measurable goals and time limits for those goals. Land reverts back to city if property is not developed as originally agreed.
- (4) If economic development project is determined to be unsuccessful, or if a qualifying entity seeks to leave the area or it is found that the development is being used for purposes not agreed upon in project participation agreement, the city shall have first right to buy the property from the first mortgage holder for the amount that is due against the property.

(Ord. No. 447, § 7, 6-23-97)

Sec. 2-442. Project revenues.

City revenues dedicated or pledged for funding of financing of economic development projects under this article shall be deposited in a separate account. Separate accounts shall be established for each separate project. Money in the special account shall be expended only for economic development project purposes, which may include the payment of necessary professional services contracts.

(Ord. No. 447, § 8, 6-23-97)

Sec. 2-443. Other revenue sources.

If revenue sources other than those of City of Truth or Consequences are used to support an economic development project, the source and amount of any such funding must be disclosed.

(Ord. No. 447, § 9, 6-23-97)

Sec. 2-444. City resources available.

Available resources city may offer qualifying businesses include:

- (1) Land the city is willing to lease, sell or grant.
- (2) Buildings the city is willing to lease, sell or grant.
- (3) Infrastructure the city is willing to build, extend, or expand subject to the limitations set forth below.

- (4) Money subject to the limitations set forth below.
- (5) Industrial revenue bonds subject to the limitations set forth below.

The total amount of public money expended and the value of credit pledged in the fiscal year in which that money is expended for economic development projects shall not exceed five (5) percent of the annual general fund expenditures in that fiscal year. The value of any land or building contributed to any project pursuant to a project participation agreement shall not be subject to the limits of this subsection.

(Ord. No. 447, § 10, 6-23-97)

Sec. 2-445. Minimum benefit required from a qualifying entity.

The city may require any one or combination of two (2) or more of the following criteria as a minimum benefit from a qualifying entity in order to provide economic development assistance.

- (1) Number and type of jobs created.
- (2) Proposed payroll.
- (3) Repayment of loans, if any.
- (4) Purchase by the qualifying basic business of city-provided land, buildings, or infrastructure.
- (5) Public-to-private investment ratio. The amount of private dollars invested in a project must be at least twice the amount of public dollars invested in the economic development project.
- (6) Direct local tax base expansion.

(Ord. No. 447, § 11, 6-23-97)

Sec. 2-446. Safeguards of public resources.

If a qualifying entity ceases operation, relocates or otherwise defaults or reneges on its contractual or implied obligations to the city, the city will have first right of purchase, or if buildings belong to the city of Truth or Consequences, the city will recover any costs, land, buildings, or other things of value. The project participation agreement shall contain a specific term to establish default provisions and remedies for a recoupment of public resources.

(Ord. No. 447, § 12, 6-23-97)

Chapter 3 ANIMALS [1](14)

ARTICLE I. IN GENERAL

Sec. 3-1. Short title of chapter.

Sec. 3-2. Administration of chapter.

Sec. 3-3. Definitions.

- Sec. 3-4. Service animals.
- Sec. 3-5. Cruelty.
- Sec. 3-6. Sale.
- Sec. 3-7. Wild animals prohibited.
- Sec. 3-8. Licensing wild animals.
- Sec. 3-8.1. Harboring of pets.
- Sec. 3-8.2. Spaying and neutering of dogs and cats.
- Sec. 3-8.3. Female dogs or cats in heat to be confined.
- Sec. 3-9. Enforcement.
- Sec. 3-10. Reserved.
- Sec. 3-11. Penalty for violation of chapter.
- Secs. 3-12—3-25. Reserved.

Sec. 3-1. Short title of chapter.

This chapter shall be known and may be cited as the Truth or Consequences Animal Control Ordinance. It is the intent of the City Commission that enactment of this chapter will protect animals from neglect and abuse, protect residents from annoyance and injury, assist in providing housing for animals in a control center, and finance the functions of the licensing and recovery of such animals.

(Code 1962, § 6-2-1; Ord. No. 384, § 6-2-1, 7-22-91)

Sec. 3-2. Administration of chapter.

The City Manager is responsible for the administration of this chapter. Reasonable rules and regulations shall be prescribed by the Commission to carry out the intent and purpose of this chapter, pursuant to standards created by this chapter. Powers to enforce the chapter are delegated to the Truth or Consequences Police Department and the Animal Control Officer.

(Code 1962, § 6-2-3; Ord. No. 436, § 1, 5-13-96; Ord. No. 532, § 1, 10-14-03)

Sec. 3-3. 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:

Abandonment of animals means to leave the animal behind hours without proper care and protection to give up said animal to fend for itself, regardless of age or condition.

Animal means any vertebrate members of the animal kingdom, excluding man.

Animal Control Center or *Center* means any pound, lot, premises, and/or building

maintained by the City for the care and custody of animals. This shall include any private shelter contracted by the City for the purpose of maintaining care and custody of animals.

Animal Control Officer means any person designated by the City Manager as a peace officer, who is qualified to perform such duties under the laws of this state.

Auction means any place or facility where animals are regularly bought, sold or traded, except for those facilities otherwise defined in this chapter. This definition does not apply to individual sales of animals by owners.

Bite means an actual puncture or tear of the skin inflicted by the teeth of an animal.

Care means responsibility for or attention to health, well-being, and safety.

Collar means a band, chain, harness or other suitable device worn around the neck of an animal, to which a current rabies vaccination and registration tag can be affixed.

Continually means a duration that continues over a long period of time but with intervals and interruptions.

Emergency measures means any action taken by animal control or its designated agents to preserve the health and life of an animal, including but not limited to entering vehicles or premises, with probable cause, and impounding an animal to prevent present or imminent suffering.

Enclosed lot means parcel of land or portion thereof in private ownership around the perimeter of which a wall or fence has been erected.

Establishment means a place of business together with its grounds and equipment.

Estray means any animal found running at large beyond the boundaries of the premises of the owner.

Grooming parlor means any establishment, or part thereof, or premises maintained for the purpose of offering animals cosmetological services for profit.

Household is one or more persons occupying the premises and living as a single housekeeping unit as distinguished from a group occupying a boarding house, lodging house or hotel.

Kennel, commercial means any premises on which a total of five or more dogs or cats, in any combination thereof, four months of age or older, are kept; and/or where the business of buying, selling, breeding, training or boarding of dogs and/or cats is conducted. This shall not include veterinary hospitals, humane societies, animal shelters or pounds approved by a governmental agency.

Licensed veterinarian means a person with a Doctor of Veterinary Medicine degree, licensed to practice in the State of New Mexico.

Owner means any person, partnership, or corporation, owning, keeping or harboring one or more animals, but not more than four in any combination of dogs and/or cats.

Pet means any dog, cat, turtle, small caged birds, aquarium fish, iguanas, caged rodents and caged snakes, pygmy goats and potbellied pigs.

Pet shop or dealer means any commercial establishment or person, including wholesalers engaged in the business of buying and selling or holding pet animals for sale. This

term shall not include livestock auctions.

Premises means a parcel of land and/or the structure(s) thereon.

Public nuisance means where an animal owner fails to prevent its animal from urinating, defecating, disturbing the peace, emitting noxious odors or otherwise endangering or offending the well-being of the inhabitants of the City while:

- (1) Trespassing on school grounds, public or private property;
- (2) Being found running at large;
- (3) Damaging private or public property; or
- (4) Barking, whining, or howling in an excessive or continual fashion.

Quarantine means to detain or isolate an animal suspected of contagion.

Responsible person for the animal means the owner of the animal, or an adult person placed in charge of the animal in the absence of incapacitation of the owner.

Running at large or *to run* means to be free of physical restraint beyond the boundaries of the premises of the owner.

Shelter means any establishment owned and operated by a nonprofit organization or a licensed business licensed to do business in the State of New Mexico whose sole function is to bring aid and comfort to animals.

Tormenting of animals means the act of bothering, annoying, distracting or agitating an animal.

Vaccination means the inoculation of an animal with a vaccine administered by a veterinarian for the purpose of immunizing the animal against rabies as required by the State of New Mexico Rabies Control Act of 1959. The amount given should be sufficient to provide immunity from rabies for a minimum of one year.

Veterinary hospital or *clinic* means any establishment maintained and operated by a licensed veterinarian for surgery, diagnosis and treatment of diseases and injuries to animals.

Vicious animal means any animal which bites or in any other manner attacks or attempts to attack any person or animal within the City, except that any animal that bites, attacks, or attempts to attack any person unlawfully upon its owner's or keeper's premises, or which is provoked to attack, shall not be deemed a vicious animal.

(Code 1962, § 6-2-2; Ord. No. 384, § 6-2-2, 7-22-91; Ord. No. 400, § 1, 10-26-92; Ord. No. 436, § 2, 5-13-96; Ord. No. 532, § 2, 10-14-03; Ord. No. 608, § 1, 8-30-11; Ord. No. 659(1), § 1, 1-13-15)

Definitions and rules of construction generally, § 1-2.

Sec. 3-4. Service animals.

No qualified service animal as defined by the ADA (American Disability Act) shall be denied admittance to any building, facility, or accommodation open to the general public, including, but not limited to, restaurants, hotels, motels hospitals, clinics, swimming pools, stores, common carriers, and theaters, provided that the qualified service animal is under the

immediate control of a person that is disabled under the definitions of the ADA.

(Code 1962, § 6-2-23; Ord. No. 659(1), § 1, 1-13-15)

Editor's note—

Section 1 of Ord. No. 659, adopted Jan. 13, 2015, changed the title of § 3-4 from "Dogs trained to assist the blind and hearing impaired allowed in public places" to read as herein set out.

Sec. 3-5. Cruelty.

- (a) *Physical abuse.* It is unlawful for any person to willfully or maliciously kill, maim, disfigure, torture, beat with a stick, chain, club, or other object, mutilate, burn, or scald any animal; except that reasonable force may be employed to drive off vicious or trespassing animals. When a Law Enforcement Officer or an Animal Control Officer has probable cause to believe that an animal has been cruelly treated, the officer may impound the animal for its protection pending appropriate court proceedings.
- (b) *Work cruelty.* It is unlawful for any person to drive or work any animal cruelly.
- (c) *Care and maintenance.* It is unlawful for any person to fail, refuse, or neglect to provide any animal in his charge or custody, as owner or otherwise, with:
 - (1) *Food.* Animals shall be provided with uncontaminated, edible, nutritious food which is of adequate quantity as to maintain the normal weight and condition of a healthy animal. All food containers shall be kept clean.
 - (2) *Water.* Animals shall be provided with constant access to a supply of potable water with sufficient amount as to maintain good health as required by the species.
 - (3) *Shelter.* Any animal habitually kept outside shall be provided with a structurally sound, weatherproof enclosure, large enough to accommodate the animal.
 - (4) *Veterinary care.* No person shall keep an animal which is seriously sick or injured without providing proper veterinary care to the animal.
 - (5) *Shade.* Any owner of an animal shall provide the animal with access to shade not to be inclusive of shelter or to carry any animal in or upon any vehicle in a cruel or inhumane manner.
- (d) *Poisoning.* It is unlawful for any person by any means to make accessible to any animal, with the intent to cause harm or death, any harmful or poisonous substance.
- (e) *Uncared-for animals.* Whenever the animal control officer, Code Enforcement Officer, or designated representative finds that any animal is or will be without proper care because of injury, illness, incarceration, or other voluntary absence of the owner or person responsible for the care of such animal, the Animal Control Officer shall make arrangements for the care of the animal.
- (f) *Injury by motorists.* Every operator of a motor or other self-propelled vehicle

upon the streets and ways of the City shall immediately, upon injuring, striking, maiming, or running down any animal, give such aid as is reasonably able to be rendered. In the absence of the owner, he shall immediately notify the Police, furnishing sufficient facts relative to such injury. It is the duty of such operator to remain at or near the scene until such time as the appropriate authorities arrive and, upon the arrival of such person, such operator shall immediately identify himself to the appropriate authorities. Alternatively, in the absence of the owner, a person may give aid by taking the animal to a veterinary hospital or the Animal Control Center and notifying the Police. Such animal shall be deemed an uncared-for animal within the meaning of subsection (e) of this section. Emergency vehicles are excluded from this provision.

- (g) *Hobbling livestock.* It is unlawful for any person to hobble livestock or other animals by any means which may cause injury or damage to any animal.
- (h) *Keeping of diseased animals.* It is unlawful for any person to have, keep, or harbor any animal which is infected with any dangerous disease. The Animal Control Officer may impound such diseased animal in accordance with the provisions of this article. All such animals impounded may be destroyed humanely as soon as is conveniently possible. In the case of destruction of such animal, the Code Enforcement Officer or Animal Control Officer shall not be required to give any of the notices provided in this article. This section shall not be construed to include veterinary hospitals or animals under active veterinary care.
- (i) *Fights.* It is unlawful for any person to promote, stage, hold, manage, conduct, carry on, or attend any game, exhibition, contest, or fight in which one or more animals are engaged for the purpose of injuring, killing, maiming, or destroying themselves or any other animal.
- (j) *Abandonment.* It shall be unlawful for any person to abandon any animal or to cause such abandonment.
- (k) *Fowl; impounding; crating.* It is unlawful for any person to confine any wild or domestic fowl or birds unless provisions are made by each person for the proper feeding and the furnishing of water to such fowl or birds at intervals not longer than 12 hours. No person shall impound any wild or domestic fowl or birds in a crate, box or other enclosure, which does not permit each fowl or bird impounded therein to stand in a naturally erect position.
- (l) *Tormenting.* It shall be unlawful for any person to willfully torment any and all animals by any means, such as throwing rocks, yelling or giving chase in any manner. No person shall purposely cause a dog to bark unnecessarily or annoy such animal to the point the animal will attempt to attack a person or other animal.
- (m) *Songbirds, killing and robbing of nest prohibited.* It is unlawful for any person to willfully kill any songbird, or to molest or rob the nest of such bird.

(Code 1962, § 6-2-24; Ord. No. 384, § 6-2-24, 7-22-91; Ord. No. 436, § 3, 5-13-96; Ord. No. 659(1), § 1, 1-13-15)

Cruelty to animals, NMSA 1978, § 30-18-1.

Sec. 3-6. Sale.

- (a) *Use of public property.* No person shall display, sell, or offer for sale, barter, give away, or otherwise dispose of any animal upon any street, sidewalk, public park or private business, unless said private business is properly licensed.
- (b) *Rabbits or fowl.* No person shall sell, offer for sale, barter, or give away any baby rabbits under four weeks of age. Nothing in this section shall be construed to prohibit the raising of rabbits and fowl by a private individual for his personal use and consumption, provided that he shall maintain proper brooders and other facilities for the care and containment of such animals while they are in his possession.
- (c) *Premiums and novelties.* No person shall offer as a premium prize, award, novelty, or incentive to purchase merchandise any live animal.
- (d) *Turtles.* No person shall offer for sale, sell, barter, or give away turtles, except in conformance with appropriate federal regulations.

(Code 1962, § 6-2-25; Ord. No. 436, § 4, 5-13-96; Ord. No. 532, § 3, 10-14-03)

Sec. 3-7. Wild animals prohibited.

- (a) No person shall keep an animal of a species prohibited or protected by Title 50 of the Code of Federal Regulations or by the appropriate state regulations or statutes.
- (b) No person shall keep any animal which is wild, fierce, dangerous, noxious, or naturally inclined to do harm except where 1) adequate protective devices are provided to prevent such animals from escaping or injuring the public, and 2) a proper license is obtained in accordance with section 3-8. If such requirements are met, they may be kept in a zoological park, pet shop, veterinary hospital, animal shelter, public laboratory, circus, amusement show, educational facility, scientific facility, or in the control of a humane society.
- (c) *Wild animals prohibited.* "Wild animal" means any animal of a species that in its natural life is wild, dangerous, or ferocious and though it may be trained and domesticated will remain dangerous to others and may injure or kill a citizen in the City. Those animals, however domesticated, shall include but are not limited to:
 - (1) Dog family (canidae). All except domesticated dogs, including wolf, fox, coyote, dingo, etc.
 - (2) Cat family (felidae). All except the commonly accepted domesticated cats, including lions, pumas, panthers, mountain lions, wild cats, etc.
 - (3) Bears (ursidae). All bears, including grizzly bears, brown bears, black bears, etc.
 - (4) Weasels (mustelidae). All, including weasels, martins, mink, wolverine, ferrets, badgers, otters, ermine, mongoose, etc.

- (5) Porcupine (erehizontidae).
- (6) Venomous snakes.
- (7) Venomous lizards, alligators, and crocodiles.

(Code 1962, § 6-2-26; Ord. No. 384, § 6-2-26, 7-22-91; Ord. No. 436, § 5, 5-13-96)

Sale, purchase, trade and possession of certain animals regulated, NMSA 1978, § 77-18-1.

Sec. 3-8. Licensing wild animals.

- (a) Any person owning a wild animal covered by this section at the time of enactment of this Chapter may license such animal in accordance with law. A fee of \$20.00 shall be charged for such licensing through the City.
- (b) For the purpose of humanely trapping wild animals such as skunks and domesticated dogs or cats which may be a menace to the public, the Animal Control Officer may maintain such traps as are constructed for the purpose of trapping a live animal without serious risk of injury to the trapped animal and which may be placed on private property at the request of the owner thereof. Traps shall be baited only inside the trap and shall be checked not less than twice a day by the Animal Control Officer or the property owner requesting the placement of such traps. All such trapping shall be in conformity with state law.

(Ord. No. 384, § 6-2-27, 7-22-91; Ord. No. 436, § 6, 5-13-96)

Sec. 3-8.1. Harboring of pets.

- (a) It shall be unlawful for any owner to possess or harbor more than four dogs or cats, in any combination thereof, four months of age or older on their premises, where the business of buying, selling, breeding, training or boarding of pets is not carried on. Animals that are the property of visitors who stay in a household longer than 90 days in a calendar year shall be included in the calculation of total animals for that household.
- (b) It shall not be a violation of this section if the said person obtains a kennel permit from the City Clerk which permits the person to engage in the aforesaid activity. All applications for kennel permits must meet the following conditions:
 - (1) Kennel permits may only be issued after the applicant is granted a special use permit pursuant to the procedure detailed in section 11-5-6 of the City's Planning and Zoning Code. The fees for kennel permits are described below.
 - (2) An initial non-refundable fee of \$100.00 for kennel permits must accompany an application to defray the cost of processing the request.
 - (3) All kennel permits must be renewed annually and a fee of \$25.00 shall be assessed.
 - (4) Any application may be denied or revoked if the owner or responsible

person shows a history of non-compliance with the city codes concerning animal control as evidenced by a conviction of any such ordinance during the past year.

- (c) A kennel permit may be revoked if, in the judgment of the Animal Control Officer, it is determined that the holder of the permit allows any one or more of the following conditions to exist:
 - (1) The realty or the pens are not maintained in a clean and sanitary condition to such an extent that either of them constitute a health hazard or produce noxious odors.
 - (2) The housing structures are considered to be unsafe.
 - (3) The permit holder is in violation of any of the city animal control ordinances.

(Ord. No. 395, § 1, 10-26-92; Ord. No. 436, § 7, 5-13-96; Ord. No. 532, § 4, 10-14-03; Ord. No. 609, § 1, 8-30-11; Ord. No. 659(1), § 1, 1-13-15)

Sec. 3-8.2. Spaying and neutering of dogs and cats.

- (a) It shall be the responsibility of the person obtaining an adult dog or cat from the Animal Control Center to have the dog or cat spayed or neutered prior to receiving the animal.
- (b) If the animal obtained is a puppy or kitten, the owner can wait until the animal reaches the age of six months before getting it spayed or neutered.

(Ord. No. 393, § 1, 8-24-92; Ord. No. 532, § 5, 10-14-03; Ord. No. 610, § 1, 8-30-11)

Sec. 3-8.3. Female dogs or cats in heat to be confined.

Owners shall confine their female dogs and cats in heat so that other dogs or cats are not attracted to the animal in heat and can only come in contact with dogs or cats intended to be bred with the animal in heat.

(Ord. No. 436, § 8, 5-13-96)

Sec. 3-9. Enforcement.

- (a) The civil and criminal provisions of this chapter shall be enforced by those persons or agencies designated by the City Manager.
- (b) It shall be a violation of this chapter for any person to interfere, hinder or molest any Animal Control Officer or Police Officer in the performance of their duties.

(Ord. No. 384, § 6-2-28, 7-22-91; Ord. No. 436, § 9, 5-13-96; Ord. No. 532, § 6, 10-14-03; Ord. No. 611, § 1, 8-30-11)

Sec. 3-10. Reserved.

Editor's note—

Section 1 of Ord. No. 612, adopted Aug. 30, 2011, repealed § 3-10, which pertained to fines and fees and derived from Ord. No. 384, § 6, adopted July 22, 1991; Ord. No. 436, § 10, adopted May 13, 1996; and Ord. No. 532, § 7, adopted Oct. 14, 2003.

Sec. 3-11. Penalty for violation of chapter.

Any person who violates any of the provisions of this chapter shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished in accordance with section 1-10, with each conviction carrying a mandatory minimum fine of \$100.00.

(Code 1962, § 6-2-30; Ord. No. 384, § 6-2-30, 7-22-91; Ord. No. 394, § 1, 8-24-92; Ord. No. 436, § 11, 5-13-96; Ord. No. 532, § 8, 10-14-03; Ord. No. 613, § 1, 8-30-11)

Secs. 3-12—3-25. Reserved.

ARTICLE II. CONTROL

DIVISION 1. GENERALLY

Sec. 3-26. Authority of Animal Control Officers.

Sec. 3-27. Establishment of Animal Control Center.

Sec. 3-28. Animal Control Center, hours of business.

Sec. 3-29. Impoundment.

Sec. 3-30. Impounding estrays; records; redemption fees; notice.

Sec. 3-31. Restraint of animals.

Sec. 3-32. Confinement during estrus.

Sec. 3-33. Breaking into Animal Control Center, animal control vehicle.

Sec. 3-34. Sterilization agreement and sterilization deposit.

Secs. 3-35—3-50. Reserved.

Sec. 3-26. Authority of Animal Control Officers.

The Truth or Consequences Police Department, and animal control officers shall have the authority to issue citations for violations of this chapter and to perform such other duties as are prescribed in this chapter. An Animal Control Officer shall wear a uniform and shall wear a badge identifying such officer as an animal control officer. The Animal Control Officer is hereby designated a Peace Officer, deputized in accordance with state statutes as they now exist or may hereafter be amended, and he shall not be required to be certified as a regular law enforcement officer.

(Code 1962, § 6-2-4; Ord. No. 436, § 12, 5-13-96; Ord. No. 532, § 9, 10-14-03)

Municipal authority to designate animal control officer, NMSA 1978, § 77-1-15.1B.

Sec. 3-27. Establishment of Animal Control Center.

There is hereby established an Animal Control Center which shall be located in a location as shall be designated by the Commission.

(Code 1962, § 6-2-5)

Sec. 3-28. Animal Control Center, hours of business.

The Animal Control Center of the City of Truth or Consequences shall be kept open to the general public for the transaction of business during the hours set by the City Manager.

(Code 1962, § 6-2-6; Ord. No. 436, § 13, 5-1-3-96)

Sec. 3-29. Impoundment.

It is the duty of the Animal Control Officer to take up and impound in the Animal Control Center any stray or any animal kept or maintained contrary to this chapter, including any animal that is allegedly creating a public nuisance.

(Code 1962, § 6-2-7; Ord. No. 384, § 6-2-7, 7-22-91)

Municipal authority to impound and dispose of animals running at large, NMSA 1978, § 3-18-3A(3).

Sec. 3-30. Impounding estrays; records; redemption fees; notice.

- (a) No person shall, without the knowledge or consent of the owner, hold or retain possession of any animal of which he is not the owner for more than 24 hours without first reporting the possession of such animal to the animal control officer, giving his name and address, a true and complete statement of the circumstances under which he took up the animal, and the precise location where such animal is confined.
- (b) It is unlawful for any person taking up an animal to fail to give the notice required in subsection (a) of this section and for any person having such animal in his possession to fail or refuse to immediately surrender such animal to the Animal Control Officer upon demand thereof.
- (c) If an stray animal is wearing a license or other identification, it shall be returned to the owner and a citation issued. If an stray animal is not wearing a license or other identification, the animal shall be confined for a 72-hour period at the Animal Control Center. The Animal Control Officer may dispose of stray animals impounded under this section the day after the required impoundment period.
- (d) No dog or cat that has been impounded by the Animal Control Center will be sold for the purpose of breeding or resale.
- (e) Reserved.
- (f) Reserved.

- (g) An animal which continues to be an alleged nuisance may be impounded by the Animal Control Officer until such time as a judgment is made by the Municipal Court.
- (h) Fines for violations of this article shall be in accordance with the provisions of section 1-10.

(Code 1962, § 6-2-8; Ord. No. 384, § 6-2-8, 7-22-91; Ord. No. 436, § 14, 5-13-96; Ord. No. 614, § 1, 8-30-11)

Sec. 3-31. Restraint of animals.

- (a) All animals shall be contained upon the premises of the owner unless restrained off the premises under the immediate control of the owner or responsible person. While restrained on the premises of its owner or responsible person, no lead less than 25 feet in length shall be used. While restrained off the premises under the immediate control of the owner or responsible person, no lead greater than eight feet in length shall be used for animals weighing less than 35 pounds. For animals weighing greater than 35 pounds, no lead greater than four feet in length shall be used.
- (b) No owner or responsible person shall fail to exercise proper care and control of his animal to prevent it from becoming a public nuisance.
- (c) Any animal trespassing upon private or public premises shall be deemed prima facie not to be under the immediate control of the owner or a responsible person and the Animal Control Officer may issue a citation to the owner or responsible person or impound the animal, or both.
- (d) Voice commands are not an acceptable form of restraint.

(Code 1962, § 6-2-12; Ord. No. 384, § 6-2-12, 7-22-91; Ord. No. 436, § 15, 5-13-96; Ord. No. 615, § 1, 8-30-11)

Sec. 3-32. Confinement during estrus.

Any female dog or cat in the stage of estrus (heat) shall be confined to a building, kennel, or other secure enclosure so that contact with a male animal of the same species will be prevented except for intentional breeding purposes. Keepers who do not comply with this section shall be required to place such animal in a boarding kennel or veterinary hospital at the keeper's expense.

(Code 1962, § 6-2-13; Ord. No. 384, § 6-2-13, 7-22-91)

Sec. 3-33. Breaking into Animal Control Center, animal control vehicle.

It is unlawful for any person to break open any pound, center, or animal control vehicle wherein animals are impounded by the Animal Control Officer of the City, or in any other way to remove or assist in the removal of any animal from such pound, center, or vehicle without lawful permission.

(Code 1962, § 6-2-22)

Sec. 3-34. Sterilization agreement and sterilization deposit.

- (a) No animal shall be released from the animal shelter to an adopting person unless a sterilization agreement has been signed and a sterilization deposit has been paid, as provided in subsections (c) and (d) of this section.
- (b) In addition to any adoption fee charged, a sterilization deposit of at least \$25.00 shall be imposed on the adoption of each animal from the animal shelter.
- (c) Animals less than six months of age shall be released only upon payment of the adoption fee and a sterilization deposit and after the adopting person has signed an agreement stating he will have the adopted animal sterilized when it is no older than six months of age.
- (d) Adult animals over the age of six months shall be released only upon payment of the adoption fee and a sterilization deposit and after the adopting person has signed an agreement stating he will have the animal sterilized within 30 days of the date of adoption.
- (e) The sterilization deposit shall be reimbursed only upon presentation of a receipt from a veterinarian that the adopted animal has been sterilized.
- (f) An unsterilized animal reclaimed by its owner shall be released without being sterilized upon payment of the \$25.00 for the sterilization deposit and impoundment fees imposed by the shelter, and the owner shall sign an agreement stating he will sterilize the animal within 30 days after release or will obtain a breeder permit or its equivalent. The sterilization deposit shall be reimbursed upon presentation by the owner of a receipt from a veterinarian that the animal has been sterilized.

(Ord. No. 418, § 1, 9-12-94)

Secs. 3-35—3-50. Reserved.

DIVISION 2. RABIES [2](15)

Sec. 3-51. Vaccinations.

Sec. 3-52. Confinement of rabid animal.

Sec. 3-53. Biting dogs or other biting animals.

Secs. 3-54—3-70. Reserved.

Sec. 3-51. Vaccinations.

- (a) It is the duty of all persons owning or keeping a cat or a dog or any member of the canine family over the age of three months to have such animals vaccinated against rabies. The rabies vaccination shall be given in an amount sufficient to provide immunity from rabies for three years and shall be administered by a licensed veterinarian. A certificate from a licensed veterinarian shall be evidence

of vaccination. The Commission may require other animals to receive annual rabies vaccination.

- (b) The veterinarian administering antirabies vaccine to any animal shall issue to the owner or keeper of the animal a numbered vaccination certificate. The certificate shall contain the name and address of the owner or keeper of the animal, a description of the animal vaccinated, the date of vaccination, and the expiration date of the period of immunity.
- (c) It is unlawful for the owner or keeper of any dog, cat, or any other members of the canine or feline family to fail to exhibit its certificate of vaccination upon demand to any police officer or animal control officer.
- (d) It is the duty of all persons who adopt a dog to have such dog vaccinated against rabies, distemper complex, and parvo virus within 48 hours of adoption. It is the duty of all persons who adopt a cat to have such cat vaccinated against rabies and feline distemper complex within 48 hours of adoption.

(Code 1962, § 6-2-9; Ord. No. 527, §§ 1, 2, 7-14-03)

Vaccination of dogs and cats against rabies, NMSA 1978, § 77-1-3.

Sec. 3-52. Confinement of rabid animal.

An animal that has rabies or shows signs of having rabies, and every animal bitten by another animal afflicted with rabies or that has been exposed to rabies shall be confined at once in a secure place by the owner. A person who knows or who has reason to know that an animal is infected with rabies or has been exposed to rabies shall immediately upon learning of this notify the Animal Control Officer as to the place where the animal is confined and shall surrender the animal to the Animal Control Officer upon demand. The Animal Control Officer shall then deal with the rabid animal pursuant to state law.

(Code 1962, § 6-2-10)

Sec. 3-53. Biting dogs or other biting animals.

- (a) The owner of an animal that bites a person and a person bitten by an animal have a duty to report that occurrence to the Animal Control Officer within 24 hours. The owner of an animal that bites a person shall surrender the animal to an Animal Control Officer to impound such animal for a period of observation.
- (b) A physician who renders professional treatment to a person bitten by an animal shall report the fact that he has rendered professional treatment to the Chief of Police or an Animal Control Officer within 24 hours of his first professional attendance. The physician shall report the name, sex, and address of the person bitten as well as the type and location of the bite. The physician shall give the name and address of the owner of the animal that inflicted the bite and other facts that may assist the Animal Control Officer in ascertaining the immunization status of the animal.
- (c) An animal that bites a person shall be confined securely at a place and for a period of time deemed necessary by the animal control officer. The owner of the animal shall bear the cost of confinement.

- (d) A person who has custody of an animal that has bitten a person shall immediately notify the Animal Control Officer.

(Code 1962, § 6-2-11; Ord. No. 384, § 6-2-11, 7-22-91; Ord. No. 436, § 16, 5-13-96; Ord. No. 616, § 1, 8-30-11)

Notice to health officer of animal bites, NMSA 1978, § 77-1-6.

Secs. 3-54—3-70. Reserved.

DIVISION 3. LICENSING

Sec. 3-71. License required.

Sec. 3-72. Unlawful use of license tag.

Sec. 3-73. License issued by others.

Secs. 3-74—3-90. Reserved.

Sec. 3-71. License required.

- (a) Any person owning, possessing or harboring any dog or cat three months of age or over shall obtain a license for each animal. Application for such license shall be made as directed by the City Clerk and shall state the name and address of the owner, the name, breed, color, age and sex of such animal and any other information deemed necessary by the City Clerk. A current rabies vaccination certificate shall be presented at the time of application for the license. Upon payment of the license fee, as prescribed in subsection (d) of this section, the City Clerk shall issue a license certificate and tag for each animal. If the tag is lost, replacement tags with a cost set by resolution shall be purchased from the City Clerk. The license shall expire on the same date as the rabies certificate or one year whichever is greater.
- (b) A current license tag shall be affixed to the licensed dog or cat at all times in a reasonable manner, unless the licensed dog or cat is being kept in an approved kennel, veterinary hospital, is appearing in an approved show, or is being trained. Provided that the person that is training the dog shall have in his personal possession the valid license tag for each dog or cat and shall immediately display such upon request of the Animal Control Officer or a regular law enforcement officer.
- (c) Animals belonging to nonresidents who do not keep said animals within the corporate limits of the city for 90 consecutive days shall be exempt from this section, provided, however, that all other provisions of this division be complied with.
- (d) The annual license fee shall be set by resolution for each neutered male dog or cat, or for each spayed female dog or cat. The annual license fee shall be set by resolution for each unneutered male dog or cat, or for each unspayed female dog or cat. The license fee shall not apply to animals trained as qualified service

animals. The City Clerk shall charge a fee for a dog or cat that has not been spayed or neutered, unless the owner presents a signed statement from a licensed veterinarian stating that spaying or neutering would be a surgical risk for the animal, due to the animal's age or condition.

- (e) Upon change of ownership of any dog or cat, the new owner shall have the current license transferred to his name, within 30 days.

(Code 1962, § 6-2-14; Ord. No. 384, § 6-2-14, 7-22-91; Ord. No. 436, § 17, 5-13-96; Ord. No. 564, § 1, 11-14-06; Ord. No. 659(1), § 1, 1-13-15)

Municipal authority to require licensing of dogs, NMSA 1978, § 77-1-15.1.

Sec. 3-72. Unlawful use of license tag.

It is unlawful for any person to remove any license tag from one animal to another. It shall be unlawful for any person to manufacture, cause to be manufactured, or to have in his possession or under his control a stolen, counterfeit, or forged animal license tag, rabies vaccination certificate, or other form of licensing as required under this division.

(Code 1962, § 6-2-21)

Sec. 3-73. License issued by others.

The City Clerk may allow the issuance of animal licenses by other private or public parties within the City of Truth or Consequences. The City Clerk shall enter into an agreement in a form provided by the City Attorney for that purpose. The agreement shall allow a fee by the interested party in an amount set by resolution of the Commission.

(Ord. No. 564, § 1, 11-14-06)

Secs. 3-74—3-90. Reserved.

DIVISION 4. AT LARGE, VICIOUS, NUISANCE

Sec. 3-91. Running at large.

Sec. 3-92. Enclosure for breeding.

Sec. 3-93. Reserved.

Sec. 3-94. Vicious animals.

Sec. 3-95. Disturbing the peace.

Sec. 3-96. Public nuisance.

Sec. 3-97. Dangerous and potentially dangerous dogs.

Sec. 3-91. Running at large.

It is unlawful for any person to allow or permit any animal to run at large in or on any street, alley, sidewalk, vacant lot, or public property without the permission of the owner thereof.

Any animal permitted to run at large in violation of this section is declared to be a nuisance, a menace to the public health and safety, and shall be taken up and impounded as provided in section 3-30.

(Code 1962, § 6-2-15)

Municipal authority to make provision for the seizure of dogs and cats running at large, NMSA 1978, § 77-1-12.

Sec. 3-92. Enclosure for breeding.

It is unlawful for any person to let any female animal mate to any male animal, except within an enclosure so arranged as to obstruct such animals completely from the view of all who have no proprietary interest in the breeding of such animals.

(Code 1962, § 6-2-16)

Sec. 3-93. Reserved.

Editor's note—

Ord. No. 436, § 18, adopted May 13, 1996, repealed § 3-93, which pertained to unenclosed premises and derived from Code 1962, § 6-2-17.

Sec. 3-94. Vicious animals.

It is unlawful for any person to keep or harbor a vicious animal in the City. Any person attacked by a vicious animal may use necessary force to repel said attack. After a judicial determination that an animal is vicious, the owner or keeper of such vicious animal shall turn such animal over to the Animal Control Officer, who shall destroy it humanely.

(Code 1962, § 6-2-18; Ord. No. 505, § 1, 2-11-02; Ord. No. 621, § 1, 11-22-11)

Vicious animals, NMSA 1978, § 77-1-10.

Sec. 3-95. Disturbing the peace.

It is unlawful for any person to allow any animal to persistently or continually bark, howl, or make noise common to its species or otherwise disturb the peace and quiet of the inhabitants of the City or to keep or maintain any animal in such manner as to disturb by noxious or offensive odors or otherwise endanger the health and welfare of the inhabitants of the City.

(Code 1962, § 6-2-19; Ord. No. 617, § 1, 8-30-11; Ord. No. 659(2), § 1, 1-13-15)

Offenses relating to public order and safety, § 8-31 et seq.

Sec. 3-96. Public nuisance.

It is unlawful for the owner of any animal to be in violation of the public nuisance definition and such violation will be punished in accordance with section 1-10.

(Code 1962, § 6-2-20; Ord. No. 436, § 19, 5-13-96; Ord. No. 618, § 1, 8-30-11)

Editor's note—

Section 1 of Ord. No. 618, adopted Aug. 30, 2011, changed the title of § 3-96 from "Nuisances on sidewalks, public parks, alleys" to "Public nuisance."

Sec. 3-97. Dangerous and potentially dangerous dogs.

- (a) *Short title.* This section may be known, and will be cited, as the "Dangerous Dog Ordinance".
- (b) *Findings and intent.*
 - (1) Every year innocent people, predominantly children, are injured and sometimes killed as a result of the actions of dangerous dogs.
 - (2) No person has an absolute right to keep or harbor a dangerous or potentially dangerous dog within the City.
 - (3) This section will protect the inhabitants of the City.
 - (4) This section will provide for the proper registration and tracking of dangerous or potentially dangerous dogs within the City.
 - (5) This section will assist in providing control over dangerous and potentially dangerous dogs.
- (c) *Definitions.*

Animal control authority: The Animal Control Center and Animal Control Officer(s) of the Police Department of the City is charged with addressing animal control issues within the City.

Dangerous dog: A dog that caused a serious injury to a person or domestic animal.

Owner: A person who possesses, harbors, keeps or has control or custody of a dog or, if that person is under the age of 18, that person's parent or guardian.

Potentially dangerous dog: A dog that may reasonably be assumed to pose a threat to public safety as demonstrated by the following behaviors:

- (1) Causing an injury to a person or domestic animal that is less severe than a serious injury; or
- (2) Chasing or menacing a person or domestic animal in an aggressive manner and without provocation; or
- (3) Acting in a highly aggressively manner within a fenced yard or enclosure and appearing able to jump out of the yard or enclosure.

Proper enclosure: Secure confinement indoors or outdoors, such as in a fenced yard, locked pen or other structure that is designed to prevent the animal from escaping the confined area and young children from entering the confined area but does not include chaining, restraining or other affixing the animal to a stationary object.

Serious injury: A physical injury that results in broken bones, multiple bites or disfiguring lacerations requiring sutures or reconstructive surgery.

- (d) *Exceptions.* A dog will not be declared a dangerous or potentially dangerous dog

if:

- (1) The dog is used by a law enforcement official for legitimate law enforcement purposes; or
 - (2) The threat, injury or damage sustained by a person or domestic animal is the result of the person or domestic animal:
 - a. Trespassing upon premises occupied by the owner or the dog; or
 - b. Provoking, tormenting, abusing or assaulting the dog, or in the past has repeatedly provoked, tormented, abused or assaulted the dog; or
 - c. Committing, or attempting to commit, a crime; or
 - (3) The dog was:
 - a. Responding to pain or injury; or
 - b. Protecting itself or its offspring; or
 - c. Protecting or defending a human being or domestic animal from attack or assault.
- (e) *Seizure of dog—Petition to court of competent jurisdiction.*
- (1) If an animal control authority has probable cause to believe that a dog is a dangerous dog and poses an imminent threat to public safety, the animal control authority may apply to a court of competent jurisdiction in the county where the animal is located for a warrant to seize the animal.
 - (2) If an animal control authority has probable cause to believe that a dog is a potentially dangerous dog and poses a threat to public safety, the animal authority may apply to a court of competent jurisdiction in the county where the animal is located for a warrant to seize the animal.
 - (3) After seizure, the animal control authority will impound the dog pending disposition of the case or until the owner has fulfilled the requirements for a certificate of registration pursuant to the provisions of subsection (e) of this section.
 - (4) After seizure:
 - a. The owner may admit that the dog is dangerous or potentially dangerous and comply with the requirements for a certificate of registration pursuant to subsection (e) of this section; or
 - b. The animal control authority may, within 14 days after seizure of the dog, bring a petition in a court of competent jurisdiction seeking a determination of whether the dog is dangerous or potentially dangerous. If the court finds, by clear and convincing evidence, that the dog is dangerous and poses an imminent threat to public safety or potentially dangerous and poses a threat to public safety, the court shall order the owner to comply with the registration and handling requirements for the dog and obtain a

certificate of registration within 30 days or have the dog humanely destroyed. If the court does not make the required findings pursuant to this paragraph, the court shall immediately order the release of the dog to the owner.

- (5) If the owner does not admit that the dog is dangerous or potentially dangerous and the animal control authority does not bring a petition in court within 14 days of seizure of the dog, the court shall immediately order the release of the dog to its owner.
 - (6) If the owner admits that the dog is dangerous and transfers ownership of the dog to the animal control authority, the animal control authority may humanely destroy the dog.
 - (7) A determination that a dog is not dangerous or potentially dangerous shall not prevent the animal control authority from making a subsequent application for seizure based on the dog's subsequent behaviors.
- (f) *Dangerous and potentially dangerous dogs—Registration required.*
- (1) Upon application, an animal control authority shall issue a certificate of registration to the owner of a dangerous or potentially dangerous dog if the owner establishes that:
 - a. The owner is able to keep the dog under control at all times; and
 - b. A license, if applicable, has been issued pursuant to the requirements of the City; and
 - c. The dog has a current rabies vaccination; and
 - d. The owner has a proper enclosure to the dog; and
 - e. The owner has paid an annual fee of \$100.00 to register a dangerous or potentially dangerous dog.; and
 - f. The dog has been spayed or neutered; and
 - g. The dog has been implanted with a microchip containing owner identification information that is also provided to the animal control authority; and
 - h. The owner has entered the dog in a socialization and behavior program approved or offered by the animal control authority.
 - (2) If a dog previously determined to be dangerous or potentially dangerous has not exhibited any of the behaviors specified in this section for 36 consecutive months, the owner may request the animal control authority in the City to lift the requirements for registration pursuant to this section. If the animal control authority has no reasonable basis to believe that the dog has exhibited the behaviors specified, it shall relieve the owner of the requirements of this section.
 - (3) An animal control authority shall issue a certificate of registration to the owner of a dangerous dog if the owner, in addition to the requirements of subsection (e)(1) of this section, establishes that:

- a. The owner has paid an annual fee of \$100.00, as established by the animal control authority to register a dangerous dog; and
- b. The owner has written permission of the property owner or homeowner's association where the dangerous dog will be kept, if applicable; and
- c. The dangerous dog will be maintained exclusively on the owner's property except for medical treatment or examination; and
- d. When the dangerous dog is removed from the owner's property, the dog shall be caged or muzzled and restrained with a lead no longer than four feet, and the dog shall be under complete control at all times; and
- e. The dangerous dog will not be transported in a vehicle that might allow the dog to escape or gain access to any person or animal outside the vehicle; and
- f. A clearly visible warning sign with a conspicuous warning symbol indicate there is a dangerous dog on the premises is posted where the dog is kept and is visible from a public roadway or from 50 feet, whichever is less.

(4) An animal control authority may order the immediate impoundment or humane destruction of a dog previously determined to be a dangerous dog if the owner fails to comply with the conditions for registration, confinement or handling set forth in this section.

(g) *Prohibited acts.*

- (1) It is unlawful for an owner of a dangerous or potentially dangerous dog to:
 - a. Keep the dog without a valid certificate of registration; or
 - b. Violate the registration and handling requirements for the dog; or
 - c. Fail to notify the animal control authority immediately upon:
 - 1. The escape of the dog; or
 - 2. An attack by the dog upon a human being or a domestic animal;
 - d. Fail to notify the animal control authority of the dog's death within five business days; or
 - e. Fail to notify the animal control authority within 24 hours if the dog has been sold or given away and to provide the name, address and telephone number of the new owner of the dog; or
 - f. Fail to surrender the dog to an animal control authority for safe confinement pending a determination of the case where there is reason to believe that the dog poses an imminent threat to public safety; or

- g. Fail to comply with special handling or case requirements for the dog that a court has ordered.
- (2) Whoever violates a provision of subsection (g)(1) shall be charged in the Magistrate Court in the county in which the animal is located with a violation of the State Dangerous Dog Act, and upon conviction shall be sentenced in accordance with the provisions of NMSA 1978 § 31-19-1, and the State Dangerous Dog Act.

(Ord. No. 546, §§ 1—7, 10-11-05; Ord. No. 619, § 1, 9-27-11)

Editor's note—

Ord. No. 546, §§ 1—7, adopted Oct. 11, 2005, set out provisions intended for use as § 3-101. At the editor's discretion, these provisions have been included as § 3-97.

Chapter 4 BUILDINGS AND BUILDING REGULATIONS [1](16)

ARTICLE I. IN GENERAL

Sec. 4-1. Authority of Building Inspector.

Sec. 4-2. Penalty.

Secs. 4-3—4-20. Reserved.

Sec. 4-1. Authority of Building Inspector.

- (a) The Building Inspector shall have the authority to inspect the entire structure of any building prior to the installation of any metering device for new service, prior to the renewal of any existing service, upon change of ownership or tenants, or following a shutoff, disconnect, or removal of any metering device for any reason.
- (b) The Building Inspector shall have the authority to remove or order the removal of any or all City-owned metering devices serving any structure upon the discovery of any condition in that structure which is not in compliance with the building, electrical, plumbing, water, gas piping, or any other code provisions.
- (c) Thereafter, temporary services only may be installed in accordance with the usual procedures in performing repairs, renovations, remodeling, or rebuilding of any structure where the metering devices have been refused or removed pursuant to subsections (a) and (b) of this section, and such temporary installations shall not exceed 90 days without a written extension from the Building Inspector. Regular services may not be restored until the structure is brought into compliance with all applicable code provisions.

(Code 1962, § 4-8-1)

Sec. 4-2. Penalty.

It shall be unlawful to use, occupy, rent or lease to others any structure for any purpose where metering devices have been removed or refused in accordance with subsections (a) and (b) of section 4-1. Any person violating any provisions of this chapter shall be subject to a fine of up to \$300.00 per day for each day the violation continues.

(Code 1962, § 4-8-2)

Secs. 4-3—4-20. Reserved.

ARTICLE II. TECHNICAL CODES

DIVISION 1. GENERALLY

Secs. 4-21—4-45. Reserved.

Secs. 4-21—4-45. Reserved.

DIVISION 2. BUILDING CODE

Sec. 4-46. Code adopted.

Secs. 4-47—4-65. Reserved.

Sec. 4-46. Code adopted.

The conditions, provisions, limitations, and terms of the current editions of the International Building Code, the New Mexico Commercial Building Code, the International Existing Building Code, the New Mexico Existing Building Code, the New Mexico Non-Load Bearing Baled Straw Construction Building Standards, the New Mexico Earthen Building Materials Code, the New Mexico Solar Energy Code, and the New Mexico Swimming Pool, Spa, and Hot Tub Code which are made a part hereof by reference as fully as if copied at length in this division, are hereby adopted by the City of Truth or Consequences, New Mexico.

Copies of the above-described codifications, or codifications and revisions, are available and subject to inspection, at all reasonable times, at the City Clerk's Office, City Hall, 505 Sims Street, Truth or Consequences, New Mexico.

(Code 1962, § 4-1-1; Ord. No. 560, §§ 1, 2, 9-12-06)

Secs. 4-47—4-65. Reserved.

DIVISION 3. PLUMBING CODE

Sec. 4-66. Code adopted.

Secs. 4-67—4-85. Reserved.

Sec. 4-66. Code adopted.

The conditions, provisions, limitations, and terms of the current editions of the Uniform Plumbing Code and the Plumbing Code of the State of New Mexico, which are made a part hereof by reference as fully as if copied at length in this division, are hereby adopted for the City of Truth or Consequences, New Mexico. A copy of such codifications or codifications and revisions shall at all reasonable times be available and subject to inspection at the City Clerk's Office, City Hall, 505 Sims Street, Truth or Consequences, New Mexico.

(Code 1962, § 4-2-1)

Secs. 4-67—4-85. Reserved.

DIVISION 4. ELECTRICAL CODE

Sec. 4-86. Code adopted.

Secs. 4-87—4-105. Reserved.

Sec. 4-86. Code adopted.

The conditions, provisions, limitations, and terms of the current editions of the National Electrical Code, the State of New Mexico Electrical Code, the National Electrical Safety Code, and the New Mexico Electrical Safety Code, which are made a part hereof by reference as fully as if copied at length in this division, are hereby adopted by the City of Truth or Consequences, New Mexico.

Copies of the above-described codifications, or codifications and revisions, are available and subject to inspection, at all reasonable times, at the City Clerk's Office, City Hall, 505 Sims Street, Truth or Consequences, New Mexico.

(Code 1962, § 4-3-1; Ord. No. 560, §§ 1, 2, 9-12-06)

Secs. 4-87—4-105. Reserved.

DIVISION 5. GAS CODE

Sec. 4-106. Code adopted.

Secs. 4-107—4-125. Reserved.

Sec. 4-106. Code adopted.

The rules and regulations governing basic standards for the installation of gas piping and gas appliances in buildings shall be as set forth in the current editions of the Uniform Mechanical Code, and the New Mexico Mechanical Code, which are made a part hereof by reference as fully as if copied at length in this division, are hereby adopted by the City of Truth or Consequences, New Mexico.

Copies of the above-described codifications, or codifications and revisions, are available and subject to inspection, at all reasonable times, at the City Clerk's Office, City Hall, 505 Sims Street, Truth or Consequences, New Mexico.

(Code 1962, § 4-4-1; Ord. No. 560, §§ 1, 2, 9-12-06)

Secs. 4-107—4-125. Reserved.

DIVISION 6. LIQUEFIED PETROLEUM GAS

Sec. 4-126. Code adopted.

Secs. 4-127—4-145. Reserved.

Sec. 4-126. Code adopted.

The rules and regulations for the storage and handling of liquefied petroleum gases shall be as set forth in § 19.15.40, et seq., NMAC (New Mexico Liquefied Petroleum Gas Standard), and in § 70-5-1, et seq., NMSA (1978) (Liquefied and Compressed Gases), which are made a part hereof by reference as fully as if copied at length in this division, are hereby adopted by the City of Truth or Consequences, New Mexico.

Copies of the above-described codifications, or codifications and revisions, are available and subject to inspection, at all reasonable times, at the City Clerk's Office, City Hall, 505 Sims Street, Truth or Consequences, New Mexico.

(Code 1962, § 4-5-1; Ord. No. 560, §§ 1, 2, 9-12-06)

Secs. 4-127—4-145. Reserved.

DIVISION 7. HOUSING CODE

Sec. 4-146. Minimum Housing Code; adopted.

Secs. 4-147—4-165. Reserved.

Sec. 4-146. Minimum Housing Code; adopted.

The conditions, provisions, limitations, and terms of the current editions of the International Residential Code, the New Mexico Residential Building Code, the International Energy Conservation Code, and the New Mexico Energy Conservation Code are hereby adopted by reference as fully as if copied at length in this division, are hereby adopted by the City of Truth or Consequences, New Mexico.

Copies of the above-described codifications, or codifications and revisions, are available and subject to inspection, at all reasonable times, at the City Clerk's Office, City Hall, 505 Sims Street, Truth or Consequences, New Mexico.

(Code 1962, § 4-6-1; Ord. No. 560, §§ 1, 2, 9-12-06)

Secs. 4-147—4-165. Reserved.

ARTICLE III. FLOOD DAMAGE PREVENTION

DIVISION 1. GENERALLY

Sec. 4-166. Statutory authorization, findings of fact, purpose and objectives.

Sec. 4-167. Definitions.

Sec. 4-168. General provisions.

Secs. 4-169—4-185. Reserved.

Sec. 4-166. Statutory authorization, findings of fact, purpose and objectives.

The legislature of the State of New Mexico has in NMSA 1978, § 3-18-7, delegated the responsibility to local governmental units to adopt regulations designed to minimize flood losses. Therefore, the City Commission of the City of Truth or Consequences, New Mexico, does ordain as follows:

(1) *Findings of fact.*

- a. The flood hazard areas of Truth or Consequences are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental 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 floodplains 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.

(2) *Statement of purpose.* It is the purpose of this article 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, and streets and bridges located in floodplains;

- f. Help maintain a stable tax base by providing for the sound use and development of floodprone areas in such a manner as to minimize future flood blight areas; and
 - g. Insure that potential buyers are notified that property is in a flood area.
- (3) *Methods of reducing flood losses.* In order to accomplish its purposes, this article uses the following methods:
- a. Restrict or prohibit uses which are dangerous to health, safety, or property in times of flood, or cause excessive increases in flood heights or velocities;
 - b. Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
 - c. Control the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of floodwaters;
 - d. Control filling, grading, dredging, and other development which may increase flood damage;
 - e. Prevent or regulate the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards to other lands.

(Code 1962, § 4-9-1)

Sec. 4-167. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Alluvial fan flooding means flooding occurring on 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 means 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.

Area of shallow flooding means a designated AO, AH, or VO zone on a community's Flood Insurance Rate Map (FIRM) with a one percent chance or greater annual 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 means the land in the floodplain within a community subject to a one percent 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 usually is refined into zones A, AE,

AH, AO, A1-99, VO, V1-30, VE or V.

Base flood means the flood having a one percent chance of being equalled or exceeded in any given year.

Basement means any area of the building having its floor subgrade (below ground level) on all sides.

Critical feature means 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 means 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, storage of equipment or materials.

Elevated building means a nonbasement building 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 in zones V1-30, VE, or V, to have the bottom of the lowest horizontal structure member of the elevated floor elevated above the ground level by means of pilings, columns (posts and piers), or shear walls parallel to the floor of the water and 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, D, 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, or V, 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 section 60.3(e)(5) of the National Flood Insurance Program regulations.

Existing construction means, 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 means 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.

Expansion to an existing manufactured home park or subdivision means 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 either final site grading or the pouring of concrete pads).

Flood or flooding means a general and temporary condition of partial or complete inundation of normally dry land areas from:

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

Flood Insurance Rate Map (FIRM) means an official map of a community, on which the Federal Emergency Management Agency has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

Flood insurance study is the official report provided by the Federal Emergency Management Agency. The report contains flood profiles, water surface elevation of the base flood, as well as the Flood Boundary-Floodway Map.

Flood protection system means 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.

Highest adjacent use means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

Historic structure means any structure that is:

- (a) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- (b) 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;
- (c) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of Interior; or
- (d) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
 - (1) By an approved state program as determined by the Secretary of the Interior or;
 - (2) Directly by the Secretary of the Interior in states without approved programs.

Levee means 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 means a flood protection system which consists of a levee, or levees, and associated structures, such as closure and drainage devices, which are constructed and operated in accordance with sound engineering practices.

Lowest floor means the lowest floor of the lowest enclosed area, including the basement. An unfinished or flood resistant enclosure, useable solely for the parking of 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 nonelevation design requirement of section 60.3 of the National Flood Insurance Program regulations.

Manufactured home means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. The term "manufactured home" does not include a "recreational vehicle".

Manufactured home park or subdivision means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

Mean sea level means, 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.

New construction means, for the purpose 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 means 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.

Recreational vehicle means a vehicle which is (i) built on a single chassis; (ii) 400 square feet or less when measured at the largest horizontal projections; (iii) designed to be self-propelled or permanently towable by a light duty truck; and (iv) 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 (Pub. L. 97-348), includes substantial improvement 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 means either the first placement of permanent construction of a structure on a site, such as the pouring of a slab or footings, the installation of piles, 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 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 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 that alteration affects the external dimensions of the building.

Structure means a walled and roofed building, including a gas or liquid storage tank,

that is principally aboveground, as well as a manufactured home.

Substantial damage means 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 percent of the market value of the structure before the damage occurred.

Substantial improvement means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before "start of construction" of the improvement. This includes structures which 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 code specifications which have been identified by the local code enforcement official and which are the minimum necessary 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 means 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 section 60.6 of the National Flood Insurance Program regulations.)

Violation means 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 section 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 means the height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929 (or other datum, where specified), of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

(Code 1962, § 4-9-2; Ord. No. 435, § 1, 4-23-96)

Definitions and rules of construction generally, § 1-2.

Sec. 4-168. General provisions.

- (a) *Lands to which this article applies.* This article shall apply to all areas of special flood hazard within the jurisdiction of the City.
- (b) *Basis for establishing the 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 the City of Truth or Consequences," dated July 16, 1996 with accompanying Flood Insurance Rate Maps and Flood Boundary-Floodway Maps (FIRM and FBFM) and any revisions thereto are hereby adopted by reference and declared to be a part of this article.
- (c) *Establishment of development permit.* A development permit shall be required to ensure conformance with the provisions of this article.
- (d) *Compliance.* No structure or land shall hereafter be located, altered, or have its use changed without full compliance with the terms of this article and other

applicable regulations.

- (e) *Abrogation and greater restrictions.* This article is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this article and another conflict or overlap, whichever imposes the more stringent restrictions shall prevail.
- (f) *Interpretation.* In the interpretation and application of this article, all provisions shall be:
 - (1) Considered as minimum requirements;
 - (2) Liberally construed in favor of the Governing Body; and
 - (3) Deemed neither to limit nor repeal any other powers granted under state statutes.
- (g) *Warning and disclaimer of liability.* The degree of flood protection required by this article 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 article does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This article shall not create liability on the part of the community or any official or employee thereof for any flood damages that result from reliance on this article or any administrative decision lawfully made thereunder.

(Code 1962, § 4-9-3; Ord. No. 435, § 2, 4-23-96)

Secs. 4-169—4-185. Reserved.

DIVISION 2. ADMINISTRATION [2](17)

Sec. 4-186. Administrator.

Secs. 4-187—4-205. Reserved.

Sec. 4-186. Administrator.

- (a) *Designation of the Floodplain Administrator.* The Floodplain Administrator shall administer and implement the provisions of this article and other appropriate sections of 44 CFR (National Flood Insurance Program Regulations) pertaining to floodplain management.
- (b) *Duties and responsibilities of the Floodplain Administrator.* Duties and responsibilities of the Floodplain Administrator shall include but not be limited to the following:
 - (1) Maintain and hold open for public inspection all records pertaining to the provisions of this article.
 - (2) Review permit application to determine whether proposed building site will be reasonably safe from flooding.

- (3) Review, approve, or deny all applications for development permits required by adoption of this article.
 - (4) Review permits for proposed development to assure that all necessary permits have been obtained from those federal, state or local governmental agencies, including section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334, from which prior approval is required.
 - (5) Where interpretation is needed as to the exact location of the boundaries of the areas of special flood hazards (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.
 - (6) Notify, in riverine situations, adjacent communities and the state coordinating agency, which is New Mexico State Engineer's Office, prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency.
 - (7) Assure that the flood carrying capacity within the altered or relocated portion of any watercourse is maintained.
 - (8) When base flood elevation data has not been provided in accordance with section 4-168(b), the Floodplain Administrator 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 section 4-206.
 - (9) When a regulatory floodway has not been designated, the Floodplain Administrator must require that 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 the 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.
 - (10) Under the provisions of 44 CFR Chapter 1, Section 65.12, of the National Flood Insurance Program regulations, a community may approve certain development in Zones A1-30, AE, AH, on the community's FIRM which increases the water surface elevation of the base flood by more than one foot, provided that the community first applies for a conditional FIRM revision through FEMA.
- (c) *Permit procedures.*
- (1) Application for a development permit shall be presented to the Floodplain Administrator on forms furnished by him and may include but not be limited to plans in duplicate drawn to scale showing the location, dimensions, and elevation of proposed landscape alterations, existing and proposed structures, and the location of the foregoing in relation to areas of special flood hazard. Additionally, the following information is required:

- a. Elevation, in relation to mean sea level, of the lowest floor, including the basement, of all new and substantially improved structures;
 - b. Elevation in relation to mean sea level to which any nonresidential structure shall be floodproofed;
 - c. A certificate from a registered professional engineer or architect that the nonresidential floodproofed structure shall meet the floodproofing criteria of section 4-206(b)(2);
 - d. Description of the extent to which any watercourse or natural drainage will be altered or relocated as a result of proposed development;
 - e. Maintain a record of all such information in accordance with the provisions of this article.
- (2) Approval or denial of a development permit by the Floodplain Administrator shall be based on all of the provisions of this article and the following relevant factors:
- a. The danger to life and property due to flooding or erosion damage;
 - b. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
 - c. The danger that materials may be swept onto other lands to the injury of others;
 - d. The compatibility of the proposed use with existing and anticipated development;
 - e. The safety of access to the property in times of flood for ordinary and emergency vehicles;
 - f. 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, electrical, and water systems;
 - g. 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;
 - h. The necessity to the facility of a waterfront location, where applicable;
 - i. The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
 - j. The relationship of the proposed use to the comprehensive plan for that area.

(d) *Variance procedures.*

- (1) The Appeal Board, as established by the community, shall hear and render judgment on requests for variances from the requirements of this article.
- (2) The Appeal Board shall hear and render judgment on an appeal only when it is alleged there is an error in any requirement, decision, or determination made by the Floodplain Administrator in the enforcement or administration of this article.
- (3) Any person aggrieved by the decision of the Appeal Board may appeal such decision to the courts of competent jurisdiction.
- (4) The Floodplain Administrator shall maintain a record of all actions involving an appeal and shall report variances to the Federal Emergency Management Agency upon request.
- (5) 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 article.
- (6) 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, providing the relevant factors in subsection (c)(2) of this section have been fully considered. As the lot size increases beyond one-half acre, the technical justification required for issuing the variances increases.
- (7) Upon consideration of the factors noted above and the intent of this article, the Appeal Board may attach such conditions to the granting of variances as it deems necessary to further the purpose and objectives of section 4-166.
- (8) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
- (9) 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 the variance is the minimum necessary to preserve the historic character and design of the structure.
- (10) *Prerequisites for granting variances.*
 - a. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
 - b. Variances shall only be issued upon:
 1. Showing of good and sufficient cause;
 2. A determination that failure to grant the variance would

result in exceptional hardship to the applicant; and

3. A determination that the granting of a 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.
 - c. 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 floor elevation.
- (11) Variances may be issued by a community for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use provided that:
- a. The criteria outlined in subsection (d)(1) to (d)(9) of this section are met; and
 - b. 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.

(Code 1962, § 4-9-4; Ord. No. 435, §§ 3—5, 4-23-96)

Secs. 4-187—4-205. Reserved.

DIVISION 3. PROVISIONS FOR FLOOD HAZARD REDUCTION

Sec. 4-206. Standards.

Sec. 4-207. Flood hazard areas.

Sec. 4-208. Stop work orders.

Secs. 4-209—4-225. Reserved.

Sec. 4-206. Standards.

- (a) *General standards.* In all areas of special flood hazards the following provisions are required for all new construction and substantial improvements:
 - (1) All new construction or 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.
 - (2) All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damage.
 - (3) All new construction or substantial improvements shall be constructed

with materials resistant to flood damage.

- (4) All new construction or substantial improvements shall be constructed with electrical, heating, ventilation, plumbing, 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.
 - (5) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system.
 - (6) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharge from the systems into floodwaters; and
 - (7) Onsite waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.
- (b) *Specific standards.* In all areas of special flood hazards where base flood elevation data have been provided as set forth in section 4-168(b), section 4-186(b)(8) or subsection (c)(3) of this section, the following provisions are required:
- (1) *Residential construction.* New construction and substantial improvement of any residential structure shall have the lowest floor including the basement, elevated to or above base flood elevation. A registered professional engineer, architect, or land surveyor shall submit a certification to the Floodplain Administrator that the standard of this subsection as proposed in section 4-186(c)(1)a. is satisfied.
 - (2) *Nonresidential construction.* New construction and substantial improvements of any commercial, industrial, or other nonresidential structure shall either have the lowest floor, including basement, elevated to or above the base flood level 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 he shall certify that the design and methods of construction are in accordance with accepted standards of practice as outlined in this subsection. 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.
 - (3) *Enclosures.* New construction and substantial improvements, with fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access or storage in an area other than a basement and which 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:

- a. 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.
- b. The bottom of all openings shall be no higher than one foot above grade.
- c. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

(4) *Manufactured homes.*

- a. Require that all manufactured homes to be placed within Zone A on a community's FHBM or FIRM shall be installed using methods and practices which minimize flood damage. For the purposes of this requirement, manufactured homes must be elevated and anchored to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable State and local anchoring requirements for resisting wind forces.
- b. Require that manufactured homes that are placed or substantially improved within Zones A1-30, AH, and AE on the community's FIRM on sites (i) outside of a manufactured home park or subdivision, (ii) in a new manufactured home park or subdivision, (iii) in an expansion to an existing manufactured home park or subdivision, or (iv) in an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage" as a result of a flood, be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated to or above the base flood elevation and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.
- c. Require that manufactured homes be placed or substantially improved on sites in an existing manufactured home park or subdivision with Zones A1-30, AH and AE on the community's FIRM that are not subject to the provisions of paragraph (4) of this section be elevated so that either;
 - (i) the lowest floor of the manufactured home is at or above the base flood elevation, or
 - (ii) the manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade and be securely anchored to an adequately anchored foundation system to resist flotation, collapse,

and lateral movement.

- (5) *Recreational vehicles.* Require that recreational vehicles placed on sites within Zones A1-30, AH, and AE on the community's FIRM either (i) be on the site for fewer than 180 consecutive days, (ii) be fully licensed and ready for highway use, or (iii) meet the permit requirements of Article 4, Section C(1), and the elevation and anchoring requirements for "manufactured homes" in paragraph (4) of this section. 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.
- (c) *Standards for subdivision proposals.*
- (1) All subdivision proposals, including manufactured home parks and subdivisions, shall be consistent with the provisions of this chapter.
 - (2) All proposals for the development of subdivisions, including manufactured home parks and subdivisions, shall meet the development permit requirements of sections 4-168(c), 4-186(c) and the provisions of this section.
 - (3) Base flood elevation data shall be generated for subdivision proposals and other proposed development, including manufactured home parks and subdivisions, which are greater than 50 lots or five acres, whichever is lesser, if not otherwise provided pursuant to section 4-168(b) or section 4-186(b).
 - (4) All subdivision proposals, including manufactured home parks and subdivisions, shall have adequate drainage provided to reduce exposure to flood hazards.
 - (5) 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 to minimize or eliminate flood damage.
- (d) *Standards for areas of shallow flooding (AO/AH Zones).* Located within the areas of special flood hazard established in Article 3, Section B, are areas designated as 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 and 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 apply:
- (1) All new construction and substantial improvements of residential structures 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 (at least two feet if no depth number is specified).
 - (2) All new construction and substantial improvements of non-residential structures:

- (i) 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 (at least two feet if no depth number is specified).
 - (ii) 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 of effects of buoyancy.
- (3) A registered professional engineer or architect shall submit a certification to the Floodplain Administrator that the standards of this Section, as proposed in Article 4, Section C(1)a., are satisfied.
- (4) Require within Zones AH or AO adequate drainage paths around structures on slopes, to guide flood waters around and away from proposed structures.

(Code 1962, § 4-9-5; Ord. No. 435, § 6, 4-23-96)

Sec. 4-207. Flood hazard areas.

- (a) A building permit from the City must be obtained from the City Building Inspector after he determines that a proposed building site is reasonably safe from flooding. If a flood hazard exists, as shown on exhibit A, adopted by reference in this section, Federal Emergency Management Agency Flood Hazard Boundary Maps No. H 01-0 through H 01-04, for the City, dated June 28, 1974, and revised February 7, 1975, which maps show the areas indicated thereon as subject to flooding, then any proposed new construction, additions, or improvements, including prefabricated and mobile homes, must:
- (1) Use methods, practices, and materials that will minimize flood damage to structures, buildings, and utility equipment. The Building Inspector will use the Federal Emergency Management Agency manual "Elevated Residential Structures" when applicable, and the Chief of Engineers, U.S. Army, manual "Flood Proofing Regulations" for nonresidential structures, such as commercial and industrial buildings or additions or substantial improvements to such existing structures, and the New Mexico Construction Industry Commission's uniform building code and revisions, and the regulations of the Mobile Home Commission. In addition to the above requirements, floodproofing and clearance from ground level to the first floor of residential structures must not be less than 24 inches, must require that within the flood hazard zone all new construction and substantial improvements of nonresidential structures have the lowest floor elevated above the crown of the nearest street to the structure or above the depth and numbers specified on the federal insurance rate map together with attendant utility and sanitary facilities to be completely floodproof to or above the level so that any space below that level 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. The flood hazard zone is defined as an area of special flood hazards having shallow water depths and/or unpredictable flow paths between one foot and three feet.

- (2) The Building Inspector's responsibilities include new construction, substantial improvements and additions to existing structures, and the installation, anchoring additions to, and improvements to mobile homes.
- (3) Mobile homes must be designed or modified and adequately anchored to prevent flotation, collapse, or lateral movement of the structure. No mobile home shall be placed in a floodway except in an existing mobile home park or existing mobile home subdivision.
 - a. Anchor standards for mobile homes required:
 1. Over-the-top ties are required at each of the four corners of mobile homes with two additional ties to a side at intermediate locations; and mobile homes of less than 50 feet long require one additional tie to a side;
 2. Frame ties at each corner of the mobile home are required with five additional ties to a side at intermediate points; and, on mobile homes of less than 50 feet in length, an additional four ties to a side are required;
 3. All components of the anchoring system must be capable of carrying a force of 4,800 pounds; and
 4. Any additions to a mobile home must be similarly anchored.
 - b. Where the mobile home housing unit manufacturer has issued specific instructions for footing and piers, those instructions should be followed except that the footing and pier specifications as prescribed by the New Mexico Mobile Home Commission are the minimum permitted.
 - c. An evacuation plan indicating all alternate vehicular access and escape routes shall be filed with the appropriate disaster preparedness authorities for mobile home parks and mobile home subdivisions located within zone A as shown on the flood hazard boundary map for the City.
- (b) No person shall construct or cause to be constructed any structure or improvement, addition to any structure, residential, industrial, commercial, or otherwise, without first obtaining a building permit from the Building Inspector of the City.
- (c) Proposed subdivisions and land use areas shall be reviewed by the City Building Inspector to assure, among other things, the following:
 - (1) That all proposals for construction provide for methods to minimize flood damage;

- (2) That all public utilities and facilities such as sewage, gas, electrical service, and water systems are located and constructed so as to minimize the possibility of flood damage;
 - (3) That adequate drainage is provided for so as to reduce exposure to flood hazards;
 - (4) Base flood elevation data shall be generated for subdivision proposals and other proposed developments which are greater than the lesser of 50 lots or five acres.
- (d) All new and replacement water supply systems and/or sanitary sewerage systems shall be designed to minimize or eliminate infiltration of floodwaters into the system and discharges from the system into the floodwaters. All onsite waste disposal systems shall be located so as to avoid impairment to them or contamination from them during flooding.
- (e) Upon completion of any work or of the construction of any building under a building permit granted as aforesaid, the owner of such building permit shall report such completion to the Building Inspector. The Building Inspector shall, after completion, or at any time during the course of the work for which the building permit shall have been granted, cause an inspection of such building to be made. If there is evidence that any requirement of the law or of any applicable ordinance has not been complied with, the City shall commence prosecution under such law or ordinance to take the necessary steps to secure compliance. The completion of such work shall be noted on the original building permit. The Building Inspector shall indicate on the building permit the height and the mandatory floodproofing, and all clearances from ground levels of the first floor. The completed building permit shall be kept on file by the City Clerk.
- (f) The City Manager shall review proposed developments with the City to assure that all necessary permits have been received from those governmental agencies from which approval is required by federal or state law, including section 404 of the Federal Water Pollution Control Act Amendments 1972, 33 USC 1334.
- (1) He shall assure that the alteration of any watercourse shall not diminish the floodwater carrying capacity of the watercourse;
 - (2) He shall assure that any manmade changes in the landscape shall not adversely affect or increase flooding in Truth or Consequences;
 - (3) He shall request of the Village of Williamsburg and of the Sierra County Commission to advise and consult with the City before permitting the alteration of any watercourse, construction of any building or structure, or change in the landscapes that will adversely affect the City of Truth or Consequences flood hazard.
 - (4) The Governing Body of the City shall:
 - a. Restrict or prohibit the uses that are dangerous to the health, safety, or property of the citizens of the City or of the City in times of flood, or which might cause excessive increases in flood height

or velocity;

- b. Control the alteration of natural floodplains, their protective barriers, and stream channels;
 - c. Prevent the construction of barriers which would divert floodwaters and subject the City to greater flood hazards.
- (g) The decree of flood protection required by this article is considered reasonable for regulatory purposes and is based upon the minimum requirements established by the Federal Insurance Administration of the U.S. Department of Housing and Urban Development, the New Mexico State Engineer, the New Mexico Construction Industries Commission, the General Construction Board, the Mobile Home Housing Commission, and the ordinances of the City.

(Code 1962, § 4-1-2)

Editor's note—

Exhibit A, referred to in subsection (a) of this section, is not printed in this Code, but is on file in the office of the City Clerk.

Sec. 4-208. Stop work orders.

Upon notice from the Floodplain Administrator that work on any building, structure, dike, bridge, or any improvement which would affect water drainage, is being done contrary to the provisions of this regulation, or in a dangerous or unsafe manner, such work shall be immediately stopped. Such notice shall be in writing and shall be given to the owner of the property or his agent, or to the person doing the work, and shall state the conditions under which work may be resumed. Where an emergency exists, no written notice shall be required to be given by the Floodplain Administrator, provided, written notice shall be in writing and shall be given to the owner of the property or his agent, or to the person doing the work, and shall state the conditions under which work may be resumed. Where an emergency exists, no written notice shall be required to be given by the Floodplain Administrator, provided, written notice shall follow within 24 hours from the time oral notice to stop work is issued.

(Ord. No. 435, § 7, 4-23-96)

Secs. 4-209—4-225. Reserved.

ARTICLE IV. DANGEROUS AND UNSAFE STRUCTURES [3](18)

Sec. 4-226. Penalty.

Sec. 4-227. Prohibited.

Sec. 4-228. Unsafe structures or premises.

Sec. 4-229. Dangerous structures or premises.

Sec. 4-230. Determination.

Sec. 4-231. Procedure to abate.

- Sec. 4-232. Removal and appeal.
- Sec. 4-233. Recording of lien; interest rate on lien.
- Sec. 4-234. Emergency action.
- Sec. 4-235. Owner is absent from the city.
- Secs. 4-236—4-300. Reserved.

Sec. 4-226. Penalty.

Violations of this article are punishable as provided in section 1-10.

(Ord. No. 640, § 1, 9-24-13)

Sec. 4-227. Prohibited.

It shall be unlawful for any person or persons, corporation or entity to:

- (1) Maintain or permit the existence of any dangerous or unsafe building or structure within the city;
- (2) Fail to repair, remodel or renovate any building or structure designated as dangerous or unsafe, or any building moved within the city;
- (3) For the owner, occupant, or person in custody of any dangerous building to allow or permit the same to remain in a dangerous condition and to permit any building or structure to be occupied while it is or remains in a dangerous condition.

(Ord. No. 640, § 1, 9-24-13)

Sec. 4-228. Unsafe structures or premises.

An unsafe structure is one that is found to be dangerous to the life, health, property or safety of the public or the occupants of the structure by not providing minimum safeguards to protect or warn occupants in the event of fire, or because such structure is so damaged, decayed, dilapidated, structurally unsafe or of such faulty construction or unstable foundation, that partial or complete collapse is possible.

(Ord. No. 640, § 1, 9-24-13)

Sec. 4-229. Dangerous structures or premises.

For the purpose of this Code, any building, structure or premises that have any or all of the conditions or defects described below shall be considered dangerous:

- (1) Any door which is unsecured or any door, aisle, passageway, stairway or other means of egress, including windows, that does not conform to the current New Mexico Building Code and Fire Code as adopted by the authority having jurisdiction relating to the requirement for existing buildings.
- (2) The walking surface of any aisle, passageway, stairway, exit or other means of

egress is so warped, worn, loose, torn or otherwise unsafe as to not provide safe and adequate means of egress.

- (3) Any portion of a building, structure, or appurtenance that has been damaged by fire, earthquake, wind, flood, deterioration, neglect, abandonment, vandalism or by any other cause to such an extent that it is likely to partially or completely collapse, or to become detached or dislodged.
- (4) 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 percent of the market value of the structure before the damage occurred.
- (5) Any portion of a building, or any member, appurtenance or ornamentation on the exterior thereof that is not of sufficient strength or stability, or is not so anchored, attached or fastened in place so as to be capable of resisting natural or artificial loads required by the New Mexico Building Code.
- (6) The building or structure, or part of the building or structure, because of dilapidation, deterioration, decay, faulty construction, the removal or movement of some portion of the ground necessary for the support, or for any other reason, is likely to partially or completely collapse, or some portion of the foundation or underpinning of the building or structure is likely to fail or give way.
- (7) The building or structure is neglected, damaged, dilapidated, unsecured or abandoned so as to become an attractive nuisance to children who might play in the building or structure to their danger, becomes a harbor for vagrants, criminals or persons, or enables persons to resort to the building or structure for committing a nuisance or an unlawful act.
- (8) Any building or structure has been constructed, exists or is maintained in violation of any specific requirements or prohibition applicable to such building or structure provided by the approved building or fire code of the jurisdiction, or of any law or ordinance to such an extent as to present either a substantial risk of fire, building collapse or any other threat to life and safety.
- (9) A building or structure, used or intended to be used for dwelling purposes, because of inadequate maintenance, dilapidation, decay, damage, faulty construction or arrangement, inadequate light, ventilation, mechanical or plumbing system, or otherwise, is determined by the enforcement officer to be unsanitary, unfit for human habitation or in such a condition that is likely to cause sickness or disease.
- (10) Any portion of a building remaining on a site after a demolition or destruction of the building or structure or whenever any building or structure is abandoned so as to constitute such building or portion thereof an attractive nuisance or hazard to the public.

(Ord. No. 640, § 1, 9-24-13)

Sec. 4-230. Determination.

When the building inspector suspects that a building or structure may be unsafe or dangerous, he shall perform a complete inspection and generate a report on the condition of

the structure.

(Ord. No. 640, § 1, 9-24-13)

Sec. 4-231. Procedure to abate.

- (a) Whenever the building inspector shall be of the opinion that any building or structure in the city is a dangerous or unsafe building, the building inspector shall prepare a written notice to be served upon the legal owner of record thereof, and upon the occupant thereof, if any, by certified mail or by personal service to the last known address. Such notice shall state that the building has been declared to be in a dangerous condition, and that such dangerous condition(s) must be removed or remedied by repairing or altering the building or by demolishing it; and that the condition must be remedied within a fixed period of time not to exceed 90 days.
- (b) Based on the report submitted by the aforementioned official, the city commission may, by formal resolution, find the property to be dangerous. A copy of the resolution shall be served on the owner, occupant or agent in charge of the building, structure or premises. If the owner, as shown by the real estate records of the county clerk, occupant or agent in charge of the building, structure or premises cannot be served within the city, a copy of the resolution shall be posted on the building, structure or premises and a copy of the resolution shall be published one time.

(Ord. No. 640, § 1, 9-24-13)

Sec. 4-232. Removal and appeal.

- (a) Within ten days of the receipt of a copy of the resolution or of the posting and publishing of a copy of the resolution, the owner, occupant or agent in charge of the building, structure or premises shall commence removing the building, structure, ruin, rubbish, wreckage or debris, or file a written objection with the city clerk asking for a hearing before the governing body of the municipality.
- (b) If a written objection is filed as required in this section, the city shall:
 - (1) Fix a date for a hearing on its resolution and the objection;
 - (2) Consider all evidence for and against the removal resolution at the hearing; and
 - (3) Determine if its resolution should be enforced or rescinded.
- (c) Any person aggrieved by the determination of the governing body may appeal to the district court by:
 - (1) Giving notice of appeal to the governing body within five days after the determination made by the governing body; and
 - (2) Filing a petition in the district court within 20 days after the determination made by the governing body. The district court shall hear the matter de novo and enter judgment in accordance with its findings.

- (d) If the owner, occupant or agent in charge of the building, structure or premises fails to commence removing the building, structure, ruins, rubbish, wreckage or debris:
 - (1) Within ten days of being served a copy of the resolution or of the posting and publishing of the resolution; or
 - (2) Within five days of the determination by the governing body that the resolution shall be enforced; or
 - (3) After the district court enters judgment sustaining the determination of the governing body, the municipality may remove the building, structure, ruins, rubbish, wreckage or debris at the cost and expense of the owner. The reasonable cost of the removal shall constitute a lien against the building, structure, ruin, rubbish, wreckage or debris so removed and against the lot or parcel of land from which it was removed. The lien shall be foreclosed in the manner provided in sections 3-36-1 through 3-36-6 NMSA 1978.
- (e) The municipality may pay for the costs of removal of any condemned building, structure, wreckage, rubbish or debris by granting to the person removing such materials, the legal title to all salvageable materials in lieu of all other compensation.
- (f) Any person or firm removing any condemned building, structure, wreckage, rubbish or debris shall leave the premises from which the material has been removed in a clean, level and safe condition, suitable for further occupancy or construction and with all excavations filled.

(Ord. No. 640, § 1, 9-24-13)

Sec. 4-233. Recording of lien; interest rate on lien.

- (a) It shall be the duty of the city clerk to make out, sign, attest, file and record in the office of the county clerk, a claim of lien upon premises described in any delinquent assessment roll.
- (b) Such lien shall bear interest at the rate of eight percent per annum from the date of filing until paid, together with reasonable attorney fees for the foreclosure of same.

(Ord. No. 640, § 1, 9-24-13)

Sec. 4-234. Emergency action.

In cases where it reasonably appears that there is immediate danger to the life or safety of any person unless a dangerous building is immediately repaired, vacated, or demolished, the building inspector shall report such facts to the city manager or his designee, and the city manager or his designee shall cause the immediate repair, vacation, or demolition of such dangerous building. The costs of such emergency, repair, vacation, or demolition of such dangerous building shall be collected in the same manner as provided in sections 4-232 and 4-233.

(Ord. No. 640, § 1, 9-24-13)

Sec. 4-235. Owner is absent from the city.

In the cases, except emergency cases, where the owner, occupant, lessee, or mortgagee is absent from the city, all notices or orders provided for in this article shall be sent by registered mail to the owner, occupant, mortgagee, lessee, and all other persons having an interest in the building, as shown by the land records of the Recorder of Deeds of the County of Sierra, to the last known address of each, and a copy of such notice shall be posted in a conspicuous place on the dangerous building to which it relates. Such mailing and posting shall be deemed adequate service.

(Ord. No. 640, § 1, 9-24-13)

Secs. 4-236—4-300. Reserved.

ARTICLE V. FAIR HOUSING [4](19)

Sec. 4-301. Policy.

Sec. 4-302. Definitions.

Sec. 4-303. Unlawful practice.

Sec. 4-304. Discrimination in the sale or rental of housing.

Sec. 4-305. Discrimination in residential real estate—Related transactions.

Sec. 4-306. Discrimination in the provision of brokerage services.

Sec. 4-307. Exemption.

Sec. 4-308. Administration.

Sec. 4-309. Education and conciliation.

Sec. 4-310. Enforcement.

Sec. 4-311. Investigations; subpoenas; giving of evidence.

Sec. 4-312. Enforcement by private persons.

Sec. 4-313. Interference, coercion or intimidation.

Sec. 4-314. Separability of provisions.

Sec. 4-315. Prevention of intimidation in fair housing cases.

Secs. 4-316—4-400. Reserved.

Sec. 4-301. Policy.

It is the policy of City of Truth or Consequences to provide, within constitutional limitations, for fair housing throughout the City of Truth or Consequences.

(Ord. No. 568, § 1, 2-27-07)

Sec. 4-302. Definitions.

[The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:]

"Aggrieved person" includes any person who:

- (1) Claims to have been injured by a discriminatory housing practice; or
- (2) Believes that they will be injured by a discriminatory housing practice that is about to occur.

"Chief Elected Official" means the person who holds the highest elected position of the local unit of government and who is signatory to the Small Cities Community Development Block Grant agreement with the Local Government Division.

"Complainant" means the person (including the Chief Elected Official) who files a complaint under section 4-310.

"Discriminatory housing practice" means an act that is unlawful under section 4-304, 4-305 or 4-306 of this article.

" Dwelling " means any building, structure or portion thereof which is occupied as, designed or intended for occupancy as a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure or portion thereof.

"Familial status" means one or more individuals (who have not attained the age of 18 years) being domiciled with:

- (1) A parent or another person having legal custody of such individual or individuals; or
- (2) The designee of such parent or other person having such custody, with the written permission of such parent or other person.

The protections afforded against discrimination on the basis of familial status shall apply to any person who is pregnant, or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

"Family" includes a single individual.

"Handicap" means, with respect to a person:

- (1) A physical or mental impairment which substantially limits one or more of such person's major life activities;
- (2) A record of having such an impairment; or
- (3) Being regarded as having such an impairment, but such term does not include current, illegal use of or addiction to, a controlled substance (as defined in Section 102 of the Controlled Substances Act [21 U.S.C. 802]).

"Person" includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers and fiduciaries.

"Respondent" means:

- (1) The person or other entity accused in a complaint of an unfair housing practice; and
- (2) Any other person or entity identified in the course of investigation and notified as required with respect to respondents so identified under section 4-310.

"To rent" includes to lease, to sublease, to let and otherwise to grant for a consideration the right to occupy premises owned by the occupant.

(Ord. No. 568, § 2, 2-27-07)

Sec. 4-303. Unlawful practice.

Subject to the provisions of subsection (2) and section 4-307, the prohibitions against discrimination in the sale or rental of housing set forth in this section shall apply to:

- (1) All dwellings except as exempted by subsection (2).
- (2) Nothing in section 4-304 shall apply to:
 - a. Any single-family house sold or rented by an owner: Provided, that such private individual owner does not own more than three such single-family houses at any one time: Provided further, that in the case of the sale of any such single-family house by a private individual owner not residing in such house at the time of such sale, or who was not the most recent resident of such house prior to such sale, the exemption granted by this subsection shall apply only with respect to one such sale within any 24-month period: Provided further, that such bona fide private individual owner does not own any interest in, nor is there owned or reserved on his behalf, under any express or voluntary agreement, title to, or any right to all or a portion of the proceeds from the sale or rental of, more than three such single-family houses at any one time: Provided further, that the sale or rental of any such single-family house shall be excepted from the application of this article only if such house is sold or rented

- Without the use in any manner of the sales or rental facilities or the sales or rental services of any real estate broker, agent or salesperson or of such facilities or services of any person in the business of selling or renting dwellings, or of any employee or agent of any such broker, agent, salesperson or person, and

- Without the publication, posting or mailing, after notice of any advertisement or written notice in violation of section 4-304(3) of this article, but nothing in this provision shall prohibit the use of attorneys, escrow agents, abstractors, title companies, and other such professional assistance as necessary to perfect or transfer the title, or

- b. Rooms or units in dwellings contained living quarters occupied or intended to be occupied by no more than four families living

independently of each other, if the owner actually maintains and occupies one of such living quarters as their residence.

- (3) For the purposes of subsection (2), a person shall be deemed to be in the business of selling or renting dwellings if:
 - a. They have, within the preceding 12 months, participated as principal in three or more transactions involving the sale or rental of any dwelling or any interest therein; or
 - b. They have, within the preceding 12 months, participated as agent, other than in the sale of their own personal residence in providing sales or rental facilities or sales or rental services in two or more transactions involving the sale or rental of any dwelling or any interest therein; or
 - c. They are the owner of any dwelling designed or intended for occupancy by, or occupied by, five or more families.

(Ord. No. 568, § 3, 2-27-07)

Sec. 4-304. Discrimination in the sale or rental of housing.

As made applicable by section 4-303 and except as exempted by sections 4-303(2) and 4-307, it shall be unlawful:

- (1) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, handicap, familial status or national origin.
- (2) To discriminate against any person in the terms, conditions or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, handicap, familial status or national origin.
- (3) To make, print or publish, or cause to be made, printed or published any notice, statement or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status or national origin, or an intention to make any such preference, limitation or discrimination.
- (4) To represent to any person because of race, color, religion, sex, handicap, familial status or national origin that any dwelling is not available for inspection, sale or rental when such dwelling is in fact so available.
- (5) For profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, handicap, familial status or national origin.

(Ord. No. 568, § 4, 2-27-07)

Sec. 4-305. Discrimination in residential real estate—Related transactions.

- (a) *In general.* It shall be unlawful for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of race, color, religion, sex, handicap, familial status or national origin.
- (b) *Definition.* As used in this section, the term "residential real estate-related transaction" means any of the following:
- (1) The making or purchasing of loans or providing other financial assistance:
 - For purchasing, constructing, improving, repairing or maintaining a dwelling; or
 - Secured by residential real estate.
 - (2) The selling, brokering or appraising of residential real property.
- (c) *Appraisal exemption.* Nothing in this article prohibits a person engaged in the business of furnishing appraisals of real property to take into consideration factors other than race, color, religion, sex, handicap, familial status or national origin.

(Ord. No. 568, § 5, 2-27-07)

Sec. 4-306. Discrimination in the provision of brokerage services.

It shall be unlawful to deny any person access to or membership or participation in any multiple-listing service, real estate brokers organization, or other service, organization, or facility relating to the business of selling or renting dwellings, or to discriminate against them in the terms or conditions of such access, membership or participation because of race, color, religion, sex, handicap, familial status or national origin.

(Ord. No. 568, § 6, 2-27-07)

Sec. 4-307. Exemption.

Nothing in this article shall prohibit a religious organization, association or society or any nonprofit institution or organization operated, supervised or controlled by, or in conjunction with, a religious organization, association or society, from limiting the sale, rental or occupancy of dwellings which it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to such persons, unless membership in such religion is restricted on account of race, color, national origin or handicap. Nor shall anything in this article prohibit a private club not in fact open to the public, which as an incident to its primary purpose or purposes provides lodgings which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members or from giving preference to its members.

(Ord. No. 568, § 7, 2-27-07)

Sec. 4-308. Administration.

- (a) The authority and responsibility for administering this article shall be in the Chief

Elected Official of the City.

- (b) The Chief Elected Official may delegate any of these functions, duties and powers to employees of the City or to boards of such employees, including functions, duties and powers with respect to investigating, conciliating, hearing, determining ordering, certifying, reporting or otherwise acting as to any work, business or matter under this article. The Chief Elected Official shall by rule prescribe such rights of appeal from the decisions of their hearing examiners, to other hearing examiners or to other offices in the City, to boards of officers or to themselves, as shall be appropriate and in accordance with law.
- (c) All City departments and agencies shall administer their programs and activities relating to housing and community development in a manner affirmatively to further the purposes of this article and shall cooperate with the Chief Elected Official to further such purposes.

(Ord. No. 568, § 8, 2-27-07)

Sec. 4-309. Education and conciliation.

Immediately after the enactment of this article, the Chief Elected Official shall commence such educational conciliatory activities as will further the purposes of this article. They shall call conferences of persons in the housing industry and other interested parties to acquaint them with the provisions of this article and the suggested means of implementing it and shall endeavor with their advice to work out programs of voluntary compliance and enforcement.

(Ord. No. 568, § 9, 2-27-07)

Sec. 4-310. Enforcement.

- (a) Any person who claims to have been injured by a discriminatory housing practice or who believes that they will be irrevocably injured by a discriminatory housing practice that is about to occur (hereafter "aggrieved person") may file a complaint with the Chief Elected Official. Complaints shall be in writing and shall contain such information, and be in such form as the Chief Elected Official requires. Upon receipt of such a complaint, the Chief Elected Official shall furnish a copy of the same to the person or persons who have committed, or are about to commit, the alleged discriminatory housing practice. Within 30 days after receiving a complaint or within 30 days after the expiration of any period reference under subsection (c), the Chief Elected Official shall investigate the complaint and give notice in writing to the aggrieved person whether they intend to resolve it. If the Chief Elected Official decides to resolve the complaints, they shall proceed to try to eliminate or correct the alleged discriminatory housing practice by informal methods of conference, conciliation and persuasion. Nothing said or done in the course of such informal endeavors may be made public or used as evidence in a subsequent proceeding under this article without the written consent of the persons concerned. Any employee of the Chief Elected Official who shall make public any information in violation of this provision shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not more than \$1,000.00 or imprisoned not more than one year.

- (b) A complaint under subsection (a) shall be filed within 180 days after the alleged discriminatory housing practice occurred. Complaints shall be in writing and shall state the facts upon which the allegations of a discriminatory housing practice are based. Complaints may be reasonably and fairly amended at any time. A respondent may file an answer to the complaint against him and with the leave of the Chief Elected Official, which shall be granted whenever it would be reasonable and fair to do so, may amend his answer at any time. Both complaints and answers shall be verified.
- (c) If within 30 days after a complaint is filed with the Chief Elected Official, the Chief Elected Official has been unable to obtain voluntary compliance with this article, the aggrieved person may, within 30 days thereafter, file a complaint with the Secretary of the Department of Housing and Urban Development. The Chief Elected Official will assist in this filing.
- (d) If the Chief Elected Official has been unable to obtain voluntary compliance within 30 days of the complaint, the aggrieved person may, within 30 days thereafter commence a civil action in any appropriate court, against the respondent named in the complaint, to enforce the rights granted or protected by this article, insofar as such rights relate to the subject of the complaint. If the court finds that a discriminatory housing practice has occurred or is about to occur, the court may enjoin the respondent from engaging in such practice or order such affirmative action as may be appropriate.
- (e) In any proceeding brought pursuant to this section, the burden of proof shall be on the complainant.
- (f) Whenever an action filed by an individual comes to trial, the Chief Elected Official shall immediately terminate all efforts to obtain voluntary compliance.

(Ord. No. 568, § 10, 2-27-07)

Sec. 4-311. Investigations; subpoenas; giving of evidence.

- (a) In conducting an investigation, the Chief Elected Official shall have access at all reasonable times to premises, records, documents, individuals and other evidence or possible sources of evidence and may examine, record and copy such materials and take and record the testimony or statements of such persons as are reasonably necessary for the furtherance or the investigation: Provided, however, that the Chief Elected Official first complies with the provisions of the Fourth Amendment relating to unreasonable searches and seizures. The Chief Elected Official may issue subpoenas to compel their access to, or the production of, such materials, or the appearance of such persons and may issue interrogatories to a respondent, to the same extent and subject to the same limitations as would apply if the subpoenas or interrogatories were issued or served in aid of a civil action in the United States District Court for the district in which the investigation is taking place. The Chief Elected Official may administer oaths.
- (b) Upon written application to the Chief Elected Official, a respondent shall be entitled to the issuance of a reasonable number of subpoenas by and in the

name of the Chief Elected Official to the same extent and subject to the same limitations as subpoenas issued by the Chief Elected Official. Subpoenas issued at the request of a respondent shall show on their face the name and address of such respondent and shall state that they were issued at their request.

- (c) Witnesses summoned by subpoena of the Chief Elected Official shall be entitled to the same witness and mileage fees as are witnesses in proceedings in United States District Courts. Fees payable to a witness summoned by a subpoena issued at the request of a respondent shall be paid by the respondent.
- (d) Within five days after service of a subpoena upon any person, such person may petition the Chief Elected Official to revoke or modify the subpoena. The Chief Elected Official shall grant the petition if they find that the subpoena requires appearance or attendance at an unreasonable time or place, that it requires production of evidence which does not relate to any matter under investigation, that it does not describe with sufficient particularity the evidence to be produced, that compliance would be unduly onerous, or for other good reason.
- (e) In case of contumacy or refusal to obey a subpoena the Chief Elected Official, or other person at whose request it was issued, may petition for its enforcement in the municipal or state court for the district in which the person to whom the subpoena was addressed resides, was served or transacts business.
- (f) Any person who willfully fails or neglects to attend and testify, or to answer any lawful inquiry, or to produce records, documents or other evidence, if in his power to do so, in obedience to the subpoena or lawful order of the Chief Elected Official shall be fined not more than \$1,000.00 or imprisoned not more than one year or both. Any person who, with intent thereby to mislead the Chief Elected Official, shall make or cause to be made any false entry or statement of fact in any report, account, record or other document submitted to the Chief Elected Official pursuant to his subpoena or other order, or shall willfully neglect or fail to make or cause to be made full, true and correct entries in such reports, accounts, records or other documents, or shall willfully mutilate, alter or by any other means falsify any documentary evidence, shall be fined not more than \$1,000.00 or imprisoned not more than one year, or both.
- (g) The City Attorney shall conduct all litigation in which the Chief Elected Official participates as a party or as amicus pursuant to this article.

(Ord. No. 568, § 11, 2-27-07)

Sec. 4-312. Enforcement by private persons.

- (a) The rights granted by sections 4-303, 4-304, 4-305 and 4-306 may be enforced by civil actions in the appropriate United States district, state or local court. A civil action shall be commenced within 180 days after the alleged discriminatory housing practice occurred: Provided, however, that the court shall continue such civil case brought pursuant to this section or section 4-310 from time to time before bringing it to trial if the court believes that the conciliation efforts of the Chief Elected Official are likely to result in satisfactory settlement of the alleged discriminatory housing practice complained of in the complaint made to the Chief Elected Official and which practice forms the basis for the action in court.

Provided, however, that any sale, encumbrance or rental consummated prior to the issuance of any court order issued under the authority of this article and involving a bona fide purchaser, encumbrancer or tenant without actual notice of the filing of a complaint or civil action under the provisions of this article shall not be affected.

- (b) The court may grant as relief, as it deems appropriate, any permanent or temporary injunction, temporary restraining order or other order and may award to the plaintiff actual damages and not more than \$1,000.00 punitive damages, together with court costs and reasonable attorney fees in the case of a prevailing plaintiff: Provided, that the said plaintiff in the opinion of the court is not financially able to assume said attorney's fees.

(Ord. No. 568, § 12, 2-27-07)

Sec. 4-313. Interference, coercion or intimidation.

It shall be unlawful to coerce, intimidate, threaten or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by sections 4-303, 4-304, 4-305, or 4-306 of this article. This section may be enforced by appropriate civil action.

(Ord. No. 568, § 13, 2-27-07)

Sec. 4-314. Separability of provisions.

If any provision of this article or the application thereof to any person or circumstances is held invalid, the remainder of the article and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby.

(Ord. No. 568, § 14, 2-27-07)

Sec. 4-315. Prevention of intimidation in fair housing cases.

Whoever, whether or not acting under color of law, by force or threat of force willfully injures, intimidates or interferes with, or attempts to injure, intimidate or interfere with:

- (1) Any person because of their race, color, religion, sex, handicap, familial status, or national origin and because they are or have been selling, purchasing, renting, financing, occupying or contracting or negotiating for the sale, purchase, rental, financing, or occupation of any dwelling, or applying for or participating in any service organization or facility relating to the business of selling or renting dwellings; or
- (2) Any person because they are or have been, or in order to intimidate such person or any other person or any class of persons from:
 - a. Participating, without discrimination because of race, color, religion, sex, handicap, familial status or national origin, or in any of the activities, services organizations, or facilities described in section 4-315; or
 - b. Affording another person or class of persons opportunity or protection so

to participate; or

- (3) Any citizen because they are or have been, or in order to discourage such citizen or any other citizen from lawfully aiding or encouraging other persons to participate, without discrimination on account of race, color, religion, sex, handicap, familial status or national origin, in any of the activities, services, organizations or facilities described in section 4-315, or participating lawfully in speech or peaceful assembly opposing any denial of the opportunity to so participate — shall be fined not more than \$1,000.00, or imprisoned not more than one year or both; and if bodily injury results shall be fined not more than \$10,000, or imprisoned not more than ten years or both; and if death results shall be subject to imprisonment for any term of years or for life and/or to other applicable local/state/federal laws.

(Ord. No. 568, § 15, 2-27-07)

Secs. 4-316—4-400. Reserved.

ARTICLE VI. DEVELOPMENT IMPACT FEE

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- Sec. 4-432. Reserved.
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Sec. 4-401. Short title.

This article may be cited as the "Development Impact Fee Ordinance."

(Ord. No. 563, 11-14-06)

Sec. 4-402. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Approved land use assumptions means land use assumptions adopted originally or as amended under this article.

Assessment means a determination of the amount of a development impact fee.

Capital improvement means any of the following facilities that have a life expectancy of ten or more years and are owned and operated by or on behalf of a municipality:

- (1) Water supply, treatment and distribution facilities and wastewater collection and treatment facilities and stormwater, drainage and flood control facilities;
- (2) Roadway facilities located within the service area, including roads, bridges, bike and pedestrian trails, bus bays, rights-of-way, traffic signals, landscaping and any local components of state and federal highways;
- (3) Buildings for fire, police and rescue and essential equipment costing \$10,000.00 or more and having a life expectancy of ten years or more; and
- (4) Parks, recreational areas, open space, trails and related areas and facilities.

Capital improvements plan means a plan required by this article that identifies capital improvements or facility expansion for which impact fees may be assessed.

Development impact fee means a charge or assessment imposed by the City on new development in order to generate revenue for funding or recouping the costs of capital improvements or facility expansions necessitated by and attributable to the new development. The term includes amortized charges, lump sum charges, capital recovery fees, contributions in aid of construction, development fees and any other fee that functions as described by this definition. The term does not include hookup fees, dedication of rights-of-way or easements or construction or dedication of on-site water distribution, wastewater collection or drainage facilities or streets, sidewalks or curbs if the dedication or construction is required by previously adopted valid ordinance or regulation and is necessitated by and attributable to the new development.

Facility expansion means the expansion of the capacity of an existing facility that serves the same function as an otherwise necessary new capital improvement, in order that the existing facility may serve new development. The term does not include the repair, maintenance, modernization or expansion of an existing facility to better serve existing development, including schools and related facilities.

Fee means development impact fee.

Hookup fee means a reasonable fee for connection of a service line to an existing gas, water, sewer or municipal utility.

Land use assumptions includes a description of the service area and projections of changes in land uses, densities, intensities and population in the service area over at least a five-year period.

New development means the subdivision of land; reconstruction, redevelopment, conversion, structural alteration, relocation or enlargement of any structure; or any use or extension of the use of land; any of which increases the number of service units.

Qualified professional means a professional engineer, surveyor, financial analyst or planner providing services within the scope of his license, education or experience.

Roadway facilities means arterial or collector streets or roads that have been designated on an official roadway plan of the City, including bridges, bike and pedestrian trails, bus bays, rights-of-way, traffic signals, landscaping at any local components of state or federal highways.

Service area means the area within the corporate boundaries or extraterritorial jurisdiction of a municipality to be served by the capital improvements or facility expansions specified in the capital improvements plan designated on the basis of sound planning and engineering standards.

Service unit means a standardized measure of consumption, use, generation or discharge attributable to an individual unit of development calculated in accordance with generally accepted engineering or planning standards for a particular category of capital improvements or facility expansions.

(Ord. No. 563, 11-14-06)

Sec. 4-403. Authorization.

- (a) The City may enact or impose development impact fees on land within its municipal boundaries.
- (b) The City and the county may enter into a joint powers agreement to provide capital improvements within an area subject to both municipal and county planning and subdivision jurisdiction or extraterritorial jurisdiction and may charge a development impact fee under the agreement, but if a fee is charged in that area, the City and the county shall comply with this article and the Development Fees Act.

(Ord. No. 563, 11-14-06)

Sec. 4-404. Items payable by fee.

- (a) An impact fee may be imposed only to pay the following specified costs of constructing capital improvements or facility expansions:
 - (1) Estimated capital improvements plan cost;
 - (2) Planning, surveying and engineering fees paid to an independent qualified professional who is not a City employee for services provided for and directly related to the construction of capital improvements or facility expansions;
 - (3) Fees actually paid or contracted to be paid to an independent qualified professional, who is not a City employee, for the preparation or updating of a capital improvements plan; and
 - (4) Up to three percent of total impact fees collected for administrative costs for City employees who are qualified professionals.
- (b) Projected debt service charges may be included in determining the amount of impact fees only if the impact fees are used for the payment of principal and interest on bonds, notes or other obligations issued to finance construction of capital improvements or facility expansions identified in the capital improvements plan.

(Ord. No. 563, 11-14-06)

Sec. 4-405. Items not payable by fee.

Development impact fees shall not be imposed or used to pay for:

- (1) Construction, acquisition or expansion of public facilities or assets that are not capital improvements or facility expansions identified in the capital improvements plan;
- (2) Repair, operation or maintenance of existing or new capital improvements or facility expansions;
- (3) Upgrading, updating, expanding or replacing existing capital improvements to serve existing development in order to meet stricter safety, efficiency, environmental or regulatory standards;
- (4) Upgrading, updating, expanding or replacing existing capital improvements to provide better service to existing development;
- (5) Administrative and operating costs of the City, except as provided in this article;
- (6) Principal payments or debt service charges on bonds or other indebtedness, except as allowed by section 4-404; or
- (7) Libraries, community centers, schools, projects for economic development and employment growth, affordable housing or apparatus and equipment of any kind, except capital improvements defined in section 4-402.

(Ord. No. 563, 11-14-06)

Sec. 4-406. Capital improvements plan.

- (a) The City shall use qualified professionals to prepare the capital improvements plan and to calculate the development impact fees. The capital improvements plan shall follow the infrastructure capital improvement planning guidelines established by the state department of finance and administration and shall address the following:
 - (1) A description, as needed to reasonably support the proposed impact fee, which shall be prepared by a qualified professional, of the existing capital improvements within the service area and the costs to upgrade, update, improve, expand or replace the described capital improvements to adequately meet existing needs and usage and stricter safety, efficiency, environmental or regulatory standards;
 - (2) An analysis, which shall be prepared by a qualified professional, of the total capacity, the level of current usage and commitments for usage of capacity of the existing capital improvements;
 - (3) A description, which shall be prepared by a qualified professional, of all or the parts of the capital improvements or facility expansions and their costs necessitated by and attributable to new development in the service area based on the approved land use assumptions;
 - (4) The projected demand for capital improvements or facility expansions

required by new service units accepted over a reasonable period of time, not to exceed ten years; and

- (5) Anticipated sources of funding independent of development impact fees.
- (b) The analysis required in subsection (a)(2) of this section may be prepared on a system-wide basis within the service area for each major category of capital improvement or facility expansion for the designated service area.
- (c) The City Manager is responsible for supervising the implementation of the capital improvements plan in a timely manner.

(Ord. No. 563, 11-14-06)

Sec. 4-407. Maximum fee per service unit.

The development impact fee shall not exceed the cost to pay for a proportionate share of the cost of system improvements, based upon service units, needed to serve new development.

(Ord. No. 563, 11-14-06)

Sec. 4-408. Time of assessment and collection.

- (a) Assessments of a development impact fee shall be made at the earliest possible time. Collection of the impact fee shall occur at the latest possible time.
- (b) For land that has been platted in accordance with the City's subdivision or platting procedures before the effective date of the ordinance from which this article derives or for land on which new development occurs or is proposed without platting, the City may assess the fees at the time of development approval or issuance of a building permit, whichever date is earlier. The assessment shall be valid for a period of not less than four years from the date of development approval or issuance of a building permit, whichever date is earlier.
- (c) For land that is platted after the effective date of the ordinance from which this article derives, the City shall assess the fees at the time of recording of the subdivision plat, and this assessment shall be valid for a period of not less than four years from the date of recording of the plat.
- (d) Collection of development impact fees shall occur no earlier than the date of issuance of a building permit.
- (e) For new development that is platted in accordance with the City's subdivision or platting procedures before the adoption of a development impact fee, a fee shall not be collected on any service unit for which a valid building permit has been issued.
- (f) After the expiration of the four-year period described in subsections (b) and (c) of this section, the City may adjust the assessed development impact fee to the level of current impact fees as provided in this article.

(Ord. No. 563, 11-14-06)

Sec. 4-409. Additional fees prohibited; exception.

Except as provided in subsection 4-408(f), after assessment of the fees attributable to the new development or execution of an agreement for payment of fees, additional fees or increases in fees may not be assessed for any reason unless the number of service units to be developed increases. If an increase in the number of service units occurs, the fees to be imposed are limited to the amount attributable to the additional service units.

(Ord. No. 563, 11-14-06)

Sec. 4-410. Agreement with owner regarding payment.

The City may enter into an agreement with the owner of a tract of land for which a plat has been recorded providing for a method of payment of the development impact fees over an extended period of time otherwise in compliance with this article.

(Ord. No. 563, 11-14-06)

Sec. 4-411. Collection if services not available.

Development impact fees may be assessed but shall not be collected unless:

- (1) Collection is made to pay for a capital improvement or facility expansion that has been identified in the capital improvements plan and the City commits to complete construction within seven years and to have the service available within a reasonable period of time after completion of construction considering the type of capital improvement or facility expansion to be constructed, but in no event longer than seven years;
- (2) The City agrees that the owner of a new development may construct to adopted municipal standards or finance the capital improvements or facility expansions and agrees that the costs incurred or funds advanced will be credited against the fees otherwise due from the new development or agrees to reimburse the owner for such costs from fees paid from other new developments that will use such capital improvements or facility expansions, which fees shall be collected and reimbursed to the property owner of record at the time the plat of the other new development is recorded; or
- (3) The time period set forth in subsection (1) of this section can be extended, provided the City obtains a performance bond or similar surety securing performance of the obligation to construct the capital improvements or facility expansions, but in no event longer than seven years from commencement of construction of the capital improvements or facility expansion for which fees have been collected. The City shall establish written procedures to ensure that the owner of a new development shall not lose the value of the credits. Any refund for fees shall be made as provided in section 4-417.

(Ord. No. 563, 11-14-06)

Sec. 4-412. Entitlement to services.

Any new development for which an impact fee has been paid is entitled to the permanent use and benefit of the services for which the fee was exacted and is entitled to receive prompt service from any existing facilities with actual capacity to serve the new service units.

(Ord. No. 563, 11-14-06)

Sec. 4-413. Authority of City to spend funds or enter into agreements to reduce fees.

The City may spend funds from any lawful source or pay for all or a part of the capital improvements or facility expansions to reduce the amount of the development impact fees. A developer and the City may agree to offset or reduce part or all of the fee assessed on that new development, provided that the public policy which supports the reduction is contained in the City's appropriate planning documents and provided that the development's new proportionate share of the system improvement is funded with revenues other than the fees from other new developments.

(Ord. No. 563, 11-14-06)

Sec. 4-414. Effect on governmental entities.

Governmental entities shall pay all development impact fees imposed under this article.

(Ord. No. 563, 11-14-06)

Sec. 4-415. Credits against facilities fees.

Any construction of, contributions to or dedications of on-site or off-site facilities, improvements, or real or personal property with off-site benefits not required to serve the new development, in excess of minimum City standards established by a previously adopted and valid ordinance or regulation and required by the City as a condition of development approval, shall be credited against development impact fees otherwise due from the development. The credit shall include the value of dedication of rights-of-way or easements or construction or dedication of on-site water distribution, wastewater collection or drainage facilities, or streets, sidewalks or curbs.

(Ord. No. 563, 11-14-06)

Sec. 4-416. Accounting; interest.

- (a) All money collected through the adoption of development impact fees shall be maintained in separate interest-bearing accounts clearly identifying the payor and the category of capital improvements or facility expansions within the service area for which the fee was adopted.
- (b) Interest earned on impact fees shall become part of the account on which it is earned and shall be subject to all restrictions placed on the use of impact fees under this article.
- (c) Money from fees may be spent only for the purposes for which the fee was imposed as shown by the capital improvements plan and as authorized by this

article.

- (d) The records of the accounts into which impact fees are deposited shall be open for public inspection and copying during ordinary City business hours.
- (e) As part of its annual audit process, the City shall prepare an annual report describing the amount of any impact fees collected, encumbered and used during the preceding year by category of capital improvement and service area identified as provided in subsection (a) of this section.

(Ord. No. 563, 11-14-06)

Sec. 4-417. Refunds.

- (a) Upon the request of an owner of the property on which a development impact fee has been paid, the City shall refund the fee if existing facilities are available and service is not provided or the City has, after collecting the fee when service was not available, failed to complete construction within the time allowed under section 4-411 or service is not available within a reasonable period of time after completion of construction considering the type of capital improvement or facility expansion to be constructed, but in no event later than seven years from the date of payment under subsection 4-411(a).
- (b) Upon completion of the capital improvements or facility expansions identified in the capital improvements plan, the City shall recalculate the development impact fee using the actual costs of the capital improvements or facility expansion. If the fee calculated based on actual costs is less than the fee paid, including any sources of funding not anticipated in the capital improvements plan, the City shall refund the difference if the difference exceeds the fee paid by more than ten percent, based upon actual costs.
- (c) The City shall refund any fee or part of it that is not spent as authorized by this article within seven years after the date of payment.
- (d) A refund shall bear interest calculated from the date of collection to the date of refund at the statutory rate as set forth in NMSA 1978, § 56-8-3.
- (e) All refunds shall be made to the record owner of the property at the time the refund is paid. However, if the impact fees were paid by a governmental entity, payment shall be made to the governmental entity.
- (f) The owner of the property on which an impact fee has been paid or a governmental entity that has paid the impact fee has standing to sue for a refund under this section.

(Ord. No. 563, 11-14-06)

Sec. 4-418. City compliance required.

Except as otherwise provided by this article, the City shall comply with this article and the state Development Fees Act to levy a development impact fee.

(Ord. No. 563, 11-14-06)

Sec. 4-419. Public hearings and notice.

- (a) Prior to imposing or updating any development impact fee, the City shall hold public hearings on land use assumptions, capital improvement plans, and development impact fees, and shall publish notice of such hearings in compliance with the state Development Fees Act, as amended.
- (b) Information concerning the land use assumptions, capital improvement plans, and development impact fees shall be available to the public prior to the hearings provided for in subsection (a) of this section in compliance with the state Development Fees Act, as amended.

(Ord. No. 563, 11-14-06)

Sec. 4-420. Capital improvements plans.

The City shall provide for capital improvements plans to be developed by qualified professionals using generally accepted engineering and planning practices in accordance with section 4-406.

(Ord. No. 563, 11-14-06)

Sec. 4-421. Advisory board comments.

- (a) The Public Utility Advisory Board established by the City or its successor shall file its written comments on the proposed capital improvements plan and development impact fees before the fifth business day before the date of the public hearing on the plan and fees.
- (b) The Board or its successor shall file its written comments on any proposed amendment to the land use assumptions, capital improvements plan, or impact fees before the fifth business day before the date of the public hearing on the amendments.

(Ord. No. 563, 11-14-06)

Sec. 4-422. Approval of capital improvements plan and fee required.

- (a) Within 30 days after the date of the public hearing on the capital improvements plan and development impact fees, as provided in this article, the City shall approve, disapprove or modify the adoption of the capital improvements plan and imposition of the fees.
- (b) The resolutions approving the capital improvements plan and assessment of an impact fee shall not be adopted as an emergency measure, and their adoption must comply to the procedural requirements of this article.

(Ord. No. 563, 11-14-06)

Sec. 4-423. Consolidation of land use assumptions and capital improvements plan.

- (a) In lieu of separately adopting the land use assumptions and capital improvements plan for a service area containing not greater than 300 units, the City may consolidate the land use assumptions and the capital improvements plan and adopt the assumptions, the plan and the impact fee simultaneously.
- (b) If the City elects to consolidate the land use assumptions plan as authorized by subsection (a) of this section, the City shall first comply with section 4-419 and follow the public notice and hearing requirements in compliance with the state Development Fees Act, as amended.
- (c) In addition to the requirements of subsection (b) of this section, the City shall comply with all other requirements for adopting land use assumptions, a capital improvements plan and an impact fee.

(Ord. No. 563, 11-14-06)

Sec. 4-424. Periodic update of land use assumptions and capital improvements plan.

- (a) The City shall update the land use assumptions and capital improvements plan at least every five years. The initial five-year period begins on the day the capital improvements plan is adopted.
- (b) The City shall review and evaluate its current land use assumptions and shall update the capital improvements plan in accordance with this article.

(Ord. No. 563, 11-14-06)

Sec. 4-425. Approval of amendments.

- (a) Under this article, within 30 days after the date of the public hearing on the amendments, the City shall approve, disapprove, revise or modify the amendments to the land use assumptions, the capital improvements plan or impact fees.
- (b) The resolution approving the amendments to the land use assumptions, the capital improvements plan or development impact fees shall not be adopted as an emergency measure, and such adoption must comply with the procedural requirements of this article.

(Ord. No. 563, 11-14-06)

Sec. 4-426. Determination that no update of land use assumptions, capital improvements plan or development impact fee is needed.

- (a) When an update under section 4-424 is required, if the City Commission determines that no changes to the land use assumptions, capital improvements plan or development impact fees are needed, it may, as an alternative to the updating requirements, publish notice of its determination conforming to locally adopted regulations governing change-of-zone requests, except as otherwise provided in the state Development Fees Act, as amended.
- (b) The Public Utility Advisory Board or its successor shall file its written comments

on the need for updating the land use assumptions, capital improvements plan and impact fees before the fifth business day before the earliest notice of the City's decision that no update is necessary is mailed or published.

- (c) If a person requests in writing, within 60 days after publication of the notice, that the land use assumptions, capital improvements plan or impact fees be updated, the City shall cause, accept or reject an update of the land use assumptions and capital improvements plan to be prepared in accordance with this article.
- (d) The resolution determining the need for updating the land use assumptions, capital improvements plan or impact fees shall not be adopted as an emergency measure and if adopted must comply with the procedural requirements of this article.

(Ord. No. 563, 11-14-06)

Sec. 4-427. Performance of duties within time limits.

If the City does not perform a duty imposed under this article within the prescribed period, a person who has paid a development impact fee or an owner of land on which a fee has been paid has the right to present a written request to the City stating the nature of the unperformed duty and requesting that it be performed within 60 days after the date of the request. If the City Commission finds that the duty is required under this article and is late in being performed, the City shall perform the duty within 60 days after the date of the request and shall continue until completion.

(Ord. No. 563, 11-14-06)

Sec. 4-428. Records of hearings.

A record shall be made of any public hearing required by this article. The record shall be maintained by the City and shall be made available for public inspection for at least ten years after the date of the public hearing.

(Ord. No. 563, 11-14-06)

Sec. 4-429. Effect of prior fees.

The City stipulates that no impact fees have existed prior to the enactment of this article.

(Ord. No. 563, 11-14-06)

Sec. 4-430. Moratorium on development prohibited.

A moratorium shall not be placed on new development for the sole purpose of awaiting the completion of all or any part of the process necessary to develop, adopt or update impact fees.

(Ord. No. 563, 11-14-06)

Sec. 4-431. Reserved.

Sec. 4-432. Reserved.

Sec. 4-433. Authorization to approve wastewater system capital improvements plan.

- (a) The City shall approve a wastewater system capital improvements plan.
- (b) The City may modify the plan by resolution after periodic updates in compliance with this article.

(Ord. No. 563, 11-14-06)

Sec. 4-434. Authorization to impose wastewater system development impact fees.

- (a) The City shall impose wastewater system impact fees by resolution. For the initial period, which shall not exceed five years, the fees shall be assessed on new development per service unit based on the smallest size residential water meter.
- (b) The City shall update the fees or determine that no update is needed every five years. Based on the periodic review, the fees may be adjusted by resolution.

(Ord. No. 563, 11-14-06)

Sec. 4-435. Authorization to approve water system capital improvements plan.

- (a) The City shall approve a water system capital improvements plan.
- (b) The City may modify the plan by resolution after periodic updates in compliance with this article.

(Ord. No. 563, 11-14-06)

Sec. 4-436. Authorization to impose water system development impact fees.

- (a) The City shall impose water system development impact fees by resolution. For the initial period, which shall not exceed five years, the fees shall be assessed to new development per service unit based on the smallest size residential water meter.
- (b) The City shall update the fees or determine that no update is needed at least every five years. Based on the periodic review, the fees may be adjusted by resolution.

(Ord. No. 563, 11-14-06)

Sec. 4-437. Authorization to approve other capital improvements plans and development impact fees.

- (a) The City may approve by resolution any other capital improvements plan authorized by and in compliance with this article. The City may thereafter modify the plan by resolution after periodic updates in compliance with this article.

- (b) The City may impose by resolution any other development impact fee authorized by and in compliance with this article. The City shall update the fee or determine that no update is needed at least every five years. Based on periodic review, the fee may be adjusted by resolution.

(Ord. No. 563, 11-14-06)

Secs. 4-438—4-450. Reserved.

ARTICLE VII. WATER AND WASTEWATER IMPACT FEE [5](20)

- Sec. 4-451. Items payable by fee.
- Sec. 4-452. Items not payable by fee.
- Sec. 4-453. Fee per service unit.
- Sec. 4-454. Time of assessment and collection.
- Sec. 4-455. Agreement with owner regarding payment.
- Sec. 4-456. Collection if services not available.
- Sec. 4-457. Entitlement to services.
- Sec. 4-458. Effect on governmental entities.
- Sec. 4-459. Credits against facilities fees.
- Sec. 4-460. Accounting; interest.
- Sec. 4-461. Refunds.
- Sec. 4-462. Performance of duties within time limits.

Sec. 4-451. Items payable by fee.

- (a) The impact fee may be imposed only to pay the following specified costs of constructing capital improvements or facility expansions:
 - (1) Estimated capital improvements plan cost;
 - (2) Planning, surveying and engineering fees paid to an independent qualified professional who is not a City employee for services provided for and directly related to the construction of capital improvements or facility expansions;
 - (3) Fees actually paid or contracted to be paid to an independent qualified professional, who is not a City employee, for the preparation or updating of a capital improvements plan; and
 - (4) Up to three percent of total impact fees collected for administrative costs for City employees who are qualified professionals.
- (b) Projected debt service charges may be included in determining the amount of

impact fees only if the impact fees are used for the payment of principal and interest on bonds, notes or other obligations issued to finance construction of capital improvements or facility expansions identified in the capital improvements plan.

(Ord. No. 571, § 1, 5-8-07)

Sec. 4-452. Items not payable by fee.

Development impact fees shall not be imposed or used to pay for:

- (1) Construction, acquisition or expansion of public facilities or assets that are not capital improvements or facility expansions identified in the capital improvements plan;
- (2) Repair, operation or maintenance of existing or new capital improvements or facility expansions;
- (3) Upgrading, updating, expanding or replacing existing capital improvements to serve existing development in order to meet stricter safety, efficiency, environmental or regulatory standards;
- (4) Upgrading, updating, expanding or replacing existing capital improvements to provide better service to existing development;
- (5) Administrative and operating costs of the City, except as provided in this chapter;
- (6) Principal payments or debt service charges on bonds or other indebtedness, except as allowed by section 4-404; or
- (7) Libraries, community centers, schools, projects for economic development and employment growth, affordable housing or apparatus and equipment of any kind, except capital improvements defined in section 4-402.

(Ord. No. 571, § 2, 5-8-07)

Sec. 4-453. Fee per service unit.

The fee shall be calculated at \$150.00 per service unit (also known as "fixture unit" as defined by the Uniform Plumbing Code latest edition).

- (1) *Payment due.* The appropriate fee shall be assessed pursuant to this article and payable upon demand.
- (2) *Appeal of due date.* Any person who has been assessed a fee pursuant to this article and who can demonstrate that the fee will place an undue hardship upon them may appeal the method and timing of the payment. Said appeal shall be filed with the City Manager. The City Manager at his/her discretion may grant or deny said appeal based on the information provided by the appellant. Any denial must be accompanied by a written statement indicating the reasons for the denial. The City Manager may approve the appeal in which case the City Manager may allow the appellant to make monthly installments to be assessed through the utility billing system. The term of the installments may not exceed 24 months.

(Ord. No. 571, § 3, 5-8-07)

Sec. 4-454. Time of assessment and collection.

- (a) Assessments of a development impact fee shall be made at the earliest possible time. Collection of the impact fee shall occur at the latest possible time.
- (b) For land that has been platted in accordance with the City's subdivision or platting procedures before the effective date of the ordinance from which this chapter derives or for land on which new development occurs or is proposed without platting, the City will assess the fees at the time of development approval or issuance of a building permit, whichever date is earlier. The assessment shall be valid for a period of not less than four years from the date of development approval or issuance of a building permit, whichever date is earlier.
- (c) For land that is platted after the effective date of the ordinance from which this chapter derives, the City shall assess the fees at the time of recording of the subdivision plat, and this assessment shall be valid for a period of not less than four years from the date of recording of the plat.
- (d) Collection of development impact fees shall occur no earlier than the date of issuance of a building permit.
- (e) For new development that is platted in accordance with the City's subdivision or platting procedures before the adoption of a development impact fee, a fee shall not be collected on any service unit for which a valid building permit has been issued.
- (f) After the expiration of the four-year period described in subsections (b) and (c) of this section, the City may adjust the assessed development impact fee to the level of current impact fees as provided in this chapter.
- (g) Remodeling, renovation or expansion of existing residential, commercial, governmental, or industrial structures are exempt, and shall not be subject to this fee as long as the remodeling, renovation or expansion does not increase the number of fixture units by more than twice the existing amount. In the case that the remodeling, renovation or expansion does exceed the limit set forth herein, the fee shall be assessed to only those fixture units not in existence at the time the building permit was requested.

(Ord. No. 571, § 4, 5-8-07)

Sec. 4-455. Agreement with owner regarding payment.

The City may enter into an agreement not to exceed four years with the owner of a tract of land for which a plat has been recorded providing for a method of payment of the development impact fees.

(Ord. No. 571, § 5, 5-8-07)

Sec. 4-456. Collection if services not available.

Development impact fees may be assessed but shall not be collected unless:

- (1) Collection is made to pay for a capital improvement or facility expansion that has been identified in the capital improvements plan and the City commits to complete construction within seven years and to have the service available within a reasonable period of time after completion of construction considering the type of capital improvement or facility expansion to be constructed, but in no event longer than seven years;
- (2) The City agrees that the owner of a new development may construct to adopted municipal standards or finance the capital improvements or facility expansions and agrees that the costs incurred or funds advanced will be credited against the fees otherwise due from the new development or agrees to reimburse the owner for such costs from fees paid from other new developments that will use such capital improvements or facility expansions, which fees shall be collected and reimbursed to the property owner of record at the time the plat of the other new development is recorded; or
- (3) The time period set forth in subsection (1) of this section can be extended, provided the City obtains a performance bond or similar surety securing performance of the obligation to construct the capital improvements or facility expansions, but in no event longer than seven years from commencement of construction of the capital improvements or facility expansion for which fees have been collected.
- (4) The City Clerk shall keep a record of all fees collected under the provisions of this article. The City Clerk shall keep the following record for not less than seven years:
 - a. The file shall be indexed by address of the location of the improvement
 - b. Name and address of the payor
 - c. A copy of the building permit
 - d. The date the fee was collected and the amount
 - e. The date and amount any funds from each particular payor were used in accordance to this article. The record shall also identify the particular improvement by name or type such as: installation of new water tank at...
 - f. Any refund for fees shall be made as provided in section 4-461.

(Ord. No. 571, § 6, 5-8-07)

Sec. 4-457. Entitlement to services.

Any new development for which an impact fee has been paid is entitled to the permanent use and benefit of the services for which the fee was exacted and is entitled to receive prompt service from any existing facilities with actual capacity to serve the new service units.

(Ord. No. 571, § 7, 5-8-07)

Sec. 4-458. Effect on governmental entities.

Governmental entities shall pay all development impact fees imposed under this chapter.

(Ord. No. 571, § 8, 5-8-07)

Sec. 4-459. Credits against facilities fees.

Any construction of, contributions to or dedications of on-site or off-site facilities, improvements, or real or personal property with off-site benefits not required to serve the new development, in excess of minimum City standards established by a previously adopted and valid ordinance or regulation and required by the City as a condition of development approval, shall be credited against development impact fees otherwise due from the development. The credit shall include the value of dedication of rights-of-way or easements or construction or dedication of on-site water distribution, wastewater collection or drainage facilities, or streets, sidewalks or curbs.

(Ord. No. 571, § 9, 5-8-07)

Sec. 4-460. Accounting; interest.

- (a) The City Finance Officer shall keep all money collected through the adoption of development impact fees in separate interest-bearing accounts clearly identifying the payor and the address of the improvement that caused the collection of the fee.
- (b) Interest earned on impact fees shall become part of the account on which it is earned and shall be subject to all restrictions placed on the use of impact fees under this chapter.
- (c) Money from fees may be spent only for the purposes for which the fee was imposed as shown by the capital improvements plan and as authorized by this chapter.
- (d) The records of the accounts into which impact fees are deposited shall be open for public inspection and copying during ordinary City business hours.
- (e) As part of its annual audit process, the City shall prepare an annual report describing the amount of any impact fees collected, encumbered and used during the preceding year by category of capital improvement.

(Ord. No. 571, § 10, 5-8-07)

Sec. 4-461. Refunds.

- (a) Upon the request of an owner of the property on which a development impact fee has been paid, the City shall refund the fee if existing facilities are available and service is not provided or the City has, after collecting the fee when service was not available, failed to complete construction within seven years or service is not available within a reasonable period of time after completion of construction

considering the type of capital improvement or facility expansion to be constructed, but in no event later than seven years from the date of payment.

- (b) Upon completion of the capital improvements or facility expansions identified in the capital improvements plan, the City shall recalculate the development impact fee using the actual costs of the capital improvements or facility expansion. If the fee calculated based on actual costs is less than the fee paid, including any sources of funding not anticipated in the capital improvements plan, the City shall refund the difference if the difference exceeds the fee paid by more than ten percent, based upon actual costs.
- (c) The City shall refund any fee or part of it that is not spent as authorized by this chapter within seven years after the date of payment.
- (d) A refund shall bear interest calculated from the date of collection to the date of refund at the statutory rate as set forth in NMSA 1978, § 56-8-3.
- (e) All refunds shall be made to the record owner of the property at the time the refund is paid. However, if the impact fees were paid by a governmental entity, payment shall be made to the governmental entity.
- (f) The owner of the property on which an impact fee has been paid or a governmental entity that has paid the impact fee has standing to sue for a refund under this section.

(Ord. No. 571, § 11, 5-8-07)

Sec. 4-462. Performance of duties within time limits.

If the City does not perform a duty imposed under this chapter within the prescribed period, a person who has paid a development impact fee or an owner of land on which a fee has been paid has the right to present a written request to the City stating the nature of the unperformed duty and requesting that it be performed within 60 days after the date of the request. If the City Commission finds that the duty is required under this chapter and is late in being performed, the City shall perform the duty within 60 days after the date of the request and shall continue until completion.

(Ord. No. 571, § 12, 5-8-07)

Chapter 5 FIRE PREVENTION AND PROTECTION [1](21)

ARTICLE I. IN GENERAL

- Sec. 5-1. Hanging on fire apparatus.
- Sec. 5-2. Defacing fire apparatus; hindering firefighters.
- Sec. 5-3. Opening or using fire hydrant.
- Sec. 5-4. False fire alarms.
- Sec. 5-5. Duties of drivers of automobiles.
- Sec. 5-6. Distance of approach to fires.

Sec. 5-7. Open burning.

Sec. 5-8. Negligent burning.

Secs. 5-9—5-25. Reserved.

Sec. 5-1. Hanging on fire apparatus.

It shall be unlawful for any person, other than members of the Fire Department, to ride upon or hang on any fire apparatus while going to or returning from any fire or fire alarm.

(Code 1962, § 3-2-10)

Sec. 5-2. Defacing fire apparatus; hindering firefighters.

Should any person injure, deface, or in any manner destroy any City fire apparatus, or should any person hinder or obstruct any City fire company, or any member thereof, from freely passing along the streets of the City, to or from a fire, or in any manner hinder or prevent the Fire Department from operating at any fire, he shall be guilty of a misdemeanor.

(Code 1962, § 3-2-11)

Sec. 5-3. Opening or using fire hydrant.

It shall be unlawful for any person, other than members of the Fire Department, to turn on, open or use any fire hydrant maintained by the City without prior approval; provided, however, that it shall be lawful for members of the Street Department to use the hydrants after first getting a permit from the Superintendent of Maintenance, which permit shall state the location and the date on which any such hydrant may be used.

(Code 1962, § 3-2-12)

Sec. 5-4. False fire alarms.

It shall be unlawful to give any false alarm of a fire; to willfully, maliciously, or jokingly turn in or cause to be turned in any false alarm of fire; to use any telephone or other means of communication for such purpose; or to cause any other person to do so.

(Code 1962, § 3-2-13)

Sec. 5-5. Duties of drivers of automobiles.

Upon the happening of a fire or conflagration, and/or upon the blowing of the fire whistle or siren announcing a fire, it shall be the duty of every driver and operator of a vehicle then driving upon the streets and thoroughfares of the City to immediately drive to and alongside of the nearest street curb or sidewalk, or to the outside line of the street, and to stop and park parallel with the curb or street line and remain in such place for a period of at least two minutes before again driving his vehicle in and upon the streets. If the fire apparatus of the City is then engaged in going to or returning from a fire, the driver and operator of any vehicle shall stop and park parallel to the curb, providing this section shall not apply to active members of the Fire

Department engaged in going to a fire in their own vehicles for performing their duties.

(Code 1962, § 3-2-14)

Traffic, ch. 14.

Sec. 5-6. Distance of approach to fires.

It shall be unlawful for any driver or operator of a vehicle to run over or upon any hose of the Fire Department, before, after, and/or while in use during any fire or conflagration; to approach nearer than 150 feet to any such fire or conflagration; to willfully and knowingly operate a vehicle so as to approach to, park near, or interfere with the use of any fire hydrant or fire apparatus necessary for the use of the Fire Department and/or while such hydrant or apparatus is under the charge and control of the Fire Department.

(Code 1962, § 3-2-15)

Sec. 5-7. Open burning.

It is unlawful to burn anything within the City limits except weeds, leaves, small shrubs, tree limbs and grass during the hours of sun-up to sun-down. All other fires shall be prohibited, unless approved by the City Fire Chief.

It is unlawful to leave any fire unattended.

Outdoor burning shall be permitted only so long as the weather permits and so long as water-under-pressure supplied through hoses is available at the location where the burning is being conducted. If no water-under-pressure is available, the individual responsible for the outdoor burning must have a City fire truck standing by and a responsible individual must remain on the scene watching the fire at all times until it is extinguished.

It is unlawful for any person to start any permitted fire unless that person first notifies Sierra County Regional Dispatch Authority (SCRDA) as to the time and location of the proposed fire. Such person shall again notify SCRDA when the burn is completed.

(Code 1962, § 6-1-2-23; Ord. No. 543, 6-13-05)

Sec. 5-8. Negligent burning.

It is unlawful to burn weeds, trash, grass, or other materials in such a manner as to permit the same to spread to and damage adjoining property.

(Code 1962, § 6-1-2-24)

Secs. 5-9—5-25. Reserved.

ARTICLE II. FIRE LIMITS [2](22)

Sec. 5-26. Designated.

Sec. 5-26.1. Prohibition of parking in fire lanes.

Sec. 5-27. Permit required.

Sec. 5-28. Application.

Sec. 5-29. Permit fees.

Sec. 5-30. Storage of combustible materials.

Sec. 5-31. Refusal of permit; hearing.

Secs. 5-32—5-50. Reserved.

Sec. 5-26. Designated.

The fire limits of the City shall hereafter include the area one block on either side of Main Street, Broadway, Date Street, Third Street east of Date to the City limits.

(Code 1962, § 7-1-1)

Sec. 5-26.1. Prohibition of parking in fire lanes.

- (a) The Chief of Police, upon receiving recommendations from the Fire Chief, shall establish and mark fire lanes on private property to be devoted to the public use. These fire lanes shall be established and upon the giving of consent to the Police Department by the individual owner of the private property to be devoted to the public use.
- (b) Parking of all motor vehicles other than authorized Fire Department equipment is prohibited from fire lanes at all times.

(Ord. No. 397, § 1, 10-13-92)

Sec. 5-27. Permit required.

- (a) No wall, structure, building, or part thereof shall hereafter be built, enlarged, or altered within the fire limits until a plan of the proposed work, together with a statement of the materials to be used, shall have been submitted to the Building Inspector, who shall, if they are in accordance with the provisions of this article, and all applicable building codes, issue a permit for the proposed construction.
- (b) Structures erected without a permit shall be removed by proceedings as provided by law. No building within such limits shall be moved, and no building shall be moved into the area within such limits until a permit has been obtained from the Building Inspector, who shall not issue such permit unless such building shall comply with the provisions of Uniform Building Code or if the proposed new location of the building would seriously increase the fire hazard of the surrounding buildings. Any person dissatisfied with the decision of the Building Inspector may appeal to and be granted a hearing to the planning and zoning board.

(Code 1962, § 7-1-2)

Exclusive enforcement over permits, NMSA 1978, § 3-18-6A(4).

Sec. 5-28. Application.

All applications for permits under the provisions of this article shall be in writing, signed by the owner, lessee, or agent, and shall state the lot and block or area upon which the work proposed is to be done and the purpose for which the building, wall, or structure is to be used; and such application shall be accompanied by full and complete plans and specifications.

(Code 1962, § 7-1-3)

Sec. 5-29. Permit fees.

Such applications shall be filed with the Clerk and, except in the case of emergency, shall not be acted upon by the Governing Body before the expiration of seven days from the date of such filing. The permits, when granted, shall be issued by the Clerk under the seal of the City. The permit fees shall be set from time to time and a schedule of such fees is on file in the City Clerk's office.

(Code 1962, § 7-1-4)

Sec. 5-30. Storage of combustible materials.

No lumber or fuel storage sheds, outhouses, or other structures containing any class of combustible or inflammable materials prohibited by State, National Building, Fire, or Safety Codes; or the piling or placing of any such material within the fire limits shall be permitted in the City. The bulk storage of any class of combustible or inflammable materials, in excess of ten gallons of fuel for use in lawn mowers, chain saws, and so forth, is prohibited in any other area of the City. Further, no residences, temporary or permanent, and no combustible materials shall be placed or stored on the premises of a gasoline service station, bulk plant, or place utilized for the commercial bulk storage of liquefied petroleum gases.

(Code 1962, § 7-1-8)

Sec. 5-31. Refusal of permit; hearing.

Any person claiming to be injuriously affected by the refusal of the Governing Body to issue a permit under the provisions of this article, or any person seeking to protest the issuance or nonissuance of such permit, may have a hearing before the Governing Body after public notice in a newspaper ten days before such hearing. Upon such hearing, any person interested in the issuance or nonissuance of such permit may be heard in the proceedings and object or protest the issuance or nonissuance of such permit. From the determination of the Governing Body upon such hearing, any party to such proceedings may have the right to appeal to the District Court within ten days, by appropriate action in such District Court.

(Code 1962, § 7-1-9)

Secs. 5-32—5-50. Reserved.

ARTICLE III. FIRE PREVENTION CODE

Sec. 5-51. Adopted.

Secs. 5-52—5-70. Reserved.

Sec. 5-51. Adopted.

The conditions, provisions, limitations, and terms of the NFPA (National Fire Prevention Association) Life Safety Code 101-85 Edition, and the Uniform Fire Code, 1985 Edition, and any amendments, revisions, new editions thereof, or any subsequent code which is made a part hereof by reference as fully as if copied at length in this article, are hereby adopted for the City of Truth or Consequences, New Mexico. A copy of the codification or codification and revision of the code shall be at all reasonable times available and subject to inspection at the City Clerk's office, City Hall, 505 Sims Street, Truth or Consequences, New Mexico.

(Code 1962, § 7-3-1)

Municipal authority to adopt by reference a fire prevention code, NMSA 1978, § 3-17-6A(6).

Secs. 5-52—5-70. Reserved.

ARTICLE IV. FIRE DEPARTMENT [3](23)

Sec. 5-71. Access to premises.

Sec. 5-72. Dangerous conditions; correction.

Sec. 5-73. Appointment of Deputy Inspectors; report to Chief.

Sec. 5-74. Appeal by persons aggrieved.

Sec. 5-75. Duties of owner.

Sec. 5-76. Noncompliance.

Sec. 5-77. Investigation of cause of fire.

Sec. 5-78. Authority at fire.

Sec. 5-79. Appointment of officers at fires.

Secs. 5-80—5-95. Reserved.

Sec. 5-71. Access to premises.

The Chief of the Fire Department is hereby empowered and authorized, at any and all reasonable times, to enter upon and into any premises, building, or structure within the corporate limits of the City for the purpose of examining and inspecting such premises, building, or structure to ascertain the condition of such building, and also with regard to the presence, arrangement, or deposit of any articles, materials, substances, goods, wares, or merchandise which may have a tendency to create danger of or from fire in such premises, building, or structure; to create danger in case of fire on or in such building or personal injury to or loss of life of the occupants of or persons on or in such premises, building, or structure; also with

regard to the conditions, size, arrangements and efficiency of any and all appliances for protection against fire on or in such premises, building, or structure.

(Code 1962, § 3-2-1)

Sec. 5-72. Dangerous conditions; correction.

- (a) If the Chief of the Fire Department shall find on such inspection of such premises, building, or structure any rubbish, debris, waste, or inflammable or combustible materials, and that the same is not so arranged or disposed as to afford reasonable safeguard against the dangers of fire; if he shall find that the articles, materials, goods, wares, and merchandise on or in such premises, building, or structure are so arranged and disposed that the occupants thereof, or persons rightfully on or in such building would not, because of such arrangement and disposition, be afforded reasonable access to the exits of the premises, building, or structure in case of fire; if he shall find that by reason of such arrangement or disposition, the members of the Fire Department would unnecessarily and unreasonably be interfered with in the exercise of their duties in and about such premises, building, or structure in case of fire in such structure, he may order in writing the removal of such rubbish, debris, waste, or inflammable or combustible materials from such premises, building, or structure, or the disposing and arranging of the same on or in such premises, building, or structure in such a manner as will remove such danger from fire. He may also order in writing that such articles, materials, goods, wares, or merchandise be so arranged and disposed on or in such premises, building, or structure that the occupants thereof, or the persons rightfully on or in such building, will be afforded all reasonable access to the exits from the building in case of fire. The members of the Fire Department will be afforded all reasonable facilities for the discharge of their duties in or about the premises, building, or structure in case of fire.
- (b) If he shall also find that such building is in a dangerous or unsafe condition so as to endanger the public health and safety, he shall report such building to the Governing Body who shall, if it so deems necessary, order such premises to be removed or demolished, or placed in such condition as will comply with the provisions of this Code applying to the zone or section of the City within which such structure is located.

(Code 1962, § 3-2-2)

Dangerous buildings, § 4-226 et seq.

Sec. 5-73. Appointment of Deputy Inspectors; report to Chief.

The Chief of the Fire Department is empowered and authorized to appoint as many deputies to be employees of the Fire Department as required to make the inspections provided for in this article and who shall report in writing the results of their inspections to the Chief of the Fire Department.

(Code 1962, § 3-2-3)

Sec. 5-74. Appeal by persons aggrieved.

Should any owner of any premises, building, or structure, or the owner or person in control of any materials, goods, wares, or merchandise, consider himself aggrieved by any abatement order by the Chief, such owner or controller may, within 24 hours after the order has been served on him, appeal to the Governing Body, who shall thereupon make such order in the premises as, in its discretion, it may deem right and reasonable.

(Code 1962, § 3-2-4)

Sec. 5-75. Duties of owner.

Such orders mentioned in section 5-72 shall be directed to the owner of such premises, building, or structure, or to the person in control of the articles, materials, goods, wares, or merchandise referred to in this article, or to the owner thereof, as the circumstances may require. It is hereby made the duty of such owner of such premises, building, or structure, and of such person in control of such articles, materials, goods, wares, and merchandise, or the owner thereof, to comply with such orders, within 30 days from written notice thereof.

(Code 1962, § 3-2-5)

Sec. 5-76. Noncompliance.

It shall be unlawful for the owner of such building, premises, or structure, or any person in control of such articles, materials, goods, wares, or merchandise, as referred to in this article, to fail or neglect to discharge the duties imposed by sections 5-71 to 5-75, inclusive, of this article, and the orders of the Chief of the Fire Department.

(Code 1962, § 3-2-6)

Sec. 5-77. Investigation of cause of fire.

It shall be the duty of the Chief or assistant in charge at any fire to make prompt and thorough investigation of the cause of such fire, and he is hereby authorized to request the Governing Body to require the attendance of witnesses, and the production of books and papers, property, or other evidence, at such time and place as shall be deemed by the Governing Body convenient and proper. Such witnesses shall be required to give their evidence under oath, which shall be reduced to writing and placed on file with the Chief. A record of such proceedings shall be kept by such officer.

(Code 1962, § 3-2-8)

Sec. 5-78. Authority at fire.

The Chief of the Fire Department or assistant in charge at any fire may prescribe limits in the vicinity of such fire, within which no persons, except those whose property may be within such limits, shall be allowed, unless by permission of the Chief or assistant in charge, or the Chief or Captain of Police of the City. It shall be the duty of the police force of the City to enforce the orders of the Fire Chief, respecting the occupation of such limits during the progress of the fire. Every person who may be present at such fire shall be subject to the orders

of the Chief or assistant in charge, or Chief or Captain of Police of the City, and shall do and perform such duty as may be required of him by either of the officers in the extinguishing of such fire or the removal or protection of property endangered thereby. Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor.

(Code 1962, § 3-2-9)

Sec. 5-79. Appointment of officers at fires.

The Chief of the Fire Department is hereby authorized to designate and appoint, and commission as such, volunteer fire police officers to enforce this article, and the persons so appointed and commissioned, as well as each and every active member of the Fire Department, during any fire or conflagration, are hereby vested with all the power of police officers of the City, and are hereby authorized and empowered to arrest any person found violating this article, and cause them to be cited to appear before the Municipal Magistrate, there to be tried and punished as provided in this Code.

(Code 1962, § 3-2-16)

Secs. 5-80—5-95. Reserved.

ARTICLE V. FIREWORKS [4](24)

Sec. 5-96. Title.

Sec. 5-97. Definitions.

Sec. 5-98. License or permit.

Sec. 5-100. Exportation of fireworks from the City.

Sec. 5-101. Permissible fireworks.

Sec. 5-102. Retail sales or storage of fireworks; regulated activities.

Sec. 5-103. Public display of fireworks.

Sec. 5-104. Penalty.

Sec. 5-105. Emergencies.

Sec. 5-96. Title.

This article shall be known and cited as the Truth or Consequences Fireworks Ordinance.

(Ord. No. 382, § 7-2-1, 6-24-91)

Sec. 5-97. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Aerial device means a fireworks device that upon ignition propels itself or an insert a significant distance into the air, but does not include a firework that produces a shower of sparks. Aerial device includes skyrocket and bottle rocket, missile-type rocket, helicopter, aerial spinner, Roman candle, and mine, shell.

Common fireworks means any fireworks device suitable for use by the public that complies with the construction, performance, composition and labeling requirements promulgated by the United States Consumer Product Safety Commission in 16 CFR and that is classified as a class C explosive by the United States Department of Transportation.

Display distributor means any person, firm or corporation selling special fireworks.

Distributor means any person, firm or corporation selling fireworks to wholesalers and retailers for resale.

Fireworks means any composition or device for the purpose of producing a visible or audible effect by combustion, deflagration or detonation. Fireworks are further classified in this article as common fireworks and special fireworks, as defined by the United States Department of Transportation, 49 CFR, Transportation, parts 173.88(d) and 173.100(r).

Ground audible device means a fireworks device intended to function on the ground that produces an audible effect and includes firecrackers of all types and chasers.

Manufacturer means any person, firm or corporation engaged in the manufacture of fireworks.

Permissible fireworks means fireworks legal for sale and use in Truth or Consequences under the provisions of this article.

Retailer means any person, firm or corporation purchasing fireworks for resale to consumers.

Special fireworks means fireworks devices primarily intended for commercial displays which are designed to produce visible or audible effects by combustion, deflagration or detonation, including salutes containing more than 130 milligrams (two grains) of explosive composition, aerial shells containing more than 40 grams of chemical composition exclusive of lift charge and other exhibition display items that exceed the limits contained in this article for common fireworks.

Specialty retailer means any person, firm or corporation purchasing fireworks for year-round resale in permanent retail stores whose primary business is tourism.

Wholesaler means any person, firm or corporation purchasing fireworks for resale to retailers.

(Ord. No. 382, § 7-2-2, 6-24-91)

Definitions and rules of construction generally, § 1-2.

Sec. 5-98. License or permit.

- (a) *Required.* No person may sell, hold for sale, import, distribute or offer for sale, as specialty retailer or retailer, any fireworks in the City unless such person has first obtained the appropriate license or permit.

- (b) *Application, enforcement.* The Fire Chief shall enforce the provisions of this article. All license applications shall be submitted to the office of the City Clerk with the approval of the Fire Chief.
- (c) *Fee.* An applicant for a license or permit required by this article shall pay to the City the following fees, which shall not be refundable:
 - (1) Specialty retailer license . . . \$25.00
 - (2) Retailer permit . . . 25.00
- (d) *Issuance.* All license and permits shall be issued for one year beginning on May 1 of each year. All licenses and permits shall be issued within 30 days from the date of receipt of application.
- (e) *Number not restricted.* Licenses issued under this article shall not be restricted in number or limited to any person without cause.

(Ord. No. 382, § 7-2-4, 6-24-91; Ord. No. 478, § 1, 7-24-00)

Sec. 5-100. Exportation of fireworks from the City.

Nothing in this article shall prohibit wholesalers, distributors, importers, specialty retailers, or manufacturers from storing, selling, shipping or otherwise transporting fireworks as defined by the United States Department of Transportation to any person or entity outside the City.

(Ord. No. 382, § 7-2-5, 6-24-91)

Sec. 5-101. Permissible fireworks.

Permissible fireworks for sale to the general public as that term is used in this article shall be understood to mean common fireworks legal for sale and use in New Mexico under the provisions of the Fireworks Safety and Licensing Act, as amended, with the exception of ground audible devices, and aerial devices, which are prohibited pursuant to section 5-99.

(Ord. No. 382, § 7-2-6, 6-24-91)

Sec. 5-102. Retail sales or storage of fireworks; regulated activities.

- (a) No fireworks may be sold at retail stores without a retail permit. The permit shall be at the location where the retail sale takes place.
- (b) It is unlawful to offer for sale or to sell any fireworks to children under the age of 12 years or to any intoxicated person.
- (c) At all places where fireworks are stored, sold or displayed, the words "NO SMOKING" shall be posted in letters at least four inches in height. Smoking, open flames, or any ignition source is prohibited within 25 feet of any fireworks stock.
- (d) No fireworks shall be stored, kept, sold or discharged within 50 feet of any gasoline pump or gasoline bulk station or any building in which gasoline or volatile liquids are sold in quantities in excess of one gallon, except in stores

where cleaners, paints and oils are handled in sealed containers only.

- (e) All fireworks permittees and licensees shall keep and maintain upon the premises a fire extinguisher bearing an Underwriters' Laboratories, Inc., rated capacity of at least five pounds ABC per 500 square feet of space used for fireworks sales or storage.
- (f) A sales clerk who is at least 16 years of age shall be on duty to serve consumers at the time of purchase or delivery. All fireworks sold and shipped to consumers within the City shall be sold and shipped only by an individual firm, partnership or corporation holding the proper state fireworks license or permit.
- (g) No fireworks shall be discharged within 150 feet of any fireworks retail sales location.
- (h) No person shall ignite any fireworks within a motor vehicle or throw fireworks from a motor vehicle, nor shall any person place or throw any ignited article of fireworks into or at a motor vehicle or at or near any person or group of people.
- (i) Any fireworks devices that are readily accessible to handling by consumers or purchasers in a retail sales location shall have their exposed fuses protected in a manner to protect against accidental ignition of an item by a spark, cigarette ash or other ignition source. If the fuse is a thread-wrapped safety fuse which has been coated with a nonflammable coating, only the outside end of the safety fuse shall be covered. If the fuse is not a safety fuse, then the entire fuse shall be covered.
- (j) Fireworks may be sold at retail between June 20 and July 6 of each year and three days preceding and including New Year's Day, Chinese New Year and Cinco de Mayo of each year except that fireworks may be sold all year in permanent retail stores whose primary business is tourism.

(Ord. No. 382, § 7-2-7, 6-24-91)

Sec. 5-103. Public display of fireworks.

- (a) Nothing in this article shall prohibit the public display of fireworks except that any person shall secure a written permit from the office of the City Clerk upon approval from the Fire Chief and the fireworks shall be purchased from a distributor or display distributor licensed by the State Fire Marshal and the Bureau of Alcohol, Tobacco and Firearms at the United States Department of the Treasury.
- (b) The Fire Chief may adopt reasonable rules and regulations for the use of special fireworks in public displays.

(Ord. No. 382, § 7-2-8, 6-24-91)

Sec. 5-104. Penalty.

- (a) Any person who violates any provision of this article is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than \$500.00 or imprisonment for not more than 90 days, or both.

- (b) Nothing in this article shall apply to or prohibit any employees of the Department of Game and Fish or the United States Fish and Wildlife Service from processing fireworks for control of game birds and animals or to prohibit any law enforcement officer from possessing fireworks in the performance of his duties or to prohibit any organization therein from sponsoring and conducting in connection with any public celebration an officially supervised and controlled fireworks display.
- (c) If a person is found guilty of violating any of the provisions of this article, that person's license or permit may be revoked or suspended by the Fire Chief, his deputies or designee, or by a qualified representative of the state's Fire Marshal Office.
- (d) No person shall possess any fireworks for sale within the City, other than those authorized in this article. The Fire Chief, his deputies or designee may at reasonable hours enter and inspect the permittee's premises, building, mobile or motor vehicle or temporary or permanent structure to determine compliance with the provisions of this article. If any retailer has in his possession any fireworks in violation of this article, his permit shall be revoked and all such fireworks seized, and the fireworks shall be kept to be used as evidence. If any person has in his possession any fireworks in violation of this article, a warrant may be issued to be used as evidence. Upon conviction of the offender, the fireworks shall be destroyed, but if the offender is discharged, the permissible fireworks shall be returned to the person in whose possession they were found; provided, however, that nothing in this article applies to the transportation of fireworks by regulated carriers.

(Ord. No. 382, §§ 7-2-9, 7-2-10, 6-24-91)

Sec. 5-105. Emergencies.

In the event of an emergency situation arising within the City such as water shortages, droughts, extremely windy conditions, the City Manager has the right to impose other reasonable restrictions as the City Manager deems necessary in his discretion.

(Ord. No. 382, § 7-2-11, 6-24-91)

Chapter 6 HEALTH AND SANITATION [1](25)

ARTICLE I. TREES AND SHRUBBERY [2](26)

Sec. 6-1. Trimming—Trees.

Sec. 6-2. Same—Hedges and shrubbery.

Sec. 6-3. Injury.

Secs. 6-4—6-20. Reserved.

Sec. 6-1. Trimming—Trees.

Any owner or occupant of any real property shall trim all trees on property owned or occupied by him overhanging any public thoroughfare, so that the branches thereon will not interfere with pedestrians or public travel.

(Code 1962, § 9-10-1; Ord. No. 645, § 1, 11-12-13)

Sec. 6-2. Same—Hedges and shrubbery.

Any owner or occupant of any real property shall maintain all hedges and shrubbery adjacent to public sidewalks so that no part of the hedges and/or shrubbery shall extend over any part of public sidewalk, street, or alley in the City.

(Code 1962, § 9-10-2; Ord. No. 645, § 1, 11-12-13)

Sec. 6-3. Injury.

It is hereby declared unlawful for any person, not the owner thereof, or without lawful authority so to do, to injure willfully, deface, disfigure, or destroy any tree or shrub, or to injure, destroy, cut, or pick any flower or plant located either on private ground or on any public place or thoroughfare.

(Code 1962, § 9-10-3; Ord. No. 645, § 1, 11-12-13)

Secs. 6-4—6-20. Reserved.

ARTICLE II. INSECT AND RODENT CONTROL [3](27)

Sec. 6-21. Definitions.

Sec. 6-22. Inspection of buildings, premises, and vacant lots.

Sec. 6-23. Enforcement; serving of notices and order; hearings.

Sec. 6-24. Extermination required; harborage not permitted.

Sec. 6-25. Enforcement of article.

Secs. 6-26—6-30. Reserved.

Sec. 6-21. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Extermination means the control and elimination of insects or rodents by eliminating their harborage, or removing or making inaccessible materials that may serve as their food; by poisoning, spraying, fumigating, or trapping; or by any other recognized and legal insect or rodent control method approved by the Manager.

Infestation means the presence of any insects or rodents of such kind or in such numbers as to create a potential health hazard or nuisance.

Insects mean members of Class Insecta and such other members of the Phylum Arthropoda as may be considered dangerous or pestiferous by the Manager.

Person in control means the owner or part owner of a building, lot, or premises; the agent or occupant of a building, lot, or premises, or any other person who has the use of or control of a building, lot, or premises or any part thereof.

Rodents mean members of the Order Rodentia and such members of the Order Lagomorpha as may be considered dangerous or pestiferous by the Manager.

(Code 1962, § 8-6-1; Ord. No. 645, § 1, 11-12-13)

Definitions and rules of construction generally, § 1-2.

Sec. 6-22. Inspection of buildings, premises, and vacant lots.

The Manager is hereby authorized to make such inspections of buildings, lots and premises as he deems necessary to investigate and abate insect or rodent infestations or harborages. For the purpose of making such inspections, the Manager is hereby authorized to enter, examine, or survey such buildings, lots and premises at all reasonable times. Such entry shall be made in a manner as to cause the least possible inconvenience to the person in control, and the Manager shall obtain an order for this purpose from a court of competent jurisdiction if entry is denied or resisted.

(Code 1962, § 8-6-2; Ord. No. 645, § 1, 11-12-13)

Sec. 6-23. Enforcement; serving of notices and order; hearings.

Whenever it appears to the Manager that an insect or rodent harborage or infestation exists, he shall issue and cause to be served on the person in control of complaint stating the charges in that respect and specifying a reasonable amount of time for abatement. If, after the stated period of time, the Manager finds that such condition has not been abated, he shall serve notice that a hearing will be held before the Manager not less than three days nor more than seven days after receipt of such notice by the person in control. If after such notice and an opportunity for a hearing, the Manager determines that the complaint is justified, the person in control shall be deemed to be in violation of the provisions of this article.

(Code 1962, § 8-6-3; Ord. No. 645, § 1, 11-12-13)

Sec. 6-24. Extermination required; harborage not permitted.

- (a) All buildings, lots, and premises shall be kept free of infestation or harborage. The person in control shall not allow the accumulation of water, refuse, animal wastes, garbage, trash, or other harborage.
- (b) When any building, lot, or premises is so infested or subject to infestation, the person in control shall utilize extermination measures as specified by the Manager.
- (c) When the person in control of any building, lot, or premises fails to abate the nuisance of harborage or infestation, the Manager shall be authorized to go upon the premises and abate the nuisance of harborage or infestation. The cost of

such abatement shall be borne by the person in control who failed to abate the nuisance under the terms of this article. If payment is not received within 60 days of receipt of the bill for such costs, the Manager may proceed to record a lien on the affected property for the amount due and owing.

(Code 1962, § 8-6-4; Ord. No. 645, § 1, 11-12-13)

Sec. 6-25. Enforcement of article.

The Manager or his designated representative shall be responsible for the enforcement of this article. Rules and regulations to carry out the intent and purpose of this article shall be prescribed by the Manager pursuant to standards created in this article.

(Code 1962, § 8-6-5; Ord. No. 645, § 1, 11-12-13)

Secs. 6-26—6-30. Reserved.

ARTICLE III. SOIL AND SURFACE WATER PROTECTION [4](28)

Sec. 6-31. Definitions.

Sec. 6-32. Unlawful deposit of sewage or hazardous material.

Sec. 6-33. Enforcement of this article.

Sec. 6-34. Penalty for violation of this article.

Secs. 6-35—6-40. Reserved.

Sec. 6-31. Definitions.

[The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:]

Cesspool, holding tank, septic system, and sewage as defined in the Uniform Plumbing Code, section 4-66.

Hazardous material is any material as defined under the terms "hazardous production material," "health hazard," or "highly toxic material" in the Uniform Building Code, section 4-46.

(Ord. No. 422, § 1, 5-8-95; Ord. No. 645, § 1, 11-12-13)

Sec. 6-32. Unlawful deposit of sewage or hazardous material.

- (a) It is unlawful for any occupant or owner of property to deposit or cause to be deposited untreated sewage or hazardous material upon the surface of the ground or in a manner which may contaminate surface water.
- (b) It is unlawful for any occupant or owner of property to deposit or cause to be deposited untreated sewage or hazardous material into a holding tank, cesspool or septic system which has not received proper approval from both the state

construction industries division of the regulation and licensing department and the state environment department.

(Ord. No. 422, § 5-8-95; Ord. No. 645, § 1, 11-12-13)

Sec. 6-33. Enforcement of this article.

The Manager or his designated representative shall be responsible for the enforcement of this article. Regulations or administrative policies to carry out the intent and purpose of this article shall be prescribed by the City Manager pursuant to standards created in this article.

(Ord. No. 422, § 1, 5-8-95; Ord. No. 645, § 1, 11-12-13)

Sec. 6-34. Penalty for violation of this article.

Any person violating any provision of this article shall be deemed guilty of a misdemeanor and punished in accordance with section 1-10, and if violation continues, each day's violation shall constitute a separate offense. In addition to any penalties provided for [in] this section, this section is enforceable by injunction.

(Ord. No. 422, § 1, 5-8-95; Ord. No. 645, § 1, 11-12-13)

Secs. 6-35—6-40. Reserved.

ARTICLE IV. NUISANCE ORDINANCE [5](29)

Sec. 6-41. [Title.]

Sec. 6-42. Definitions.

Secs. 6-43—6-50. Reserved.

Sec. 6-41. [Title.]

This article and articles V and VI and all sections within may be cited as the "Nuisance Ordinance."

(Ord. No. 646, § 1, 11-12-13)

Sec. 6-42. 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:

Alley means a public right-of-way or private way or thoroughfare or part thereof, providing secondary access to abutting properties and not intended for general traffic circulation.

Antique motor vehicle means an operable motor vehicle more than 25 years old currently licensed.

Approved means approved by the Enforcement Officer or Building Official.

Curb line means the edge of the curb or, in absence of a curb, the edge of the pavement or the travelled surface.

Deterioration means the weakening, disintegration, corrosion, rusting or decaying or loss of effectiveness.

Easement means a grant of one or more of the property rights by the property owner to and/or for use by the public, a corporation, or another person or entity.

Egress means an exit.

Enforcement Officer includes City Police Officers, Code Compliance Officers, Animal Control Officers and any other City employees responsible for enforcing Municipal Code.

Garbage means and includes any and all accumulation of waste and refuse, vegetable and animal matter, discarded from processing, storage, sale, or handling of food in or on any premises in the City.

Hobby stock vehicle means a licensed or unlicensed stock, race, and drag car capable of being operated in accordance with established hobby stock race policies or requirements.

Imminent danger means a condition which could cause serious or life-threatening injury or death at any time.

Junk means discarded, dismantled, partially dismantled, wrecked, inoperative, abandoned, unusable or broken machinery or parts, scrap metal, utility trailers, mobile homes, appliances, furniture, furnishings, sporting equipment, used building or construction materials, and all other items commonly known as junk.

Junked motor vehicle means any motor vehicle, other than an antique or special interest vehicle, which has not been moved or had active and regular efforts to make the motor vehicle able to meet minimum safety standards for operation on public streets and highways, or water bodies and ways in New Mexico, and includes motor vehicles which have been wrecked, dismantled, partially dismantled, or abandoned or left on a public premises or on private property and either:

- (1) Does not bear a valid, unexpired license plate; or
- (2) Cannot be safely or legally operated on the public streets and highways, or water bodies and ways, of New Mexico. This definition includes boats, motorcycles, cars, trucks, recreational vehicles, and other motor vehicles.

Litter means all rubbish, waste material, refuse, garbage, trash, debris or other foreign substances, solid or liquid, of every form, size, kind, and description.

Motor vehicle means any vehicle which is designed, when in proper working order, to be self-propelled and designed to travel along the ground and shall include, but not be limited to, automobiles, buses, motor-bikes, motorcycles, motor scooters, trucks, tractors, go-carts, golf carts and self-propelled campers or motor homes.

Neglect means the lack of reasonable and necessary maintenance for a building or structure.

Occupancy means the purpose for which a building or portion thereof is utilized or

occupied.

Occupant means any person, firm, entity, partnership, trust, corporation, association, or other organization that is occupying or leasing a building or other property for a period exceeding 30 days.

Owner means any and all persons, firms, entities, partnerships, trusts, corporations, associations, or other organizations that own the fee title to, or have an undivided interest in, any building or property, which is subject to the provisions of these regulations.

Privacy fence means a fence, including any gates, constructed of solid material, wood or masonry, through which no visual images may be seen.

Private property means any real property within the City which is privately owned and which is not public property as defined in this section.

Public property means any street or highway which shall include the entire width between the boundary lines of every right-of-way publicly maintained for the purposes of vehicular or pedestrian travel, and shall also mean any other publicly owned property or facility.

Public way means any street, alley or similar parcel of land essentially unobstructed from the ground to the sky, which is deeded, dedicated or otherwise permanently appropriated to the public for public use.

Rights-of-way means a strip of land acquired by reservation, dedication, prescription, or condemnation and intended to be occupied by a street, crosswalk, railroad, electric transmission lines, oil or gas pipeline, water line, sanitary storm sewer, or other similar uses; generally the right of one to pass over the property of another.

Rubbish means combustible and non-combustible waste materials, except garbage; the term shall include the residue from the burning of wood, coal, coke and other combustible materials, paper, rags, cartons, boxes, wood, excelsior, rubber, leather, tree branches, yard trimmings, tin cans, metals, mineral matter, glass, crockery and dust and other similar materials.

Shrubs means a woody plant, smaller than a tree, consisting of several small stems from the ground or small branches near the ground. It may be deciduous or evergreen.

Solid waste means unwanted or discarded material, including waste material with insufficient liquid content to be free flowing, includes solid waste materials resulting from industrial, commercial, industrial, institutional, municipal, residential, and agricultural activities.

Special interest vehicle means an operable motor vehicle currently licensed, which is owned by a collector and which the collector can demonstrate has special collector or historic value.

Structure means a combination of materials that form a construction for use, occupancy, or ornamentation whether installed on, above, or below the surface of land or water.

Tenant means a person, corporation, partnership or group, whether or not the legal owner of record, occupying a building or portion thereof as a unit.

Ventilation means the natural or mechanical process of supplying conditioned or unconditioned air to, or removing such air from, any space.

(Ord. No. 646, § 1, 11-12-13)

Secs. 6-43—6-50. Reserved.

ARTICLE V. MOTOR VEHICLES [6](30)

Sec. 6-51. Penalty.

Sec. 6-52. Prohibited.

Sec. 6-53. Exceptions.

Sec. 6-54. Unhitched trailers.

Sec. 6-55. Casual sale of vehicles and trailers.

Sec. 6-56. Removal generally.

Sec. 6-57. Notice to remove nuisance.

Sec. 6-58. Responsibility for removal.

Sec. 6-59. Circumstances permitting summary vehicle removal.

Sec. 6-60. Notice procedure.

Sec. 6-61. Contents of notice.

Sec. 6-62. Request for hearing.

Sec. 6-63. Procedure for hearing.

Sec. 6-64. Removal of motor vehicle from property.

Sec. 6-65. Notice of removal.

Sec. 6-66. Use of private firms for removal, relocation, storage, or disposition.

Sec. 6-67. Liens.

Secs. 6-68—6-70. Reserved.

Sec. 6-51. Penalty.

Violations of this article are punishable as provided in section 1-10.

(Ord. No. 646, § 1, 11-12-13)

Sec. 6-52. Prohibited.

No person shall park, store, leave, or permit the parking, storing or leaving of any motor vehicle of any kind which is in an abandoned, wrecked, dismantled, junked or partially dismantled condition, whether attended or not, upon any public or private property within the City for a period of time in excess of 72 hours. The presence of an abandoned, wrecked, dismantled, inoperative, junked, or partially dismantled vehicle or parts thereof on private or public property is hereby declared to be a public nuisance which may be abated as such in accordance with the provisions of this article.

(Ord. No. 646, § 1, 11-12-13)

Sec. 6-53. Exceptions.

- (a) This section shall not apply to any vehicle enclosed within a building or behind a privacy fence on private property or to any vehicle held in connection with a business enterprise, lawfully licensed by the City and properly operated in an appropriate business zone, pursuant to the zoning laws of the City.
- (b) Any hobby stock vehicle maintained in track-operable condition or regularly used for racing purposes.
- (c) Any antique motor vehicle retained by the owner for antique collection purposes.
- (d) Any special interest vehicle retained by the owner for vehicle collection purposes.

(Ord. No. 646, § 1, 11-12-13)

Sec. 6-54. Unhitched trailers.

No person shall leave any type of trailer unhitched upon any street, public right-of-way or public parking area.

(Ord. No. 646, § 1, 11-12-13)

Sec. 6-55. Casual sale of vehicles and trailers.

No person making a casual sale of his own motor vehicle, boat; motorized or otherwise, or trailer duly registered to him shall sell the vehicle or offer or display the motor vehicle, boat, or trailer for sale at any location other than his current residence, place of employment, except at any site where the seller of the motor vehicle, boat, or trailer has obtained prior written permission from the land owner. The written land owner permission must be visibly displayed in the vehicle offered for sale. Only two vehicles, boats or trailers are allowed to be displayed on any one lot or parcel. Vehicles shall be parked so as not to impede traffic visibility on corners and intersections and shall not encroach on, in, over, or under any real property owned by the City or any public way, sidewalk, or public right-of-way owned by the City, including easements. A vehicle displayed for sale in a location in violation of this article may be towed no sooner than 48 hours after a warning sticker is placed on the vehicle. The warning sticker shall contain the following information:

- (1) The date and time the warning sticker was affixed to the vehicle;
- (2) A statement that pursuant to this article, if the vehicle is not removed within 48 hours of the time the sticker is affixed, it may be taken into custody and stored at the owner's expense or if the vehicle is located being displayed for sale in a location in violation of this article, within 48 hours from receipt of the warning sticker, the vehicle shall be taken into custody and stored pursuant to this article;
- (3) A statement that if the vehicle is towed pursuant to this article, the owner will have the opportunity to challenge the action at a hearing, and a written notice of the procedure for the hearing will be mailed to the owner's address as provided by the state motor vehicle division files or the files of the appropriate motor

vehicle regulatory agency of another state;

- (4) The location and telephone number where additional information may be obtained; and
- (5) The identity of the affixing person.

(Ord. No. 646, § 1, 11-12-13)

Sec. 6-56. Removal generally.

No Police Officer, Enforcement Officer, or City employee shall remove or cause to be removed any unattended vehicle from any street, alley or public way within the corporate limits, except as provided in this article.

(Ord. No. 646, § 1, 11-12-13)

Sec. 6-57. Notice to remove nuisance.

Whenever it comes to the attention of the Enforcement Officer that any nuisance under this article exists in the City, a notice in writing shall be served upon the occupant of the land where the nuisance exists, or in the case there is no such occupant, upon the owner of the property or his agent, notifying them of the existence of the nuisance and requesting its removal in the time specified in this article.

(Ord. No. 646, § 1, 11-12-13)

Sec. 6-58. Responsibility for removal.

Upon proper notice and opportunity to be heard, the owner of the abandoned, wrecked, dismantled or inoperative vehicle or vehicle or trailer offered for casual sale in a prohibited location and the owner or occupant of the private property on which the same is located, either or all of them, shall be responsible for its removal. In the event of removal and disposition by the City, the owner or occupant of the private property where same is located shall be liable for the expenses incurred.

(Ord. No. 646, § 1, 11-12-13)

Sec. 6-59. Circumstances permitting summary vehicle removal.

Any Police Officer or any Enforcement Officer who is authorized to direct traffic or enforce state or local parking or motor vehicle laws may remove or cause to be removed any vehicle within the corporate limits without prior notice to the owner or operator thereof when:

- (1) Any vehicle is left unattended on a bridge, viaduct or causeway or in any tube or tunnel where the vehicle constitutes an obstruction to traffic.
- (2) Any vehicle is parked or left standing upon a street, alley or public way in such a position as to obstruct normal movement of traffic or is in such a condition as to create a hazard to other traffic.
- (3) Any vehicle is found upon a street, alley or public way or private property and a report has been previously made that the vehicle has been stolen or a complaint

has been filed and a warrant thereon issued charging that the vehicle has been stolen.

- (4) Any vehicle is found upon a street, alley, public way, right-of-way, or easement that is obstructing a City construction or infrastructure maintenance project.
- (5) Any vehicle is illegally parked so as to block the entrance to a private driveway.
- (6) Any vehicle is illegally parked so as to prevent access by firefighting equipment to a fire hydrant.
- (7) The person in charge of a vehicle upon a roadway is because of physical injuries, intoxication or any illness, incapacitated to such an extent as to be unable to provide for the custody or removal.
- (8) An officer arrests any person driving or in control of the vehicle for an alleged offense and the officer is by ordinance or by law required or permitted to take and does take the person arrested before a municipal judge without unnecessary delay.
- (9) An abandoned, unattended, wrecked, burned or partially dismantled vehicle is creating a traffic hazard because of its position in relation to the street, alley or public way or its physical location is causing the impeding of traffic.
- (10) The use of the street, alley or public way or any portion thereof is authorized by the City for a purpose other than the normal flow of traffic or for the movement of equipment, articles or structures of unusual size and the parking of any vehicle would prohibit or interfere with such use of movement and signs giving notice that such vehicle may be removed are erected or placed within at least 24 hours prior to the removal.
- (11) Any vehicle is parked or left standing where prohibited by ordinance or other state or local law, provided that no vehicle may be removed unless signs are posted giving notice of the removal at least 24 hours prior to the removal.
- (12) The vehicle is parked or standing in a manner so as to obstruct necessary emergency services, rerouting of traffic at the scene of a disaster and moving the vehicle to a legal parking location is impractical. However, the owner or operator of a vehicle so relocated or removed shall not be subject to any relocation, removal or storage charge if the vehicle is otherwise lawfully parked. Such charges shall be paid by the City.

(Ord. No. 646, § 1, 11-12-13)

Sec. 6-60. Notice procedure.

The Enforcement Officer shall give notice of removal to the owner or occupant of the private property where a nuisance under this article is located. The notice shall describe the violation and shall establish a reasonable time limit for abatement thereof by the owner, occupant or tenants, which limit shall be not less than two days or more than 30 days after service of the notice. The notice may be served either personally or by mail at the owner's or occupant's last known address of record. If such owner cannot be served, a copy of the ordinance from which this article derives shall be posted on the property.

(Ord. No. 646, § 1, 11-12-13)

Sec. 6-61. Contents of notice.

The notice issued under this article shall contain the request for removal of the nuisance within the time specified in this article, and the notice shall advise that upon failure to comply with the notice to remove, the City or its designee shall undertake such removal with the cost of removal to be levied against the owner or occupant of the property.

(Ord. No. 646, § 1, 11-12-13)

Sec. 6-62. Request for hearing.

The persons to whom the notices are directed, or their duly authorized agents, may file a written request for a hearing before the City Manager, or its designee during the period of compliance prescribed in section 6-60 for the purpose of defending the charges by the City.

(Ord. No. 646, § 1, 11-12-13)

Sec. 6-63. Procedure for hearing.

The hearing provided for in this article shall be held as soon as practicable after the filing of the request and the persons to whom the notices are directed shall be advised of the time and place of such hearing at least seven days in advance thereof. At any such hearing the City and the persons to whom the notices have been directed may introduce such witnesses and evidence as either party deems necessary.

(Ord. No. 646, § 1, 11-12-13)

Sec. 6-64. Removal of motor vehicle from property.

If the violation of this article described in the notice has not been remedied within period of compliance, or in the event that a notice requesting a hearing is timely filed, a hearing is had, and the existence of the violation is affirmed by the City Manager, or its designee, the Enforcement Officer or his designee shall have the right to take possession of the junked motor vehicle and remove it from the premises. It shall be unlawful for any person to interfere with, hinder, or refuse to allow such person or persons to enter upon private property for the purpose of removing the vehicle under the provisions of this article.

(Ord. No. 646, § 1, 11-12-13)

Sec. 6-65. Notice of removal.

Within 48 hours of the removal of any vehicle under this article, the Enforcement Officer shall give notice to the registered owner of the vehicle, if known, and also to the owner or occupant of the private property from which the vehicle was removed, that such vehicle has been impounded and stored for violation of this article. The notice shall give the location of where the vehicle is impounded and the costs incurred by the City, or the private firm for removal.

(Ord. No. 646, § 1, 11-12-13)

Sec. 6-66. Use of private firms for removal, relocation, storage, or disposition.

- (a) A person, private business or company may remove or place a vehicle in storage whenever:
 - (1) Requested to do so by the owner or operator of the vehicle;
 - (2) Directed to do so by an authorized Enforcement Officer or Police Officer per the terms of this article; or
 - (3) Otherwise allowed by law.
- (b) No removal or storage shall be undertaken at the direction of an authorized City employee or Police Officer unless the person ordering the removal or storage provides to each private business or company taking possession of the vehicle a copy of the removal and storage order.
- (c) When the City chooses to delegate the removal or storage to a private business or company, the City may enter into a franchise or contract with the private business or company. Such franchise or contract shall at a minimum provide for the following:
 - (1) Require the private company or business to obtain compensation for the removal and storage of unclaimed vehicles by obtaining a lien and foreclosing the lien.
 - (2) Set the rates for removal and storage of vehicles which will be paid to the private business or company by the City whenever a vehicle is reclaimed from storage and the City is liable for such costs under [NMSA 1978,] § 14-2-8.
 - (3) Require the private business or company to provide a performance bond.
 - (4) Require the private business or company to carry liability insurance and hold the City harmless against negligent relocation, removal or storage.

(Ord. No. 646, § 1, 11-12-13)

Sec. 6-67. Liens.

- (a) Whenever a vehicle has been removed under this article and placed in storage, the owner of the storage facility may obtain a lien on the vehicle to compensate the owner for removal and storage of the vehicle when a Municipal Judge issues an order upholding the legality of the removal, storage or assessment or the owner fails to challenge the removal and storage in the manner specified in section 6-45 [6-66].
- (b) No lien shall attach to any personal property in or on the vehicle.
- (c) If a hearing has been conducted by the Municipal Judge on the legality of the removal and storage, the legality of assessing the owner or driver of the vehicle, or liability for removal and storage charges and the Judge rules that removal and storage or the assessment were legal, the owner of the storage facility shall have a lien on the vehicle to cover costs of removal and storage.

- (d) If no hearing on the legality of the removal and storage was conducted, the owner of the storage facility desiring to obtain a lien on the vehicle shall send written notice of hearing to the registered owner of the vehicle. Such hearing shall be held before the Municipal Judge no less than ten days after the notice is sent by registered or certified mail, return receipt requested. If no signed receipt is received, the hearing shall be not less than ten days after notice by publication is made at least twice, no less than seven days apart, in a newspaper of general circulation. Such notice by mail or publication shall contain notice written in bold type or all capitals stating the lien could be attached to the vehicle in favor of the owner of the storage facility if the owner of the vehicle does not appear at the hearing.
- (e) If the owner of the vehicle does not appear at the hearing and if a prima facie case showing compliance with this article is proved, the Judge shall order that the removal and storage were legal and that the assessment of the removal and storage charges against the owner of the vehicle are proper. The prima facie case is established by the introduction of a copy of the order for the removal and storage and the order which has been substantially and materially completed correctly.
- (f) All liens created under this section shall be enforced and foreclosed in any manner allowed by law.

(Ord. No. 646, § 1, 11-12-13)

Secs. 6-68—6-70. Reserved.

ARTICLE VI. WEEDS, ALLEYS, JUNK, TRASH AND REFUSE

Sec. 6-71. Penalty.

Sec. 6-72. Declaration of nuisance; unlawful.

Sec. 6-73. Disposal restricted generally.

Sec. 6-74. Unsanitary premises.

Sec. 6-75. Hazardous premises.

Sec. 6-76. Accumulation of solid waste.

Sec. 6-77. Storage on private property.

Sec. 6-78. Weeds, responsibility of owner.

Sec. 6-79. Reserved.

Sec. 6-80. Alleys.

Sec. 6-81. Notice of nuisance.

Sec. 6-82. Criminal complaint.

Sec. 6-83. Removal of nuisance.

Sec. 6-84. Injunctions.

Secs. 6-85—6-90. Reserved.

Sec. 6-71. Penalty.

Violations of this article are punishable as provided in section 1-10.

(Ord. No. 646, § 1, 11-12-13)

Sec. 6-72. Declaration of nuisance; unlawful.

In the interest of the inhabitants of the City, it is necessary to prohibit the accumulation of junk, trash, solid waste, debris, garbage and refuse on property within the corporate limits of the City by declaring such accumulation a nuisance. Violations of this article are a public nuisance.

(Ord. No. 646, § 1, 11-12-13)

Sec. 6-73. Disposal restricted generally.

It shall be unlawful for any reason for any person to keep, store, deposit, sweep, place or throw solid waste, garbage, rubbish or other solid waste materials in or upon any sidewalk, street, alley, river, arroyo, irrigation ditch, or unoccupied premises or lots, or upon private property, whether owned by such person or not, within the City, unless otherwise provided in this Code.

(Ord. No. 646, § 1, 11-12-13)

Sec. 6-74. Unsanitary premises.

It shall be unlawful for any person to permit or cause to remain in or about his premises any solid waste, garbage, rubbish, weeds, automobiles not in operating condition, wastewater or any conglomeration of residue thereof, which emits odors or serves as a feeding or breeding place for flies, insects or rodents, and which is unsanitary or injurious to public health.

(Ord. No. 646, § 1, 11-12-13)

Sec. 6-75. Hazardous premises.

It shall be unlawful for any person to permit in or about his premises trees, weeds, briars, brush, shrubs, machinery, appliances, scrap metal, lumber, logs, pilings, open pits, quarry, cistern, well or other excavation without barriers, or any other waste, rubbish, or debris to become, in any way, hazardous or injurious to public health, to create a fire danger, or to obstruct pedestrian or vehicular traffic.

(Ord. No. 646, § 1, 11-12-13)

Sec. 6-76. Accumulation of solid waste.

No person shall allow any solid waste, garbage, or rubbish to accumulate upon premises owned, leased, rented or occupied, except in the manner herein provided.

(Ord. No. 646, § 1, 11-12-13)

Sec. 6-77. Storage on private property.

It shall be unlawful for any person to leave outside any building or dwelling in the City any dilapidated furniture, appliances, machinery, equipment, building material, junk, or other items which are either wrecked, junked, dismantled or in inoperative condition, and which are not completely enclosed within a building or dwelling, or behind a privacy fence. All fences must be permitted and constructed as provided in chapter 26, land use.

(Ord. No. 646, § 1, 11-12-13)

Sec. 6-78. Weeds, responsibility of owner.

It shall be unlawful for any owner, agent, lessee, or occupant of any lots, tracts or parcels of land within the City to allow weeds to be planted, lie, grow or be located upon any such property or along any street adjoining the same between the property line and the curb line thereof. Weeds include, but are not limited to:

African Rue/*Peganum Harmala*

Arundo/*Arundo Donax*

Black Henbane/*Hyoscyamus Niger*

Bull Thistle/*Cirsium Vulgare*

Camelthorn/*Alhagi Maurorum*

Canada Thistle/*Cirsium Arvense*

Cheatgrass/*Bromus Tectorum*

Crimson Fountaingrass/*Pennisetum Setaceum*

Dalmatian Toadflax/*Linaria Dalmatica*

Diffuse Knapweed/*Centaurea Diffusa*

Dryers Woad/*Isatis Tinctoria*

Eurasian Watermilfoil/*Myriophyllum Spicatum*

Giant Salvinia/*Salvinia Molesta*

Halogeton/*Halogeton Glomeratus*

Hoary Cress/*Caldaria Spp.*

Hydrillia/*Hydrilla Verticillata*

Leafy Spurge/*Euphorbia Esula*

Malta Starthistle/*Centaurea Melitensis*

Meadow Knapweed/*Centaurea Pratensis*
Musk Thistle/*Carduus Nutans*
Onionweed/*Asphodelus Fistulosus*
Oxeye Daisy/*Leucanthemum Vulgare*
Parrotfeather/*Myriophyllum Aquaticum*
Perennial Pepperweed/*Lepidium Latifolium*
Poison Hemlock/*Conium Maculatum*
Purple Loosestrife/*Lythrum Salicaria*
Purple Starthistle/*Lythrum Salicaria*
Quackgrass/*Elytrigia Repens*
Russian Knapweed/*Acroptilon Repens*
Russian Olive/*Elaeagnus Angustifolia L.*
Sahara Mustard/*Brassica Tournefortii*
Salt Cedar/*Tamarix Spp.*
Scotch Thistle/*Onoprodum Acanthium*
Siberian Elm/*Ulmus Pumila*
Spotted Knapweed/*Centaurea Biebersteinii*
Yellow Starthistle/*Centaurea Solstitialis*
Yellow Toadflax/*Linaria Vulgaris*

(Ord. No. 646, § 1, 11-12-13; Ord. No. 653, § 1, 4-22-14)

Sec. 6-79. Reserved.

Editor's note—

Section 2 of Ord. No. 653, adopted April 22, 2014, repealed § 6-79 which pertained to invasive species and noxious weeds, planting prohibited, and derived from Ord. No. 646, § 1, adopted Nov. 12, 2013.

Sec. 6-80. Alleys.

It shall be unlawful for any owner, agent, lessee, or occupant of any lots, tracts or parcels of land within the City to allow weeds, shrubs, trees, or rubbish to become, in any way, hazardous or injurious to public health or to obstruct pedestrian and vehicular traffic on or along any alley adjoining the same between the property line and the center of such alley.

(Ord. No. 646, § 1, 11-12-13)

Sec. 6-81. Notice of nuisance.

Any Enforcement Officer or City employee designated by the City Manager, upon observing any violation of this article, shall issue a notice directed to the owner of record of the property on which the nuisance occurs, or to the occupant or tenant of the property, or both. The notice shall describe the violation and shall establish a reasonable time limit for abatement thereof by the owner, occupant or tenants, which limit shall be not less than two days or more than 30 days after service of the notice. The notice may be served either personally or by mail at the owner's or occupant's last known address of record. If such owner cannot be served, a copy of the ordinance from which this article derives shall be posted on the property.

(Ord. No. 646, § 1, 11-12-13)

Sec. 6-82. Criminal complaint.

In the event the owner or occupant of the property where the nuisance violation exists has failed, within the prescribed period of compliance, to abate the nuisance, then the City may file a criminal complaint with the municipal court, demanding that the owner of the property, or the occupant thereof, or both, be held to answer to the court for the violation of this article.

(Ord. No. 646, § 1, 11-12-13; Ord. No. 653, § 3, 4-22-14)

Editor's note—

Section 3 of Ord. No. 653, adopted April 22, 2014, changed the title of § 6-82 from "Citation" to "Criminal complaint."

Sec. 6-83. Removal of nuisance.

In the event that a person, owner, or occupant in charge of property fails to remove the nuisance and upon a judicial determination by the Municipal Judge, the City may enforce this article in any manner consistent with the law including, but not limited to, removal of the nuisance and collection of reasonable costs of labor, equipment and materials. Failure to pay these costs shall result in a lien against the subject property for these costs, which may be enforced as provided in NMSA 1978 § 3-36-1 et seq. The lien may include an interest charge of eight percent per annum.

(Ord. No. 646, § 1, 11-12-13; Ord. No. 653, § 4, 4-22-14)

Sec. 6-84. Injunctions.

The City Police Department, City Attorney, Enforcement Officer, or any other official of the City, when a nuisance exists as set forth in this article, may maintain a complaint in the name of the City, perpetually, to enjoin all persons from maintaining or permitting the nuisance and to abate the same.

(Ord. No. 646, § 1, 11-12-13)

Secs. 6-85—6-90. Reserved.

Chapter 7 LICENSES, TAXATION AND MISCELLANEOUS BUSINESS REGULATIONS [1](31)

ARTICLE I. IN GENERAL

Sec. 7-1. Solicitors.

Sec. 7-2. Uninvited peddlers.

Sec. 7-3. Registered businesses required to disclose hazardous material inventory.

Secs. 7-4—7-30. Reserved.

Sec. 7-1. Solicitors.

In addition to the business registration fee imposed in this chapter and in lieu of any separate license fee, itinerant solicitors not maintaining a regular place of business in the City shall provide and post a bond in the sum of \$2,000.00 payable to the City for the use and benefit of any person who may suffer damages as adjudged by the District Court growing out of a transaction with such solicitor.

(Code 1962, § 5-1-5)

Sec. 7-2. Uninvited peddlers.

- (a) *Declared a nuisance.* The practice of going in and upon private residences in the City by solicitors, peddlers, hawkers, itinerant merchants, or transient vendors of merchandise, not having been requested or invited so to do by the owner or occupant of such private residence, for the purpose of soliciting orders for the sale of goods, wares, and merchandise or for the purpose of disposing of, peddling, or hawking such goods, is hereby declared to be a nuisance and punishable as a misdemeanor.
- (b) *Exceptions.* The provisions of this article shall not apply to the sale or soliciting of orders for the sale of milk, dairy products, vegetables, poultry, eggs, and other farm and garden produce so far as the sale of the commodities named in this section is now authorized by law.

(Code 1962, §§ 5-2-1, 5-2-2)

Sec. 7-3. Registered businesses required to disclose hazardous material inventory.

- (a) This section shall apply to hazardous materials and chemicals that shall have been defined as such by the Environmental Protection Agency or the state Environmental Improvement Division, or both. The Director of Emergency Management for Sierra County shall be responsible on or before December 1 of every year to acquire from the New Mexico Department of Public Safety and the Environmental Improvement Division information of chemicals and products defined by them as being hazardous, and shall make such information available,

without charge, to all citizens of the City, and to all persons or entities doing business within the City limits. Such information shall be recorded with the City Clerk on or before December 10 of each year, and the list shall be in effect for the following year, but no list shall become obsolete until its successor is recorded. For the first year that this section shall be in effect, the list shall be recorded within 15 days of August 1, 1991.

- (b) All persons, businesses or other entities possessing any of the products on the above-referenced list must declare their inventory with the Director of Emergency Management of such chemicals or products on or before March 15 of each year, commencing in 1992. An updated report of new or additional chemicals added to inventory within the year must be reported to the Director of Emergency Management within 15 days of chemical acquisition.
- (c) Any person filing for business registration shall complete the inventory at that time, such list to be filed with the Director of Emergency Management on a form to be approved by the Director of Emergency Management. All other persons, organizations or entities must submit a list to the Director of Emergency Management by August 1, 1991.
- (d) Any person or entity so filing shall also indicate the method by which such hazardous waste or chemicals, or any hazardous waste or chemicals generated on site therefrom, are to be disposed of.
- (e) There shall be no filing fee for the filing of such declarations.
- (f) The standards of the National Fire Protection Association Rule 704 are specifically adopted and incorporated herein by reference.
- (g) The following standards shall be applicable to all facilities:
 - (1) Those facilities which commence storage, manufacture or use of hazardous materials after June 1, 1991, must comply with the standards by August 1, 1991.
 - (2) Those facilities which expand their physical plant for storage, manufacture or use of hazardous materials after June 1, 1991, or which add additional hazardous materials, or increase their inventory or output of hazardous materials by at least 15 percent after June 1, 1991, must comply with the standards upon the date of such expansion, addition, or increase.
 - (3) Those facilities which, before June 1, 1991, were of the type covered by the standards adopted herein but which do not come under subsection (g)(2) of this section, must comply with the standards adopted herein within 90 days of August 1, 1991.
- (h) Violations of this section as it pertains to NFPA Rule 704 standards, or to any certifications or filings required under this section, shall be punishable as a misdemeanor.

(Ord. No. 381, 6-24-91)

Secs. 7-4—7-30. Reserved.

ARTICLE II. BUSINESS REGISTRATION FEE

Sec. 7-31. Imposition.

Sec. 7-32. Application to do business.

Sec. 7-33. Renewal.

Sec. 7-34. Application.

Sec. 7-35. Default; penalties.

Sec. 7-36. Display.

Secs. 7-37—7-55. Reserved.

Sec. 7-31. Imposition.

There is imposed on each place of business conducted in this Municipality a business registration fee of \$35.00 per annum. The fee is imposed pursuant to NMSA 1978, § 3-38-3, as it now exists or is amended, and shall be known as the "business registration fee." The business registration fee may not be prorated for businesses conducted for a portion of the year.

(Code 1962, § 5-1-1)

Sec. 7-32. Application to do business.

Any person proposing to engage in business within the municipal limits of Truth or Consequences, New Mexico, after July 1, 1981, shall apply for and pay a business registration fee for each outlet, branch, or location within the municipal limits of Truth or Consequences prior to engaging in business.

(Code 1962, § 5-1-2)

Sec. 7-33. Renewal.

- (a) *Renewal generally.* Prior to March 16 of each year, any person with a place of business in Truth or Consequences and subject to this article shall apply for renewal of business registration with the Municipal Clerk. The term for each registration is for one year pursuant to this article.
- (b) *Late fee.* Pursuant to § 3-38-5 NMSA 1978 (as amended), any registration not applied and paid for by March 15 shall be subject to a late fee of \$10.00. In addition to this late fee, provided by law, a person found guilty of violation of this article shall also be subject to those penalties prescribed by § 3-17-1 NMSA, 1978 (as amended).

(Code 1962, § 5-1-3; Ord. No. 635, § 1, 4-9-13)

Similar provisions, NMSA 1978, § 3-38-4(B).

Sec. 7-34. Application.

Any person filing an application for issuance or renewal of any business registration shall include in the application his current revenue division taxpayer identification number or evidence of application for a current revenue division taxpayer identification number.

(Code 1962, § 5-1-4)

Similar provisions, NMSA 1978, § 3-38-4(C).

Sec. 7-35. Default; penalties.

In the event that the City, by and through its City Attorney, files a criminal complaint in Municipal Court seeking enforcement of this section, any violator of this section may be penalized in accordance with section 1-10 of this Code. Further, the City reserves the right to initiate enforcement action in accordance with § 3-38-5, NMSA (1978) (1988 Repl. Pamphlet) and § 3-38-6, NMSA (1981).

(Ord. No. 471, § 1, 12-27-99; Ord. No. 604, 12-14-10; Ord. No. 635, § 2, 4-9-13)

Sec. 7-36. Display.

The Municipal Clerk shall provide a suitable certificate of registration or license to be furnished to each place of business coming within the terms of this chapter, and such certificate of registration or license shall be displayed at the place of business for which such registration or license is issued; and such license shall be displayed at the place of business clearly visible to the public at all times. Solicitors and similar licenses shall carry the license on their person while engaging in the business for which such license is issued.

(Ord. No. 635, § 3, 4-9-13)

Secs. 7-37—7-55. Reserved.

ARTICLE III. ALCOHOLIC BEVERAGES

Sec. 7-56. Licenses—State required.

Sec. 7-57. Same—Application.

Sec. 7-58. Same—Fees.

Sec. 7-59. Hours of business.

Sec. 7-60. Selling or giving liquor to minors.

Sec. 7-61. Prohibited on City-owned property; exceptions.

Sec. 7-62. Alcoholic beverage license restrictions.

Secs. 7-63-7-80. Reserved.

Sec. 7-56. Licenses—State required.

No license shall be issued for the sale of any alcoholic liquors to any person who shall not have previously secured a license from the Bureau of Liquor Control of the state.

(Code 1962, § 5-7-3)

Sec. 7-57. Same—Application.

Prior to the issuance of any license authorized to be issued by section 7-56, application therefor shall be made in writing and approved by the Governing Body of the City. The Governing Body may, in their judgment, determine if such person is unfit to engage in the sale of alcoholic liquors or the issuance of which license would be against the public interest.

(Code 1962, § 5-7-2)

Sec. 7-58. Same—Fees.

- (a) The amount to be paid for a license for the sale of alcoholic beverages in the City, by dispensers of alcoholic beverages, sale at clubs, or by retailers selling or offering for sale any and all kinds of alcoholic beverages, as authorized to be fixed by laws of the State of New Mexico, shall be \$250.00 per year per license. Said amount must be paid in one lump sum and must be paid before July 1st of each year.
- (b) Special dispensers' permits commonly referred to as picnic licenses: \$25.00 per day permittee is to dispense liquor. This fee shall be paid for all "public celebrations". "Public celebrations" means any state or county fair, fiesta, cultural or artistic performance or professional athletic competition of a seasonal nature or activities held on an intermittent basis.

(Code 1962, § 5-7-1; Ord. No. 408-A, § 1, 5-24-93; Ord. No. 413, § 1, 6-13-94)

Sec. 7-59. Hours of business.

- (a) It shall be unlawful for the owner, proprietor or operator of any place of business in the City, where intoxicating liquors are sold or dispensed, to permit his place of business to remain open, or do business therein after the hour of 2:00 a.m. and before 7:00 a.m., and it shall be the duty of such owner, proprietor and operator of any such place of business to securely close and lock the doors thereof, having previously excluded the patrons of such business from the premises.
- (b) It shall be unlawful for the owner, proprietor and operator of any place of business in the City, where intoxicating liquors are sold and dispensed, to allow or permit any customers or patrons of such place of business to be, remain in, or upon the premises and place of business after the hour of 2:00 a.m. and until 7:00 a.m.

(Code 1962, § 5-7-4)

Sec. 7-60. Selling or giving liquor to minors.

- (a) It shall be a violation of this article for any club, retailer, dispenser, bartender, waiter or servant or employee of any club, retailer or dispenser, or for any taxi driver, hotel employee or any other person, except the parent or guardian or spouse of any minor, or adult person into whose custody any court has committed such minor for the time, outside of the actual, visible personal presence of such minor's parent, guardian, spouse, or the adult person into whose custody any court has committed such minor for the time, to do any of the following acts:
 - (1) To sell, serve or give any alcoholic liquor to a minor;
 - (2) To buy alcoholic liquor for, or to procure the sale or service of alcoholic liquor to, a minor;
 - (3) To deliver alcoholic liquor to a minor;
 - (4) To aid or assist a minor to buy, procure or be served with alcoholic liquor.
- (b) It shall be a violation of this article for any minor to buy, receive or permit himself to be served with any alcoholic liquor except when accompanied by his parent, guardian, spouse, or an adult person into whose custody he has been committed for the time by some court who is actually, visibly and personally present at the time such alcoholic liquor is bought or received by him or served or delivered to him.
- (c) If any person except a minor shall procure any other person to sell, serve or deliver any alcoholic liquor to a minor by actual or constructive misrepresentation of any facts calculated to cause, or by the concealment of any facts the concealment of which is calculated to cause, the person, selling, serving or delivering such alcoholic liquors to such minor, that such minor is legally entitled to be sold, served, or delivered alcoholic liquors, and actually deceiving him by such misrepresentation or concealment, then that person, and not the person so deceived by such misrepresentation or concealment, shall have violated this article.
- (d) In any proceedings under subsection (a) of this section, it shall not be necessary for the prosecution, or any person, official or party urging or contending that such subsection has been violated, to allege or prove that the parent, guardian, spouse, or any adult person into whose custody any such minor has been committed by any court was not actually visibly and personally present at the time of the alleged violation, but such matters are matters of defense to be established and proved by the person against whom the prosecution or proceedings are brought.
- (e) Except when accompanied by any of the persons specified in this article, it shall be unlawful for any minor to be in any establishment where alcoholic liquor is being sold.
- (f) The term "minor" as used in this article shall mean any person under 21 years of age.

(Code 1962, § 5-7-5)

Sec. 7-61. Prohibited on City-owned property; exceptions.

- (a) It is unlawful for any person to possess any alcoholic beverages on any property owned by the City, including all municipal parks such as Ralph Edwards Park, Judge Osburn Park, Armijo Park and J.A. Hodges Memorial Swimming Pool Park. Exceptions are provided in this section. The Governing Body may permit the use of a special dispenser's license or other appropriate license at the Convention Center and the Municipal Golf Course or the Recreation/Senior Citizen's Center, only when furnished an acceptable liability and dram shop insurance policy affording the City adequate coverage under the Tort Claims Act of the State of New Mexico, in conjunction with regulations for serving alcoholic beverages as promulgated by the City Manager or the Director or Manager of the facilities. Such regulations shall conform to generally accepted practices in the State of New Mexico and the Tort Claims Act.
- (b) All applications must be received no less than ten days prior to the proposed usage. The foregoing shall not apply to the Civic and Activities Center Complex on West Fourth Street where regulations for the serving of alcoholic beverages shall be promulgated by the director and shall conform to generally accepted practices in the State of New Mexico and the provisions of the Tort Claims Act.

(Code 1962, § 5-7-6; Ord. No. 370, 5-14-90; Ord. No. 386, 8-12-91; Ord. No. 409, 10-25-93)

Sec. 7-62. Alcoholic beverage license restrictions.

Pursuant to NMSA 1978, § 60-6B-10, no license shall be approved for the sale of alcoholic beverages at premises that are located within 300 feet of any church or school unless a waiver is granted by the Governing Body. The Governing Body may grant a waiver of the 300 foot distance requirement only under the following circumstances:

- (1) The proponent must fill out a duly established application form as provided by the City Clerk's Office.
- (2) The applicant must notify all property owners within 300 feet of the location of the proposed waiver request (subject site) by use of both certified and regular mail. The certified mail stubs and the list of property owners shall be provided to the City Clerk by the applicant at the applicant's expense. The City Clerk shall notify the Governing Body of any undelivered mail that the Clerk's Office is made aware of.
- (3) The Commission may grant a waiver if:
 - a. The applicant is asking for a reduction of the 300 foot distance to a distance of not less than 150 feet from the subject site; and
 - b. The waiver is for the sale and consumption on-site of beer and wine in conjunction with restaurant service at the subject site.
- (4) In considering the waiver request, the Commission may consider any protest made by a church(s) or a school(s) within the 300 radius of the subject site.

- (5) The waiver may be revoked at any time at the discretion of the Governing Body if said waiver is deemed to cause problems related to crime that negatively affect the church(s) or the school(s).

This restriction does not apply to special dispensers' permits commonly referred to as "picnic licenses."

(Ord. No. 541, 11-8-04; Ord. No. 565, §§ 1, 2, 12-12-06)

Secs. 7-63-7-80. Reserved.

ARTICLE IV. FIREARMS DEALER

Sec. 7-81. Records to be kept.

Sec. 7-82. Exceptions to article.

Sec. 7-83. Time of retaining records.

Sec. 7-84. Transactions with minors.

Secs. 7-85—7-105. Reserved.

Sec. 7-81. Records to be kept.

Each person in the City engaged in the business of purchasing, selling or lending money on secondhand or used firearms shall keep records on the transactions involving the firearms as follows:

- (1) The make, caliber, description and serial number of each firearm purchased or sold or on which money is loaned;
- (2) The name and address of the person from whom purchased, to whom sold, or to whom money is loaned; and
- (3) The date of each transaction.

(Code 1962, § 5-8-1)

Sec. 7-82. Exceptions to article.

Regularly established businesses within the City engaged in the business of selling, at retail, new firearms which have been procured at wholesale from a manufacturer or jobber, shall not be subject to the provisions of this article.

(Code 1962, § 5-8-2)

Sec. 7-83. Time of retaining records.

The records required to be kept pursuant to this article shall be preserved and maintained for at least five years from the date of each such transaction and shall be made available at any time, upon request, to law enforcement agencies.

(Code 1962, § 5-8-3)

Sec. 7-84. Transactions with minors.

It shall be the responsibility of each person who buys, sells or loans money on secondhand or used firearms to ascertain whether or not the person with whom the transaction is consummated is a minor under the age of 21 years and to report to the Chief of Police of the City any transaction with such minor.

(Code 1962, § 5-8-4)

Secs. 7-85—7-105. Reserved.

ARTICLE V. FLEA MARKETS

Sec. 7-106. Definitions.

Sec. 7-107. Renting space to sellers.

Sec. 7-108. Secondhand stores excepted.

Sec. 7-109. More than one market.

Sec. 7-110. Camping prohibited.

Sec. 7-111. Purchases from children regulated.

Sec. 7-112. Customer parking.

Sec. 7-113. Sanitary facilities and food service.

Sec. 7-114. Zones.

Sec. 7-115. Taxes.

Sec. 7-116. Penalty for violation of article.

Secs. 7-117—7-135. Reserved.

Sec. 7-106. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Flea market means a market place, indoors or out-of-doors, where new or used personal property, merchandise, or items of all kinds are displayed, offered for sale, sold or exchanged from individual locations, including but not limited to spaces, lots, booths, vehicles, or other areas, with each location being operated independently from other locations.

Flea market operator means the owner or proprietor of a flea market.

Flea market seller means a person, firm, or corporation selling items or offering items for sale at a flea market.

(Code 1962, § 5-1-6(A))

Sec. 7-107. Renting space to sellers.

- (a) *License required.* No person shall operate the business of renting space or allocating space to flea market sellers without first obtaining a license therefor. Applications for licenses shall be made to the City Clerk, on forms to be provided by the City Clerk. One license shall be required for each market space or booth, but the individual flea market sellers shall not be required to obtain a license or pay a business registration fee so long as the person operating the business of renting space or allocating space to flea market sellers has complied with this section. The fee for each such space shall be \$25.00 per year in addition to the business registration fee paid by the person operating the business of renting or allocating space to flea market sellers.
- (b) *Exceptions.* This section shall not apply to locally recognized civic organizations, churches, museums, or other nonprofit organizations which operate arts and crafts fairs, sales, rummage sales, or other such functions from time to time and are not regularly engaged in the business of conducting such activities. Further, this section shall not apply to activities or public celebrations recognized in advance by the City Commission, such as but not limited to vendors invited by the Truth or Consequences- Sierra County Chamber of Commerce to occupy booths provided by them during the annual Fiesta. In such cases, the Chamber of Commerce or other qualified organization may obtain one permit by paying the \$25.00 fee, and such permit will cover all of the vendors invited by them who are occupying a booth provided or space reserved by such organization.
- (c) *Records to be kept by licensee.* Each person required by this article to obtain a license shall keep accurate records of the names and addresses of each flea market seller, together with a brief description of the type of merchandise offered for sale by that seller.

(Code 1962, § 5-1-6(B)—(D))

Sec. 7-108. Secondhand stores excepted.

No person having a license as a secondhand store shall be required to obtain a license under this section.

(Code 1962, § 5-1-6(E))

Sec. 7-109. More than one market.

Any person renting or allocating space to flea market sellers in more than one place of business shall be required to obtain a license for each place of business, provided that one license shall be adequate for locations that are on the same lot, adjacent lots, or lots separated only by an alley.

(Code 1962, § 5-1-6(F))

Sec. 7-110. Camping prohibited.

Temporary or overnight camping, lodging, or staying by flea market sellers or customers is prohibited unless accommodations are provided therefor, pursuant to the standards for recreational vehicle parks.

(Code 1962, § 5-1-6(G))

Sec. 7-111. Purchases from children regulated.

No flea market seller shall purchase any personal property, item, merchandise, used household item, antique, or used article whatsoever from any person under the age of 18 years, unless such person is accompanied by the person's parent or guardian.

(Code 1962, § 5-1-6(H))

Sec. 7-112. Customer parking.

Each applicant for a flea market license shall furnish the City Clerk with evidence of not fewer than two offstreet parking spaces to accommodate each flea market seller's customers in addition to the normal onstreet parking capability available in street frontage of the building or open space used in connection with the flea market.

(Code 1962, § 5-1-6(I))

Sec. 7-113. Sanitary facilities and food service.

Each applicant for a flea market license shall provide the City Clerk with a certificate, permit, or other approval from the New Mexico Environmental Improvement Division evidencing the availability of restroom facilities and, in addition, potable water and handwashing facilities provided by the applicant if food service of any kind is to be provided in the flea market area or facility.

(Code 1962, § 5-1-6(J))

Sec. 7-114. Zones.

Licenses for flea markets may be approved only for areas zoned commercial.

(Code 1962, § 5-1-6(K))

Sec. 7-115. Taxes.

Each flea market operator shall be and is hereby made responsible for requiring each flea market seller to be licensed in New Mexico pursuant to the law and the regulations of the New Mexico Taxation and Revenue Department.

(Code 1962, § 5-1-6(L))

Sec. 7-116. Penalty for violation of article.

Any person violating any provision of this article shall be fined not more than \$300.00 for each offense, and a separate offense shall be deemed committed on each day during or on which a violation occurs or continues.

(Code 1962, § 5-1-6(M))

Secs. 7-117—7-135. Reserved.

ARTICLE VI. GROSS RECEIPTS TAX [2](32)

Sec. 7-136. Imposition of tax.

Sec. 7-137. General provisions.

Sec. 7-138. Specific exemptions.

Sec. 7-139. Dedication.

Sec. 7-140. Effective date.

Sec. 7-141. Municipal environmental services gross receipts tax.

Sec. 7-142. Municipal infrastructure gross receipts tax.

Secs. 7-143—7-160. Reserved.

Sec. 7-136. Imposition of tax.

There is imposed on any person engaging in business in this municipality for the privilege of engaging in business in this municipality an excise tax equal to one-fourth of one percent (0.25%) of the gross receipts reported or required to be reported by the person pursuant to the New Mexico Gross Receipts and Compensating Tax Act as it now exists or as it may be amended. The tax imposed under this ordinance is pursuant to the Municipal Local Option Gross Receipts Taxes Act as it now exists or as it may be amended and shall be known as the "one-fourth of one percent (0.25%) municipal gross receipts tax."

(Code 1962, § 5-16-1; Ord. No. 416, § 1, 7-11-94; Ord. No. 606, § 1, 6-14-11)

Authority to impose municipal gross receipts tax, NMSA 1978, § 7-19-4.

Sec. 7-137. General provisions.

This article hereby adopts by reference all definitions, exemptions and deductions contained in the Gross Receipts and Compensating Tax Act as it now exists or as it may be amended.

(Code 1962, § 5-16-2; Ord. No. 416, § 2, 7-11-94; Ord. No. 606, § 2, 6-14-11)

Sec. 7-138. Specific exemptions.

No municipal gross receipts tax shall be imposed on the gross receipts arising from:

- (1) Transporting persons or property for hire by railroad, motor vehicle, air transportation or any other means from one point within the municipality to another point outside the municipality;
- (2) A business located outside the boundaries of a municipality on land owned by that municipality for which a state gross receipts tax distribution is made pursuant to NMSA 1978, § 7-1-6.4(C); or
- (3) Direct broadcast satellite services.

(Code 1962, § 5-16-3; Ord. No. 416, § 3, 7-11-94; Ord. No. 606, § 3, 6-14-11)

Sec. 7-139. Dedication.

Revenue from the one-fourth of one percent (0.25%) of municipal gross receipts tax will be used for the purpose(s) listed below:

- (1) Public safety.

(Code 1962, § 5-16-4; Ord. No. 416, § 4, 7-11-94; Ord. No. 606, § 4, 6-14-11)

Sec. 7-140. Effective date.

The effective date of the one-fourth of one percent (0.25%) municipal gross receipts tax shall be either January 1, or July 1, whichever date occurs first after the expiration of three months from the date this ordinance is adopted and the adopted ordinance is delivered or mailed to the Taxation and Revenue Department.

(Code 1962, § 5-16-5; Ord. No. 416, § 5, 7-11-94; Ord. No. 606, § 5, 6-14-11)

Sec. 7-141. Municipal environmental services gross receipts tax.

- (a) *Imposition.* There is imposed on any person engaging in business in the City for the privilege of engaging in business in the City an excise tax equal to one sixteenth of one percent of the gross receipts reported or required to be reported by the person pursuant to the New Mexico Gross Receipts and Compensating Tax Act as it now exists or as it may be amended. The tax imposed under this section is pursuant to the Municipal Environmental Services Gross Receipts Tax Act as it now exists or as it may be amended and shall be known as the "municipal environmental services gross receipts tax."
- (b) *General provisions.* This section hereby adopts by reference all definitions, exemptions and deductions contained in the Gross Receipts and Compensating Tax Act as it now exists or as it may be amended.
- (c) *Specific exemptions.* No municipal environmental services gross receipts tax shall be imposed on the gross receipts arising from:
 - (1) The transmission of messages by wire or other means from one point within the Municipality to another point outside the Municipality;
 - (2) Transporting persons or property for hire by railroad, motor vehicle, air transportation or any other means from one point within the Municipality

to another point outside the Municipality; or

- (3) A business located outside the boundaries of a Municipality on land owned by that Municipality for which a gross receipts tax distribution is made pursuant to NMSA 1978, § 7-1-6.4(c).
- (d) *Dedication.* Revenue from the municipal environmental services gross receipts tax will be used for the following purposes: the acquisition, construction, operation and maintenance of solid waste facilities, water facilities, wastewater facilities, sewer systems and related facilities.
- (e) *Effective date.* The effective date of the municipal environmental services gross receipts tax shall be July 1, 1991, unless an election is held pursuant to NMSA 1978, § 7-19B-3(A), on the question of disapproving the ordinance, in which case the effective date shall be either July 1 or January 1, whichever date occurs first after the expiration of three months from the date when the results of the election are certified to be in favor of the ordinance's adoption.

(Ord. No. 376, 3-11-91)

Sec. 7-142. Municipal infrastructure gross receipts tax.

- (a) *Imposition of tax.* There is imposed on any person engaging in business in this Municipality for the privilege of engaging in business in this Municipality an excise tax equal to one eighth of one percent of the gross receipts reported or required to be reported by the person pursuant to the New Mexico Gross Receipts and Compensating Tax Act as it now exists or as it may be amended. The tax imposed under this section is pursuant to the Municipal Infrastructure Gross Receipts Tax Act as it now exists or as it may be amended and shall be known as the "municipal infrastructure gross receipts tax."
- (b) *General provisions.* This section hereby adopts by reference all definitions, exemptions and deductions contained in the Gross Receipts and Compensating Tax Act as it now exists or as it may be amended.
- (c) *Specific exemptions.* No municipal infrastructure gross receipts tax shall be imposed on the gross receipts arising from:
 - (1) The transmission of messages by wire or other means from one point within the Municipality to another point outside the Municipality;
 - (2) Transporting persons or property for hire by railroad, motor vehicle, air transportation or any other means from one point within the Municipality to another point outside the Municipality; or
 - (3) A business located outside the boundaries of a Municipality on land owned by that Municipality for which a gross receipts tax distribution is made pursuant to NMSA 1978, § 7-1-6.4(c).
- (d) *Dedication.* Revenue from the municipal infrastructure gross receipts tax shall be used for the purpose listed below:
 - (1) General municipal purposes; or

- (2) The infrastructure funds.
- (e) *Effective date.* The effective date of the municipal infrastructure gross receipts tax shall be either January 1 or July 1, whichever date occurs first after the expiration of at least three months from the date this ordinance is adopted.

(Ord. No. 389, §§ 1—4, 3-26-92; Ord. No. 472, 3-13-00)

Secs. 7-143—7-160. Reserved.

ARTICLE VII. SUPPLEMENTAL MUNICIPAL GROSS RECEIPTS TAX

Sec. 7-161. Title of article.

Sec. 7-162. Declaration of intent and purpose of article.

Sec. 7-163. Definitions.

Sec. 7-164. Imposition of tax; rate; presumption of taxability.

Sec. 7-165. Deposit of proceeds.

Sec. 7-166. Separately stating the municipal gross receipts tax.

Sec. 7-167. Date payment due.

Sec. 7-168. Exemptions.

Sec. 7-169. Nontaxable transaction certificates, farmers' and ranchers' statements, and other evidence required to entitle persons to deductions.

Sec. 7-170. Suspension of the right to use a nontaxable transaction certificate.

Sec. 7-171. Deductions.

Sec. 7-172. Severability.

Sec. 7-173. Bureau as agent for collection; municipality liable on refunds.

Sec. 7-174. Dedication.

Secs. 7-175—7-195. Reserved.

Sec. 7-161. Title of article.

This article may be cited as the "City of Truth or Consequences Supplemental Municipal Gross Receipts Tax Ordinance."

(Code 1962, § 5-17-1)

Sec. 7-162. Declaration of intent and purpose of article.

Pursuant to the Municipal Gross Receipts Tax Act, which authorizes municipalities to enact a municipal gross receipts tax, it is hereby declared the purpose and intent of the Governing Body of the City to enact an ordinance imposing a gross receipts tax of one-fourth of

one percent in compliance with the Municipal Gross Receipts Tax Act. It is further declared the purpose and intent of this article to conform to the definitions and applicable gross receipts tax provisions of the New Mexico Gross Receipts and Compensating Tax Act, and any interpretation of this article should be in conformity with the applicable sections of the Gross Receipts and Compensating Tax Act.

(Code 1962, § 5-17-2)

Sec. 7-163. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Bureau means the revenue division of the Taxation and Revenue Department, the Director of that division or any employee of the division exercising authority lawfully delegated to him by the Director.

Buying or selling means any transfer of property for consideration or any performance of service for consideration.

Construction means building, altering, repairing, or demolishing in the ordinary course of business any:

- (1) Road, highway, bridge, parking area, or related project;
- (2) Building, stadium, or other structure;
- (3) Airport, subway, or similar facility;
- (4) Park, trail, athletic field, golf course, or similar facility;
- (5) Dam, reservoir, canal, ditch, or similar facility;
- (6) Sewerage or water treatment facility, power generating plant, pump station, natural gas compressing station, or similar facility;
- (7) Sewerage, water, gas, or other pipeline;
- (8) Transmission line;
- (9) Radio or other tower;
- (10) Water, oil, or other storage tank;
- (11) Shaft, tunnel or other mining appurtenance; or
- (12) Similar work.

Construction also means:

- (1) Leveling or clearing land;
- (2) Excavating earth;
- (3) Drilling wells of any type, including seismograph shot holes or core drilling; or
- (4) Similar work.

Engaging in business means carrying on or causing to be carried on any activity with the purpose of direct or indirect benefit.

Financial corporation means any savings and loan association, or any incorporated savings and loan company, trust company, mortgage banking company, consumer finance company, or other financial corporation.

Gross receipts means the total amount of money or the value of other consideration, received from selling property, from leasing property, or from performing services, and such total includes any receipts from sales of tangible personal property handled on consignment but excludes cash discounts allowed and taken, New Mexico gross receipts tax payable on transactions for the reporting period and taxes imposed pursuant to the provisions of the County Sales Tax Act, County Gross Receipts Tax Act, or the Municipal Gross Receipts Tax Act, which are payable on transactions for the reporting period and any type of time-price differential.

In an exchange in which the money or other consideration received does not represent the value of the property or service exchanged, gross receipts means the reasonable value of the property or service exchanged.

When the sale of property or service is made under any type of charge, conditional or time sales contract, or the leasing of property is made under a leasing contract, the seller or lessor may elect to treat all receipts, excluding any type of time-price differential, under such contracts as gross receipts as and when the payments are actually received. If the seller or lessor transfers his interest in any such contract to a third person, he shall pay the gross receipts tax upon the full sale or leasing contract amount, excluding any type of time-price differential.

Gross receipts, for the purposes of the business of buying, selling, or promoting the purchase, sale, or leasing, as factor, agent, or broker, on a commission or fee basis, of any property, service, stock, bond, or security, includes only the total commissions or fees derived from the business.

Gross receipts also includes amounts paid by the members of any cooperative association or similar organization for sales or leases of personal property or performance of services by such organization.

Leasing means any arrangement whereby, for a consideration, property is employed for or by any person other than the owner of the property.

Manufacturing means combining or processing components or materials to increase their value for sale in the ordinary course of business but does not include construction.

Municipal gross receipts tax means the municipal gross receipts tax imposed by the City of Truth or Consequences Municipal Gross Receipts Tax Ordinance.

Municipality means the City of Truth or Consequences.

Person means:

- (1) Any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, joint venture, syndicate, or other entity, including any gas, water, or electric utility owned or operated by a county, municipality, or other political subdivision of the state; or

- (2) The United States or any agency or instrumentality thereof, the State of New Mexico or any political subdivision thereof.

Property means real property, tangible personal property, licenses, franchises, patents, trademarks, and copyrights. Tangible personal property includes electricity.

Service means all activities engaged in for other persons for a consideration, which activities involve predominantly the performance of a service as distinguished from selling property. In determining what is a service, the intended use, principal objective, or ultimate objective of the contracting parties shall not be controlling.

Service includes construction activities and all tangible personal property that will become an ingredient or component part of a construction project. However, sales of tangible personal property that will become an ingredient or component part of a construction project to persons engaged in the construction business are sales of tangible personal property.

Use or *using* means and includes use, consumption, or storage other than storage for subsequent sale in the ordinary course of business or for use solely outside this state.

(Code 1962, § 5-17-3)

Definitions and rules of construction generally, § 1-2.

Sec. 7-164. Imposition of tax; rate; presumption of taxability.

- (a) Any person engaging in business in the Municipality shall pay for the privilege an excise tax to be referred to as the "Municipal Gross Receipts Tax." The rate of the tax shall be equal to one-fourth of one percent of the gross receipts of the person engaging in business.
- (b) To prevent evasion of the municipal gross receipts tax and to aid in its administration, it is presumed that all receipts of a person engaging in business within the Municipality are subject to the municipal gross receipts tax.

(Code 1962, § 5-17-4)

Sec. 7-165. Deposit of proceeds.

All revenues distributed to the Municipality by the Bureau pursuant to the provisions of the Municipal Gross Receipts Tax Act shall be deposited into the general fund of the Municipality, unless otherwise specified in section 7-174.

(Code 1962, § 5-17-5)

Sec. 7-166. Separately stating the municipal gross receipts tax.

When the municipal gross receipts tax is stated separately on the books of the seller or lessor, and if the total amount of tax that is stated separately on transactions reportable within one reporting period is in excess of the amount of the municipal gross receipts tax otherwise payable on the transactions on which the tax was stated separately, the excess amount of tax stated on the transactions within that reporting period shall be included in gross receipts.

(Code 1962, § 5-17-6)

Sec. 7-167. Date payment due.

The taxes imposed by this article are to be paid on or before the 25th day of the month following the month in which the taxable event occurs or as otherwise authorized by the Bureau.

(Code 1962, § 5-17-7)

Sec. 7-168. Exemptions.

- (a) No municipal gross receipts tax shall be imposed on the gross receipts arising from:
 - (1) The transmission of messages by wire or other means from one point within the Municipality to another point outside of the Municipality;
 - (2) Transporting persons or property for hire by railroad, motor vehicle, air transportation, or any other means from one point within the Municipality to another point outside the Municipality; or
 - (3) A business located outside the boundaries of the Municipality on land owned by the Municipality for which a gross receipts tax distribution is made pursuant to NMSA 1978, § 7-1-6.4.
- (b) Exempted from the municipal gross receipts tax are those receipts exempted in subsections (b)(1) through (23) of this section:
 - (1) *Governmental agencies.* The receipts of the United States or any agency or instrumentality thereof or the State of New Mexico or any political subdivision thereof.

Receipts from the sale of gas, water, or electricity by a utility owned or operated by a county, municipality or other political subdivision of the state are not exempted from the municipal gross receipts tax.

- (2) *Certain nonprofit facilities.* The receipts of nonprofit entities from the operation of facilities designed and used for providing accommodations for retired elderly persons.
- (3) *Wages.* The receipts of employees from wages, salaries, commissions, or from any other form of remuneration for personal services.
- (4) *Agricultural products.* The receipts of growers, producers, trappers, or nonprofit marketing associations from selling livestock, live poultry, unprocessed agricultural products, hides, or pelts. Persons engaged in the business of buying and selling wool or mohair or of buying and selling livestock on their own account are producers for the purposes of this section.

Receipts from selling dairy products at retail are not exempted from the municipal gross receipts tax.

- (5) *Livestock feeding.* The receipts of any person derived from feeding or pasturing livestock.

Receipts derived from penning or handling livestock prior to sale are receipts derived from feeding livestock for the purposes of this section.

Receipts derived from training livestock are receipts derived from feeding livestock for the purposes of this section.

- (6) *Banks and financial corporations.* The receipts of banks and financial corporations from selling or leasing property or services in the course of their regular banking and financial corporation functions.
- (7) *Vehicles.* The receipts from selling vehicles on which a tax was imposed by state law and on vehicles which were subject to registration under state law.
- (8) *Insurance companies.* The receipts of insurance companies or any agent thereof from premiums.
- (9) *Dividends and interest.* The receipts received as interest on money loaned or deposited, receipts received as dividends or interest from stocks, bonds, or securities or receipts from the sale of stocks, bonds, or securities.
- (10) *Fuel.* The receipts from selling and the use of gasoline or special fuel on which the tax imposed by NMSA 1978, § 7-13-3, or NMSA 1978, § 7-16-3, has been paid and not refunded.
- (11) *Occasional sale of property or service.* The receipts from the isolated or occasional sale of or leasing of property or a service by a person who is neither regularly engaged nor holding himself out as engaged in the business of selling or leasing the same or similar property or service.
- (12) *Certain organizations.* The receipts of organizations that demonstrate to the Bureau that they have been granted exemption from the federal income tax by the United States Commissioner of Internal Revenue as organizations described in section 501(c)(3) of the United States Internal Revenue Code of 1954, as amended or renumbered. This section does not apply to receipts derived from an unrelated trade or business as defined in section 513 of the United States Internal Revenue Code of 1954, as amended or renumbered.
- (13) *Resale activities of an armed forces instrumentality.* The receipts from selling tangible personal property and the use of property by any instrumentality of the armed forces of the United States engaged in resale activities.
- (14) *Oil and gas or mineral interests.* The receipts from the sale of or leasing of oil, natural gas, or mineral interests.
- (15) *Persons subject to Oil and Gas Emergency School Tax Act.* When a privilege tax is imposed by the Oil and Gas Emergency School Tax Act, the provisions of such Act shall apply and determine the full measure of tax liability for the privilege of engaging in the business stated in the Act, and no provision of this article shall apply to or create a tax liability for

such privilege, except that any person engaging in the business of severing oil, natural gas, or liquid hydrocarbons from the soil of this state, who sells oil, natural gas, or liquid hydrocarbons other than for subsequent resale in the ordinary course of business or for use as an ingredient or component part of a manufactured product is subject to this article as to those sales, as well as to the Oil and Gas Emergency School Tax Act.

No provision of this article shall apply to the storage of oil, natural gas, or liquid hydrocarbons, individually or any combination thereof, or to the use of such products for fuel in the operation of a production unit, as defined by the Oil and Gas Emergency School Tax Act.

- (16) *Refiners and persons subject to Natural Gas Processors Tax Act.* When a privilege tax is imposed by the Natural Gas Processors Tax Act, the provisions of the Act shall apply and determine the full measure of tax liability for the privilege of engaging in the business stated in the Act, and no provision of this article shall apply to or create a tax liability for such privilege, except that any producer or processor of natural gas or liquid hydrocarbons who sells natural gas or liquid hydrocarbons other than for subsequent resale in the ordinary course of business or for use as an ingredient or component part of a manufactured product is subject to this article as to those sales, as well as to the Natural Gas Processors Tax Act.

No provision of this article shall apply to the storage or use of oil, natural gas, or liquid hydrocarbons, individually or any combination thereof, when stored or used by a processor, as defined by the Natural Gas Processors Tax Act, or by a person engaged in the business of refining oil, natural gas, or liquid hydrocarbons, who stores or uses the oil, natural gas, or liquid hydrocarbons in the regular course of his refining business.

- (17) *Persons subject to Resources Excise Tax Act.* When a privilege tax is imposed by the Resources Excise Tax Act, the provisions of the Act shall apply and determine the full measure of tax liability for the privilege of engaging in the business stated in the Act, and no provision of this article shall apply to or create a tax liability for such privilege, except in the same manner as is provided in NMSA 1978, § 7-25-8, in regard to the New Mexico Gross Receipts and Compensating Tax Act.
- (18) *Oil and gas consumed in the pipeline transportation of oil and gas products.* Receipts from the sale of oil, natural gas, liquid hydrocarbons, or any combination thereof consumed as fuel in the pipeline transportation of such products.
- (19) *Fees from social organizations.*
- a. The receipts from dues and registration fees of nonprofit social, fraternal, political, trade, labor, or professional organizations and business leagues.
 - b. For the purposes of this section:
 1. *Dues* means amounts that a member of an organization pays at recurring intervals to retain membership in an

organization where such amounts are used for the general maintenance and upkeep of the organization; and

2. *Registration fee* means amounts paid by persons to attend a specific event sponsored by an organization to defray the cost of the event.
- (20) *Purses and jockey remuneration at New Mexico race tracks.* The receipts of horsemen, jockeys, and trainers from purses at New Mexico horserace tracks subject to taxes levied under NMSA 1978, § 60-1-15.
 - (21) *Religious activities.* The receipts of a minister of a religious organization, which organization has been granted an exemption from federal income tax by the United States Commissioner of Internal Revenue as an organization described in section 501(c)(3) of the United States Internal Revenue Code of 1954, as amended or renumbered, from religious service provided by the minister to an individual recipient of the service.
 - (22) *Theatrical and television films and tapes.* The receipts from the leasing or licensing of theatrical and television films and tapes of any kind.
 - (23) *Temporary provisions.* Receipts from contracts entered into prior to April 10, 1975, which do not permit an increase in price to cover the municipal gross receipts tax and which are registered with the Bureau of Revenue as provided by the Commissioner. Such receipts shall be taxed according to the laws existing prior to April 10, 1975.

(Code 1962, § 5-17-8)

Sec. 7-169. Nontaxable transaction certificates, farmers' and ranchers' statements, and other evidence required to entitle persons to deductions.

- (a) All nontaxable transaction certificates executed by buyers or lessees should be in the possession of the seller or lessor for nontaxable transactions at the time the nontaxable transactions occur. If the seller or lessor is not in possession of these nontaxable transaction certificates within 60 days from the date notice requiring the possession of these nontaxable transaction certificates is given the seller or lessor by the Commissioner of Revenue or his delegate, deductions claimed by the seller or lessor which required delivery of these nontaxable transaction certificates shall be disallowed. The nontaxable transaction certificates shall contain the information and be in a form prescribed by the Bureau. Only buyers or lessees who have a registration number or have applied for a registration number and have not been refused one under NMSA 1978, § 7-1-12, shall execute nontaxable transaction certificates. When the seller or lessor accepts a nontaxable transaction certificate within the required time and in good faith that the buyer or lessee will employ the property or service transferred in a nontaxable manner, the properly executed nontaxable transaction certificate shall be conclusive evidence, and the only material evidence, that the proceeds from the transaction are deductible from the seller's or lessor's gross receipts.
- (b) Properly executed documents required to support the deductions provided in section 7-171 should be in the possession of the seller at the time the nontaxable

transactions occur. If the seller is not in possession of these documents within 60 days from the date notice requiring the possession of these documents is given to the seller by the Commissioner of Revenue or his delegate, deductions claimed by the seller or lessor which require delivery of these documents shall be disallowed. These documents shall contain the information, and be in a form, prescribed by the Bureau. When the seller accepts these documents within the required time and in good faith that the buyer will employ the property or service transferred in a nontaxable manner, the properly executed documents shall be conclusive evidence, and the only material evidence, that the proceeds from the transaction are deductible from the seller's gross receipts.

- (c) Notification, as that term is used in this section, is sufficient if the notice is mailed or served as provided in NMSA 1978, § 7-1-9. Notice by the Commissioner under this section shall not be given prior to the commencement of an audit of the seller from whom the documents are required.

(Code 1962, § 5-17-9)

Sec. 7-170. Suspension of the right to use a nontaxable transaction certificate.

If the Commissioner suspends the right of any person to use nontaxable transaction certificates pursuant to NMSA 1978, § 7-9-44, such suspension applies to the use of such certificates under this article.

(Code 1962, § 5-17-10)

Sec. 7-171. Deductions.

In computing the municipal gross receipts tax due, only the receipts specified in subsections (1) through (31) of this section may be deducted. Receipts, whether specified once or several times in subsections (1) through (31) of this section may be deducted only once from gross receipts.

- (1) *Sales to manufacturers.* Receipts from selling tangible personal property may be deducted from gross receipts if the sale is made to a person engaged in the business of manufacturing who delivers a nontaxable transaction certificate to the seller. The buyer delivering the nontaxable transaction certificate must incorporate the tangible personal property as an ingredient or component part of the product which he is in the business of manufacturing.
- (2) *Sale of tangible personal property for resale.* Receipts from selling tangible personal property may be deducted from gross receipts if the sale is made to a person who delivers a nontaxable transaction certificate to the seller. The buyer delivering the nontaxable transaction certificate must resell the tangible personal property either by itself or in combination with other tangible personal property in the ordinary course of business.
- (3) *Sale of a service for resale.* Receipts from selling a service for resale may be deducted from gross receipts if the sale is made to a person who delivers a nontaxable transaction certificate. The buyer delivering the nontaxable transaction certificate must separately state the value of the service purchased in his charge for the service on its subsequent sale, and the subsequent sale must

be in the ordinary course of business and subject to the municipal gross receipts tax.

- (4) *Sale of tangible personal property for leasing.* Receipts from selling tangible personal property, other than furniture or appliances the receipts from the rental or lease of which are deductible under subsection (8)c. of this section and other than mobile homes, may be deducted from gross receipts if the sale is made to a person who delivers a nontaxable transaction certificate to the seller. The buyer delivering the nontaxable transaction certificate must be engaged in a business which derives a substantial portion of its receipts from leasing or selling tangible personal property of the type leased. The buyer may not utilize the tangible personal property in any manner other than holding it for lease or sale, or leasing or selling it either by itself or in combination with other tangible personal property in the ordinary course of business.
- (5) *Lease for subsequent lease.* Receipts from leasing tangible personal property, other than furniture or appliances the receipts from the rental or lease of which are deductible under subsection (8)c. of this section, and other than mobile homes, may be deducted from gross receipts if the lease is made to a lessee who delivers a nontaxable transaction certificate to the lessor. The lessee delivering the nontaxable transaction certificate may not use the tangible personal property in any manner other than for subsequent lease in the ordinary course of business.
- (6) *Sale of tangible personal property to persons engaged in the construction business.*
 - a. Receipts from selling tangible personal property may be deducted from gross receipts if the sale is made to a person engaged in the construction business who delivers a nontaxable transaction certificate to the seller.
 - b. The buyer delivering the nontaxable transaction certificate must incorporate the tangible personal property as:
 1. An ingredient or component part of a construction project which is subject to the municipal gross receipts tax upon its completion or upon the completion of the overall construction project of which it is a part; or
 2. An ingredient or component part of a construction project which is subject to the municipal gross receipts tax upon the sale in the ordinary course of business of the real property upon which it was constructed.
- (7) *Sale of construction services to persons engaged in the construction business.*
 - a. Receipts from selling a construction service may be deducted from gross receipts if the sale is made to a person engaged in the construction business who delivers a nontaxable transaction certificate to the person performing the construction service.
 - b. The buyer delivering the nontaxable transaction certificate must have the construction services performed upon:

1. A construction project which is subject to the municipal gross receipts tax upon its completion or upon the completion of the overall construction project of which it is a part; or
 2. A construction project which is subject to the municipal gross receipts tax upon the sale in the ordinary course of business of the real property upon which it was constructed.
- (8) *Sale or lease of real property and lease of mobile homes.*
- a. Receipts from the sale or lease of real property, and from the lease of a mobile home, and as provided in subsection (8)b. of this section, other than receipts from the sale or lease of oil, natural gas, or mineral interests exempted by section 7-168, may be deducted from gross receipts. However, the portion of the receipts from the sale of real property which is attributable to improvements constructed on the real property by the seller in the ordinary course of his construction business may not be deducted from gross receipts.
 - b. Receipts received by hotels, motels, roominghouses, campgrounds, guest ranches, trailer parks, or similar facilities, except receipts received by trailer parks from the rental of a space or a mobile home for a period of at least one month, from lodgers, guests, roomers, or occupants are not receipts from leasing real property for the purposes of this section.
 - c. Receipts attributable to the inclusion of furniture or appliances furnished as part of a leased or rented dwelling house, mobile homes, or an apartment by the landlord or lessor may be deducted from gross receipts.
- (9) *Sales to governmental agencies.* Receipts from selling tangible personal property, other than nonfissionable metalliferous mineral ore, to the United States or any agency or instrumentality thereof or the State of New Mexico or any political subdivision thereof may be deducted from gross receipts. Receipts from selling tangible personal property, other than nonfissionable metalliferous mineral ore, to the governing body of an Indian tribe or Indian pueblo for use on Indian reservations or pueblo grants may be deducted from gross receipts. That portion of the receipts from performing a service as defined in section 7-163, which reflects the value of tangible personal property utilized or produced in performance of such service, is not deductible.
- (10) *Transactions in interstate commerce.* Receipts from transactions in interstate commerce may be deducted from gross receipts to the extent that the imposition of the municipal gross receipts tax would be unlawful under the United States Constitution.
- (11) *Intrastate transportation and services in interstate commerce.*
- a. Receipts from transporting persons or property from one point to another in this state may be deducted from gross receipts when such persons or property, including any special or extra service reasonably necessary in connection therewith, are being transported in interstate or foreign commerce under a single contract.

- b. Receipts from handling, storage, drayage, or packing of property or any other accessorial services on property, which property has moved or will move in interstate or foreign commerce, when such services are performed by a local agent for a carrier or a carrier, and when such services are performed under a single contract in relation to transportation services, may be deducted from gross receipts.

(12) *Sale of certain services to an out-of-state buyer.*

- a. Receipts from performing a service, other than a legal, accounting, or architectural service, may be deducted from gross receipts if the sale of the service is made to a buyer who delivers to the seller either a nontaxable transaction certificate or other evidence acceptable to the Commissioner that the transaction does not contravene the conditions set out in subsection (3) of this section.
- b. The buyer delivering the nontaxable transaction certificate or other evidence acceptable to the Commissioner must not contravene the conditions set out in subsection (3) of this section.
- c. Receipts from performance of a service shall not be subject to the deduction provided in this section if the buyer of the service, any of his employees, or any person in privity with him:
 - 1. Makes initial use of the product of the service in New Mexico;
 - 2. Takes delivery of the product of the service in New Mexico; or
 - 3. Concurrent with the performance of the service, has a regular place of work in New Mexico or spends more than brief and occasional periods of time in New Mexico; and
 - i. Has any communication in New Mexico related in any way to the subject matter, performance or administration of the service, with the person performing the service; or
 - ii. Himself performs work in New Mexico related to the subject matter of the service.

(13) *Feed; fertilizers.* Receipts from selling feed for livestock, for fish raised for human consumption, for poultry, or for animals raised for their hides or pelts, and receipts from selling seeds, roots, bulbs, plants, soil conditioners, fertilizers, insecticides, fungicides or weedicides, or water for irrigation purposes may be deducted from gross receipts if the sale is made to a person who states in writing that he is regularly engaged in the business of farming, ranching, or the raising of animals for their hides or pelts. Receipts of auctioneers from selling livestock or other agricultural products at auction may also be deducted from gross receipts.

(14) *Warehousing, threshing, harvesting, growing, cultivating and processing agricultural products.*

- a. Receipts from warehousing grain or other agricultural products may be deducted from gross receipts.

- b. Receipts from threshing, cleaning, growing, cultivating, or harvesting agricultural products, including the ginning of cotton or processing for growers, producers, or nonprofit marketing associations of other agricultural products raised for food and fiber, including livestock, may be deducted from gross receipts.
- (15) *Sales to certain organizations.* Receipts from selling tangible personal property, other than metalliferous mineral ore, to organizations that have been granted exemption from the federal income tax by the United States Commissioner of Internal Revenue as organizations described in section 501(c)(3) of the United States Internal Revenue Code of 1954, as amended or renumbered, may be deducted from gross receipts if the sale is made to an organization that delivers a nontaxable transaction certificate to the seller. The buyer delivering the nontaxable transaction certificate must employ the tangible personal property in the conduct of functions described in section 501(c)(3) and must not employ the tangible personal property in the conduct of an unrelated trade or business as defined in section 513 of the United States Internal Revenue Code of 1954, as amended or renumbered. Receipts from selling tangible personal property that will become an ingredient or component part of a construction project are not receipts from selling tangible personal property for purposes of this section.
- (16) *Sales to banks and financial corporations.* Receipts from selling tangible personal property, other than metalliferous mineral ore, to banks and financial corporations who employ the tangible personal property in their regular banking and financial corporation functions may be deducted from gross receipts.
- (17) *Agricultural implements; aircraft; vehicles that are not required to be registered.* Fifty percent of the receipts from selling agricultural implements, farm tractors, aircraft, or vehicles that are not required to be registered under the Motor Vehicle Code may be deducted from gross receipts. Any deduction allowed under subsection (26) of this section must be taken before the deduction allowed by this section is computed.
- (18) *Publication sales.* Receipts from publishing newspapers or magazines, except from selling advertising space, may be deducted from gross receipts.

Receipts from selling magazines at retail may not be deducted from gross receipts.

- (19) *Newspaper sales.* Receipts from selling newspapers, except from selling advertising space, may be deducted from gross receipts.
- (20) *Chemicals and reagents.* Receipts from selling chemicals or reagents to any mining, milling, or oil company for use in processing ores or oil in a mill, smelter, or refinery or in acidizing oil wells and receipts from selling chemicals or reagents in lots in excess of 18 tons may be deducted from gross receipts. Receipts from selling explosives, blasting powder, or dynamite may not be deducted from gross receipts.
- (21) *Commissions.* Receipts derived from commissions on sales of tangible personal property which are not subject to the municipal gross receipts tax may be deducted from gross receipts.
- (22) *Refunds; uncollectible debts.* Refunds and allowances made to buyers or

amounts written off the books as an uncollectible debt by a person reporting municipal gross receipts tax on an accrual basis may be deducted from gross receipts. If debts reported uncollectible are subsequently collected, such receipts shall be included in gross receipts in the month of collection.

- (23) *Warranty obligations.* Receipts of a dealer from furnishing goods or services to the purchaser of tangible personal property to fulfill a warranty obligation of the manufacturer of the property may be deducted from gross receipts.
- (24) *Administrative and accounting services.* Receipts of a corporation for administrative and accounting services performed by it for a wholly-owned subsidiary corporation upon a nonprofit or cost basis, and receipts from a wholly-owned subsidiary for the joint use or sharing of office machines and facilities upon a nonprofit or cost basis, may be deducted from gross receipts.
- (25) *Rental or leasing of vehicles used in interstate commerce.* Receipts from the rental or leasing of vehicles used in the transportation of passengers or property for hire in interstate commerce under the regulations or authorization of any agency of the United States may be deducted.
- (26) *Trade-in allowance.* That portion of the receipts of a seller that is represented by a trade-in of tangible personal property of the same type being sold may be deducted from gross receipts.
- (27) *Special fuel.* Receipts from the sale of special fuel, as defined in NMSA 1978, § 7-16-2, may be deducted from gross receipts if the purchaser is a bonded special fuel user under NMSA 1978, § 7-16-10, who delivers a nontaxable transaction certificate to the seller.
- (28) *Sale of prosthetic devices.* Receipts from selling prosthetic devices may be deducted from gross receipts if the sale is made to a person who is licensed to practice medicine, osteopathy, dentistry, podiatry, optometry, chiropractic, or professional nursing and who delivers a nontaxable transaction certificate to the seller. The buyer delivering the nontaxable transaction certificate must deliver the prosthetic device incidental to the performance of a service and must include the value of the prosthetic device in his charge for the service.
- (29) *Sale of property used in the manufacture of jewelry.* Receipts from selling tangible personal property may be deducted from gross receipts if the sale is made to a person who states in writing that he will use the property so purchased in manufacturing jewelry. The buyer must incorporate the tangible personal property as an ingredient or component part of the jewelry that he is in the business of manufacturing. The deduction allowed a seller under this section shall not exceed the sum of \$1,000.00 during any 12-month period attributable to purchases by a single purchaser.
- (30) *Sale of certain services performed directly on product manufactured.* Receipts from selling the service of combining or processing components or materials may be deducted from gross receipts if the sale is made to a person engaged in the business of manufacturing who delivers a nontaxable transaction certificate to the seller. The buyer delivering the nontaxable transaction certificate must have the service performed directly upon tangible personal property which he is in the business of manufacturing or upon ingredients or component parts

thereof.

- (31) *Travel agents' commissions paid by certain entities.* Receipts of travel agents derived from commissions paid by maritime transportation companies and interstate airlines, railroads, and passenger buses for booking, referral, reservation, or ticket services, may be deducted from gross receipts.

(Code 1962, § 5-17-11)

Sec. 7-172. Severability.

If any part or parts or application of any part of this article is held invalid, such holding shall not affect the validity of the remaining parts of the article. The Governing Body hereby declares that it would have passed the remaining parts of the article even if it had known that such part or parts or application of any part thereof would be declared invalid. Further, the Governing Body declares that if any deduction or exemption granted by this article be held invalid, it is the intent of the Governing Body that the unaffected remainder of the article be continued in force and that the taxpayers theretofore enjoying such deduction or exemption shall thenceforth, from the effective date of the declaration of invalidity, be liable for the rate of tax under section 7-164.

(Code 1962, § 5-17-12)

Sec. 7-173. Bureau as agent for collection; municipality liable on refunds.

This Municipality hereby appoints the New Mexico Bureau of Revenue as its agent to administer and enforce the collection of the municipal gross receipts tax. The Tax Administration Act applies to the administration and enforcement of this article. Any refund or other reimbursement which is due a taxpayer under this article is a debt owing to such taxpayer from the Municipality. The Bureau may remit such refund or reimbursement to the taxpayer and deduct an equivalent amount from current collections attributable to the Municipality. Should current collections not be sufficient to satisfy all refunds and reimbursements that are due and owing, the Bureau is authorized and directed to make such refunds and reimbursements from the amounts of state gross receipts tax otherwise distributable to the Municipality under the provisions of NMSA 1978, § 7-1-6. If the Bureau is unable to otherwise satisfy all refunds and reimbursements that are due and owing, the Bureau shall so advise the Municipality, and the Municipality shall treat such refunds and reimbursements as extraordinary, nonrecurring debts for which the Municipality shall be liable as if it had been a party to the claim for refund or reimbursement, and which shall be satisfied by additional assessments of the citizens of the Municipality or by another legal means. Should the Bureau require it, the Municipality will enter into a contract with the Bureau, whose terms are the same as those set out in this section.

(Code 1962, § 5-17-13)

Sec. 7-174. Dedication.

A portion of the municipal gross receipts tax is to be dedicated toward a specific purpose or area of municipal government services listed in this section to purposes and amount of dedication. One-quarter percent shall be dedicated to and used for the construction, maintenance, and repair of streets, alleys, sidewalks, and curbs within the corporate limits of the City of Truth or Consequences.

(Code 1962, § 5-17-14)

Secs. 7-175—7-195. Reserved.

ARTICLE VIII. LODGER'S TAX [3](33)

Sec. 7-196. Title of article.

Sec. 7-197. Purpose of article.

Sec. 7-198. Definitions.

Sec. 7-199. Imposition of tax.

Sec. 7-200. Licensing.

Sec. 7-201. Exemptions.

Sec. 7-202. Collection of the tax and reporting procedures.

Sec. 7-203. Duties of the vendor.

Sec. 7-204. Enforcement.

Sec. 7-205. Failure to make return; computation, criminal and civil penalties; notice; collection of delinquencies; occupancy tax is a lien.

Sec. 7-206. Reserved.

Sec. 7-207. Refunds and credits.

Sec. 7-208. Vendor audits.

Sec. 7-209. Financial reporting.

Sec. 7-210. Confidentiality of return and audit.

Sec. 7-211. Administration of lodgers' tax monies collected.

Sec. 7-212. Eligible uses of lodger's tax proceeds.

Secs. 7-213—7-230. Reserved.

Sec. 7-196. Title of article.

This article shall be known as and may be cited as "The Lodgers' Tax Ordinance."

(Ord. No. 442, § 1, 8-12-96)

Sec. 7-197. Purpose of article.

The purpose of this article is to impose a tax which will be borne by persons using commercial lodging accommodations which tax will provide revenues for the purpose of advertising, publicizing and promoting tourist-related attractions, facilities and events, and acquiring, establishing and operating tourist-related facilities, attractions or transportation

systems, as authorized in section 17 of this article.

(Ord. No. 442, § 2, 8-12-96)

Sec. 7-198. Definitions.

As used in this article:

Board means the advisory board established herein to make recommendations to the governing body, keep minutes of its proceedings and submit its recommendations, correspondence and other pertinent documents to the governing body;

City clerk means the City Clerk of Truth or Consequences, New Mexico;

Gross taxable rent means the total amount of rent paid for lodging, not including the state gross receipts tax or local sales taxes.

Lodging means the transaction of furnishing rooms or other accommodations by a vendor to a vendee who for a rent uses, possesses, or has the right to use or possess any room or other units of accommodation in or at a taxable premises.

Lodgings means the rooms or other accommodations furnished by a vendor to a vendee by the taxable service of lodgings.

Occupancy tax means the tax on lodging, authorized by the Lodgers' Tax Act.

Person means a corporation, firm, other body corporate, partnership, association, or individual, person includes an executor, administrator, trustee, receiver or other representative appointed according to law and acting in a representative capacity, but does not include the United States of America, the State of New Mexico, any corporation, department, instrumentality, or agency of the federal government, the state government, or any political subdivision of the state.

Rent means the consideration received by a vendor in money, credits, property, or other consideration valued in money for lodgings subject to any occupancy tax authorized in the Lodgers' Tax Act.

Taxable premises means a hotel, apartment, apartment hotel, apartment house, lodge, lodginghouse, roominghouse, motor hotel, guest house, guest ranch, ranch resort, guest resort, mobile home, motor court, auto court, auto camp, trailer court, trailer camp, trailer park, tourist camp, cabin, or other premises for lodging.

Tourist means a person who travels for the purpose of business, pleasure or culture to a municipality or county imposing an occupancy tax;

Tourist-related events means events that are planned for, promoted to and attended by tourists;

Tourist-related facilities and attractions means facilities and attractions that are intended to be used by or visited by tourists;

Tourist-related transportation systems means transportation systems that provide transportation for tourists to and from tourist-related facilities, attractions and events;

Vendee means a natural person to whom lodgings are furnished in the exercise of the taxable service of lodging; and

Vendor means a person furnishing lodgings in the exercise of the taxable service of lodging.

(Ord. No. 442, § 3, 8-12-96)

Sec. 7-199. Imposition of tax.

There is hereby imposed an occupancy tax of five percent of gross taxable rent for lodging within the municipality paid to vendors.

(Ord. No. 442, § 4, 8-12-96)

Sec. 7-200. Licensing.

- (a) No vendor shall engage in the business of providing lodging in the Municipality of Truth or Consequences who has first not obtained a license as provided in this section.
- (b) Applicants for a vendor's license shall submit an application to the City Clerk stating:
 - (1) The name of the vendor, including identification of any person, as defined in this article, who owns or operates, or both owns and operates a place of lodging and the name or trade names under which the vendor proposes to do business and the post office address thereof;
 - (2) A description of the facilities, including the number of rooms and the usual schedule of rates therefor;
 - (3) A description of other facilities provided by vendor or others to users of the lodgings such as restaurant, bar, cleaning, laundry, courtesy car or others, and a statement identifying the license issued, to whom issued, the authority issuing, and the period for which issued. If applicable, also the identification number provided by the Bureau of Revenue of the State of New Mexico;
 - (4) The nature of the business of the vendor and to what extent, if any, his business is exempt from the lodgers' tax;
 - (5) Other information reasonably necessary to effect a determination of eligibility for such license.
- (c) The City Clerk shall review applications for license within ten days of receipt thereof, and grant the license in due course if the applicant is doing business subject to the lodgers' tax.
- (d) An applicant who is dissatisfied with the decision of the City Clerk may appeal the decision to the governing body by written notice to the City Clerk of such appeal to be made within 15 days of the date of the decision of the City Clerk on the application. The matter shall be referred to the governing body for hearing at a regular or special meeting in the usual course of business. The decision of the governing body made thereof shall be expressed in writing and be communicated in the same manner as the decision of the City Clerk is

transmitted. The action of the governing body shall be deemed final.

- (e) If the governing body finds for the applicant, the City Clerk shall issue the appropriate license or other notice conforming to the decision made by the governing body.

(Ord. No. 442, § 5, 8-12-96)

Sec. 7-201. Exemptions.

The occupancy tax shall not apply:

- A. if a vendee:
 - (1) has been a permanent resident of the taxable premises for a period of at least 30 consecutive days; or
 - (2) enters into or has entered into a written agreement for lodgings at the taxable premises for a period of at least 30 consecutive days;
- B. if the rent paid by the vendee is less than \$2.00 a day;
- C. to lodging accommodations at institutions of the federal government, the state or any political subdivision thereof;
- D. to lodging accommodations at religious, charitable, educational or philanthropic institutions, including without limitation such accommodations at summer camps operated by such institutions;
- E. to clinics, hospitals or other medical facilities;
- F. to privately-owned and operated convalescent homes, or homes for the aged, infirm, indigent or chronically ill; or
- G. if the taxable premises does not have at least three rooms or three other units of accommodation for lodging.

(Ord. No. 442, § 6, 8-12-96)

Sec. 7-202. Collection of the tax and reporting procedures.

- (a) Every vendor providing lodgings shall collect the tax thereon on behalf of the Municipality and shall act as a trustee therefor.
- (b) The tax shall be collected from vendees and shall be charged separately from the rent fixed by the vendor for the lodgings.
- (c) Each vendor licensed under this article shall be liable to the Municipality of Truth or Consequences tax provided herein on the rent paid for lodging at his respective place of business.
- (d) Each vendor shall make a report by the 25th day of each month, on forms provided by the City Clerk, of the receipts for lodging in the preceding calendar month, and shall submit the proceeds of the lodgers' tax to the Municipality and include sufficient information to enable the Municipality to audit the reports and shall be verified on oath by the vendor.

(Ord. No. 442, § 7, 8-12-96)

Sec. 7-203. Duties of the vendor.

Vendor shall maintain adequate records of facilities subject to the tax and of proceeds received for the use thereof. Such records shall be maintained in Truth or Consequences, New Mexico, and shall be open to the inspection of the Municipality during reasonable hours and shall be retained for three years.

(Ord. No. 442, § 8, 8-12-96)

Sec. 7-204. Enforcement.

- (a) An action to enforce the Lodgers' Tax Act may be brought by:
 - (1) the attorney general or the district attorney in the county of jurisdiction; or
 - (2) a vendor who is collecting the proceeds of an occupancy tax in the county of jurisdiction.
- (b) A district court may issue a writ of mandamus or order an injunction or other appropriate remedy to enforce the provisions of the Lodgers' Tax Act.
- (c) The court shall award costs and reasonable attorneys' fees to the prevailing party in a court action to enforce the provisions of the Lodgers' Tax Act.

(Ord. No. 442, § 9, 8-12-96)

Sec. 7-205. Failure to make return; computation, criminal and civil penalties; notice; collection of delinquencies; occupancy tax is a lien.

- (a) Every vendor providing lodging within the City shall be required to pay the proceeds of the requisite occupancy tax and to account properly for any lodging and tax proceeds pertaining thereto. Any vendor who violates this section shall be subject to the penalties described in Chapter 1, Article I, § 1-10 of this Code.
- (b) In addition to the criminal penalties referred to in § 7-205(a) above, every vendor is civilly liable for the payment of proceeds of any occupancy tax that the vendor failed to remit to the City, whether due to its failure to collect the tax or otherwise. The vendor shall be liable for the tax, plus a civil penalty equal to the greater of ten percent of the amount not remitted, or \$100.00. The City Clerk shall give the delinquent vendor written notice of the delinquency, which notice shall be mailed to the vendor's local address.
- (c) If payments are not received within 15 days of the mailing of the notice, the City may bring an action in law, or equity, in the district court for the collection of any amounts due, including, without limitation, penalties thereon, interest on the unpaid principal at a rate not exceeding one percent a month. If the City attempts collection through an attorney, or the City Attorney, for any purpose with regard to this article, the vendor shall be liable to the City for all costs, fees paid to the attorney or City Attorney, and all other expenses incurred in connection therewith.

- (d) The occupancy tax imposed by the City constitutes a lien in favor of the City upon the personal and real property of the vendor providing lodgings. The lien may be enforced as provided in section NMSA §§ 3-36-1 through 3-36-7 (1978). Priority of the lien shall be determined from the date of filing.
- (e) Under process or order of court, no person, or entity, shall sell the property of a vendor without first ascertaining from the City Clerk, or City Treasurer, the amount of any occupancy tax due the City. Any occupancy tax due the City shall be paid from the proceeds of such a sale before payment is made to the judgment creditor, or any other person or entity with a claim on the proceeds of the sale.

(Ord. No. 442, § 10, 8-12-96; Ord. No. 569, 4-10-07)

Sec. 7-206. Reserved.

Editor's note—

Ord. No. 444, § 2, adopted March, 10, 1997, repealed the provisions of former § 7-206, which pertained to criminal penalties, as derived from Ord. No. 442, § 11, adopted August 12, 1996.

Sec. 7-207. Refunds and credits.

If any person believes he has made payment of any Lodgers' Tax in excess of that for which he was liable, he may claim a refund thereof by directing to the City Clerk, no later than 90 days from the date of payment was made, a written claim for refund. Every claim for refund shall state the nature of the person's complaint and the affirmative relief requested. The City Clerk shall allow the claim in whole or in part or may deny it. Refunds of tax and interest erroneously paid and amounting to \$100.00 or more may be made only with the approval of the Governing Body.

(Ord. No. 442, § 12, 8-12-96)

Sec. 7-208. Vendor audits.

The Governing Body shall conduct random audits to verify full payment of occupancy tax receipts.

- (a) The Governing Body shall determine each year the number of vendors within the Municipality to audit.
- (b) The audit(s) may be performed by the City Clerk or by any other designee of the Governing Body. A copy of the audit(s) shall be filed annually with the Local Government Division of the Department of Finance and Administration.

(Ord. No. 442, § 13, 8-12-96)

Sec. 7-209. Financial reporting.

- (a) The Governing Body shall furnish to the Advisory Board that portion of any proposed budget, report or audit filed or received by the Governing Body

pursuant to either Chapter 6, Article 6 NMSA 1978 or the Audit Act that relates to expenditure of occupancy tax funds within ten days of the filing or receipt of such proposed budget, report or audit by the Governing Body.

- (b) The Governing Body shall report to the Local Government Division of the Department of Finance and Administration on a quarterly basis any expenditure of occupancy tax funds pursuant to sections 3-38-15 and 3-38-21 NMSA 1978 and shall furnish a copy of this report to the Advisory Board when it is filed with the Division.

(Ord. No. 442, § 14, 8-12-96)

Sec. 7-210. Confidentiality of return and audit.

It is unlawful for any employee of the Municipality of Truth or Consequences to reveal to any individual other than another employee of the Municipality of Truth or Consequences any information contained in the return or audit of any taxpayer, including vendors subject to the Lodgers' Tax Act, except to a court of competent jurisdiction in response to an order thereof in an action relating to taxes to which the Municipality of Truth or Consequences is a party, and in which information sought is material to the inquiry; to the taxpayer himself or to his authorized representative; and in such manner, for statistical purposes, the information revealed is not identified as applicable to any individual taxpayer.

(Ord. No. 442, § 15, 8-12-96)

Sec. 7-211. Administration of lodgers' tax monies collected.

The Governing Body shall administer the lodgers' tax monies collected. The City Commission shall appoint a five-member advisory board that consists of two members who are owners or operators of lodgings subject to the occupancy tax within the Municipality, two members who are owners or operators of industries located within the Municipality that primarily provide services or products to tourists and one member who is a resident of the Municipality and represents the general public. The Board shall advise the Governing Body on expenditure of funds authorized under section 7-212 of this article for advertising, publicizing and promoting tourist attractions and facilities in the Municipality and surrounding area.

(Ord. No. 442, § 16, 8-12-96)

Sec. 7-212. Eligible uses of lodger's tax proceeds.

- (a) The Municipality may use the proceeds from the tax to defray the costs of:
 - (1) collecting and otherwise administering the tax, including the performance of audits required by the Lodgers' Tax Act pursuant to guidelines issued by the Department of Finance and Administration;
 - (2) establishing, operating, purchasing, constructing, otherwise acquiring, reconstructing, extending, improving, equipping, furnishing or acquiring real property or any interest in real property for the site or grounds for tourist-related facilities, attractions or transportation systems of the Municipality, the county in which the Municipality is located or the county;

- (3) the principal of and interest on any prior redemption premiums due in connection with and any other charges pertaining to revenue bonds authorized by section 3-38-23 or 3-38-24 NMSA 1978;
- (4) advertising, publicizing and promoting tourist-related attractions, facilities and events of the Municipality or county and tourist facilities or attractions within the area;
- (5) providing police and fire protection and sanitation service for tourist-related events, facilities and attractions located in the Municipality; or
- (6) any combination of the foregoing purposes or transactions stated in this section, but for no other municipal purpose.

(Ord. No. 442, § 17, 8-12-96)

Secs. 7-213—7-230. Reserved.

ARTICLE IX. MOTELS AND HOTELS

Sec. 7-231. Building permit required.

Sec. 7-232. Definitions.

Sec. 7-233. Fire protection equipment.

Sec. 7-234. Maintenance of equipment.

Sec. 7-235. Inspection.

Sec. 7-236. Hotel register.

Sec. 7-237. Existing standards.

Secs. 7-238—7-260. Reserved.

Sec. 7-231. Building permit required.

Before construction of a motel is started, an application for a permit for such construction shall be submitted to the Building Inspector, who, after approval of such application, shall issue a permit for construction.

(Code 1962, § 5-11-1)

Sec. 7-232. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Motel means every building maintained or advertised as a public lodginghouse or where more than six rooms are provided for sleeping accommodations.

(Code 1962, § 5-12-1)

Definitions and rules of construction generally, § 1-2.

Sec. 7-233. Fire protection equipment.

The Fire Chief, or other officer designated by the Governing Body, shall survey each hotel and specify suitable fire detecting devices or extinguishing appliances which shall be provided.

(Code 1962, § 5-12-2)

Fire prevention and protection, ch. 5.

Sec. 7-234. Maintenance of equipment.

Fire protective or extinguishing systems or appliances which have been installed in any hotel in the City in compliance with any permit or order, or according to any provisions of this Code, shall be maintained in operative condition at all times, and it shall be unlawful for any owner or occupant to reduce the effectiveness of the protection so required.

(Code 1962, § 5-12-3)

Sec. 7-235. Inspection.

It shall be the duty of the Fire Chief and the Health Officer, or other officers so designated by the Governing Body, to make periodic and regular inspections of every hotel and to make regular reports to the Governing Body of such hotel or hotels concerning regulations imposed by this Code.

(Code 1962, § 5-12-4)

Sec. 7-236. Hotel register.

A register shall be maintained at every hotel, and each guest shall be required to register his name and home address. The date of arrival and departure shall be clearly indicated, and the register shall be maintained for a period of at least one year following registration. The register shall be open for inspection to any authorized person.

(Code 1962, § 5-12-5)

Sec. 7-237. Existing standards.

The plumbing, heating, and ventilation components of all hotels in the City shall meet all local and state fire, plumbing, building, natural and liquid gas, and health code requirements.

(Code 1962, § 5-12-6)

Secs. 7-238—7-260. Reserved.

ARTICLE X. PUBLIC AUCTIONS [4](34)

Sec. 7-261. Definitions.
Sec. 7-262. Licensed auctioneer to conduct.
Sec. 7-263. Auctioneer's license; bond.
Sec. 7-264. Fee; term.
Sec. 7-265. Requisites of sale.
Sec. 7-266. Prohibited acts.
Secs. 7-267—7-285. Reserved.

Sec. 7-261. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Auctioneer means any person conducting a sale by public auction of personal property or real property of his own or as agent for another.

Property means and includes all goods, wares, merchandise, commodities, compounds, things, chattels, jewelry, and all other property of whatsoever form or nature exceeding an aggregate retail value of \$1,000.00 but does not include choses in action or real property.

Public auction means and includes any public offer to sell personal property or real property to the highest bidder or to the person offering to pay the highest prices therefor, and shall be without qualifications or reservations, unless at the time of the offer of each article or parcel and before any bids are asked thereon a minimum price therefor be publicly stated.

Real property means the land, together with the improvement thereon and attached thereto.

(Code 1962, § 5-10-1)

Definitions and rules of construction generally, § 1-2.

Sec. 7-262. Licensed auctioneer to conduct.

The sale of any personal or real property at public auction shall be unlawful, unless such sale be directly conducted by an auctioneer licensed pursuant to the provisions of this article. It shall be unlawful for any license to be granted to any minor or to any person not of good reputation and moral character.

(Code 1962, § 5-10-2)

Sec. 7-263. Auctioneer's license; bond.

- (a) *Application.* Every applicant for a license pursuant to this article shall present to the Clerk a written application signed and duly verified by him, which application shall state the following: full name; age; residence by street, number, and place;

present occupation; that he is a citizen of the United States; place where he intends to conduct the business of auctioneer in the City.

- (b) *Bond.* The applicant shall also present to the Clerk with his application for such license a bond of the City executed by a duly authorized surety company, or by two or more individual sureties, to be approved by the Governing Body, who are residents of and freeholders in the state, in the penal sum of \$2,000.00, conditioned for the faithful observance of the laws of the state, and of the laws of the City then in effect or thereafter enacted, for the performance of all duties, the rendition of all accounts, and the payment of all moneys required of him by law to be paid; and also conditioned for the payment to the City for and on behalf of any person who shall be defrauded or suffer loss by reason of the violation by such auctioneer of any of the provisions of this article. Such bond shall be approved as to form and compliance with this article by the City Attorney. Individual sureties shall justify the bond in the manner prescribed by the laws of the state.
- (c) *Clerk's records.* The Clerk shall preserve such application as a public record of his office.

(Code 1962, § 5-10-3)

Sec. 7-264. Fee; term.

The fee for such license shall be \$100.00 per year or \$10.00 per day. The Treasurer shall issue auctioneers' licenses upon receipt of the requisite fees and the certificate of the Clerk that the affiant is entitled to the issuance of the license. All licenses issued for the period of one year shall expire on June 30 next succeeding their issue. All licenses issued for a period of days shall expire on the date noted on the face thereof. Upon the issuance of each license, the Treasurer shall transmit a copy thereof to the Clerk.

(Code 1962, § 5-10-4)

Sec. 7-265. Requisites of sale.

It shall be unlawful for any person, other than advertising concerns where acting as an advertising medium, to sell, dispose of, advertise for sale, or offer for sale at public auction any property of any kind unless the following provisions are complied with:

- (1) *Auctioneer.* No such sale shall be conducted unless section 7-262 shall have been complied with.
- (2) *Permit to conduct sale.* No such sale shall be conducted until a permit therefor shall have been procured.
- (3) *Taxes.* All taxes or penalties which have become a lien under any law, whether or not such taxes may have been actually assessed, shall have first been paid.
- (4) *Special sales.* If such auction sale is also an insurance, salvage, removal, closing-out, going out of business, liquidation, or creditors' sale; or a sale of goods, wares, or merchandise damaged by fire, smoke, water, or otherwise, the statutes and laws regulating such sales shall have been complied with.

(Code 1962, § 5-10-5)

Sec. 7-266. Prohibited acts.

The following acts, omissions, and practices in connection with the sales of goods, wares, and merchandise at auction are hereby prohibited:

- (1) The use of deceit, fraud, or misrepresentation in the sale or offering for sale of any article;
- (2) The substitution of an unlicensed person in place of a licensed auctioneer;
- (3) The use of any false or misleading advertising matter, whether relating to the kind or quality of the goods or to other past history, present status, or otherwise;
- (4) The failure to exhibit an auctioneer's license or permit to conduct such sale to any police officer upon demand at the place where an auction is being conducted;
- (5) The receipt for sale by auction or the sale by auction by any licensed auctioneer of any goods, wares, or merchandise from any minor, knowing him to be such;
- (6) The opening of any public auction sale until all the provisions of this article have been complied with and an authorization or permit for such sale obtained; the conduct of any such sale in a manner contrary to any of the provisions of this article.

(Code 1962, § 5-10-6)

Secs. 7-267—7-285. Reserved.

ARTICLE XI. SALES TAX [5](35)

Sec. 7-286. Authorization.

Sec. 7-287. Definitions.

Sec. 7-288. Imposition.

Sec. 7-289. Date payment due.

Sec. 7-290. Exemptions.

Sec. 7-291. Nontaxable transaction certificate.

Sec. 7-292. Deductions.

Sec. 7-293. Presumption of taxability.

Sec. 7-294. Separately stating the municipal sales tax.

Sec. 7-295. Unlawful to advertise tax not a part of price.

Sec. 7-296. Cost of enforcement.

Sec. 7-297. Administration and enforcement.

Sec. 7-298. Interpretation of article.

Sec. 7-299. Tax Administrative Act.

Secs. 7-300—7-320. Reserved.

Sec. 7-286. Authorization.

The Governing Body of the City, finding the City to be an incorporated municipality under the laws of the State of New Mexico, finding the City to be in need of revenue for governmental purposes, and the City desirous of availing itself of the provisions of state law hereby fixes a municipal sales tax pursuant thereto.

(Code 1962, § 5-13-1)

Sec. 7-287. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Bureau means the New Mexico Bureau of Revenue, the Commissioner of Revenue, or any employee of the Bureau exercising authority lawfully delegated to him by the Commissioner.

Buying or *selling* means any transfer of property for consideration or any performance of service for consideration.

Contracting means and includes but is not limited to constructing, altering, repairing, or demolishing any:

- (1) Road, highway, bridge, parking area, or related project;
- (2) Building, stadium, or other structure;
- (3) Airport, subway, or similar facilities;
- (4) Park, trail, athletic field, golf course, or similar facility;
- (5) Dam reservoir, canal, ditch, or similar facility;
- (6) Sewage or water treatment facility, power generating plant, pump station, natural gas compressing station, or similar facility;
- (7) Sewage, water, gas, or other pipeline;
- (8) Transmission lines;
- (9) Radio or other tower;
- (10) Water, oil, or other storage tanks;
- (11) Shaft, tunnel, or other mining appurtenance; or
- (12) Similar work.

Contracting also includes:

- (1) Leveling or clearing land;
- (2) Excavating earth;
- (3) Drilling wells of any type, including seismograph shot holes or core drilling; or
- (4) Similar work.

Engaging in business means carrying or causing to be carried on any activity with the purpose of direct or indirect benefit.

Gross receipts means the total amount of money or the value of other consideration received from selling property in the Municipality, from leasing property employed in the Municipality, or from performing services in the Municipality, and includes any type of time-price differential and receipts from sales of property handled on consignment but excludes cash discounts allowed and taken.

In an exchange in which the money or other consideration received does not represent the value of the property or service exchanged, gross receipts means the reasonable value of the property or service exchanged.

When the sale of property or service is made under any type of charge, conditional, or time sales contract, or the leasing of property is made under a leasing contract, the seller or lessor may elect to treat all receipts under such contracts as gross receipts as and when the payments are actually received. If the seller or lessor transfers his interest in any such contract to a third person, he shall pay the municipal sales tax upon the full sale or leasing contract amount.

Gross receipts, for the purpose of the business of buying, selling, or promoting the purchase, sale, or leasing, as factor, agent, or broker, on a commission or fee basis, of any property, service, stock, bond, or security, includes only the total commissions or fees derived from the business.

Leasing means any arrangement whereby, for a consideration, property is employed for or by any person other than the owner of the property.

Manufacturing means combining or processing components or materials to increase their value for sale in the ordinary course of business but does not include contracting.

Municipality means the City of Truth or Consequences.

Person means:

- (1) Any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, joint venture, syndicate, or other entity, including any gas, water, or electric utility owned or operated by a county, municipality, or other political subdivision of the state;
- (2) The United States or any agency or instrumentality thereof, the State of New Mexico, or any political subdivision thereof.

Property means real property or tangible personal property. Tangible personal property includes electricity.

Service means all activities engaged in for other persons for a consideration, which

activities involve primarily the performance of a service as distinguished from selling property. Service includes contracting, and all materials employed in contracting are to be treated as part of the service. However, sales of materials that will be employed in contracting to persons engaged in contracting are sales of tangible personal property.

Tax means the municipal sales tax.

Use or *using* means and includes use, consumption, or storage other than storage for subsequent sale in the ordinary course of business or for use solely outside of the Municipality.

(Code 1962, § 5-13-2)

Definitions and rules of construction generally, § 1-2.

Sec. 7-288. Imposition.

- (a) There is hereby levied and imposed a municipal sales tax on all retail business and services within the Municipality at the rate of one percent of the gross receipts of all retail businesses and services within the Municipality. Gross receipts shall be measured by the amount or volume of business done.
- (b) The tax imposed by this section shall be referred to as the "municipal sales tax."

(Code 1962, § 5-13-3)

Sec. 7-289. Date payment due.

The municipal sales tax imposed by this article is to be paid on or before the 20th day of the month following the month in which the taxable event occurred.

(Code 1962, § 5-13-4)

Sec. 7-290. Exemptions.

The following transactions are exempted from the municipal sales tax imposed by this article:

- (1) The receipts of the United States or any agency or instrumentality thereof or the State of New Mexico or any political subdivision thereof.

Receipts from the sale of gas, water or electricity by a utility owned or operated by a county, municipality or other political subdivision of the state are not exempted from the municipal sales tax by this subsection.

- (2) The receipts of hospitals, infirmaries, or sanitariums and the receipts of nonprofit corporations from the operation of facilities designed and used for providing accommodations for retired, elderly persons.
- (3) Receipts of employees from wages, salaries, commissions, or from any other form of remuneration for personal services.
- (4) The receipts of growers, producers, trappers, or nonprofit marketing associations from selling livestock, live poultry, unprocessed agricultural products, hides, or pelts.

Persons engaged in the business of buying and selling wool or mohair are producers for purposes of this subsection.

Persons engaged in the business of buying and selling livestock on their own account are also producers for purposes of this subsection.

Receipts from selling dairy products at retail are not exempted from the municipal sales tax by this subsection.

- (5) The receipts of any person derived from feeding or pasturing livestock.

Receipts derived from penning or handling livestock prior to the sale shall be considered receipts derived from feeding livestock for purposes of this subsection.

- (6) The receipts of banks, building and loan associations, or credit unions from selling or leasing property or service in the regular course of their banking, building and loan association, or credit union functions.
- (7) The receipts from selling vehicles on which the tax imposed by state statute is payable.
- (8) The receipts of insurance companies from premiums.
- (9) The receipts received as interest on money loaned or deposited, as dividends from stocks, bonds or securities or from a sale of stocks, bonds, or securities.
- (10) The receipts from selling motor fuel or special fuel on which the taxes imposed by state statute have been paid and not refunded.
- (11) The receipts from the isolated or occasional sale of or leasing of property or service by a person who is neither regularly engaged nor holding himself out as engaged in the business of selling or leasing property or service or similar property or service.
- (12) The receipts of public, parochial, or private nonprofit schools, colleges, or universities received from the tuition payments, fees, dormitories, or dining facilities.
- (13) The receipts from selling tangible personal property by an instrumentality of the armed forces of the United States engaged in resale activities.
- (14) The receipts from the sale or leasing of oil, natural gas, or mineral interests.
- (15) When a privilege tax is imposed by the Oil and Gas Emergency School Tax Act, the provisions of such act shall apply and determine the full measure of tax liability for the privilege of engaging in the business stated in the Act, and no provisions of the municipal sales tax shall apply to or create a tax liability for such privilege.

No provision of this article shall apply to the storage of oil, natural gas, or liquid hydrocarbon, individually or in any combination thereof, or to the use of such products for fuel in the operation of a production unit, as defined by the Oil and Gas Emergency School Tax Act.

- (16) When a privilege tax is imposed by the Oil and Gas Manufacturers Privilege Tax Act, the provisions of the Act shall apply and determine the full measure of tax liability for the privilege of engaging in the business stated in the Act, and no

provision of this article shall apply to or create a tax liability for such privilege.

No provision of this article shall apply to the storage or use of oil, natural gas, or liquid hydrocarbon, individually or in any combination thereof, when stored or used by a manufacturer, as defined by the Oil and Gas Manufacturers Privilege Tax Act.

- (17) When a privilege tax is imposed by the Resources Excise Tax Act, the provisions of the Act shall apply and determine the full measure of tax liability for the privilege of engaging in the business stated in the Act, and no provision of the municipal sales tax shall apply to or create a tax liability for such privilege, except as is provided in section 8 of the Resources Excise Tax Act.
- (18) The receipts derived from the use of all natural gas, liquid hydrocarbon, or any combination thereof as a fuel in the pipeline transportation of such products.
- (19) The receipts from dues and registration fees of nonprofit social, fraternal, political, trade, business, labor, or professional organizations.
- (20) No provision of this article shall apply to or create a tax liability for the privilege of engaging in any business by an insurance company or any agent thereof, as provided in NMSA 1978, § 59-5-1. If any conflict exists between any provision of this article and the provisions of NMSA 1978, § 59-5-1 then the state statute, shall control.

(Code 1962, § 5-13-5)

Sec. 7-291. Nontaxable transaction certificate.

A nontaxable transaction certificate by the buyer or lessee shall be in the possession of the seller or lessor for a nontaxable transaction when regulations of the New Mexico Bureau of Revenue so require. The nontaxable transaction certificate shall contain information and be in a form prescribed by the New Mexico Bureau of Revenue. Only buyers or lessees who have a registration number or who have applied for a registration number and have not been refused one under NMSA 1978, § 7-1-12, shall execute nontaxable transaction certificates. When the seller or lessor accepts the nontaxable transaction certificate in good faith that the buyer or lessee will employ the property or service transferred in a nontaxable manner, the properly executed nontaxable transaction certificate shall be conclusive evidence that the proceeds from the transaction are not includable in the seller's or lessor's gross receipts.

(Code 1962, § 5-13-6)

Sec. 7-292. Deductions.

In computing the municipal sales tax due:

- (1) Receipts from selling tangible personal property that will become an ingredient or component part of any manufactured product may be deducted from gross receipts if the sale is made to a person engaged in the business of manufacturing who delivers a nontaxable transaction certificate to the seller.
- (2) Receipts from selling tangible personal property for subsequent sale, either by itself or in combination with other tangible personal property in the ordinary course of business, may be deducted from gross receipts if the sale is made to a

person who delivers a nontaxable transaction certificate to the seller.

Sales of materials that will be employed in contracting to persons engaged in contracting are not sales of tangible personal property for subsequent sale for purposes of this subsection.

- (3) Receipts from leasing tangible personal property for subsequent leasing in the ordinary course of business may be deducted from gross receipts if the lease is made to a person who delivers a nontaxable transaction certificate to the lessor.
- (4) Receipts from selling a service for resale may be deducted from gross receipts if:
 - a. The sale is made to a person who delivers a nontaxable transaction certificate to the seller;
 - b. The value of the particular service is stated separately in the buyer's charge for the subsequent sale of the service;
 - c. The subsequent sale of the service is a transaction taxable under the municipal sales tax; and
 - d. The subsequent sale is in the ordinary course of business.

Receipts of persons engaged in contracting from performing contracting work are not receipts from selling a service for resale for purposes of this subsection.

- (5) Fifty percent of the receipts from performing a contracting project may be deducted from gross receipts.
- (6) Receipts from the sale of or leasing of real property, other than the receipts from the sale of or leasing of oil, natural gas, or mineral interest exempted by section 7-290 of the municipal sales tax, may be deducted from gross receipts.

No receipts received by hotels, motels, roominghouses, campgrounds, guest ranches, trailer parks, or similar facilities from lodgers, guests, roomers, or occupants shall be considered receipts from leasing real property for purposes of this subsection.

- (7) Receipts from selling tangible personal property, other than nonfissionable metalliferous mineral ore, to the United States or any agency or instrumentality thereof or the State of New Mexico or any political subdivision thereof may be deducted from gross receipts.

Receipts from selling tangible personal property, other than nonfissionable metalliferous mineral ore, to the Governing Body of Pueblos Grants may be deducted from gross receipts.

- (8) Receipts from transactions in interstate commerce may be deducted from gross receipts to the extent that the imposition of the municipal tax would be unlawful under the United States Constitution.
- (9) Receipts from transmitting messages or conversations by telegraph, telephone, or radio, other than from one point in this Municipality to another point in this Municipality, may be deducted from gross receipts. Receipts from transporting persons or property under a single contract from one point to another in this Municipality may be deducted from gross receipts when such persons or property, including any special or extra service reasonably necessary in connection therewith, is being transported in interstate or foreign commerce.

Receipts from transporting for hire persons or property by railroad, motor vehicle, air transportation, or any other means, from one point within the Municipality to another point outside the Municipality, may be deducted from gross receipts.

- (10) Receipts from selling feed for livestock or poultry, seeds, roots, bulbs, plants, fertilizers, insecticides, fungicides, or weedicides, applied to land or water for irrigation purposes, may be deducted from gross receipts.

Receipts of auctioneers from selling livestock or other agricultural products at auction may also be deducted from gross receipts.

- (11) Receipts from warehousing grain or other agricultural products or from threshing or cleaning agricultural products, including the ginning of cotton, may be deducted from gross receipts.
- (12) Receipts from selling tangible personal property, other than metalliferous mineral ore, to nonprofit schools, colleges, universities, hospitals, religious or charitable organizations, who employ the tangible personal property in the conduct of their regular educational, hospital, religious, or charitable functions may be deducted from gross receipts.
- (13) Receipts from selling tangible personal property, other than metalliferous mineral ore, to banks, buildings, and loan associations or credit unions who employ the tangible personal property primarily in their banking, building and loan association, or credit union functions may be deducted from gross receipts.
- (14) Fifty percent of the receipts from selling agricultural implements, farm tractors, airplanes, or vehicles that are not registered under the Motor Vehicle Code may be deducted from gross receipts.

Any deduction allowed under subsection (15) of this section is to be taken before the deduction allowed by this subsection is computed.

- (15) That portion of the receipts of a seller that are derived from an allowance granted to a buyer of tangible personal property for a trade-in of tangible personal property of the same type being bought may be deducted from gross receipts.
- (16) Receipts from publishing newspapers or magazines, except from selling advertising space, may be deducted from gross receipts.

Receipts from selling magazines at retail may not be deducted from gross receipts.

- (17) Receipts from selling newspapers, except from selling advertising space, may be deducted from gross receipts.
- (18) Receipts from selling coal in carload lots may be deducted from gross receipts.
- (19) Receipts from selling chemicals or reagents to any mining, milling, or oil company for use in processing ores or oil in mill, smelter, or refiner or in acidizing oil wells and from selling chemicals or reagents in lots in excess of 18 tons may be deducted from gross receipts.

Receipts from selling explosives, blasting powder, or dynamite may not be deducted from gross receipts.

- (20) Receipts of any person from selling merchandise to wholesalers for a manufacturer's account, but who does not at any time receive title to, handle, or invoice the merchandise, may be deducted from gross receipts.
- (21) Refunds and allowances made to buyers or amounts written off the books as an uncollectible debt by a person reporting municipal sales tax on an accrual basis may be deducted from gross receipts. If debts reported uncollectible are subsequently collected, such receipts shall be included in gross receipts in the month of collection.
- (22) The amount of gross receipts tax stated separately on the books of the seller or lessor may be deducted from gross receipts, but the amount deducted shall not exceed the amount of gross receipts tax due.
- (23) Receipts of a dealer from furnishing goods or services to the purchaser of tangible personal property to fulfill a warranty obligation of the manufacturer of the property may be deducted from gross receipts.
- (24) Receipts of a corporation for administrative and accounting services performed by it for a wholly-owned subsidiary corporation upon a nonprofit or cost basis, and receipts from a wholly-owned subsidiary for the joint use or sharing of office machines and facilities upon a nonprofit or cost basis, may be deducted from gross receipts.
- (25) Seventy-five percent of the receipts from originating and servicing loans on real property may be deducted from gross receipts.
- (26) Receipts from the rental or leasing of vehicles used in the transportation of passengers or property for hire in interstate commerce under the regulations or authorization of any agency of the United States shall be deducted.

(Code 1962, § 5-13-7)

Sec. 7-293. Presumption of taxability.

To prevent evasion of the municipal sales tax and to aid in its administration, it is presumed that all receipts of a person engaging in a retail business or a service are subject to the municipal sales tax. Any person engaged solely in transactions specifically exempt under the provisions of this article shall not be required to register or file a return under the provisions of this article.

(Code 1962, § 5-13-8)

Sec. 7-294. Separately stating the municipal sales tax.

When the municipal sales tax is stated separately by the seller or lessor to the buyer or lessee and if the total amount of tax as stated separately on transactions reportable within one reporting period is in excess of the amount of municipal sales tax otherwise payable on the transaction on which the tax was stated separately, the excess amount of tax stated on the transactions within that reporting period shall be included in the gross receipts.

(Code 1962, § 5-13-9)

Sec. 7-295. Unlawful to advertise tax not a part of price.

It is unlawful for any person to advertise that any tax imposed by the municipal sales tax is not an element of the price of the property or service sold.

(Code 1962, § 5-13-10)

Sec. 7-296. Cost of enforcement.

As reasonable compensation for the enforcement and collection of this municipal sales tax, the Bureau of Revenue may deduct an amount not to exceed three percent of the tax actually collected by the Bureau of Revenue. The Bureau of Revenue shall remit to the Municipality the municipal sales tax collected less the administrative cost aforementioned not later than the 20th day of each month following the month in which the tax was collected, which remittance the Treasurer of the Municipality is hereby directed to deposit to the credit of the general fund of the Municipality.

(Code 1962, § 5-13-11)

Sec. 7-297. Administration and enforcement.

Any municipal sales tax imposed by this Code shall be enforced and collected by the Bureau of Revenue pursuant to the provisions of state law. This article shall be enforced and tax collected in the same manner and at the same time as the state gross receipts tax is collected.

(Code 1962, § 5-13-12)

Sec. 7-298. Interpretation of article.

For the purpose of administration and enforcement of this article, the Bureau of Revenue shall interpret this article.

(Code 1962, § 5-13-13)

Sec. 7-299. Tax Administrative Act.

Copies of the Tax Administration Act shall be on file in the office of the Clerk of the Municipality.

(Code 1962, § 5-13-14)

Secs. 7-300—7-320. Reserved.

ARTICLE XII. SECONDHAND DEALERS [6](36)

Sec. 7-321. Definitions.

Sec. 7-322. Record required.

Sec. 7-323. Inspection permitted.

Secs. 7-324—7-345. Reserved.

Sec. 7-321. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Secondhand dealer means any person who shall engage in the business of purchase, sale, barter, trade, consignment, or exchange of secondhand goods, wares, or merchandise, whether in a fixed and established location of business or otherwise; provided that transactions involving a trade-in of goods, wares, or merchandise on the purchase of other goods, wares, or merchandise, where no cash is paid to the person making such trade-in, is not the business of a secondhand dealer.

(Code 1962, § 5-9-1)

Definitions and rules of construction generally, § 1-2.

Sec. 7-322. Record required.

Every secondhand dealer shall keep a permanent record on forms provided by the Chief of Police, providing the following information:

- (1) The date and hour of purchase of all secondhand goods, wares, or merchandise;
- (2) The name, age, address, and physical description of the vendor;
- (3) The amount of money paid in any such transaction;
- (4) A complete and accurate description of the goods, wares, or merchandise purchased.

(Code 1962, § 5-9-2)

Sec. 7-323. Inspection permitted.

The records required by the provisions of this article, as well as all merchandise or articles purchased, shall at all times be open and available to inspection by the Chief of Police or any properly designated police officer.

(Code 1962, § 5-9-3)

Secs. 7-324—7-345. Reserved.

ARTICLE XIII. TAXICABS [7](37)

Sec. 7-346. Bond required.

Sec. 7-347. Application for license.

Sec. 7-348. License fees.

Sec. 7-349. Taximeters.

Sec. 7-350. Cruising.

Sec. 7-351. Rate map and schedule.

Sec. 7-352. Charges for waiting time.

Secs. 7-353—7-360. Reserved.

Sec. 7-346. Bond required.

- (a) No person shall operate any taxicab on the streets of the City, and no license shall be issued or remain in force unless and until the owner of such taxicab shall file with the Clerk a surety bond or policy of insurance by some authorized company to do such surety or insurance business in this state, conditioned to pay within the amount of such surety bond or policy of insurance all losses and damage proximately caused by or resulting from the negligent operation, maintenance, or use of the motor vehicles under such license.
- (b) Minimum amounts of the surety bond, or policy of insurance, are hereby prescribed as follows:
 - (1) Limit for bodily injuries or death of one person . . . \$10,000.00
 - (2) Limit for bodily injuries or death to all persons in one accident . . . 20,000.00
 - (3) Limit for loss or damage to property . . . 10,000.00

(Code 1962, § 5-4-1)

Sec. 7-347. Application for license.

Application for license, with a surety bond or insurance policy, must be filed each year with the Clerk. The Governing Body may, for the purpose of regulation, refuse to issue a license when it may deem it for the best interest of the public; provided, however, that no license shall be refused without first giving the person so applying therefor an opportunity to be heard.

(Code 1962, § 5-4-5)

Sec. 7-348. License fees.

The occupation license fee shall be \$25.00 for the first cab and \$10.00 for each additional cab licensed.

(Code 1962, § 5-4-2)

Sec. 7-349. Taximeters.

Each firm shall acquire, install, and maintain in good working order in each taxicab so operated upon the streets of the City a device known as a "taximeter" which has been examined, tested, and approved and sealed by the Chief of Police, and that shall, with

precision, indicate on a dial clearly visible to the passenger, the charge accrued at any point during the trip for which the taxicab is hired, the charge to be computed in accordance with section 7-351. This section does not apply to firms that use flat rate schedules.

(Code 1962, § 5-4-3; Ord. No. 551, 2-14-06)

Sec. 7-350. Cruising.

It shall be unlawful for any person engaged in operating a taxicab to cruise the City streets seeking passengers; provided, however, that taxicabs may be parked at or near bus or air terminals for this purpose.

(Code 1962, § 5-4-3)

Sec. 7-351. Rate map and schedule.

The operator of the taxicab service shall file with the City Clerk a rate map and rate schedule which he shall charge for passenger service within the municipal limits of the City of Truth or Consequences. The rate map and rate schedule shall be subject to the approval of the Governing Body upon the issuance and at each renewal date of the occupation license.

(Code 1962, § 5-4-3; Ord. No. 552, 2-14-06)

Sec. 7-352. Charges for waiting time.

Drivers shall collect, without deviation, from the passenger so carried in the taxicab the fare indicated on the dial of the taximeter at the time such passengers are discharged; provided, however, that no operator shall charge more than the amount allowed in section 7-351 for each two minutes of waiting time. For the purpose of this section, "waiting time" is construed to mean the time during which the taxicab is not in motion, beginning with its arrival at the place to which it has been called and includes the time consumed while standing at the direction of the passenger. This shall not include time lost because of inefficiency of the taxicab or its operator or the time consumed by premature arrival in response to a call.

(Code 1962, § 5-4-4)

Secs. 7-353—7-360. Reserved.

ARTICLE XIV. CONVENTION CENTER

Sec. 7-361. Convention center fees.

Sec. 7-361. Convention center fees.

- (a) A convention center fee is hereby imposed on the use of any room within a lodging facility within the City of Truth or Consequences in the amount of one percent of gross taxable rent per room for each day that a room within a lodging facility in the City limits is occupied by a vendee not otherwise exempted by the Act. The fee shall not exceed \$2.50 per room for each day.

- (b) The revenue generated by the convention center fee shall be dedicated as follows:
 - (1) The costs of acquisition of land for, and the design, construction, equipping, furnishing, landscaping, operation and maintenance of a convention center located within the city limits.
 - (2) Costs of collecting and otherwise administering the convention center fee; provided that administration costs shall not be paid until all required payments on the revenue bonds issued pursuant to the Convention Center Financing Act are made and that no more than five percent of the revenue collected in any fiscal year shall be used to pay administration costs.
- (c) Each vendor must maintain strict records in connection with the convention center fees. A vendor is liable for the payment of the proceeds of convention center fees that it failed to remit to the City Clerk. Failure of the vendor to collect the fee is not cause for the City to forgive convention center fees due and owed by the vendor. Each violation of this section is punishable by fees in an amount equal to the greater of ten percent of the amount that was not duly remitted to the City or \$100.00.
- (d) Pursuant to the requirements of NMSA 1978 (2003 Repl. Pamph.), § 5-13-4(B), the convention center fee imposed by this article shall be received by the City Clerk on a monthly basis.

(Ord. No. 660, § 1, 3-10-15)

Chapter 8 OFFENSES AND MISCELLANEOUS PROVISIONS [1](38)

ARTICLE I. IN GENERAL

Sec. 8-1. Short title of chapter.

Sec. 8-2. Limitations of actions.

Sec. 8-3. Jurisdiction.

Sec. 8-4. Definitions.

Sec. 8-5. Penalty for violation of article.

Secs. 8-6—8-30. Reserved.

Sec. 8-1. Short title of chapter.

This code may be cited as the "Criminal Code of Truth or Consequences."

(Code 1962, § 6-1-1-1)

Sec. 8-2. Limitations of actions.

All prosecutions for the alleged violation of this chapter shall be commenced within one year after the alleged violation and shall be barred thereafter.

(Code 1962, § 6-1-1-2)

Sec. 8-3. Jurisdiction.

This chapter applies only to offenses committed within the City limits of Truth or Consequences, New Mexico, as those limits may from time to time be established.

(Code 1962, § 6-1-1-3)

Sec. 8-4. 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:

Anything of value means any conceivable thing of a slightest value, tangible or intangible, movable or immovable, corporal or incorporeal, public or private. The term is not necessarily synonymous with the traditional legal term property.

Court means the Municipal Court of the City of Truth or Consequences.

House of prostitution means any place where prostitution or promotion of prostitution is carried on.

Peace officer means and includes City, county, and state police officers and members of organized police or sheriff reserve units.

Possess means and includes but is not limited to any manner of custody, control, or ownership, no matter how initiated.

Promote means and includes but is not limited to the words "sale," "exhibition," "loan," "circulation," or any act calculated to attract attention to a particular publication or person.

Prostitute means a person who knowingly engages in or offers to engage in sexual intercourse for hire.

Public place means and includes but is not limited to public dancehalls, pool rooms, bars, restaurants, cafes, lounges, commercial establishments patronized by the public, City, county, and state or federal buildings, streets, sidewalks, parks, or alleys.

Sexual intercourse means penetration of the vagina of a female to any extent by the penis of a male. Proof of sexual intercourse does not require proof of emission.

(Code 1962, § 6-1-1-4)

Similar definitions, NMSA 1978, § 30-1-12.

Sec. 8-5. Penalty for violation of article.

Any person convicted of a violation of this article shall be punished in accordance with section 1-10.

(Code 1962, § 6-1-1-5)

Secs. 8-6—8-30. Reserved.

ARTICLE II. OFFENSES RELATING TO PUBLIC ORDER AND SAFETY

Sec. 8-31. Assault, assault against a household member, assault upon a peace officer.

Sec. 8-32. Battery; battery against a household member.

Sec. 8-33. Criminal trespass.

Sec. 8-34. Unreasonable noise.

Sec. 8-35. Disorderly conduct.

Sec. 8-36. Unlawful assembly.

Sec. 8-37. Obstructing movement.

Sec. 8-38. Carrying concealed deadly weapons.

Sec. 8-39. Negligent use of weapons.

Sec. 8-40. False identification.

Sec. 8-41. Propulsion of missiles.

Sec. 8-42. Possession of fireworks.

Sec. 8-43. Barbed wire and fences.

Sec. 8-44. Removal of barricades.

Sec. 8-45. False reports.

Sec. 8-46. Concealing identity.

Sec. 8-47. False alarm.

Sec. 8-48. Impersonating a police officer.

Sec. 8-49. Resisting, evading or obstructing an officer.

Sec. 8-50. Unauthorized use of vehicle signs.

Sec. 8-51. Prowling.

Sec. 8-52. Escape.

Secs. 8-53—8-75. Reserved.

Sec. 8-31. Assault, assault against a household member, assault upon a peace officer.

(a) *Assault consists of either:*

(1) An attempt to commit a battery upon the person of another;

- (2) Any unlawful act, threat, or menacing conduct which causes another person to reasonably believe that he is in danger of receiving an immediate battery.
- (b) *Assault against a household member consists of:*
 - (1) An attempt to commit a battery against a household member; or
 - (2) Any unlawful act, threat or menacing conduct that causes a household member to reasonably believe that he is in danger of receiving an immediate battery.
- (c) *Assault upon a peace officer consists of:*
 - (1) An attempt to commit a battery upon the person of a peace officer while he is in the lawful discharge of his duties; or
 - (2) Any unlawful act, threat or menacing conduct which causes a peace officer while he is in the lawful discharge of his duties to reasonably believe that he is in danger of receiving an immediate battery.

(Code 1962, § 6-1-2-1; Ord. No. 460, § 1, 9-14-98)

Sec. 8-32. Battery; battery against a household member.

- (a) Battery is the unlawful, intentional touching or application of any force to the person of another when done in a rude, insolent, or angry manner.
- (b) Battery against a household member consists of the unlawful, intentional touching or application of force to the person of a household member, when done in a rude, insolent or angry manner.

(Code 1962, § 6-1-2-2; Ord. No. 462, § 1, 9-14-98)

Sec. 8-33. Criminal trespass.

Criminal trespass consists of unlawfully and with malicious intent entering or remaining upon the lands or property of another, knowing that any consent to enter or remain has been denied or withdrawn by the person lawfully in possession of the property.

(Code 1962, § 6-1-2-3)

Sec. 8-34. Unreasonable noise.

Unreasonable noise consists of creating any unreasonably loud, disturbing, or unnecessary noise of such character, intensity, or duration as to be detrimental to the repose, life, or health of others, including but not limited to the following specific noises:

- (1) The sounding of any horn or signalling device of any motor vehicle within the City, except as a danger warning, which creates an unreasonable loud or harsh sound, or which occurs for an unnecessary and unreasonable period of time. This does not include accidental or mechanical difficulty or failure.
- (2) The playing of any radio, television, phonograph, musical instrument, or other

sound-producing machine in such a manner or with such an unreasonable volume as to disturb the quiet, comfort, or repose of any other person.

- (3) The use of any motor vehicle so out of repair, so loaded, or in such a manner as to create loud and unnecessary grating, grinding, rattling, or other noise.
- (4) The use of any loudspeaker, drum, whistle, bell, or other instrument or device for the purpose of attracting attention by the creation of sound to any performance, show, sale, display, merchandise, or political candidate, party, or platform without first obtaining a written permit from the City Manager. The City Manager shall issue such permit, subject only to such reasonable standards of noise volume and hours of operation as he or his representative may adopt.

(Code 1962, § 6-1-4)

Sec. 8-35. Disorderly conduct.

Disorderly conduct consists of any of the following:

- (1) Engaging in any public place in violent, abusive, indecent, or otherwise disorderly conduct which creates a clear and present danger of violence;
- (2) Maliciously making a telephone call with intent to annoy or threaten another, whether or not conversation ensues;
- (3) Maliciously disturbing, threatening, or, in a malicious manner, intentionally striking any building or vehicle occupied by any person; or
- (4) Inciting, causing, aiding, abetting, or assisting in creating any riot, affray, disturbance at or within any dwelling or building, whether public or private, or at any other public place within the city.

(Code 1962, § 6-1-2-5)

Sec. 8-36. Unlawful assembly.

- (a) Unlawful assembly consists of the gathering together or assemblage of three or more persons for the purpose of violating any of the provisions of the Code or the statutes of the state or federal governments.
- (b) Refusal to obey an order to disperse within a reasonable time after being ordered by an officer shall constitute a violation of this section.

(Code 1962, § 6-1-2-6)

Sec. 8-37. Obstructing movement.

Obstructing movement consists of either:

- (1) Hindering, annoying, or molesting persons passing along any street, sidewalk, crosswalk, or other public way; or
- (2) Loitering, sitting, or standing around the entrance of any church, public building, theater, commercial establishment, or other place of public assemblage in any manner so as to intentionally obstruct such entrance.

(Code 1962, § 6-1-2-7)

Sec. 8-38. Carrying concealed deadly weapons.

- (a) Unlawfully carrying a concealed deadly weapon consists of carrying a deadly weapon concealed in a manner making it not readily visible on the person, or in close proximity thereto, making it readily accessible for use. Nothing in this section is construed to prohibit the carrying of such weapon:
 - (1) In a person's residence or on real property belonging to him as owner, tenant, lessee, or licensee;
 - (2) In a private vehicle when traveling intercity;
 - (3) By a peace officer as defined by New Mexico Statutes; or
 - (4) Any unloaded firearm.
- (b) Deadly weapon means any firearm, whether loaded or unloaded; or any weapon which is capable of producing death or great bodily harm, including but not restricted to any types of daggers, brass knuckles, switchblade knives, bowie knives, poniards, butcher knives, dirk knives, and all such weapons with which dangerous cuts can be given; or with which dangerous thrusts can be inflicted, including swordcanes, and any kind of sharp pointed canes; also slingshots, slung shots, bludgeons, or any other weapons with which dangerous wounds can be inflicted.

(Code 1962, § 6-1-2-8)

Sec. 8-39. Negligent use of weapons.

- (a) Negligent use of a weapon consists of either:
 - (1) Unlawfully discharging a weapon within the City limits;
 - (2) Carrying any deadly weapon while under the influence of an intoxicant, narcotic, drug, stimulant and depressant or by one who is incompetent.
 - (3) Endangering life or property of another by mishandling a deadly weapon.
 - (4) Selling, loaning or furnishing any deadly weapon to a person with knowledge that the person is under the influence of an intoxicant, narcotic, drug, stimulant, depressant, or to one who is incompetent.
- (b) It shall not be a violation of this section for a person to discharge a weapon during a special event when such person has obtained the prior written permission from the City Manager or Chief of Police.

(Code 1962 § 6-1-2-9; Ord. No. 391, 6-8-92)

Sec. 8-40. False identification.

It is unlawful for any person to exhibit any fictitious or false registration card, identification card, note, or other instrument for the purpose of consummating any transaction

whatsoever within the City, for the purpose of deceiving or misleading any other person as to the true age of such person.

(Code 1962, § 6-1-2-10)

Sec. 8-41. Propulsion of missiles.

Propulsion of missiles consists of shooting, slinging, or throwing snowballs, rocks, pellets, BB shot, or any kind of object or substance whatsoever in any manner as to be reasonably likely to cause injury to any person or property.

(Code 1962, § 6-1-2-11)

Sec. 8-42. Possession of fireworks.

- (a) Possession of fireworks consists of either selling, offering to sell, owning, possessing, manufacturing, transporting, or discharging any firecracker, Roman candle, skyrocket, torpedo, bomb, blank cartridge, or any type or form of explosive commonly known as fireworks.
- (b) Nothing in this section shall prohibit the use of blank cartridges in connection with athletic or racing activities, or the City or civic organization from sponsoring and conducting an officially supervised and controlled fireworks display, provided such devices are proclaimed safe and sane by the City Manager.

(Code 1962, § 6-1-2-12)

Sec. 8-43. Barbed wire and fences.

- (a) It is unlawful to erect or maintain any fence composed wholly or in part of barbed wire in any area other than that zoned for agricultural use.
- (b) It is unlawful to erect or maintain any fence so constructed as to produce an electric shock.

(Code 1962, § 6-1-2-13)

Sec. 8-44. Removal of barricades.

Removal of barricades consists of knowingly or willfully removing, destroying, or interfering with any barrier, guard, light, traffic cone, flare, or reflector placed before or at any dangerous place or public way.

(Code 1962, § 6-1-2-14)

Sec. 8-45. False reports.

It is unlawful for any person to intentionally make or file with the Police Department any false, misleading, or unfounded report or statement concerning the commission or alleged commission of any crime.

(Code 1962, § 6-1-2-15)

Sec. 8-46. Concealing identity.

It is unlawful for anyone to conceal one's true name or identity or disguise one's self with the intent to obstruct, intimidate, hinder, or interrupt any public officer, peace officer, or any other person in the legal performance of his duties.

(Code 1962, § 6-1-2-16)

Sec. 8-47. False alarm.

It shall be unlawful for any person to give a false fire alarm to any City, county, or state official or employee; or knowingly give a false alarm of need for rescue, police, or ambulance assistance.

(Code 1962, § 6-1-2-17)

Sec. 8-48. Impersonating a police officer.

- (a) It is unlawful to wear or carry the uniform, apparel, badge, identification card, or other insignia of office, or an imitation thereof, adopted for the exclusive use of duly commissioned peace officers, with the intent to deceive another.
- (b) It is unlawful to falsely represent one's self as a peace officer whether by assertion, implication, or exhibition of any of the items described in this section.

(Code 1962, § 6-1-2-18)

Sec. 8-49. Resisting, evading or obstructing an officer.

Resisting, evading or obstructing an officer consists of:

- (1) Knowingly obstructing, resisting or opposing any officer of this municipality or any other duly authorized person serving or attempting to serve or execute any process or any rule or order of any of the courts of this state or any other judicial writ or process;
- (2) Intentionally fleeing, attempting to evade or evading an officer of this municipality when the person committing the act of fleeing, attempting to evade or evasion has knowledge that the officer is attempting to apprehend or arrest him;
- (3) Willfully refusing to bring a vehicle to a stop when given a visual or audible signal to stop, whether by hand, voice, emergency light, flashing light, siren or other signal, by a uniformed officer in an appropriately marked police vehicle; or
- (4) Resisting or abusing any judge, magistrate or peace officer in the lawful discharge of his duties.

(Code 1962, § 6-1-2-19; Ord. No. 470, § 1, 11-8-99)

Sec. 8-50. Unauthorized use of vehicle signs.

It is unlawful to display on any vehicle, moving or parked, the words "Police," "Police

Department," "Truth or Consequences Police Department," "Department of Police," "T. or C.P.D.," or words or insignia of similar import without the authority of the City Manager, provided nothing in this section shall apply to any State Police or County Sheriff vehicles.

(Code 1962, § 6-1-2-20)

Sec. 8-51. Prowling.

Prowling consists of any of the following acts:

- (1) It is unlawful to be concealed upon any property of another without lawful business and without the consent of the person in lawful possession of the premises.
- (2) It is unlawful to enter upon any private property and look into any residence without the consent of the occupant of the residence.

(Code 1962, § 6-1-2-21)

Sec. 8-52. Escape.

Escape consists of any of the following acts:

- (1) It is unlawful for any person, who shall have been lawfully committed to any jail, to escape, or attempt to escape, from such jail or from a work detail to which such person is assigned.
- (2) It is unlawful for any person who has been placed under lawful arrest for the alleged commission of a violation of this Code to escape, or attempt to escape, from the custody or control of any police officer.
- (3) It is unlawful to intentionally aid any person confined or held in lawful custody or confinement to escape.
- (4) It is unlawful for any peace officer, jailer, or other person in lawful custody of a prisoner to intentionally permit the prisoner to escape.

(Code 1962, § 6-1-2-22)

Secs. 8-53—8-75. Reserved.

ARTICLE III. OFFENSES RELATING TO PROPERTY

Sec. 8-76. Definitions.

Sec. 8-77. Shoplifting.

Sec. 8-78. Criminal damage to property.

Sec. 8-79. Larceny.

Sec. 8-80. Fraud.

Sec. 8-81. Embezzlement.

- Sec. 8-82. Worthless checks.
- Sec. 8-83. Credit cards.
- Sec. 8-84. Receiving stolen property.
- Sec. 8-85. Tampering with vehicles.
- Sec. 8-86. Falsely obtaining accommodations or services.
- Sec. 8-87. Overnight camping on City-owned lands and parks.
- Sec. 8-88. Unauthorized graffiti on personal or real property.
- Sec. 8-89. Trespass upon the airport.
- Sec. 8-90. Tampering with utilities.
- Secs. 8-91—8-110. Reserved.

Sec. 8-76. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Merchandise means chattels of any type or description offered for sale in or about a store.

Merchant means any owner or proprietor of any store or any agent, servant, or employee of the owner or proprietor.

Store means a place where merchandise is sold or offered to the public for sale or retail.

(Code 1962, § 6-1-3-3(B))

Sec. 8-77. Shoplifting.

- (a) *Defined, unlawful.* It shall be unlawful to willfully commit any one or combination of the following acts:
 - (1) Taking possession of any merchandise of another with the intention of converting it to one's own use without paying for it;
 - (2) Concealing any merchandise of another with the intention of converting it to one's own use without paying for it;
 - (3) Altering any label, price tag, or marking upon any merchandise with the intention of depriving the merchant of all or some part of the value of it;
 - (4) Transferring any merchandise from the container in or on which it is displayed to any other container with the intention of depriving the merchant of all or some part of the value of it.
- (b) *Presumption created.* Any person who willfully conceals merchandise on his person, on the person of another, or among his belongings or the belongings of

another on or outside the premises of the store shall be prima facie presumed to have concealed the merchandise with the intention of converting it without paying for it. If any merchandise is found concealed upon any person or among his belongings, it shall be prima facie evidence of willful concealment.

- (c) *Reasonable detention.* If any police officer, security officer, or merchant has probable cause to believe that a person has willfully taken possession of any merchandise in violation of this article, and that he can recover his merchandise by detaining the person or taking him into custody, police officers, security officers, or merchants may, for the purpose of attempting to effect a recovery of the merchandise, take a person into custody and detain him in a reasonable manner for a reasonable time.
- (d) *Arrest authorized.* Any police officer may arrest without warrant any person he has reason to believe has committed the crime of shoplifting.

(Code 1962, § 6-1-3-3)

Sec. 8-78. Criminal damage to property.

It is unlawful to intentionally damage any real or personal property of the City, County of Sierra, State of New Mexico, United States government, or of any person or business, without the consent of the owner thereof.

(Code 1962, § 6-1-3-1)

Sec. 8-79. Larceny.

It is unlawful to steal anything of value which belongs to another. Larceny shall include the unauthorized taking of utilities

(Code 1962, § 6-1-3-2; Ord. No. 515, § 1, 3-11-02)

Sec. 8-80. Fraud.

It is unlawful to intentionally misappropriate or take anything of value which belongs to another or to cause another to change his position to any extent to his detriment by means of fraudulent conduct, practices, or representations.

(Code 1962, § 6-1-3-4)

Sec. 8-81. Embezzlement.

It is unlawful to embezzle, or convert to one's own use, anything of value with which one has been entrusted, with fraudulent intent to deprive the owner thereof.

(Code 1962, § 6-1-3-5)

Sec. 8-82. Worthless checks.

- (a) It is unlawful to issue a check, draft, or money order in exchange for anything of value with the intent to defraud, for the payment of money upon any bank or

depository knowing at the time of the issuance that the issuer has insufficient funds, credit, or no account with the bank or other depository for the payment of such check, draft, or order in full upon its presentation.

- (b) In the prosecution of offenses under the Worthless Check Act:
- (1) If payment of a check is refused by the bank or depository upon which it is drawn because of no account in the name of the maker or drawer in such bank, such refusal shall be proof of the fact that the maker or drawer had no account in the bank or depository upon which the check is drawn, and shall be prima facie evidence of an intent to defraud and of knowledge of insufficient funds in or credit with the bank or depository with which to pay such draft.
 - (2) If the maker or drawer of a check, payment of which is refused by the bank or depository upon which it is drawn because of insufficient funds or credit in the account of the maker or drawer in the bank or depository, fails, within ten days after notice to him that the check was not honored by the bank or depository, to pay the check in full, together with any protest fees or costs thereon, such failure shall constitute prima facie evidence of a knowledge of the insufficiency of funds in the bank or depository at the time of the making or drawing of the check and of an intent to defraud.

(Code 1962, § 6-1-3-6)

Worthless checks, NMSA 1978, § 30-36-1 et seq.

Sec. 8-83. Credit cards.

- (a) A person who takes a credit card from the person, possession, custody, or control of another without the card holder's consent, or who, with knowledge that it has been so taken, acquires or possesses a credit card with the intent to use it or to sell it, or to transfer it to a person other than the issuer or the card holder, is guilty of a violation of this section. Taking a credit card without consent includes obtaining it by conduct defined or known as statutory larceny, common law larceny by trespassory taking, common law larceny by trick, embezzlement, or obtaining property by false pretenses, false promise, or extortion. Any person other than card holder or issuer who by taking possession of a credit card which has been stolen, lost, mislaid, or delivered by mistake with the intent to use it or to sell it or to transfer it to a person other than the issuer or the card holder is guilty of violating this section.
- (b) Any person, other than the card holder or a person authorized by him, who, with intent to defraud, signs the name of another or of a fictitious person to a credit card or to a sales slip or agreement is guilty of violating this section.
- (c) Any person who, with intent to defraud, uses, to obtain anything of value, a credit card acquired in violation of this section or a credit card which is invalid, expired, or revoked, or who falsely represents that he is the card holder named on the credit card is guilty of violating this section. Each act or transaction shall constitute a separate violation of this section.

(Code 1962, § 6-1-3-7)

Sec. 8-84. Receiving stolen property.

- (a) It is unlawful to intentionally receive, retain, or dispose of stolen property knowing that it has been stolen.
- (b) The requisite knowledge or belief that property has been stolen is presumed in the case of an individual or dealer who:
 - (1) Is found in possession or control of property stolen from two or more persons on separate occasions; or
 - (2) Acquires stolen property for a consideration which the individual or dealer knows is far below the property's reasonable value. A dealer shall be presumed to know the fair market value of the property in which he deals.
- (c) For the purposes of this section, dealer means a person in the business of buying or selling goods or commercial merchandise.
- (d) Whoever receives stolen property is guilty of violating this section.

(Code 1962, § 6-1-3-8)

Sec. 8-85. Tampering with vehicles.

It is unlawful for any person, individually or in association with one or more persons, to:

- (1) Purposely and without authority from the owner, start, or cause to be started, the engine of any motor vehicle;
- (2) Purposely and maliciously shift or change the starting device or gears of a standing motor vehicle to a position other than that in which they were left by the owner or driver of such motor vehicle;
- (3) Purposely destroy any part of a motor vehicle or cut, mash, or mark or in any way destroy or damage any part, attachment, fastening, or appurtenance of a motor vehicle, without the permission of the owner thereof;
- (4) Purposely drain or start the drainage of any radiator, oil tank, or gas tank upon a motor vehicle without the permission of the owner thereof;
- (5) Purposely put any metallic or other substance or liquid in the radiator, carburetor, oil tank, grease cup, oilers, lamps, gas tanks, or machinery of the motor vehicle with the intent to injure or damage such parts or impede the working of the machinery thereof;
- (6) Maliciously tighten or loosen any bracket, bolt, wire, nut, screw, or other fastening on a motor vehicle; or
- (7) Purposely release the brake upon a standing motor vehicle, with the intent to injure the machine.

(Code 1962, § 6-1-3-9)

Sec. 8-86. Falsely obtaining accommodations or services.

It is unlawful to obtain any service, food, entertainment, or accommodations without paying therefor, and with the intent to cheat the owner or person supplying such service, food, entertainment, or accommodations.

(Code 1962, § 6-1-3-10)

Sec. 8-87. Overnight camping on City-owned lands and parks.

- (a) It is unlawful for any person to camp overnight on any City- owned land or public parks except during special activities designated in advance by the City Commission or the City Manager.

Further, notwithstanding anything in the Uniform Traffic Code to the contrary, the City Manager, in consultation with the Chief of Police and Fire Chief and after designation by the City Commission of special activities such as the annual fiesta, has the authority to waive the parking ordinance for organized groups and to block streets, so long as no fire lanes are blocked and the public health and safety are not jeopardized.

- (b) It is unlawful for any person to camp overnight on any City-owned land and then fail to clean the area where the vehicle was parked.
- (c) It is unlawful for any person to camp overnight on any City-owned land and for that person to start any fire except in permissible areas designated by the City, such as barbecue stands.

(Code 1962, § 6-1-3-12)

Parks and recreation, ch. 9.

Sec. 8-88. Unauthorized graffiti on personal or real property.

- (a) It is unlawful for any person to intentionally and maliciously deface any real or personal property of another with graffiti or other inscribed material inscribed with ink, paint, spray paint, crayon, charcoal or the use of any object without the consent or reasonable ground to believe there is consent of the owner of the property.

(Ord. No. 464, § 1, 9-14-98)

Sec. 8-89. Trespass upon the airport.

Trespass upon the airport is defined as an unauthorized access into or onto the Air Operating Areas and is punishable as established in section 1-10.

(Ord. No. 600, 9-22-09)

Editor's note—

Ord. No. 600, adopted Sept. 22, 2009, did not specifically amend the Code; hence, inclusion herein as § 8-89 was at the discretion of the editor. See also the Code Comparative Table.

Sec. 8-90. Tampering with utilities.

No person shall, without first having secured permission from the City or its duly authorized agent, start or stop any pump, open or close any fire hydrant, valve or stop cock; open, break or remove any seal or lock; or in any way tamper with or molest any pipe, meter, connection, appurtenance or property belonging to or any part of the utility system. If any meter, stop cock or other service connection appurtenance has been tampered with, the offending party shall be subject to the following fines:

- (1) A minimum fine of \$150.00 for the first offense;
- (2) A minimum fine of \$300.00 for each subsequent offense.

Further, the City shall pursue a claim for civil damages resulting from any damage occurring to the subject utilities.

(Ord. No. 627, § 1, 8-14-12)

Secs. 8-91—8-110. Reserved.

ARTICLE IV. OFFENSES RELATING TO MORALS

Sec. 8-111. Definitions.

Sec. 8-112. Gambling.

Sec. 8-113. Commercial gambling.

Sec. 8-114. Permitting premises to be used for gambling.

Sec. 8-115. Dealing in gambling devices.

Sec. 8-116. Lottery—Permissive.

Sec. 8-117. Same—Fraudulent operation.

Sec. 8-118. Selling or drinking of alcohol in public places.

Sec. 8-119. Possession of marijuana.

Sec. 8-120. Aiding an illegal activity.

Sec. 8-121. Lewd or immoral acts.

Sec. 8-122. Glue; aerosol spray; abuse or possession for abuse.

Sec. 8-123. Possession, delivery, manufacture or delivery to a minor of drug paraphernalia prohibited.

Secs. 8-124—8-140. Reserved.

Sec. 8-111. Definitions.

The following words, terms and phrases, when used in this article, shall have the

meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Bet means a bargain in which the parties agree that, dependent upon chance, even though accompanied by some skill, one stands to win or lose anything of value specified in the agreement.

Exceptions:

- (1) Offers of purses, prizes, or premiums to the actual contestants in any bona fide contest for the determination of skill, speed, strength, or endurance or to the bona fide owners of animals or vehicles entered in such contests;
- (2) A lottery as defined in this section; or
- (3) Betting otherwise permitted by law.

Gambling device means a contrivance which, for a consideration, affords the player an opportunity to obtain anything of value, the award of which is determined by chance even though accompanied by some skill, and whether or not the prize is automatically paid by the device.

Lottery means an enterprise wherein for a consideration the participants are given an opportunity to win a prize, the award of which is determined by chance. As used in this subsection, "consideration" means anything of pecuniary value required to be paid to the promoter in order to participate in such enterprise.

(Code 1962, § 6-1-4-1)

Definitions and rules of construction generally, § 1-2.

Sec. 8-112. Gambling.

It is unlawful to:

- (1) Make a bet;
- (2) Enter or remain in a gambling place with intent to make a bet, to participate in a lottery, or to play a gambling device;
- (3) Conduct a lottery unless such lottery is sanctioned by the State of New Mexico.
- (4) Possess facilities with intent to conduct a lottery unless such lottery is sanctioned by the State of New Mexico.

(Code 1962, § 6-1-4-2; Ord. No. 437, § 1, 6-10-96)

Sec. 8-113. Commercial gambling.

It is unlawful to:

- (1) Participate in the earnings of, or operating a gambling place;
- (2) Receive, record, or forward bets or offers to bet;
- (3) Possess facilities with the intent to receive, record, or forward bets or offers to bet;

- (4) For gain, become a custodian of anything of value bet, or offered to be bet;
- (5) Conduct a lottery where both the consideration and the prize are money, or with intent to conduct a lottery possess facilities to do so unless such lottery is sanctioned by the State of New Mexico; or
- (6) Set up for use, for the purpose of gambling or collecting the proceeds of, any gambling device.

(Code 1962, § 6-1-4-3; Ord. No. 437, § 2, 6-10-96)

Sec. 8-114. Permitting premises to be used for gambling.

It is unlawful to:

- (1) Knowingly permit any property owned or occupied by a person, or under his control, to be used as a gambling place; or
- (2) Knowingly permit a gambling device to be set up for use for the purpose of gambling in a place under his control.

(Code 1962, § 6-1-4-4)

Sec. 8-115. Dealing in gambling devices.

- (a) It is unlawful for a person to manufacture, transfer commercially, or process with intent to transfer commercially any of the following:
 - (1) Anything which evidences, purports to evidence, or is designed to evidence participation in gambling.
 - (2) Any device which is designed exclusively for gambling purposes or anything which he knows is designed exclusively as a subassembly or essential part of such device. This includes, without limitations, gambling devices, numbers pars, punchboards, or roulette wheels.
- (b) Proof of possession of any device designed exclusively for gambling purposes which is not in a gambling place and is not set up for use is prima facie evidence of possession with intent to transfer.

(Code 1962, § 6-1-4-5)

Sec. 8-116. Lottery—Permissive.

Nothing in sections 8-112 through 8-114 shall be construed to apply to any sale or drawing at any fair held in this City, or for the benefit of any church, library, religious society, or nonprofit organization situated or being in this City. A lottery may be operated for the benefit of the organization or charitable purpose only when the entire proceeds of the lottery go into the organization or charitable purpose and no part of such proceeds go to any individual member or employee thereof.

(Code 1962, § 6-1-4-6)

Sec. 8-117. Same—Fraudulent operation.

It is unlawful to operate or manage any lottery which does not provide a fair and equal chance to all participants, or which lottery is conducted in a manner tending to defraud or mislead the public.

(Code 1962, § 6-1-4-7)

Sec. 8-118. Selling or drinking of alcohol in public places.

It is unlawful to sell, serve, furnish, or permit the drinking or consumption of alcoholic beverages, as defined in NMSA 1978, § 60-3A-1 et seq., or to drink any alcoholic beverage in any public place or private club, or key club, whether operated for profit or not, except establishments having a license to dispense such beverages by the owner, operator, lessee, or proprietor thereof.

(Code 1962, § 6-1-4-8)

Sec. 8-119. Possession of marijuana.

- (a) *Definition of marijuana.* Marijuana means all parts of the plant Cannabis Sativa L., whether growing or not, the seeds thereof, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds. It does not include the mature stalks of the plant, hashish, tetrahydrocannabinols extracted or isolated from marijuana, fiber produced from the stalks, oil, or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.
- (b) *Possession.* Unlawful possession of marijuana consists of possessing marijuana which was not obtained directly from, or pursuant to, a valid prescription or order of a doctor of medicine who is active in the course of his professional practice, or as otherwise authorized by law.
- (c) *Penalty.* Any person who violates this section in possession of one ounce or less of marijuana is, for the first offense, guilty of a petty misdemeanor and shall be punished by a fine of not less than \$50.00 nor more than \$100.00 and by imprisonment for not more than 15 days.
- (d) *Chemical testing fee.* In addition to any other fee or fine, a fee of \$75.00 shall be added to defray the costs of chemical and other analyses of controlled substances.

(Code 1962, § 6-1-4-9; Ord. No. 626, § 1, 6-26-12)

Sec. 8-120. Aiding an illegal activity.

It is unlawful to:

- (1) Be found in any place where gambling or prostitution is being conducted, with knowledge of such activity.

- (2) Give or attempt to give any signal intended to or calculated to warn or give warning of the approach of any police officer to any person in or about any building, trailer, motor vehicle, premises, or establishment used for any illegal activity or where any illegal activity is being conducted.

(Code 1962, § 6-1-4-10)

Sec. 8-121. Lewd or immoral acts.

It is unlawful to:

- (1) Frequent, loiter, or be employed, other than as a bartender or waitress, in any establishment where alcoholic beverages are sold, and engage in the practice of or for the purpose of soliciting others to purchase alcoholic beverages.
- (2) Own or operate any establishment where alcoholic beverages are sold and knowingly permit the presence in such establishment of any person who violates the provisions of section 8-121(1).
- (3) Knowingly engage in or offer to engage in sexual intercourse for hire.
- (4) Enter or remain in a house of prostitution with an intent to engage in sexual intercourse with a prostitute.
- (5) Knowingly hire a prostitute to engage in sexual intercourse.
- (6) Knowingly establish, own, maintain, or manage a house of prostitution or participate in the establishment, ownership, maintenance, or management thereof.
- (7) Knowingly permit any place which a person partially or wholly owns or controls to be used as a house of prostitution.
- (8) Knowingly procure a prostitute for a house of prostitution or for another person.
- (9) Knowingly induce another to become a prostitute.
- (10) Knowingly solicit a patron for a prostitute or house of prostitution.
- (11) Knowingly and indecently expose the private parts or sexual organs of a person to the public view.

(Code 1962, § 6-1-4-11)

Sec. 8-122. Glue; aerosol spray; abuse or possession for abuse.

- (a) No person shall intentionally smell, sniff or inhale the fumes or vapors from a glue, aerosol spray product or other chemical substance for the purpose of causing a condition of or inducing symptoms of intoxication, elation, euphoria, dizziness, excitement, irrational behavior, exhilaration, stupefaction or dulling of the senses, or for the purpose of in any manner changing, distorting or disturbing the audio, visual or mental processes.
- (b) No person shall intentionally possess a glue aerosol spray product or other chemical substance for any purpose set forth in subsection (a) of this section.

- (c) As used in this section, "glue" means what is commonly referred to as plastic or model airplane cement and includes any cement containing hexane, benzene, toluene, xylene, carbon tetrachloride, chloroform, ethylene bichloride, acetone, cyclohexanone, methyl ethyl ketone, methylisobutyl ketone, amyl acetate, butyl acetate, ethyl acetate, tricresyl phosphate, butyl alcohol, ethyl alcohol, isopropyl alcohol or methylcellosolve acetate.
- (d) The provisions of this section do not apply to any aerosol spray product or other chemical substance used for legitimate medicinal purposes and obtained either on a prescription basis or for medicinal purposes by a person over the age of 18.

(Ord. No. 461, § 1, 9-14-98)

Sec. 8-123. Possession, delivery, manufacture or delivery to a minor of drug paraphernalia prohibited.

- (a) It is unlawful for any person to use or possess with intent to use drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, prepack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance in violation of the Controlled Substances Act. The provisions of this subsection do not apply to a person who is in possession of hypodermic syringes or needles at the time he is directly and immediately engaged in a harm reduction program, as provided in the Harm Reduction Act.
- (b) It is unlawful for any person to deliver, possess with intent to deliver or manufacture with the intent to deliver drug paraphernalia with knowledge, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze pack, prepack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance in violation of the Controlled Substances Act. The provisions of this subsection do not apply to department of health employees or their designees while they are directly and immediately engaged in activities related to the harm reduction program authorized by the Harm Reduction Act.

(Ord. No. 463, § 1, 9-14-98)

Secs. 8-124—8-140. Reserved.

ARTICLE V. OFFENSES RELATING TO MINORS [2](39)

Sec. 8-141. Abandonment and cruelty.

Sec. 8-142. Enticement of child.

Sec. 8-143. Permitting loitering of minors.

Sec. 8-144. Unlawfully assisting minors to obtain alcoholic beverages.

Sec. 8-145. Offenses by children.

Sec. 8-146. Failure of parental responsibility.

Sec. 8-147. Abandonment of dangerous container.

Sec. 8-148. Sale of aerosol spray paint in cans to minors prohibited; possession.

Sec. 8-149. Closing of Ralph Edwards Park.

Sec. 8-141. Abandonment and cruelty.

- (a) It is unlawful for the parent of any minor or any person who has been entrusted with or who has assumed the care of such child to intentionally leave the child or abandon him under circumstances where there is a possibility the child may suffer from neglect.
- (b) It is unlawful for any parent, guardian, or other person having care or custody of any child to:
 - (1) Intentionally cause or permit:
 - a. The life of such child to be endangered;
 - b. The health of such child to be injured; or
 - c. The morals of such child to be impaired.
 - (2) Intentionally place such child in a situation where:
 - a. The life of such child is endangered;
 - b. The health of such child is injured; or
 - c. The morals of such child are impaired.
 - (3) Willfully torture, torment, or cruelly punish or injure such child.
 - (4) Willfully or negligently deprive such child of necessary food, clothing, or shelter.

(Code 1962, § 6-1-5-1)

Abandonment or abuse of a child, NMSA 1978, § 30-6-1.

Sec. 8-142. Enticement of child.

It is unlawful to entice or persuade a child under the age of 16 years to enter a vehicle, building, room, or secluded place with intent to commit statutory rape, rape of a child, sodomy, aggravated sodomy, indecent exposure, or abduction and prostitution.

(Code 1962, § 6-1-5-2)

Enticement of a child, NMSA 1978, § 30-9-1.

Sec. 8-143. Permitting loitering of minors.

- (a) It is unlawful for the owner or operator of any establishment serving alcoholic

beverages to permit a person under the age of 21 years to attend, frequent, or loiter in or about such premises without being accompanied by the parent, guardian, or legal age spouse of such minor.

- (b) Nothing in this article shall be deemed to prohibit the hiring of persons under the age of 21 years as cooks, busboys, or other help so long as the minor does not serve or handle any alcoholic beverage.

(Code 1962, § 6-1-5-3)

Sec. 8-144. Unlawfully assisting minors to obtain alcoholic beverages.

- (a) It is unlawful to:
 - (1) Aid or assist a person under 21 years to buy, procure, obtain, or to be served any alcoholic beverage.
 - (2) Induce any other person to sell, serve, or deliver any alcoholic beverage to a person under 21 years by actual or constructive misrepresentation of any facts calculated to cause, or by the concealment of which is calculated to cause, the person selling, serving, or delivering such alcoholic liquors to such a minor or to any person for ultimate delivery to a minor to believe that such minor is legally entitled to be sold, served, or delivered alcoholic beverages. "Minors," as used in this section, means persons under 21 years of age.
- (b) Nothing in this section shall be deemed to prohibit the consumption of alcoholic beverages by minors in the presence of their parent or legal guardian or legal age spouse.

(Code 1962, § 6-1-5-4)

Sec. 8-145. Offenses by children.

It is unlawful for any person:

- (1) Under the age of 15 years to be in any public or semipublic place without his parent or legal guardian between the hours of 10:00 p.m. and 5:00 a.m.
 - (2) Fifteen years of age or over, but under the age of 18, to be in any public or semipublic place without his parent or legal guardian between the hours of 10:00 p.m. and 5:00 a.m. with the exception of Friday night or Saturday night, at which time the curfew would not commence until 12:00 a.m. (midnight).
 - (3) Under the age of 21 years to procure, purchase, attempt to purchase, or possess any alcoholic beverage.
- (b) It is a defense to prosecution under subsection (a)(1) or (a)(2) that the person was:
 - (1) On an errand at the direction of the minor's parent;
 - (2) In a motor vehicle involved in interstate travel;
 - (3) Engaged in an employment activity, or going to or returning home from

- an employment activity, without any detour or stop;
- (4) Involved in an emergency;
 - (5) On the sidewalk abutting the minor's residence or abutting the residence of a next-door neighbor if the neighbor did not complain to the police department about the minor's presence;
 - (6) Attending an official school, religious, or other recreational activity supervised by adults and sponsored by the city, a civic organization, or another similar entity that takes responsibility for the minor, or going to or returning home from, without any detour or stop, an official school, religious, or other recreational activity supervised by adults and sponsored by the city, a civic organization, or another similar entity that takes responsibility for the minor;
 - (7) Is an "emancipated minor" as that phrase is defined under New Mexico Statutory Law.

(Code 1962, § 6-1-5-5; Ord. No. 452, § 1, 9-8-97)

Sec. 8-146. Failure of parental responsibility.

It is unlawful for any parent or legal guardian to knowingly permit his child or ward to violate any of the provisions of this article.

(Code 1962, § 6-1-5-6)

Sec. 8-147. Abandonment of dangerous container.

It is unlawful to abandon, discard, or to keep in any place accessible to children any refrigerator, icebox, freezer, airtight container, cabinet, or similar container of a capacity of 1½ cubic feet or more, which is no longer in use, without having the attached doors, hinges, lids, or latches removed or without sealing the doors or other entrances so as to make it impossible for anyone to be imprisoned therein.

(Code 1962, § 6-1-5-7)

Health and sanitation, ch. 6; solid waste management, ch. 11.

Sec. 8-148. Sale of aerosol spray paint in cans to minors prohibited; possession.

- (a) No person shall sell aerosol spray paint in cans to any person under eighteen (18) years of age. A New Mexico driver's license, an identification card issued to a member of the Armed Forces, or an identity card issued pursuant to NMSA 1978, § 60-10-17 shall be prima facie proof of age.
- (b) Any person who owns, manages or operates a place of business wherein aerosol spray paint in cans is sold shall conspicuously post a copy of Ord. No. 390, 6-8-92, in their place of business in letters at least three-eighths of an inch high.
- (c) It is unlawful for any person under the age of eighteen (18) to be in possession of aerosol spray paint unless that person does so under direct supervision of

his[/her] parent, legal guardian or employer.

(Ord. No. 390, 6-8-92)

Sec. 8-149. Closing of Ralph Edwards Park.

Ralph Edwards Park shall be closed every day from 12:01 a.m. through 5:00 a.m. No person shall enter, remain on, stay or loiter in Ralph Edwards Park between the period commencing at 12:01 a.m. on any day and ending at 5:00 a.m., except by special written permission authorized by the city manager. It shall be unlawful for any person or persons to occupy or be present in said park during any hours in which the park is not open to the public.

(Ord. No. 445, § 1, 4-28-97)

ARTICLE VI. SMOKING [3](40)

Sec. 8-150. Prohibition of smoking in City-owned buildings and vehicles.

Sec. 8-150. Prohibition of smoking in City-owned buildings and vehicles.

Smoking shall be prohibited within all City-owned buildings and vehicles. Smoking is defined as inhaling, exhaling or burning of any lighted cigar, cigarette, pipe or other combustible product.

(Ord. No. 466, 1-25-99; Ord. No. 607, § 1, 8-30-11)

Editor's note—

Section 1 of Ord. No. 607, adopted Aug. 30, 2011, changed the title of § 8-150 from "Prohibition of smoking in City-owned buildings" to "Prohibition of smoking in City-owned buildings and vehicles."

Chapter 9 PARKS AND RECREATION [1](41)

ARTICLE I. IN GENERAL

Secs. 9-1—9-25. Reserved.

Secs. 9-1—9-25. Reserved.

ARTICLE II. RESERVED [2](42)

Secs. 9-26—9-34. Reserved.

Secs. 9-26—9-34. Reserved.

ARTICLE III. RALPH EDWARDS PARK

Sec. 9-35. Regulations for the use of the fishing pond at Ralph Edwards Park.

Secs. 9-36—9-40. Reserved.

Sec. 9-35. Regulations for the use of the fishing pond at Ralph Edwards Park.

- (a) All anglers who use or desire to use the fishing pond located at Ralph Edwards Park must comply with the State of New Mexico Fishing Proclamation including, but not limited to, fishing license requirements.
- (b) In addition to the regulations set forth in said proclamation, the following restrictions shall apply in connection with the use or desired use of the fishing pond located at Ralph Edwards Park:
 - (1) The fishing pond shall be reserved for the following groups of people: Any persons under the age of 12, any persons age 65 or older, and the handicapped (as that term is defined in the New Mexico State Fishing Regulations). All persons under the age of 12 must be accompanied by an adult. No other persons shall be permitted to fish in the pond.
 - (2) Fishing in the pond will be restricted to Friday, Saturday and Sunday only, from sunrise to sunset.
 - (3) The daily bag limit will be restricted to four fish per day per angler.
 - (4) Each angler shall be restricted to one fishing pole at all times.
 - (5) It shall be unlawful for any angler or any other person to wade, swim, use a flotation device or use a boat at fishing pond.

(Ord. No. 403, § 1, 1-11-93)

Secs. 9-36—9-40. Reserved.

ARTICLE IV. BOATING

Sec. 9-41. New Mexico Boat Act; adoption by reference.

Secs. 9-42—9-50. Reserved.

Sec. 9-41. New Mexico Boat Act; adoption by reference.

The conditions, provisions, limitations, and terms of the current additions of the New Mexico Boat Act [currently codified as NMSA 1978, § 66-12-1] which are made a part hereof by reference as fully as if copied at length in this section are hereby adopted for the City.

(Ord. No. 427, § 1, 8-28-95)

Secs. 9-42—9-50. Reserved.

ARTICLE V. VISTA MEMORY GARDENS CEMETERY

Sec. 9-51. In general.

Sec. 9-52. Sale and title of lots.

Sec. 9-53. Use of lots.

Sec. 9-54. Opening and closing of burial spaces.

Sec. 9-55. Interments.

Sec. 9-56. Disinterments.

Sec. 9-57. Markers, liners and vaults.

Sec. 9-58. Fees and charges.

Sec. 9-59. City liability.

Sec. 9-60. Rules and regulations.

Secs. 9-61—9-70. Reserved.

Sec. 9-51. In general.

- (a) The Vista Memory Gardens Cemetery (hereinafter referred to as the "cemetery") must always be kept a place of beauty. To that end, certain rules and regulations are necessary for the protection of lot owners, including but not necessarily limited to, assurance that unsightly or objectionable objects are barred.
- (b) These rules and regulations are designed for the protection of owners of interment rights as a group. Their enforcement will protect the cemetery by creating and preserving its beauty.
- (c) The following rules and regulations of the cemetery, and amendments or alterations thereto, as may be adopted from time-to-time by the City Commission of Truth or Consequences (hereinafter referred to as the "Commission"), apply to all lots, owners of lots, visitors and those performing work within the cemetery.
- (d) The cemetery will be managed by a City staff member as designated by the City Manager.

(Ord. No. 553, 4-11-06)

Sec. 9-52. Sale and title of lots.

- (a) No transfer of title to lots will be recognized unless such sale and transfer will be duly entered upon the City records by the City Clerk and an administrative transfer fee, per lot, as set by the Commission, is paid to the City Clerk.

- (b) The Commission reserves the right to refuse any transfer, assignment, or conveyance of any lot, and any right or interest therein, as long as there is any indebtedness due upon the purchase price of said lot, or for any interment therein.
- (c) The sale or transfer of any lot by the owner must be recorded in the office of the City Clerk of Truth or Consequences, New Mexico.
- (d) The subdivision of lots or interment rights is not allowed without the written consent of the Commission and no one will be buried in any lot not having an interest therein, except by written consent of interested parties and the Commission.
- (e) Interments will not be allowed in any lot to which title remains undetermined.

(Ord. No. 553, 4-11-06)

Sec. 9-53. Use of lots.

- (a) Lots in the cemetery will be used for no other purpose than the burial of the human dead. Grave liners must be used on all graves.
- (b) No enclosure of any kind, such as a fence, coping, hedge, or ditch, are permitted around any burial space or lot. Mounds are not allowed and no lot will be raised above the Section's established grade.
- (c) No dogs, except service dogs, are permitted in the cemetery.
- (d) Food and beverages are strictly forbidden.
- (e) Ingress and egress to the cemetery is prohibited except by way of the public gates and during such hours as are specified from time-to-time by the City.
- (f) The City reserves the right to remove flowers and flower holders as soon as the flowers wither without liability for their safekeeping.
- (g) The cemetery grounds are sacredly devoted to the burial of the human dead and the provisions and penalties of the law, as provided by statute, will be strictly enforced in all cases of wanton injury, disturbance and disregard of these rules.
- (h) Firearms are forbidden on the cemetery grounds except for the use of law enforcement officers or Military Honor Guards. Military Honor Guards are permitted only during a Military service and must be conducted under the oversight of a City Law Enforcement Officer.
- (i) Decorations, flowers, and other objects that interfere with cemetery maintenance will be removed by cemetery personnel without liability for their safekeeping.
- (j) Trash containers are placed throughout the cemetery for use by the public and are to be so used.
- (k) Funeral floral pieces and designs will be removed from burial spaces as soon as they wither or become unsightly in the cemetery Manager's sole judgment, without liability for their safekeeping.

- (l) Small United States flags may be displayed on burial spaces on those days and occasions when it is customary to do so. However, at the expiration of three days, cemetery employees may remove such flags. All flags of the United States will be collected by the cemetery Manager and given to the local VFW Post for proper disposal.
- (m) The Commission expressly reserves the right to perform all landscaping and planting of any nature whatsoever. Cutting or trimming by lot owners is forbidden.

(Ord. No. 553, 4-11-06)

Sec. 9-54. Opening and closing of burial spaces.

- (a) Applications for the opening and closing of all spaces and for disinterment must be presented at the Office of the City Clerk of the City of Truth or Consequences, New Mexico, during normal business hours, on, or before the day prior to the day on which the space is to be used.
- (b) The opening and closing of all spaces will be done only by cemetery personnel.

(Ord. No. 553, 4-11-06)

Sec. 9-55. Interments.

- (a) No interment will be permitted, nor marker placed, upon any lot not fully paid for, except by special consent of the Commission in writing. The granting of any such consent will not thereafter be construed as a waiver of this provision. In the event such consent is given, any and all interments placed in, or markers placed on, said lot will be considered temporary, and no rights will be acquired by the lot owner to said interment or marker until such property is fully paid.
- (b) In order to avoid confusion and misunderstandings regarding the location and size of lots and the specific space to be used therein, no interment will be permitted unless a member of the family signs an interment order that selects the lot and space to be used for the interment. The content of such interment order will be as follows:

INTERMENT ORDER

I, (Typed or Printed Name) , being the owner, or an immediate member of the family of the owner, hereby authorize the City to inter the remains of (Typed or Printed Name of Deceased) , in Space , Lot , Section , of the VISTA MEMORY GARDENS CEMETERY.

/s/

(Signature)

Filed in the Office of the City Clerk of Truth or Consequences, New Mexico, this

day of _____

/_____
/_____

, 20_____
.

/s/

(Signature of City Employee)

/s/

(Printed or Typed Name and
Title of City Employee)

- (c) Not more than one interment in one burial space will be allowed, except in the case of special written request of the owner or an immediate family member.
- (d) Interment will be made between the hours of 8:00 a.m. and 5:00 p.m. on any day of the week.

(Ord. No. 553, 4-11-06)

Sec. 9-56. Disinterments.

A permit for disinterment shall be required prior to disinterment of a dead body or fetus except as authorized by regulation or otherwise provided by law. The permit shall be issued by the state registrar or state medical investigator to a licensed funeral service practitioner or direct disposer.

(Ord. No. 553, 4-11-06)

Sec. 9-57. Markers, liners and vaults.

(a) *Permitted Materials and Design.*

- (1) The only marker permitted on a single burial space will be 16 inches by 28 inches in size or 24 inches by 12 inches. A double for two adjacent burial spaces, will be 14 inches by 44 inches in size or 36 inches by 12 inches.
- (2) All markers must be made of the best grade granite or United States Standard bronze. Granite markers will be a minimum thickness of three inches and a maximum thickness of no more than four inches.
- (3) The City reserves the right to reject all markers that are, in its opinion unsatisfactory, whether by reason of design, workmanship, material, or

fault.

- (4) All grave sites are required to have an approved liner or vault.
- (5) All markers will be installed by the City. Arrangements for setting markers must be made through the Office of the City Clerk.
- (6) All markers will be set flush and level with the grade of the burial space section.
- (7) All spaces, except grass, will be sodden-level and no mounding or planting will be allowed on any space.
- (8) Written permission must be obtained from the City Clerk for each marker setting, alteration or removal.

(Ord. No. 553, 4-11-06)

Sec. 9-58. Fees and charges.

All fees and charges will be approved by separate resolution from time-to-time by the Commission. These fees and charges include, but are not necessarily limited to, marker installations, lots, and openings and closings.

(Ord. No. 553, 4-11-06)

Sec. 9-59. City liability.

- (a) The City of Truth or Consequences, New Mexico (hereinafter referred to as the "City") will not be liable for any act of lot owners, visitors, licensees or trespassers within the cemetery or for any damage to persons or property within the cemetery.
- (b) The City will not be liable for any damage caused by the elements, an act of God, common enemy, thieves, vandals, strikers, malicious mischief makers, explosions, unavoidable accidents, invasion, insurrections, riots or order of any military or civil authority, whether the damage be direct or collateral, other than as herein provided.
- (c) The right to enlarge, reduce, re-plat or change the boundaries or grading of the cemetery, or of a section or sections thereof, from time-to-time, including, but not necessarily limited to, the right to modify or change the location of any part thereof, or to remove, re-grade roads, drives and walks, is hereby expressly reserved to the City.
- (d) The Commission, after a thorough investigation, reserves, and will have, the right to correct any errors that may be made either in making interments, disinterments or removals.
- (e) The City will not be responsible for theft or damage to items or objects placed on burial spaces or lots.

(Ord. No. 553, 4-11-06)

Sec. 9-60. Rules and regulations.

- (a) The Commission expressly reserves the right, at any time, or times, without, or without notice to Lot Owners, to adopt new rules and regulations, or to amend, alter and/or repeal any rule, regulation and/or article, section, paragraph and/or sentence in these rules and regulations.
- (b) These rules and regulations are subject to any provisions of applicable laws of the State of New Mexico.

(Ord. No. 553, 4-11-06)

Secs. 9-61—9-70. Reserved.

ARTICLE VI. HOT SPRINGS CEMETERY

Sec. 9-71. In general.

Sec. 9-72. Sale and title of lots.

Sec. 9-73. Use of lots.

Sec. 9-74. Opening and closing of burial spaces.

Sec. 9-75. Interments.

Sec. 9-76. Disinterments.

Sec. 9-77. Fees and charges.

Sec. 9-78. City liability.

Sec. 9-79. Rules and regulations.

Sec. 9-71. In general.

- (a) The Hot Springs Cemetery (hereinafter referred to as the "cemetery") must always be kept a place of beauty. To that end, certain rules and regulations are necessary for the protection of lot owners, including but not necessarily limited to, assurance that unsightly or objectionable objects are barred.
- (b) These rules and regulations are designed for the protection of owners of interment rights as a group. Their enforcement will protect the cemetery by creating and preserving its beauty.
- (c) The following rules and regulations of the cemetery, and amendments or alterations thereto, as may be adopted from time-to-time by the City Commission of Truth or Consequences (hereinafter referred to as the "Commission"), apply to all lots, owners of lots, visitors and those performing work within the cemetery.
- (d) The cemetery will be managed by the Hot Springs Cemetery Association in conjunction with a City staff member as designated by the City Manager.

(Ord. No. 554, 4-11-06)

Sec. 9-72. Sale and title of lots.

- (a) No transfer of title to lots will be recognized unless such sale and transfer will be duly entered upon the City records by the City Clerk and an administrative transfer fee, per lot, as set by the Commission, is paid to the City Clerk.
- (b) The Commission reserves the right to refuse any transfer, assignment, or conveyance of any lot, and any right or interest therein, as long as there is any indebtedness due upon the purchase price of said lot, or for any interment therein.
- (c) The sale or transfer of any lot by the owner must be recorded in the office of the City Clerk of Truth or Consequences, New Mexico.
- (d) The subdivision of lots or interment rights is not allowed without the written consent of the Commission and no one will be buried in any lot not having an interest therein, except by written consent of interested parties and the Commission.
- (e) Interments will not be allowed in any lot to which title remains undetermined.

(Ord. No. 554, 4-11-06)

Sec. 9-73. Use of lots.

- (a) Lots in the cemetery will be used for no other purpose than the burial of the human dead. Grave liners must be used on all graves.
- (b) No dogs, except service dogs, are permitted in the cemetery.
- (c) Food and beverages are strictly forbidden.
- (d) Ingress and egress to the cemetery is prohibited except by way of the public gates and during such hours as are specified from time-to-time by the City.
- (e) The City reserves the right to remove flowers and flower holders as soon as the flowers wither without liability for their safekeeping.
- (f) The cemetery grounds are sacredly devoted to the burial of the human dead and the provisions and penalties of the law, as provided by statute, will be strictly enforced in all cases of wanton injury, disturbance and disregard of these rules.
- (g) Firearms are forbidden on the cemetery grounds except for the use of law enforcement officers or Military Honor Guards. Military Honor Guards are permitted only during a Military service and must be conducted under the oversight of a City Law Enforcement Officer.
- (h) Decorations, flowers, and other objects that interfere with cemetery maintenance will be removed by cemetery personnel without liability for their safekeeping.
- (i) Trash containers are placed throughout the cemetery for use by the public and are to be so used.

- (j) Funeral floral pieces and designs will be removed from burial spaces as soon as they wither or become unsightly in the cemetery Manager's sole judgment, without liability for their safekeeping.
- (k) Small United States flags may be displayed on burial spaces on those days and occasions when it is customary to do so. However, at the expiration of three days, cemetery employees may remove such flags. All flags of the United States will be collected by the cemetery Manager and given to the local VFW Post for proper disposal.
- (l) The Commission expressly reserves the right to perform all landscaping and planting of any nature whatsoever. Cutting or trimming by lot owners is forbidden.

(Ord. No. 554, 4-11-06)

Sec. 9-74. Opening and closing of burial spaces.

- (a) Applications for the opening and closing of all spaces and for disinterment must be presented at the Office of the City Clerk of the City of Truth or Consequences, New Mexico, during normal business hours, on, or before the day prior to the day on which the space is to be used.
- (b) The opening and closing of all spaces will be done only by cemetery personnel.

(Ord. No. 554, 4-11-06)

Sec. 9-75. Interments.

- (a) No interment will be permitted, nor marker placed, upon any lot not fully paid for, except by special consent of the Commission in writing. The granting of any such consent will not thereafter be construed as a waiver of this provision. In the event such consent is given, any and all interments placed in, or markers placed on, said lot will be considered temporary, and no rights will be acquired by the lot owner to said interment or marker until such property is fully paid.
- (b) In order to avoid confusion and misunderstandings regarding the location and size of lots and the specific space to be used therein, no interment will be permitted unless a member of the family signs an interment order that selects the lot and space to be used for the interment. The content of such interment order will be as follows:

INTERMENT ORDER

I, (Typed or Printed Name), being the owner, or an immediate member of the family of the owner, hereby authorize the City to inter the remains of (Typed or Printed Name of Deceased), in Space _____
 , Lot _____
 , Section _____
 , of the HOT SPRING CEMETERY.

/s/

(Signature)

Filed in the Office of the City Clerk of Truth or Consequences, New Mexico, this

day of _____

/ _____

/ _____

, 20 _____

.

/s/

(Signature of City Employee)

/s/

(Printed or Typed Name and
Title of City Employee)

(Ord. No. 554, 4-11-06)

Sec. 9-76. Disinterments.

A permit for disinterment will be required prior to disinterment of a dead body or fetus except as authorized by regulation or otherwise provided by law. The permit will be issued by the State Registrar or State Medical Investigator to a licensed funeral service practitioner or direct disposer.

(Ord. No. 554, 4-11-06)

Sec. 9-77. Fees and charges.

All fees and charges will be approved by separate resolution from time-to-time by the Commission. These fees and charges include, but are not necessarily limited to, marker installations, lots, and openings and closings.

(Ord. No. 554, 4-11-06)

Sec. 9-78. City liability.

- (a) The City of Truth or Consequences, New Mexico (hereinafter referred to as the "City") will not be liable for any act of lot owners, visitors, licensees or trespassers within the cemetery or for any damage to persons or property within the cemetery.
- (b) The City will not be liable for any damage caused by the elements, an act of

God, common enemy, thieves, vandals, strikers, malicious mischief makers, explosions, unavoidable accidents, invasion, insurrections, riots or order of any military or civil authority, whether the damage be direct or collateral, other than as herein provided.

- (c) The right to enlarge, reduce, replat or change the boundaries or grading of the cemetery, or of a section or sections thereof, from time-to-time, including, but not necessarily limited to, the right to modify or change the location of any part thereof, or to remove, re-grade roads, drives and walks, is hereby expressly reserved to the City.
- (d) The Commission, after a thorough investigation, reserves, and will have, the right to correct any errors that may be made either in making interments, disinterments or removals.
- (e) The City will not be responsible for theft or damage to items or objects placed on burial spaces or lots.

(Ord. No. 554, 4-11-06)

Sec. 9-79. Rules and regulations.

- (a) The Commission expressly reserves the right, at any time, or times, without, or without notice to Lot Owners, to adopt new rules and regulations, or to amend, alter and/or repeal any rule, regulation and/or article, section, paragraph and/or sentence in these rules and regulations.
- (b) These rules and regulations are subject to any provisions of applicable laws of the State of New Mexico.

(Ord. No. 554, 4-11-06)

Chapter 10 POLICE DEPARTMENT [1](43)

Sec. 10-1. Created.

Sec. 10-2. Duties.

Sec. 10-3. Witness fee.

Sec. 10-4. Rules and regulations.

Sec. 10-5. Matron.

Sec. 10-1. Created.

There is hereby created a Police Department which shall consist of the Chief of Police and such other personnel as may be provided by the City Commission.

(Code 1962, § 3-1-1)

Sec. 10-2. Duties.

It shall be the duty of the members of the Police Department to see to the enforcement of all of the laws of the City, all statutes applicable therein, to preserve order, prevent infractions of the law, and arrest violators thereof.

(Code 1962, § 3-1-2)

Sec. 10-3. Witness fee.

Every member of the Police Department shall appear as a witness whenever necessary in a prosecution for a violation of any law or of any state or federal law. No such member shall retain any witness fee for service as witness in any action or suit to which the City is a party. Any fee paid for such services shall be turned over to the Chief of Police, who shall deposit the same with the Treasurer.

(Code 1962, § 3-1-3)

Sec. 10-4. Rules and regulations.

The Chief of the Police Department may make or prescribe such rules and regulations as he shall deem advisable. Such rules, when approved by the Governing Body, shall be binding on such members. Such rules and regulations may cover, besides the conduct of the members, uniforms and equipment to be worn or carried, hours of service, vacations, and all other similar matters necessary or desirable for the better efficiency of the Department.

(Code 1962, § 3-1-4)

Sec. 10-5. Matron.

The Governing Body may appoint a Police Matron, who shall perform such duties as may be assigned to her by the Chief of Police.

(Code 1962, § 3-1-5)

Chapter 11 SOLID WASTE MANAGEMENT [1](44)

ARTICLE I. IN GENERAL

Sec. 11-1. Definitions.

Sec. 11-2. Police power exercised.

Sec. 11-3. City to haul refuse.

Sec. 11-4. Permit—Required.

Sec. 11-5. Same—Revocation.

Sec. 11-6. Containers—Requirements.

Sec. 11-7. Same—City handling; scavengers prohibited; penalty.

Sec. 11-8. Governing Body to make rules and regulations.

- Sec. 11-9. Accumulation of refuse prohibited.
- Sec. 11-10. Collection fees.
- Sec. 11-11. Payment; when due.
- Sec. 11-12. Delinquency; lien, generally; business establishments.
- Sec. 11-13. Charge for release of lien.
- Sec. 11-14. Residential/commercial poly-carts and dumpsters.
- Sec. 11-14.1. [Fees.]
- Sec. 11-14.2. Exempt service collection.
- Sec. 11-15. Reserved.
- Sec. 11-16. Disposal fees for residential/commercial haulers and for the roll-off from the Sierra County Convenience Center.
- Secs. 11-17—11-35. Reserved.

Sec. 11-1. 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:

City means and includes the City, its duly authorized agents, contractors, servants, employees, or licensees.

Refuse means any garbage, rejected or waste food, offal, swill, carrion, ashes, dirt, slop, wastepaper, trash, rubbish, waste, or unwholesome material excepting, however, recognizable industrial byproducts.

(Code 1962, § 8-3-1)

Sec. 11-2. Police power exercised.

This chapter shall be deemed an exercise of the police power of the City acting in its governmental capacity for the protection and preservation of health, welfare, safety, and cleanliness; and all of its provisions shall be liberally construed for the accomplishment of that purpose. All persons having City water or electric connection shall also be liable for garbage collection fees, if garbage collection is available.

(Code 1962, § 8-3-2)

Sec. 11-3. City to haul refuse.

The City shall have the exclusive right to gather and collect refuse, and it shall be unlawful for any person, except as otherwise provided in this chapter, to collect or gather refuse.

(Code 1962, § 8-3-3)

Sec. 11-4. Permit—Required.

It shall be unlawful for any person other than the City to collect or convey through, over, or under any street or alley any refuse, for persons other than themselves, without first securing a permit from the City. The City Commission shall set the permit fee by Resolution.

(Code 1962, § 8-3-4; Ord. No. 593, § 1, 10-14-08)

Sec. 11-5. Same—Revocation.

Any person hauling refuse under a permit issued by the City shall dispose of such refuse in a safe and sanitary manner and shall obey the ordinances of the City and the laws of the State of New Mexico as well as the rules and regulations of the Governing Body of the City with regard to the storage and disposal of refuse. Failure to obey the noted ordinances, laws, or rules and regulations shall be grounds for revocation of the permit issued by the City.

(Code 1962, § 8-3-5)

Sec. 11-6. Containers—Requirements.

- (a) It shall be unlawful for any owner or occupant of any public or private premises to permit the accumulation upon such premises of any refuse except in covered containers approved by the City. Such containers shall be constructed of metal in such a manner as to be strong, not easily corrodible, rodentproof, with two handles, a capacity of not more than 30 gallons, and with tight covers. These containers shall be maintained in a sanitary condition at all times and shall be kept on a rack or in some location which will prevent the containers from being overturned by animals. City-furnished containers must be used where available and as designated by the City.
- (b) At those locations where the City furnishes a container, the City-owned containers shall be the only ones used. No rocks, bricks, metal, except food and beverage containers, or other items of like consistency shall be deposited in the City-owned containers. A cleaning fee may be imposed if loose wet refuse is deposited in a City-owned container.

(Code 1962, § 8-3-6)

Sec. 11-7. Same—City handling; scavengers prohibited; penalty.

- (a) It shall be unlawful for any person other than the City to interfere in any manner with any receptacle intended for the purpose of receiving and holding refuse, to remove any such receptacle, or to remove anything from any such receptacle unless such item was deposited there accidentally by the person removing the item. Scavenger activities are prohibited, and in addition, it shall be unlawful for any person to climb into, disturb, or enter any such containers furnished by the City, except insofar as necessary to deposit refuse therein.
- (b) Any person who violates any of the provisions of this section shall be deemed

guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine as follows:

- (1) First offense . . . \$25.00
- (2) Second offense . . . 100.00
- (3) Third and subsequent offenses . . . 200.00

Scavenger activities, including poking and hunting through refuse previously deposited in City-owned containers, shall be considered a separate offense for each such container so disturbed.

- (c) In addition to the foregoing misdemeanor fines, the City may collect a civil penalty for cleaning each garbage container disturbed by scavengers.

(Code 1962, § 8-3-7)

Sec. 11-8. Governing Body to make rules and regulations.

The Governing Body of the City shall have the power to make rules and regulations for the storage and disposal of refuse to effectuate and facilitate the provisions of this chapter.

(Code 1962, § 8-3-8)

Sec. 11-9. Accumulation of refuse prohibited.

It shall be unlawful for any person to deposit, collect, or accumulate or permit the deposit, collection, or accumulation of any refuse within the City.

(Code 1962, § 8-3-9)

Sec. 11-10. Collection fees.

The monthly fees shall be as follows:

- (1) *Residences:* \$22.37
- (2) *Commercial establishments:*

a.	<p><i>Class I.</i> Lodges (fraternal) without bars, churches, beauty shops, barber shops, T.V. shops, rock shops, jewelry stores, accounting, legal, medical, real estate, insurance, dental offices and miscellaneous small shops. Motels, hotels, and apartments with fewer than ten units and RV Parks with fewer than ten spaces.</p>	\$44.85
b.	<p><i>Class II.</i> Lodges (fraternal) without bars, package stores</p>	\$71.47

	without bars, service stations, garages, small grocery stores, body shops, small cafes, laundries, florists and small merchandising businesses. Motels, hotels, and apartments with ten to 20 units and RV Parks with ten to 20 spaces.	
c.	<i>Class III.</i> Bars and package stores in conjunction with bars, medium sized store buildings, medium sized restaurants and cafes and governmental offices. Motels, hotels, and apartments with 21 to 30 units and RV Parks with 21 to 30 spaces.	\$104.69
d.	<i>Class IV.</i> Department stores, drug stores and banks. Motels, hotels, and apartments with 31 to 40 units and RV Parks with 31 to 40 spaces.	\$140.20
e.	<i>Class V.</i> Large restaurants, large grocery stores, hospitals, trailer parks. Motels, hotels, and apartments with more than 40 units and RV Parks with more than 40 spaces.	\$403.70

(3) *Reserved.*

(4) *Reserved.*

(Code 1962, § 8-3-11; Ord. No. 405, 2-8-93; Ord. No. 411, 1-10-94; Ord. No. 454, § 1, 3-23-98; Ord. No. 477, § 1, 7-24-00; Ord. No. 495, § 1, 7-9-01; Ord. No. 503, § 1, 11-26-01; Ord. No. 510, § 1, 3-11-02; Ord. No. 519, § 1, 6-10-02; Ord. No. 522, § 1, 11-12-02; Ord. No. 544, 7-25-05; Ord. No. 547, 10-24-05; Ord. No. 630, § 1, 11-13-12; Ord. No. 647, § 1, 11-12-13)

Editor's note—

Ord. No. 630, § 1, adopted Nov. 13, 2012, changed the title of § 11-10 from "Collection fees generally" to "Collection fees."

Sec. 11-11. Payment; when due.

All collection fees shall be payable at the utility offices of the City of Truth or

Consequences on a monthly basis. All fees assessed for collection shall become delinquent 90 days after the due date. The City Clerk shall, at the end of each quarter of the year, prepare an assessment roll in accordance with state law.

(Code 1962, § 8-3-12)

Sec. 11-12. Delinquency; lien, generally; business establishments.

- (a) On or before October 1 of each year, the Municipal Clerk shall certify to the Governing Body a list containing any delinquent assessments with a penalty added for nonpayment of the assessment at the rate of one percent per month of any assessment confirmed by resolution and describe the parcel of real estate to which the assessment is applicable. After the certified list is accepted by the Governing Body, the assessment shall be a lien, when processed, against the parcel of real estate and shall be processed as provided in state law. Any such lien shall be a lien superior to all other liens except general property taxes upon the property so charged and a personal liability of the owner of the property so charged. The notice of lien shall comply with the requirements of the New Mexico Municipal Code and shall bear interest at the rate of eight percent per annum from the date of assessment. The lien may be foreclosed as provided by law.
- (b) A penalty of one percent per month shall be charged in all cases where payment is not made when delinquent.
- (c) For purposes of this section, "business establishment" shall mean each location at which business is conducted by an individual, associate, or corporate entity and each business at a common location which is separately conducted from other business at such common location.

(Code 1962, § 8-3-13)

Sec. 11-13. Charge for release of lien.

There shall be collected by the City Clerk the sum of \$5.00 for the release of any lien for delinquent garbage fees in addition to the delinquent garbage fees plus penalty and interest. This charge shall be collected, whether release is sought prior to or after the commencement of foreclosure proceedings, to enforce the lien for delinquent garbage assessments.

(Code 1962, § 8-3-14)

Sec. 11-14. Residential/commercial poly-carts and dumpsters.

Garbage and refuse containers (poly-carts/dumpsters) shall be provided by the City to applicable account holders and shall be made of metal or plastic with tight-fitting covers.

Residential customers: The City shall provide one minimum 95-gallon cart to each applicable account holder in the order determined by the City Solid Waste Department except in circumstances determined by the Solid Waste Department that a residence will be better serviced with a dumpster. Additional poly-carts may be provided at the current adopted rate per month (maximum two carts per customer account.)

Commercial containers: The City shall provide either one minimum 95-gallon cart or size appropriate dumpster(s) as determined by the City solid Waste Department. Additional poly-carts may be provided at the current adopted rate per month (maximum two carts per customer account.)

The account holder shall be charged at the current adopted rate per month for one pick up a week. The solid waste shall not exceed the receptacle capacity, and the containers lid must be securely closed when not in use.

(Ord. No. 636, § 1, 4-9-13; Ord. No. 648, 11-12-13)

Editor's note—

Ord. No. 648, adopted Nov. 12, 2013, changed the title of § 11-14 from "Solid waste collection center fees" to "Residential/commercial poly-carts and dumpsters."

Sec. 11-14.1. [Fees.]

(a) *Collection fees.*

Number of Pick-ups per Week	Residential Poly-cart (1)	Residential Additional Poly-cart	Residential Dumpster	Basic Commercial Poly-cart (1)	Basic Commercial Additional Poly-cart	Commercial Dumpster (Small)	Commercial Dumpster (Medium)	Commercial Dumpster (Large)
1	\$22.37	\$11.18	\$44.85	\$32.37	\$16.18			
2	N/A	N/A	N/A	N/A	N/A			
3	N/A	N/A	N/A	N/A	N/A			
4	N/A	N/A	N/A	N/A	N/A			
5	N/A	N/A	N/A	N/A	N/A			
6	N/A	N/A	N/A	N/A	N/A			

N/A = Not applicable/not available

Replacement poly-cart	\$60.00
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Each July of every year hereafter the fees shall be adjusted automatically to reflect a five-percent increase.

(b) *Pre-collection practices.*

- (1) All residential and commercial users shall comply with the rules and regulations established by the City for the use, care and location of solid waste containers and shall keep the lids and covers furnished for such containers closed at all times except when they are being filled, emptied or cleaned. All garbage and refuse containers provided by the City shall be kept in neat and sanitary condition at all times. Containers shall be

only loaded in such a manner as they will self-empty when inverted.

- (2) No person shall remove for their own use, someone else's receptacle. To do so, shall result in fines and penalties and could be prosecuted to the fullest extent of the law. It is unlawful for any person to deposit, or cause to be deposited, any refuse in any container that he/she does not own or is not entitled to use as a tenant (article II, utility department, section 14-31, taking service-without authority).
 - (3) The owner, occupant, tenant, or lessee of each premises shall store the containers (poly-cart) on their property for the purpose of and in such a manner to keep the containers from being overturned or upset and the contents scattered. This will also keep the sidewalks and sides of the streets clear. Poly-carts are to be placed at the designated pick up area on assigned pick up day only. It is the responsibility of the account holder to notify the utility department when vacating premises so that assigned poly-cart will be removed by the Sanitation Department. Failure to do so could result in a replacement charge to the account holder.
 - (4) It is unlawful to maliciously damage any refuse container owned by the City. Any person that damages any container provided for the residential or commercial users shall be liable to the City for the cost of repair or replacement of such container at the current market rate including freight for such container. It is prohibited for any person, including children, to be on or in sanitation containers. All account holders shall be responsible for lost, stolen or burnt poly-carts. Replacement poly-carts are available at the current adopted rate. The City shall be entitled to seek restitution for all maintenance repairs or loss occasioned by the negligent or intentional acts of third parties from such responsible third parties. Replacement poly-carts will require a security deposit amount of which to be determined by current replacement rate (article II, utility department, section 14-37, security deposits, payment guarantees).
- (c) *Collection day.* On the day curbside collection is scheduled for any premises, or not earlier than 6:00 p.m. of the night before collection is scheduled, poly-cart may be placed at curb unless otherwise specified by the City Solid Waste Department. The poly-cart may be placed at the edge of the resident's property, next to the street and front of poly-cart facing the street. There must be a minimum of five feet of clearance from parked vehicles, street signs, lampposts, trees, mailboxes and other obstructions. Poly-carts must be set apart a minimum of 16 inches. The receptacles, when placed at curbside, shall not interfere with pedestrian or vehicular traffic. Collection will begin at 6:30 a.m. Monday through Friday in an order determined by the City Solid Waste Department. It shall be the responsibility of the resident to deliver the receptacles to such point for collection and return the empty receptacles from such points to the usual place of storage, within 24 hours of collecting. No items, bagged, bundled or otherwise may be placed for pick up outside of the poly-cart. All collections made by the city for other than qualified physically disabled residents, (see exempt service collection), shall be made at curbside from the streets, except where special circumstances warrant otherwise and are approved by the City Solid Waste Department. See special services and fees subsections (d) and (e).

- (d) *Special services.* Upon request and for a fee (refer to subsection (e)) A special pickup will be provided for items that cannot be placed in poly-cart or dumpsters such as trash overflow, discarded furniture, appliances, yard waste, trees, tree and shrubbery trimmings, etc. Customers must call the office and make an appointment for the removal of such items. On the agreed appointment date and time customers will have items placed at the location specified by the Solid Waste Department and deemed acceptable and safely accessible for the city to remove such items. All costs and fees associated with this special service are payable at the time of removal and may not be applied to customers monthly bill.
- (e) *Special service fees.* (All fees subject to current GRT). Customer will be charged a fee of \$50.00 (fee includes one employee, trash truck or standard truck, fuel charges, and maximum one hour of labor) for any special services described above in subsection (d) (minimum one-hour charge).

All loads picked up will be subject to disposal fee at the current adopted rate (See section 11-14).

Loads requiring special or extra equipment, more than one employee and for services requiring more than one hour (see below):

Solid Waste Equipment	Cost/Hour
Cost per employee	\$ 25.00
Backhoe	35.00
Dump truck	35.00
Forklift	35.00
Flatbed	35.00
Skat trak	45.00
Rear load trash truck	45.00
Other equipment	40.00

Each July of every year hereafter the fees shall be adjusted automatically to reflect a five (5) percent increase.

(Ord. No. 648, 11-12-13)

Sec. 11-14.2. Exempt service collection.

Exempt service collection means the resident is physically unable and does not have anyone else at the residence to roll the poly-cart(s) to the curb or designated location for collection.

To qualify for Exempt Service Collection the resident must:

- Have a physical disability preventing you from rolling the carts to the curb or specified collection point.
- Submit the completed application to the Solid Waste Department (see application for submission options).
- Not have any other occupant or long-term guest residing in the home with the ability to roll

the cart to the curb or specified collection point.

- Have your physician complete the physician's section of the application and return to the Solid Waste Department.

Within one week of receiving the request for Exempt Service Collection, a representative from the Solid Waste Department will contact you by phone and schedule an appointment to meet at your residence for completion of the Exempt Collection Service Application. At that meeting he/she will confirm the members of your household and accept or deny your application. Upon acceptance of your application he/she will advise you of the proper location for your poly-cart(s).

Your cart's location must be:

- In front of or beside your residence.
- Less than 100 feet from the street.
- Visible from the street.
- Out of danger of any dogs.

Applications must be renewed by July 1 of each year.

Exempt Service Collection shall not be provided for persons who have not complied with the above requirements of this section.

Customers receiving Exempt Service Collection are subject to all fees as stated in collection fees, [subsection (a) and special services and fees subsections (d) and (e) as warranted.

(Ord. No. 648, 11-12-13)

Sec. 11-15. Reserved.

Sec. 11-16. Disposal fees for residential/commercial haulers and for the roll-off from the Sierra County Convenience Center.

(a) Definitions.

Construction and demolition (C&D) debris means materials generally considered to be not water soluble and nonhazardous in nature, including, but not limited to, steel, glass, brick, concrete, asphalt roofing materials, pipe, gypsum wallboard and lumber from the construction or destruction of a structure or project, and includes rocks, soil, tree remains, trees and other vegetative matter that normally result from land clearing. If construction and demolition debris is mixed with any other types of solid waste, it loses its classification as construction and demolition debris. Construction and demolition debris does not include asbestos or liquids, including, but not limited to, waste paints, solvents, sealers, adhesives or potentially hazardous materials.

Ferrous metal means any iron or steel scrap that has an iron content sufficient for magnetic separation.

Municipal solid waste (MSWV) refers to all solid waste generated by residential, commercial and institutional sources, and all solid waste generated at treatment works for water

and waste water, which are collected and transported under the authorization of a jurisdiction, or are self-hauled. Municipal solid waste does not include construction and demolition (C&D) waste, agricultural crop residues, animal manures, mining waste and fuel extraction waste, forestry waste, and ash from industrial boilers, furnaces and incinerators.

Nonferrous metals means any scrap metals that have value and are derived from metals other than iron and its alloys in steel. Nonferrous metals include aluminum, copper, brass, bronze, lead, zinc, and other metals. A magnet will not adhere to nonferrous metals.

Operational costs means those costs incurred while maintaining the ongoing operation of a program or facility, and do not include capital costs.

Waste diversion means to divert solid waste, in accordance with all applicable federal, state and local requirements, from disposal at solid waste landfills for recycling, reuse, composting, or beneficial use.

White goods means discarded, enamel-coated major appliances, such as washing machines, clothes dryers, hot water heaters, stoves and refrigerators.

Yard waste means any wastes generated from the maintenance or alteration of public, commercial or residential landscapes including, but not limited to, grass and yard clippings, leaves, tree trimmings, pruning, brush, and weeds.

- (b) On or about April 13, 2010, the City Commission of the City of Truth or Consequences approved and adopted Resolution No. 25-09/10 which imposed disposal fees for residential/commercial haulers and for the roll-off from the Sierra County Convenience Center. The City Commission has determined that Resolution No. 25-09/10 has been effective. The City Commission hereby codified the provisions of the said Resolution into this section as described below.
- (c) A disposal fee of \$3.00 per cubic yard plus gross receipts tax will be charged. Any unloading on off days will require approval prior to unloading and an additional \$25.00 plus tax shall be added to each load.
- (d) All haulers will be billed on a monthly basis. All collection fees shall be payable to the City of Truth or Consequences Utility Office. Any delinquent payments after 30 days will result in late fee charges and may result in that particular hauler being prohibited from using the landfill.
- (e) Unloading of commercial trucks will not be allowed until the loads are inspected by the landfill operator or assistant, and all load slips must be signed and completely filled. The City's landfill operator reserves the right to refuse any load that does not comply with state or federal regulations. All rates may be adjusted for fuel or operational cost.

Commercial rate fees of \$57.63 plus gross tax receipt will be added to any commercial or contractor if loads are mixed. Residents shall pay the \$2.00 per percent of mixed waste per cubic yard.

- (f) Commercial/residential haulers must submit a request to the City of Truth or Consequences Utility Office before using the City landfill. No hauler will be allowed to dispose of waste without written consent from the utility office.

(g) Tire disposal fees will be as follows:

ATV, motorcycle, bicycles, wheel barrels, est. . . . \$1.00 each

Regular car tires and regular truck tire . . . 2.00 each

Large irregular truck tires . . . 3.00 each

Semi-truck, dump truck, trash truck or bus tires . . . 10.00 each

Farm equipment tires or small tractor tires . . . 10.00 each

Construction earth moving equipment (consists of) . . . 25.00 each

- Backhoe consists of two-wheel drive or four-wheel drive
- Grader
- Scrapers
- Bobcat or skid steer loaders
- Large construction forklifts

Sanitation Director may refuse or permit any company, business or residents from delivering tire.

(Ord. No. 631, § 1, 11-27-12)

Secs. 11-17—11-35. Reserved.

ARTICLE II. RESERVED [2](45)

Secs. 11-36—11-54. Reserved.

Secs. 11-36—11-54. Reserved.

Chapter 12 STREETS AND SIDEWALKS [1](46)

ARTICLE I. IN GENERAL

Secs. 12-1—12-25. Reserved.

Secs. 12-1—12-25. Reserved.

ARTICLE II. STREET GRADES

Sec. 12-26. Establishment; preservation of plats.

Sec. 12-27. Permanent.

Sec. 12-28. Changes.

Sec. 12-29. Application for change.

Sec. 12-30. Records; map.

Sec. 12-31. Alteration of map.

Secs. 12-32—12-50. Reserved.

Sec. 12-26. Establishment; preservation of plats.

It shall be the duty of such person as shall be designated by the Governing Body to be in charge of streets to survey, lay out and establish the grade of streets and sidewalks, to perform all other duties in connection therewith, and to do or have done all the necessary engineering therefor. He shall have filed in the records of the Clerk, properly indexed, all plats of property furnished by parties who make subdivisions of such property for the purpose of sale or otherwise.

(Code 1962, § 9-1-1)

Sec. 12-27. Permanent.

When, in the construction of sidewalks, sewers, or improvements of any street or alley in the City, it shall become necessary to fix and establish a permanent grade, all the surveys, plans, profiles, grades and other work necessary to perfect the permanent grade shall be done and furnished to such person as may be designated by the Governing Body to supervise the streets of the City, who shall fix and establish such grade and have the Clerk enter on the profile showing such grade, the day and date of its adoption by the Governing Body, and such profile shall then be filed in the office of the Clerk.

(Code 1962, § 9-1-2)

Sec. 12-28. Changes.

After a permanent grade has been established by the Governing Body, the work on any street improvement shall be done in conformity therewith. No change shall be made in any street or alley, unless the same shall first be fixed and established by the Governing Body.

(Code 1962, § 9-1-3)

Sec. 12-29. Application for change.

No petition, ordinance, or resolution looking toward a change of grade in any street shall be received by the Governing Body unless such petition, etc., is accompanied by written waivers of damages on account of such change by the abutting property owners; provided, however, that if any such petition, resolution, or ordinance shall be accompanied by a statement of the person in charge of the streets of the City that canvass has been made for such waivers and all have been secured that are possible and that, in the opinion of such person designated to handle the streets, the petition, resolution, or ordinance should be considered, then, and in that event, the Governing Body may take action thereon.

(Code 1962, § 9-1-4)

Sec. 12-30. Records; map.

There shall be kept in the office of the Clerk a map on which shall be entered all data necessary to inform the public as to the proper grade of streets, and the grades as given in detail upon the profile or map in the office of the Clerk, so far as the grades may be or may hereafter be approved by the Governing Body, are hereby declared to be the established grades of the streets or parts of streets therein shown. The grades of the streets as are now or may hereafter be established or designated as the grades of the streets of the City are incorporated in this section by reference and adopted as the official record of the grade of the streets in the City.

(Code 1962, § 9-1-5)

Sec. 12-31. Alteration of map.

It shall be the duty of such person as shall be designated by the Governing Body to supervise streets to make such alterations upon the official profiles of all the several streets that may from time to time become necessary to indicate any changes that may have been ordered by the Governing Body, or may hereafter be ordered in the established grade of any street or any part of any street. The Clerk shall notify such other person of all official profiles approved or changed by the Governing Body.

(Code 1962, § 9-1-6)

Secs. 12-32—12-50. Reserved.

ARTICLE III. USE OF STREETS

Sec. 12-51. Authority of City.

Sec. 12-52. Definitions.

Sec. 12-53. Joint construction.

Sec. 12-54. Conformance to standards.

Sec. 12-55. Interference with street lighting.

Sec. 12-56. City to be given preference.

Sec. 12-57. Approval by City.

Sec. 12-58. Removal may be required.

Sec. 12-59. Disturbance or excavation.

Sec. 12-60. Permit required.

Sec. 12-61. Transporting equipment.

Sec. 12-62. Vehicular restricted access to residential streets.

Sec. 12-63. Regulationg the parking of vehicles on City streets, alleys and easements and providing penalties for violations.

Secs. 12-64—12-80. Reserved.

Sec. 12-51. Authority of City.

The City is hereby given authority to regulate the use of its streets and alleys by any and all utility companies.

(Code 1962, § 9-2-1)

Sec. 12-52. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Utility companies means any person or firm, howsoever named or organized, engaged in the telephone, telegraph, electrical, water, gas, or sewer business and using streets, alleys, roads, or public ways within the corporate limits for the transmission and distribution of its product.

(Code 1962, § 9-2-2)

Definitions and rules of construction generally, § 1-2.

Sec. 12-53. Joint construction.

When more than one utility company engaged in a similar business is using or proposes to use the same side of any street or alley in the City, joint construction shall be used by such companies.

(Code 1962, § 9-2-5)

Sec. 12-54. Conformance to standards.

All construction by utility companies shall follow the standards prescribed and recognized by their respective industries, and for those companies engaged in the electrical or telephone business, all clearance shall conform to the National Electric Safety Code. Electrical companies in addition thereto shall follow the standards prescribed by the American Institute of Electrical Engineers, and as to electric cooperatives they shall follow the standards prescribed by the Rural Electrification Authority.

(Code 1962, § 9-2-6)

Sec. 12-55. Interference with street lighting.

All construction by utility companies at street and alley corners shall be so placed as not to interfere with any present or contemplated street lighting installations by the City.

(Code 1962, § 9-2-7)

Sec. 12-56. City to be given preference.

All construction made by the City in the operation of its utilities shall be given preference as to the location of any and all of its lines.

(Code 1962, § 9-2-8)

Sec. 12-57. Approval by City.

When more than one utility company engaged in the same line of business proposes to use the streets and alleys of the City, all proposed routes shall be first approved by the Governing Body before construction work is commenced.

(Code 1962, § 9-2-9)

Sec. 12-58. Removal may be required.

The City shall have the authority to compel the removal or change the location of construction of any utility company which does not conform to the regulations set forth in this article. A reasonable time shall be allowed for any such removal or change.

(Code 1962, § 9-2-10)

Sec. 12-59. Disturbance or excavation.

- (a) *Disturbance or excavation; failure to restore.* In the event of any disturbance or excavation of any pavement, sidewalk, driveway, or other surfacing of the streets and rights-of-way of the City by any utility company, such company, at its own cost and expense and at the time and in the manner prescribed by the Governing Body of the City or its duly designated representative, shall replace and restore all such pavement, sidewalk, driveway, or other surface to as good a condition as before commencement of the work or activity by the company disturbing such surface. It shall be unlawful for any utility company which has disturbed the streets or sidewalks to fail to restore such streets and sidewalks to as good a condition as before commencement of the work.
- (b) *Inspection; notice of rejection.* The replacement and restoration of the streets and rights-of-way shall be inspected by the Building Inspector or the City Manager, who shall have the power to either accept or reject such streets and rights-of-way. If such replacement or restoration is rejected, the City Manager shall notify the utility company in writing of such rejection, and the company shall have a period of 15 days from the date of mailing the notice to correct such rejected restoration.
- (c) *Remedy.* If the utility company served with the notice of rejection does not replace or restore the street or right-of-way within 15 days, the City may proceed to replace and restore the street, keeping account of the expense of such restoration. Such expense shall be charged to and paid by the utility company responsible for the original disturbance.

- (d) *Violation; penalty; cancellation of franchise.* In addition to the foregoing, each day such replacement or restoration is not accomplished after the 15 days' notice shall be a separate violation of this section and shall be punishable in accordance with section 1-10. Failure to comply with the replacement and restoration required by this article, to pay the charges and expenses of replacement and restoration by the City, or to pay the fines imposed shall be grounds for cancellation or nonrenewal of any license or franchise granted any utility company by the City.

(Code 1962, § 9-2-11)

Sec. 12-60. Permit required.

No trucks, tractors, shovels, cranes, draglines, bulldozers, loaders, or any earth-moving equipment, or other equipment, other than that owned by the State Highway Department, shall do any work, or be used upon any street or alley within the limits of the City, or upon any land owned by the City, without first obtaining a permit from the Clerk so to do.

(Code 1962, § 9-5-1)

Sec. 12-61. Transporting equipment.

No trucks, tractors, shovels, cranes, draglines, bulldozers, loaders, or earth-moving or other equipment with caterpillar tread or with lugs on wheels shall use or cross any paved street or alley within the limits of the City without first having provided and placed in position planks or other approved devices upon which the wheels or tread of such equipment shall be run, so that the paved street or alley shall not be damaged therefrom.

(Code 1962, § 9-5-2)

Sec. 12-62. Vehicular restricted access to residential streets.

- (a) Access to residential streets is prohibited for vehicles with a gross weight over 15,000 pounds, except for loading or unloading cargo.
- (b) Any vehicle weighing over 20,000 pounds may not be parked on any City residential street or right-of-way and such vehicles are not allowed to be idle, or in operation, in excess of one hour at any given location.

(Ord. No. 548, 12-27-05)

Sec. 12-63. Regulationg the parking of vehicles on City streets, alleys and easements and providing penalties for violations.

- (a) Any vehicle, camper, motor home, boat, vacation trailer or utility trailer must have valid registration to be parked on a City street, alley or easement.
- (b) Any vehicle, camper, motor home, boat, vacation trailer or utility trailer found parked on a City street, alley or easement without a valid registration will have a notice posted thereon. The owner(s) will have 72 hours from the date of such posting to remove the vehicle. If the vehicle is not removed, it will be towed at the

owner's expense.

(Ord. No. 549, 12-12-05)

Secs. 12-64—12-80. Reserved.

ARTICLE IV. OBSTRUCTIONS TO STREETS

Sec. 12-81. Buildings; fences.

Sec. 12-82. Construction of improvements; permit.

Sec. 12-83. Red lights; barricades required.

Secs. 12-84—12-105. Reserved.

Sec. 12-81. Buildings; fences.

It shall be unlawful for any house, building, fence, or any other structure to be or remain upon any street or alley of the City.

(Code 1962, § 9-3-1)

Sec. 12-82. Construction of improvements; permit.

No person shall place any stone, timber, brick, or any other material upon any street in the City except for the purpose of making improvements or repairs upon any lot, and then only on first having obtained permission from the Manager. The permission may be given for any period not exceeding 90 days and, upon good cause shown, may be extended by the officer. But no such material shall be allowed to occupy or obstruct more than one-half of a street. Immediately upon completion of the improvements or repairs or at the expiration of the time of the permit, if prior to completion, the material or rubbish arising therefrom shall be removed by the person obtaining the permission aforesaid.

(Code 1962, § 9-3-2)

Sec. 12-83. Red lights; barricades required.

Red lights shall be placed and maintained during the hours of darkness at both ends of any and all obstructions upon the streets within the City limits by the person in charge of the obstructions or by the owner of the materials constituting obstructions. Red lights shall also be placed along the obstructions at intervals of 25 feet.

(Code 1962, § 9-3-3)

Secs. 12-84—12-105. Reserved.

ARTICLE V. SIDEWALKS

Sec. 12-106. Specifications.

Sec. 12-107. Property owner must construct sidewalks.

Sec. 12-108. Failure to comply.

Secs. 12-109—12-130. Reserved.

Sec. 12-106. Specifications.

The materials and methods of constructing sidewalks shall conform in all respects to the specifications provided by the Engineer. These specifications shall be on file at all times in the office of the Clerk.

(Code 1962, § 9-4-1)

Sec. 12-107. Property owner must construct sidewalks.

It shall be the duty of every property owner, upon notification by the Governing Body, to construct or repair sidewalks and driveways as such are prescribed in such notice.

(Code 1962, § 9-4-2)

Sec. 12-108. Failure to comply.

If such property owner shall fail, after proper hearing and after notification, to construct or repair any sidewalk or driveway, the Governing Body may order them constructed or repaired. The costs of the work shall be assessed against the property owner for which the sidewalk or driveway was constructed or repaired, and the cost shall become a lien upon the property.

(Code 1962, § 9-4-3)

Secs. 12-109—12-130. Reserved.

ARTICLE VI. PRIVATE DRIVEWAYS AND CROSSWALKS

Sec. 12-131. Supervision.

Sec. 12-132. Permit; fee.

Sec. 12-133. Barricades.

Secs. 12-134—12-155. Reserved.

Sec. 12-131. Supervision.

The construction of concrete driveways and concrete crosswalks used for private purposes within the street lines of the City shall be under the supervision and direction of the Engineer, his authorized assistant, or duly appointed Inspector. Concrete mixture shall conform to standard specifications on file in the Clerk's office for concrete sidewalks and concrete crossings.

(Code 1962, § 9-6-1)

Sec. 12-132. Permit; fee.

- (a) All applications for permits for concrete driveways or concrete crosswalks must give a description of the property to be served, such other information as may be required by the City for the proper direction of the work, and must be signed by the owner or his duly authorized agent.
- (b) Before commencing the construction of, modification or repair of any concrete driveway or concrete crosswalk the contractor shall first obtain a written permit from the office of the Engineer and such permit shall be upon the grounds at all times during the progress of the work and must be shown to any officer in authority on demand.
- (c) For each and every permit a fee established by the Governing Body will be charged and collected by the City.

(Code 1962, § 9-6-2)

Sec. 12-133. Barricades.

Excavations in streets and avenues shall be made in such manner as to impede travel as little as possible, and the time that such excavation is open may be limited by the City. Efficient barricades shall be erected by the contractor around all trenches or embankments made by him within the limits of any street or avenue, and red lights shall be maintained thereon from dark to daylight until the street or avenue shall be restored to a safe and passable condition. At no time during the progress of the work shall sidewalks be unnecessarily blocked to travel.

(Code 1962, § 9-6-3)

Secs. 12-134—12-155. Reserved.

ARTICLE VII. PUBLIC WORKS SPECIFICATIONS [2](47)

Sec. 12-156. Authority.

Sec. 12-157. Copy of specifications to be on file.

Sec. 12-158. Effective date.

Sec. 12-159. Amendments.

Sec. 12-160. Compliance to article.

Secs. 12-161—12-180. Reserved.

Sec. 12-156. Authority.

Authority is hereby given the Commission to adopt specifications and requirements for

all paving, curb and gutter, and water and sewer lines installed on property owned by the City or dedicated to public use within the City.

(Code 1962, § 9-7-1)

Sec. 12-157. Copy of specifications to be on file.

A copy of such specifications and requirements for the City shall be on file with the Clerk and shall be available for inspection by any interested person.

(Code 1962, § 9-7-2)

Sec. 12-158. Effective date.

Such specifications and requirements shall be effective ten days after a notice that such specifications and requirements have been filed with the Clerk has been published in a newspaper of general circulation within the City.

(Code 1962, § 9-7-3)

Sec. 12-159. Amendments.

Amendments or revisions to such specifications and requirements shall be effective ten days after a like notice that such amendments or revisions have been filed with the Clerk has been published in a newspaper of general circulation.

(Code 1962, § 9-7-4)

Sec. 12-160. Compliance to article.

Upon the adoption of such specifications and requirements or any amendments or revisions thereto, as set forth in this article, any person who shall construct any paving, curb or gutter, or water or sewer lines within the City upon property owned by the City or dedicated for public use, which do not comply with such specifications and requirements, shall be guilty of a misdemeanor.

(Code 1962, § 9-7-5)

Secs. 12-161—12-180. Reserved.

ARTICLE VIII. HOUSE NUMBERING [3](48)

Sec. 12-181. Uniform system established.

Sec. 12-182. Baselines for dividing City.

Sec. 12-183. Basis for assigning numbers.

Sec. 12-184. Buildings facing short streets.

Sec. 12-185. Directional designation.

Sec. 12-186. Number assignment placement on buildings.

- Sec. 12-187. Plat book for the purpose of facilitating.
- Sec. 12-188. Duties of the Public Works Director.
- Sec. 12-189. Approval required for new street names.
- Sec. 12-190. Changing, renaming, or naming existing streets.
- Sec. 12-191. Penalty for violation of article.
- Secs. 12-192—12-199. Reserved.

Sec. 12-181. Uniform system established.

There is hereby established a uniform system for numbering buildings fronting on all streets, avenues, and public ways in the City, and all houses and other buildings shall be numbered in accordance with the provisions of this article.

(Code 1962, § 9-9-1)

Sec. 12-182. Baselines for dividing City.

Broadway and a projection of Broadway easterly along the section/township line between sections 4 and 33 and 5 and 34 shall constitute the baseline which will divide the City into northern and southern parts. Hereafter, all streets north of this baseline and running generally in a northerly-southerly direction shall be considered north streets, and likewise all streets south of this baseline and running in a generally northerly-southerly direction shall be considered south streets. Date Street and a southerly projection of Date Street to the southern City limit line shall be considered the baseline which divides the City into east and west parts. Hereafter, streets east of this baseline and running in a generally easterly-westerly direction shall be considered east streets and likewise, streets west of and running in a generally easterly-westerly direction shall be considered west streets.

- (1) Each building north of Broadway and facing a street running in a northerly direction shall carry a number and address indicating its location north of such base street.
- (2) Each building south of Broadway and facing a street running in a southerly direction shall carry a number and address indicating its location south of such base street.
- (3) Each building east of Date Street and facing a street running in an easterly direction shall carry a number and address indicating its location east of such base street.
- (4) Each building west of Date Street and facing a street running in a westerly direction shall carry a number and address indicating its location west of such base street.
- (5) All buildings on diagonal streets shall be numbered the same as buildings on northerly and southerly streets if the diagonal runs more from the north to south, and the same rule shall apply on easterly and westerly streets if the diagonal runs more from east to west.

(Code 1962, § 9-9-2)

Sec. 12-183. Basis for assigning numbers.

The numbering of buildings on the streets shall begin at the baseline. All buildings on the south side of east/west streets and east of north/south streets shall bear odd numbers, and likewise, all buildings on the north side of east/west streets and west side of north/south streets shall bear even numbers. A block interval system shall be used with individual numbers being assigned according to lots. An exception to this will be where there are no blocks, in which case a 600-foot interval shall be used to determine blocking with a 20-foot interval being used to change numbers.

- (1) A multiple-family dwelling having only one main street entrance shall be assigned only one number, and separate apartments in the building will carry letter or number designations in addition to the number assigned to the main entrance of the building.
- (2) Any duplex houses having two front entrances shall have a separate number for each entrance. If both entrances fall within the same increment, either the preceding number or the next higher number shall be used for one entrance number, and the interval number in which the entrances fall shall be used for the other entrance.

(Code 1962, § 9-9-3)

Sec. 12-184. Buildings facing short streets.

All buildings facing streets not extending through to the baseline shall be assigned the same relative numbers as if the street had extended to the baseline.

(Code 1962, § 9-9-4)

Sec. 12-185. Directional designation.

In addition to the numbers placed on each house or other building as provided in this article, all streets, avenues, and other public ways within the City are hereby given the following directional designation:

- (1) All streets north of Broadway and running in a generally northerly direction are given the direction of north as part of the street name.
- (2) All streets south of Broadway and running in a generally southerly direction are given the direction of south as part of the street name.
- (3) All streets east of Date Street and running in a generally easterly direction are given the direction of east as part of the street name.
- (4) All streets west of Date Street and running in a generally westerly direction are given the direction of west as part of the street name.

(Code 1962, § 9-9-5)

Sec. 12-186. Number assignment placement on buildings.

- (a) There shall be assigned to each house and other residential or commercial building located on any street, avenue, or public way in the City its respective number under the uniform system provided for in this article. When each house or building has been assigned its respective number or numbers, the owner, occupant, or agent shall place or cause to be placed upon each house or building controlled by him the number or numbers assigned under the uniform system as provided in this article.
- (b) Such numbers shall be placed on all appropriate existing buildings within 30 days after the assignment of a permanent number. The numbers used shall not be less than three inches in height and shall be made of a durable and clearly visible material.
- (c) The numbers shall be conspicuously placed so that the number can be seen plainly from the street line. Whenever any building is situated more than 50 feet from the street line, the numbers shall appear near the walk, driveway, or entrance to such buildings, so as to be easily discernible from the sidewalk.

(Code 1962, § 9-9-6)

Sec. 12-187. Plat book for the purpose of facilitating.

A plat book of all streets, avenues, and public ways within the City showing the proper number of all houses or other buildings fronting upon all streets, avenues, or public ways shall be kept on file in the office of the City Clerk. These plats shall be open to inspection by any person during the office hours of the City Hall.

(Code 1962, § 9-9-7)

Sec. 12-188. Duties of the Public Works Director.

It shall be the duty of the Building Inspector to inform any applicant of the number or numbers belonging to or embraced within the City limits of any such lot or property as provided in this article. In case of conflict as to the proper number to be assigned to any building, the City Building Inspector or City Clerk shall determine the number of such buildings. Final approval of any structure erected, repaired, altered, or modified shall be withheld by the Building Inspector until permanent and proper numbers have been affixed to such structure.

(Code 1962, § 9-9-8)

Sec. 12-189. Approval required for new street names.

Everyone submitting a subdivision plat to the Planning and Zoning Commission or to the City Council for their approval shall show the proper names of any and all streets, and these street designations shall be approved by the Planning and Zoning Commission and by the City Commission before such new streets are officially named. Street name suggestions may originate with the parties submitting the plat under the guidance of the Building Inspector, City Clerk, or other City designee.

(Code 1962, § 9-9-9)

Sec. 12-190. Changing, renaming, or naming existing streets.

The City Commission, by resolution, may change, rename, or name an existing or newly established street within the limits of the City at any time upon recommendation of the Planning and Zoning Commission, the Building Inspector, the City Clerk, or any other person designated by the City Commission.

(Code 1962, § 9-9-10)

Sec. 12-191. Penalty for violation of article.

Any person found guilty of violating the provisions of this article requiring that they renumber and/or post the number of their home or other building in a conspicuous place, as directed by this article, or who otherwise refuses to cooperate with the renumbering of his house or building or the renaming of his street shall be guilty of a petty misdemeanor and, upon conviction thereof, shall be punished in accordance with section 1-10.

(Code 1962, § 9-9-11)

Secs. 12-192—12-199. Reserved.

ARTICLE IX. GOLF CARTS [4](49)

Sec. 12-201. Definitions.

Sec. 12-202. Operation.

Sec. 12-203. Permit issuance.

Sec. 12-204. Application.

Sec. 12-205. Permit fee.

Sec. 12-206. Term of permit.

Sec. 12-207. Condition of permit.

Sec. 12-208. Permit insurance, display, and vehicle marking.

Sec. 12-209. Insurance required.

Sec. 12-210. Assumption of liability.

Sec. 12-211. Mechanical condition.

Sec. 12-212. Occupants.

Sec. 12-213. Driving, operating, or control of motorized golf carts.

Sec. 12-214. Times and operation.

Sec. 12-215. Speed.

Sec. 12-216. Traffic laws.

- Sec. 12-217. Slow moving vehicle emblem.
- Sec. 12-218. General equipment.
- Sec. 12-219. Suspense or revocation of permits.
- Sec. 12-220. Penalty.

Sec. 12-201. Definitions.

- (a) The term "motorized golf cart" means any passenger conveyance being driven with four wheels with four low pressure tires that is limited in engine displacement of less than 800 cubic centimeters and total dry weight less than 800 pounds.
- (b) The term "driver" means the person driving and having physical control over the motorized golf cart and being the permit holder; 18 years of age or older; and must possess a valid drivers license.

(Ord. No. 592, § 1, 10-14-08)

Sec. 12-202. Operation.

It is unlawful for any person to operate a motorized golf cart on streets in the City of Truth or Consequences without first obtaining a permit as provided herein. Persons who obtain a permit as required below are authorized to operate a motorized golf cart on designated roadways or portions thereof within the City.

(Ord. No. 592, § 2, 10-14-08)

Sec. 12-203. Permit issuance.

Permits shall be issued by the City Clerk, or authorized designee, upon compliance with this section.

(Ord. No. 592, § 3, 10-14-08)

Sec. 12-204. Application.

Every application for permit, supplied by the City Clerk, shall contain the following information:

- (1) The name and address of the applicant.
- (2) The make, model name, year and serial number of the motorized golf cart.
- (3) Current driver's license.
- (4) Date of application and applicants signature.
- (5) Name of applicants insurance company, date of expiration.
- (6) The City Clerk may require an applicant to submit a certificate signed by a physician to the effect that the applicant is able to safely operate a motorized golf

cart on the roadways or shoulders under the jurisdiction of the City.

(Ord. No. 592, § 4, 10-14-08)

Sec. 12-205. Permit fee.

An annual permit fee shall be established from time to time by resolution of the City Commission.

(Ord. No. 592, § 5, 10-14-08)

Sec. 12-206. Term of permit.

Permits shall be granted for a period of one year.

(Ord. No. 592, § 6, 10-14-08)

Sec. 12-207. Condition of permit.

No permit shall be granted or renewed unless the following conditions are met:

- (1) The applicant must demonstrate that they currently hold a valid driver's license.
- (2) The applicant must provide evidence of insurance in compliance with the provisions of New Mexico Statutes concerning insurance coverage for a motor vehicle.

(Ord. No. 592, § 7, 10-14-08)

Sec. 12-208. Permit insurance, display, and vehicle marking.

All permits shall be issued for a specific motorized golf cart and individual, except as otherwise herein provided. Permit tags, including number and year for which issued, shall be plainly visible from the front of the motorized golf cart.

(Ord. No. 592, § 8, 10-14-08)

Sec. 12-209. Insurance required.

Before a motorized golf cart permit is issued by the City, and at all times effective during such permit period, the permit holder shall have and maintain public liability and bodily injury insurance in the amount established by the State of New Mexico.

(Ord. No. 592, § 9, 10-14-08)

Sec. 12-210. Assumption of liability.

Nothing in this article shall be construed as an assumption of liability by the City for injuries to persons or property which may result from the operation of any motorized golf cart by a permit holder or the failure to revoke a permit.

(Ord. No. 592, § 10, 10-14-08)

Sec. 12-211. Mechanical condition.

The motorized golf cart must be in good mechanical condition and is thoroughly safe for transportation of passengers.

(Ord. No. 592, § 11, 10-14-08)

Sec. 12-212. Occupants.

The number of occupants in the motorized golf cart may not exceed two persons.

(Ord. No. 592, § 12, 10-14-08)

Sec. 12-213. Driving, operating, or control of motorized golf carts.

Motorized golf carts may be driven, operated, or controlled on the roadways or shoulders of roadways under the jurisdiction of the City, except such roadways prohibited by the resolution of the City Commission and only in strict compliance with this section. Operation of a motorized golf cart is prohibited on State highways including, but not limited to Broadway, Date, Main, 3rd Street (that portion designated as State highway 51.)

(Ord. No. 592, § 13, 10-14-08)

Sec. 12-214. Times and operation.

Motorized golf carts may only be operated on designated roadways from sunrise to sunset. They shall not be operated in inclement weather or when visibility is impaired by weather, smoke, fog or other conditions, or at any time when there is insufficient light to clearly see persons and vehicles on the roadway at a distance of 500 feet.

(Ord. No. 592, § 14, 10-14-08)

Sec. 12-215. Speed.

No motorized golf carts may be operated on City streets at a speed in excess of 25 miles per hour. Golf carts may not be operated on roadways with a posted speed limit greater than 25 miles per hour.

(Ord. No. 592, § 15, 10-14-08)

Sec. 12-216. Traffic laws.

Every person operating a motorized golf cart under permit on designated roadways has all the rights and duties applicable to the driver of any other vehicle under the provisions of any ordinance of the City or State of New Mexico, and shall obey all vehicle code requirements of the State Vehicle Code.

(Ord. No. 592, § 16, 10-14-08)

Sec. 12-217. Slow moving vehicle emblem.

Motorized golf carts shall display the slow moving vehicle emblem in accordance with when operated on designated roadways.

(Ord. No. 592, § 17, 10-14-08)

Sec. 12-218. General equipment.

- (a) Motorized golf carts shall be equipped with a rear view mirror to provide the driver with adequate vision from behind.
- (b) At least one tail lamp mounted on the rear, which when lighted shall emit a red light plainly visible from a distance of 500 feet to the rear, two red reflectors, one at each side and one red or amber stop lamp; and
- (c) Mechanical or electrical turn signals,
- (d) Parking break,
- (e) Break lights.

(Ord. No. 592, § 18, 10-14-08)

Sec. 12-219. Suspense or revocation of permits.

An individual permit may be revoked by the City Clerk if there is any material misrepresentation made in the permit application, liability insurance is no longer in effect, or if there is evidence that the permittee cannot safely operate the motorized golf cart. An individual permit shall also be revoked if the permittee no longer has a valid driver's license. The City Clerk shall issue a notice of revocation of a permit in writing and either hand deliver the notice to the permit holder or send the notice by certified mail to the address on the application. The revocation shall be in effect immediately after personal service or three days after the mailing.

(Ord. No. 592, § 19, 10-14-08)

Sec. 12-220. Penalty.

In addition to the revocation or suspension of the permit, any person violating any of the provisions of this section shall be guilty of violating the City Municipal Code and subject to the penalty provisions thereof.

(Ord. No. 592, § 20, 10-14-08)

Chapter 13 TRAFFIC [1](50)

ARTICLE I. IN GENERAL

Sec. 13-1. Reserved.

Sec. 13-2. Traffic Safety Education and Enforcement Fund—Annual plan.

Sec. 13-3. Same—Automation fee.

Sec. 13-4. Parking near City owned dumpsters.

Secs. 13-5—13-30. Reserved.

Sec. 13-1. Reserved.

Editor's note—

Ord. No. 501, § 1, adopted Aug. 27, 2001, repealed § 13-1 in its entirety. Formerly said section pertained to the purpose of the traffic safety education and enforcement fund. See the Code Comparative Table.

Sec. 13-2. Traffic Safety Education and Enforcement Fund—Annual plan.

The Police Department and Municipal Court shall each submit an annual plan to the City Manager who must approve the plans before any expenditures from these funds can be made. The plans must outline the activities to be conducted, the expected benefit to be gained from the activities and the cost of such activities. An annual report will be submitted to the City Manager describing the accomplishments achieved as a result of the Traffic Safety Education and Enforcement Fund.

(Ord. No. 372, § 2, 12-10-90; Ord. No. 399, § 1, 10-26-92)

Sec. 13-3. Same—Automation fee.

In addition to the penalty assessment established for each penalty assessment misdemeanor and in addition to the assessment collected in section 13-1 above, there shall be assessed a penalty assessment fee of \$6.00 to be used as a Municipal Court automation fee. All court automation fees collected shall be remitted monthly to the state treasurer for credit to the municipal court automation fund and shall be used for the purchase and maintenance of court automation systems in the municipal courts. The court automation systems shall have the capability of providing, on a timely basis, electronic records in a format specified by the judicial information system council.

(Ord. No. 399, § 1, 10-26-92; Ord. No. 414, § 1, 6-13-94; Ord. No. 457, § 1, 5-26-98)

Sec. 13-4. Parking near City owned dumpsters.

It is unlawful for any person to park a motor vehicle in such a manner and/or location that would inhibit City collection vehicles from having access to City owned dumpsters. Any person who violates this section shall be subject to a \$50.00 fine.

(Ord. No. 514, 3-11-02)

Secs. 13-5—13-30. Reserved.

ARTICLE II. TRAFFIC CODE

Sec. 13-31. Code adopted by reference.

Sec. 13-32. Ordinance available for inspection.

Sec. 13-33. Copies of ordinance; purchase.

Sec. 13-34. Maximum penalty for violation of article.

Sec. 13-35. Mandatory judicial education fee.

Sec. 13-31. Code adopted by reference.

- (a) The 2004 compiled New Mexico Uniform Traffic Ordinance, comprising sections 12-1-1 through 12-13-6 inclusive, is herewith adopted by reference, pursuant to NMSA 1978 § 3-17-6. Plus, any subsequent amendments or uniform ordinances which are mandatory, pursuant to NMSA 1978 § 3-17-6 shall also be adopted by reference.
- (b) The Uniform Traffic Ordinance for the City shall be codified as section 13-31 et seq.

(Code 1962, § 12-1-1; Ord. No. 417, § 1, 9-12-94; Ord. No. 429, § 1, 11-13-96; Ord. No. 537, § 1, 7-12-04)

Sec. 13-32. Ordinance available for inspection.

A copy of the New Mexico Uniform Traffic Ordinance is available for inspection during the City Clerk's normal and regular business hours at City Hall, 505 Sims Street, Truth or Consequences, New Mexico.

(Code 1962, § 12-1-2; Ord. No. 417, § 2, 9-12-94)

Sec. 13-33. Copies of ordinance; purchase.

A copy of the Truth or Consequences New Mexico Uniform Traffic Ordinance may be purchased from the Municipal Clerk at the cost of \$25.00.

(Code 1962, § 12-1-3; Ord. No. 417, § 3, 9-12-94)

Sec. 13-34. Maximum penalty for violation of article.

Unless another penalty is expressly provided in this article, or as otherwise provided by state law, every person convicted of a violation of any provision of this article shall be punished by a fine of not more than \$500.00 or by imprisonment for not more than 90 days, or by both such fine and imprisonment. This maximum penalty is for violation of the Traffic Code only. The penalty assessments as set forth in section 1-10 specifically do not apply to violations of the Traffic Code.

(Ord. No. 374, 2-25-91)

Sec. 13-35. Mandatory judicial education fee.

- (a) *Mandatory corrections fee.*

- (1) Any person convicted of violating any municipal ordinance the penalty for

which carries potential jail term or any ordinance relating to the operation of a motor vehicle shall pay to the municipal court, in addition to any fine or other sentence, a \$20.00 corrections fee.

- (2) All money collected pursuant to this section shall be deposited in a special fund in the municipal treasury and shall be used only for:
 - a. Paying the costs of housing the municipality's prisoners in other detention facilities in the state;
 - b. Providing inpatient treatment or other substance abuse programs in conjunction with or as an alternative to jail sentencing;
 - c. Defraying the cost of transporting prisoners to jails or juveniles to juvenile detention facilities; or
 - d. Providing electronic monitoring system.

(b) *Mandatory judicial education fee.*

- (1) Any person convicted of violating any municipal ordinance, the penalty for which carries a potential jail term, or any ordinance relating to the operation of a motor vehicle will pay to the municipal court, in addition to any fine or other sentence, a \$3.00 judicial education fee.
- (2) All money collected pursuant to this section shall be remitted monthly to the state treasurer for credit to the judicial education fund and shall be used for the education and training, including production of benchbooks and other written materials, of municipal judges and other municipal court personnel.

(Ord. No. 408, §§ 1, 2, 8-9-93; Ord. No. 528, § 1, 7-14-03; Ord. No. 597, 8-11-09)

Chapter 14 UTILITIES [1](51)

ARTICLE I. IN GENERAL

Sec. 14-1. Position of Utility Director created; duties.

Secs. 14-2—14-25. Reserved.

Sec. 14-1. Position of Utility Director created; duties.

There is hereby created the office of Utility Director; an executive office of the City. The Utility Director shall be appointed by the Manager, and he shall hold office for the duration of his appointment or until such time as he may be removed by the Manager. The Utility Director holds office at the pleasure of the City Manager and can be removed by the City Manager without the City Manager having to provide notice and hearing prior to removal.

The duties of the Utility Director are to supervise the operation of the Utility Department. The Utility Director shall further be required to ensure the Utility Department properly conforms with Section 14, Article II, Article III and Article IV of this Code.

(Ord. No. 483, § I, 10-10-00)

Secs. 14-2—14-25. Reserved.

ARTICLE II. UTILITY DEPARTMENT

- Sec. 14-26. Definitions.
- Sec. 14-27. Management.
- Sec. 14-28. Service—Application; extension.
- Sec. 14-29. Same—Failures.
- Sec. 14-30. Access to property; inspection.
- Sec. 14-31. Taking service—Without authority.
- Sec. 14-32. Same—After discontinuance.
- Sec. 14-33. Tampering with meters.
- Sec. 14-34. Rights reserved.
- Sec. 14-35. Rules and regulations of the City Manager.
- Sec. 14-36. Billing procedures.
- Sec. 14-37. Security deposits, payment guarantees.
- Sec. 14-38. Water rates—Generally.
- Sec. 14-39. Same—To government facilities.
- Sec. 14-40. Utilities outside corporate limits.
- Sec. 14-41. Reserved.
- Sec. 14-42. Automatic pass through charge.
- Sec. 14-43. Installation of meters.
- Sec. 14-44. Water conservation.
- Sec. 14-45. Electrical rates.
- Sec. 14-46. Water and electrical rates for Williamsburg.
- Sec. 14-47. Electric service regulations.
- Secs. 14-48—14-50. Reserved.
- Sec. 14-51. Past due bill charges.
- Sec. 14-52. Discounted utility rates.
- Sec. 14-53. Declaration of lien and recovery of past due bills.
- Secs. 14-54—14-65. Reserved.

Sec. 14-26. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Utility means the water, electric, and sewage systems and the providing of trash and garbage disposal.

(Code 1962, § 3-3-1)

Definitions and rules of construction generally, § 1-2.

Sec. 14-27. Management.

The utility plant, systems, and services of the City shall be managed and operated in accordance with the Administrative Code of the City and the rules and regulations relating thereto. The active control and supervision of the system shall be fixed by the Manager subject to the direction of the Governing Body, which shall make all needful rules and regulations pertaining to the effective management and operation of the aforesaid utility systems, except as otherwise provided in this article.

(Code 1962, § 3-3-2)

Sec. 14-28. Service—Application; extension.

- (a) Utility services shall be supplied by the City on the basis of signed applications made to the Utility Department on such forms as are prepared by the Manager. Such application when accepted by the City shall constitute an agreement on the part of an applicant to abide by the rules and regulations of the City pertaining to the service supplied as may now or hereafter be established. The application shall disclose such information as may be required for the keeping of customers' accounts and the furnishing of services to the premises to be serviced. Service, if reasonably available, shall be supplied upon the approval of the application, payment for necessary line extensions, and the making of any required deposit to secure the payment of utility bills.
- (b) Major service line extensions by the City to various areas shall be upon the recommendation of the City Manager and as approved by the City Commission, to be paid for out of capital reserves, bond issues, or otherwise. Large utility service extensions, consisting of water, sewer, or electric lines capable of serving several customers, outside of new subdivisions, and paid for by one customer, shall be reimbursed to such customer on a pro rata basis as each new customer ties in thereafter. At the time the new customer orders or provides utility line extensions, the Building Inspector and customer paying for the same shall determine a fair and equitable basis for pro rata reimbursement and shall notify the Utility Department of the additional charges to be made for each new tie-in thereafter. Before a new tie-in is made, the new customer shall pay the City the pro rata cost of the original utility extension, and the City shall in turn pay such pro rata reimbursement to the customer who initially paid for the extension.

Alternatively, at its sole discretion and upon written guidelines established by management, the City may provide the pro rata portion of the expense of extension which would benefit future customers and collect the same as new tie-ins are made, for reimbursement to the capital investment fund. However, these provisions shall not alter or in any way change or mitigate the requirements of the City's Subdivision Code, Zoning Ordinance, or other applicable ordinances relating to new or existing subdivisions and the requirement that the subdivider provide the utilities within the subdivision. The City may also determine that main line extensions to serve general areas should be paid for as a capital investment by the City out of reserves provided for such purposes.

(Code 1962, § 3-3-3)

Sec. 14-29. Same—Failures.

The City shall not be responsible for any losses or damages due to failure of service from any cause, the breakage of any line, or the failure of equipment, power source, or any failure of service due to any riot, mob, violence, strike, flood, or war damage or otherwise; or due to any failure in the customer's line, apparatus, wiring, connections, or equipment.

(Code 1962, § 3-3-4)

Sec. 14-30. Access to property; inspection.

The City reserves the right for its officers and employees to inspect any premises at all reasonable hours in connection with utility services to private premises within the City and shall have free access at all reasonable hours to any premises to read the meters, examine the location, or connection of lines, wires, or pipes and other fixtures and apparatus used in connection with water or electric service.

(Code 1962, § 3-3-5)

Sec. 14-31. Taking service—Without authority.

It shall be unlawful for any person, by means of any trick, device, or in any manner except as now or may hereafter be authorized and approved by this article and regulations of the City, to receive, consume, or in any manner divert or appropriate to his own use or to the use of another any electric current, water, trash, or garbage disposal or sewage disposal belonging to or furnished by the City. All such utility service shall be supplied and furnished by the Department in accordance with the rules and regulations provided therefor.

(Code 1962, § 3-3-6)

Sec. 14-32. Same—After discontinuance.

It shall be unlawful for any person to break or remove any seal or device used in shutting off or discontinuing water and/or electric service, or to reconnect or turn on any such service after such service shall have been disconnected, in any case where such service shall have been disconnected or discontinued for failure to make payments of the monthly bills or for violation of any rules or regulations of the Department or provisions of this article.

(Code 1962, § 3-3-8)

Sec. 14-33. Tampering with meters.

It shall be unlawful for any person, by means of any trick or device or in any unlawful manner, to stop, hinder, or prevent the electric or water meters registering electric or water service from registering the electric current or water consumed. It shall be further unlawful for any person to prevent such meters from registering correctly, to make them stop or run backwards, or to tamper with or in any manner willfully injure or destroy such meters or registering devices. However, it shall not be a violation of this section if a Net Metering Interconnection Agreement between the customer and City has been executed.

(Code 1962, § 3-3-7; Ord. No. 642, § 1, 10-22-13)

Sec. 14-34. Rights reserved.

The City reserves the right at any time to revise or amend this article, and other provisions of this Code, pertaining to utility services. It further reserves the right to disconnect or refuse service to any consumer who shall be found by the Department to have violated any provision of this article, or rules and regulations pertaining to utility service.

(Code 1962, § 3-3-9)

Sec. 14-35. Rules and regulations of the City Manager.

- (a) Additional rules and regulations not inconsistent with the intent of this section may be prepared by the City Manager.
- (b) The City Manager shall include within each year's budget provision for providing a capital improvement account within the Joint Utility Fund. The portion of the Joint Utility Fund Revenues that shall be set aside for this account shall be two and one-quarter percent of the revenues generated by each of the revenue generating utility departments. The funds in this account are to be used for Utility System Capital Improvement projects as approved by the City Commission. These reserve funds shall be collected and set aside in addition to any other reserve fund or bond requirements of the Joint Utility Fund.
- (c) The City Manager shall include within each year's budget provisions for providing an Emergency Repair Account within the Joint Utility Fund. A total of \$12,500.00 per year is to be set aside for this account. Each revenue generating utility department will generate their share of the yearly \$12,500.00 to be set aside in their yearly revenues. This fund should be kept in an interest bearing account and when the amount reaches the amount of \$1,000,000.00 and funds in excess of \$1,000,000.00 may be transferred to the Joint Utility Capital Improvement Fund by direction of the City Commission. The funds held in this reserve account are only to be used when an emergency repair condition occurs on one of the City's Utility Systems. These reserve funds shall be collected and set aside in addition to any other reserve fund or bond requirements of the Joint Utility Fund.
- (d) The City Manager shall include within each year's budget provision for providing a Wastewater Treatment Plant Repair and Replacement Account as required by

the grant funding obtained for the construction of the existing Wastewater Treatment Plant. The funds that shall be set aside for this are to be one and three-quarters percent of the revenues generated [by the Wastewater Department of the City. The use of these funds shall be restricted to repair and replacement projects at the Wastewater Treatment Plant as approved by the City Commission. These reserve funds shall be collected and set aside in addition to any other reserve fund or bond requirements of the Joint Utility Fund.

- (e) The City Manager shall include within each year's budget provisions for providing an Electrical Construction Account within the Joint Utility Fund. A total of \$10,000.00, per year is to be set aside for this account from revenues generated by the electrical division. This fund should be kept in an interest bearing account and when the amount reaches the amount of \$1,000,000.00 and funds in excess of \$1,000,000.00 may be transferred to the Joint Utility Capital Improvement Fund by direction of the City Commission. The funds held in this reserve account may be used at any time but are only to be used for major capital outlays relating to the electrical system. These reserve funds shall be collected and set aside in addition to any other reserve fund or bond requirements of the Joint Utility Fund.
- (f) The funds for these reserve accounts shall be transferred from the Joint Utility Fund to each reserve account on a quarterly basis. The City Commission may opt to increase these minimum amounts at their pleasure during the yearly budget review process.

(Code 1962, § 3-3-10; Ord. No. 402, § 1, 1-11-93; Ord. No. 499, 7-23-01; Ord. No. 502, 11-13-01; Ord. No. 506, § 1, 2-25-02; Ord. No. 590, 8-26-08)

Sec. 14-36. Billing procedures.

- (a) The City reserves the right to adopt any reasonable billing procedures, including machine code billing, and charged as a unit for any premises or person. There will be a connection fee charge of \$19.09 for installing or turn on of each electric meter and each water meter. Meters will be read and charges for services will be assessed on a reasonable billing cycle.
- (b) All bills are net and payable within ten days from date of bill and are delinquent 30 days from date of bill.
- (c) Customers are required to pay the entire past due amount of their delinquent utility bills.
- (d) Exceptions may be granted on a case-by-case basis upon showing good cause before the City Manager provided that a reasonable repayment plan can be agreed upon.
- (e) If any utility bill installment is not paid when due, the service will be disconnected if the delinquency is not paid within 24 hours after red tagging the premises. Before utility services can be reinstated, the account must be paid in full, and there will be a charge of \$19.09 to cover the cost of reinstatement of each such service, which amount shall be in no way concerned with the regular utility service deposit.
- (f) There will be an automatic \$50.00 red tag fee.

- (g) The interest rate charge on merchandising and jobbing accounts is 18 percent per annum plus the cost of certified letters.
- (h) The City shall, in addition, file a lien against the property serviced as provided by law on all properties where the utility account is delinquent and unpaid.
- (i) Payment by check is conditioned upon the check being paid upon presentment. There will be an automatic charge of \$25.00 for each check which is returned for insufficient funds.
- (j) No deposit shall be refunded under this or any other section of this article unless the balance to be refunded totals \$1.00 or more.
- (k) All service charges shall be doubled if said services are requested by customer and provided after 4:00 p.m. and before 8:00 a.m. of the next business day, unless such service call was necessitated by a City problem.
- (l) All final and first billings shall be calculated on a pro-rata basis.
- (m) In order for utilities to be turned on at a property where they were disconnected for nonpayment, the City must receive a sworn statement from the owner or owner's authorized designee of the property that the person(s) for which utilities were disconnected for nonpayment are no longer residing or paying rent at the property.

(Code 1962, § 3-3-11; Ord. No. 494, § 1, 7-9-01; Ord. No. 511, § 1, 3-11-02; Ord. No. 542, §§ 1, 3, 3-28-05; Ord. No. 591, 8-26-08)

Municipal authority to require reasonable deposits for utilities, NMSA 1978, § 3-23-1.

Sec. 14-37. Security deposits, payment guarantees.

- (a) The City will require a utility deposit or an acceptable credit rating for residential or commercial utility service. The deposit will not exceed an amount equivalent to one-sixth of that customer's estimated annual billings or not more than one and one-half times times the customer's estimated maximum monthly billing. However, if an average cannot be obtained, then \$200.00 (\$100.00 for electricity service plus \$100.00 for water service) will be collected.
- (b) The City reserves the right to refund, or waive, deposit requirements upon establishment of an acceptable credit rating. A customer or guarantor may establish an acceptable credit rating only if they can provide adequate credit references from a utility service.
- (c) If a customer, or prospective customer, cannot establish an acceptable credit rating, but can demonstrate to the City that they do not have adequate financial resources to pay the security deposit in one payment because of low income and are elderly, disabled, or subject to other considerations, the City will give special consideration to such a customer in determining the partial deposit amount and monthly time period over which the customer will be billed for the full deposit. In no case will monthly deposit accruals exceed six months.
- (d) If a customer, or prospective customer, cannot establish an acceptable credit

rating, but previously received utility service under the name of a spouse, the City may consider the spouse's prior utility service in determining the customer's utility deposit amount, if any.

- (e) The City, at its sole discretion, may require a security deposit of customers with a previously acceptable credit rating, and deposit waiver, as a condition of continued service if:
 - (1) The customer is chronically delinquent in paying utility charges;
 - (2) As a condition for reconnection of service following discontinuance of service by the City; or
 - (3) A customer who, in an unauthorized manner has interfered with, or diverted, the City's utility service located on, or about, or delivered to, the customer's premises.
- (f) Security deposits may be applied toward payment, or partial payment, of utility charges, including penalty charges, at such time as when penalty charges become applicable.
- (g) Repealer. All ordinances or resolutions, or parts thereof, inconsistent therewith are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any ordinance or resolution, or part thereof, heretofore repealed.

(Code 1962, § 3-3-12; Ord. No. 419, § 1, 9-12-94; Ord. No. 513, § 1, 3-11-02; Ord. No. 584, 6-10-08)

Municipal authority to require reasonable deposits for utilities, NMSA 1978, § 3-23-1.

Sec. 14-38. Water rates—Generally.

- (a) *Rates to residential and commercial customers within the City limits and the Village of Williamsburg.* The rates for water are as follows:

Customer charge:	\$8.15 per month
Usage charge:	
0—7,000 gallons:	\$1.75 per each 1,000 gallons
Next 22,000 gallons:	1.93 per each 1,000 gallons
Next 20,000 gallons:	2.12 per each 1,000 gallons
Over 50,000 gallons:	2.33 per each 1,000 gallons

- (b) *Meters required.* The Governing Body shall require consumers to install water meters with the exception of services installed for fire suppression.
- (c) *Shortage of water.* When there is a shortage of water supply of the City, the Governing Body reserves the right to control the manner of use and time of use by consumers of water supplied to them by the system, and to make such rules and regulations therefore by proclamation of the Governing Body. Any consumer taking or using water contrary to such regulations and rules, as may be promulgated in such proclamation, shall be deemed guilty of a misdemeanor.

- (d) *Rates to consumers outside the City limits.* Rates charged to consumers outside the City limits are the same as those rates set forth in section 14-38(a), Water rates—Generally.
- (1) *Reference:* As provided in section 14-28(b) Service—Applications; extension: All requests and proposals to supply water to consumers outside the City limits and all proposed water system plans, designs, and specifications to deliver water beyond the City limits require prior approval by the City Commission.
- (2) *Reference:* As provided in section 14-28(a) Service—Applications; extension: Applicants who wish to have water supplied beyond the City limits shall be responsible for "payment for necessary line extensions."

The City reserves the right to deny applications and requests to supply water beyond the corporate limits of the City when in the opinion of the City Manager and by vote of the City Commission such requests would impair the supply of water to existing customers located within the corporate limits of the City.

- (e) *Industrial fire plug meter.* The minimum monthly charge shall be \$91.91, which shall entitle the consumer up to 50,000 gallons per month. The second 50,000 gallons consumed shall be charged at the rate of \$1.84 per 1,000 gallons. The third 50,000 gallons consumed shall be charged at the rate of \$2.02 per 1,000 gallons. All water consumed in excess of 200,000 gallons per month shall be charged at the rate of \$2.22 per 1,000 gallons.
- (f) *Effluent water/recycled water.* The charge shall be \$1.35 per 1,000 gallons. If a meter is used, the minimum monthly charge shall be \$25.00 plus actual usage.

(Code 1962, § 3-3-12; Ord. No. 371, 5-14-90; Ord. No. 387, 11-12-91; Ord. No. 405, 2-8-93; Ord. No. 411, 1-10-94, Ord. No. 459, § 1, 7-13-98; Ord. No. 475, § 1, 7-24-00; Ord. No. 491, § 1, 3-26-01; Ord. No. 497, §§ 1, 2, 7-9-01; Ord. No. 521, § 1, 10-16-02; Ord. No. 526, § 1, 5-27-03; Ord. No. 530, § 1, 8-25-03; Ord. No. 572, 6-20-07)

Sec. 14-39. Same—To government facilities.

The monthly rate for water consumed by municipal government departments for its use in landscaping and beautifying the highways approaching or lying within the City shall be the following: \$0.64 for each 1,000 gallons.

(Code 1962, § 3-3-13.3; Ord. No. 387, 11-12-91; Ord. No. 405, 2-8-93; Ord. No. 497, § 4, 7-9-01)

Sec. 14-40. Utilities outside corporate limits.

Water may, at the discretion of the City, be furnished to consumers outside the corporate limits; provided, however, if water is furnished to such consumers, they must in addition to agreeing to consume and pay for water at rates as set forth in section 14-37(d), also agree, in those areas where the utilities are available, to receive and pay for at the applicable rates set by ordinance, sewer services of the City as well as electrical services from the City, otherwise the City shall not furnish water to such consumers.

(Code 1962, § 3-3-13.1)

Sec. 14-41. Reserved.

Editor's note—

Ord. No. 507, § 1, adopted Feb. 25, 2002, repealed § 14-41 in its entirety. Formerly said section pertained to charge for water furnished. See the Code Comparative Table.

Sec. 14-42. Automatic pass through charge.

At any time that there is an increase or decrease in production costs or in wholesale energy costs including but not limited to electricity which are used in the production of water and which are charged to the City, such wholesale cost adjustments shall be automatically passed on to the customer on a pro rata basis. The City Commission shall review the production costs annually during budget hearings and shall set the amount of any increase or decrease in rates for the following year at that time.

(Code 1962, § 3-3-13.2)

Sec. 14-43. Installation of meters.

- (a) The Utility Department shall make such charges for the perpetual maintenance and installation of all services and meters as are set each fiscal year by the City Commission based upon recommendations and cost information submitted by the City Manager.
- (b) These prices shall include the service connection complete, the meter set in place, and an adequate meter box with cover, except where meters are required to be placed under a sidewalk excavated at the curblin, in which case the property owner shall construct a cement box for the meter, open on the top side only.
- (c) Where special services are installed by the Utility Department on streets about to be paved or on already paved streets, the additional costs of installation shall be estimated by the City Manager and shall be collected at the time of application.
- (d) Additional service charges will be billed to the customer at cost for standby, overtime, and holiday work, as well as other charges deemed appropriate by the City Manager for services not otherwise covered by this section.

(Code 1962, § 3-3-14)

Sec. 14-44. Water conservation.

- (a) *[Intent.]* The intent of this section is to encourage wise use of the City water resources and to encourage water conservation by all customers.
- (b) *Applicability* This section applies to all properties and customers that are served by the City potable water system. Compliance with this section is a condition of service from the City potable water system.

(c) *Watering restrictions:*

- (1) During the months of April through September outdoor use of potable water through an irrigation system or hand watering to water any grass, trees, plants or other vegetation shall be determined as follows:
 - a. Users with odd number addresses shall be permitted to use water for irrigation purposes on each Wednesday, Friday and Sunday.
 - b. Users with even number addresses shall be permitted to use water for irrigation purposes on each Tuesday, Thursday and Saturday.
 - c. Use of water for irrigation shall be prohibited on each Monday.
 - d. Watering is prohibited between the hours of 10:00 a.m. and 6:00 p.m.
- (2) These restrictions do not apply to:
 - a. Water used to irrigate gardens.
 - b. Outdoor irrigation necessary for the establishment of newly sodded lawns and landscaping within the first 60 days of planting.
 - c. Fund raising activities that have received prior written permission from the City Manager.
 - d. Water used to control dust or compact soil.
 - e. Manual operation of automatic systems for very short periods of time to check system condition and effectiveness.
 - f. Water used for irrigation that is supplied by a well or is pumped from the river.
 - g. Drip irrigation or bubbler irrigation systems and watering of containerized plants or plant stock.

(d) *Water waste.* These restrictions apply to all properties within the City limits and/or served by the municipal water utility.

- (1) No person, firm, corporation, or municipal or other government facility or operation shall cause or permit to be wasted any water provided by the municipal water supply system of the City.
- (2) No person, firm, corporation or municipal or other governmental facility or operation shall cause or permit the flow of fugitive water onto adjacent property or public rights-of-way.
- (3) The restrictions in subsections (1) and (2) of this subsection do not apply to:
 - a. Storm water runoff;
 - b. Flow resulting from temporary water supply system failures or malfunctions. These failures or malfunctions shall be repaired as

quickly as possible;

- c. Flow resulting from firefighting, routine inspection of fire hydrants or from fire training activities;
- d. Water applied as a dust control measure;
- e. Water applied to abate spills of flammable or otherwise hazardous materials, where water is the appropriate methodology;
- f. Water applied to prevent or abate health, safety, or accident hazards when alternate methods are not available;
- g. Flow resulting from routine inspections, operation, or maintenance of the municipal water supply system.

(e) *Penalties.*

- (1) *Penalties and restrictions of service.* Any responsible party who violates any of the provisions of subsections c. and d. of this section shall be subject to Penalty Provisions set forth in section 1-10 of the City Code and/or loss of service from the City's potable water system.
 - a. Written warning;
 - b. Written citation;
 - c. Fourth or more observed violation application of flow restriction device at meter. This device cannot be removed by the responsible party and will not be removed by the utility until the responsible party adequately demonstrates to the City that the violation has ceased.

(f) *Emergency measures.*

- (1) *Water restrictions.* When, in the judgement of the manager, emergency measures on the use of water are necessary to conserve the supply for more essential uses, the manager may declare such necessity and adopt emergency measures.
- (2) *Publication and effect.* Upon proper publication or radio advertising of such emergency measures, the emergency measures shall have the same effect as if set forth in the City Code, and the emergency measures shall continue in effect until amended or suspended by resolution of the City Commission or by declaration by the manager, when, in his judgement, the emergency measures are no longer necessary. Such declaration, to be effective, must also be by proper publication or radio advertising.
- (3) *Penalty provision.* Any person or entity who fails to comply with the emergency measures adopted by the City is subject to the penalty provisions set forth in Section 1-10 of the City Code.

(g) *Definitions.*

Bubblers are irrigation heads which deliver water to the soil adjacent to the heads.

Drip irrigation is low pressure, low volume irrigation applied slowly, near or at ground level to minimize runoff and loss to evaporation.

Even numbered properties are properties whose official address ends in an even number. Landscaped areas associated with a building will use the number of that building as their address. Only one address shall be used for a large landscaped area associated with one building or activity, even if the landscaped area is broken into many separate subareas.

Flow restriction device is a device applied by the water utility to the customer's meter that restricts the volume of flow to the customer.

Fugitive water is the pumping, flow, release, escape, or leakage of any water, potable or nonpotable, from any pipe, valve, faucet, connection, diversion, well, or any facility for the purposes of water supply, transport, storage, disposal, or delivery onto adjacent property or the public right-of-way.

Hand watering is the application of water for irrigation purposes through a hand-held hose, including hoses moved into position by hand or left to flow freely or through a shut-off nozzle.

Irrigation system is a manual or automatically operated system for irrigation of landscaped areas. This does not include hoses used for hand watering.

Landscaped area is the entire parcel less the building footprint, driveways, nonirrigated portions of parking lots, landscapes such as decks and patios, and other nonporous areas, excluding public right-of-way.

Manager is the City Manager or his/her designated representative.

Odd numbered properties are properties whose official address ends in an odd number. Large landscaped areas associated with a building will use the number of that building as their address. Only one address shall be used for a large landscaped area associated with one building or activity, even if the landscaped area is broken into many separate subareas.

Responsible party is the owner, manager, supervisor, or person who receives the water bill, or person in charge of the property, facility, or operation during the period of time that a violation is observed.

Runoff is water which is not absorbed by the soil or landscaped area to which it is applied. Runoff occurs when water is applied too quickly, that is, the application rate exceeds the infiltration rate, particularly if there is a severe slope. This section does not apply to storm water runoff that is created by natural precipitation rather than human caused or applied water use.

Shut-off nozzle is the device attached to the end of a hose that completely shuts off the flow, even if left unattended.

Water conservation officer is the City employee charged with managing the water conservation effort.

Water waste is the non-beneficial use of potable water supplied by the municipal water supply system. Non-beneficial uses include but are not restricted to:

- (1) landscape water applied in such a manner, rate and/or quantity that it regularly overflows the landscaped area being watered and runs onto adjacent property or

- public right-of-way;
- (2) landscape water which leaves a sprinkler, sprinkler system, or other application device in such a manner or direction as to spray onto adjacent property or public right-of-way;
 - (3) flushing down of hard surfaces such as parking lots, aprons, pads, driveways, or other surfaced areas when water is applied in sufficient quantity to flow from that surface onto adjacent property or the public right-of-way;
 - (4) Water applied in sufficient quantity to cause significant ponding on impervious surfaces on private property.

(Code 1962, § 3-3-15; Ord. No. 443, § 1, 9-9-96)

Sec. 14-45. Electrical rates.

- (a) *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:

Customer means any person, firm, association, or corporation, or any agency of the Federal, State or local government, being supplied with, and or responsible for payment for, electric services by the City.

Customer charge means a flat charge for providing the availability of service.

Demand means the average rate at which energy is delivered during any specified demand interval. Demand may be expressed in kilowatts, kilovolt-amperes or other suitable units. The demand interval, unless specified otherwise, will be 15 minutes.

Energy means electricity consumed, usually expressed in kilowatt hours.

Horsepower means the nameplate rating of motors or other apparatus. For conversion purposes, one horsepower shall be considered as equivalent to 746 watts or 0.746 kilowatts.

Kilowatt means a unit of power, equal to 1,000 watts or approximately 1.341 horsepower. (Abbreviated kW)

Kilowatt-hour means a unit of energy equal to 1,000 watts delivered for one hour. One kilowatt-hour is the energy delivered in one hour, when delivery is at a constant rate of one kilowatt. (Abbreviated kWh) For example, ten 100 watt light bulbs that are in continuous use for one hour, equals 1,000 watt hours or one kilowatt hour.

Line means a system of poles, ducts, wires, or fixtures used for the distribution of electricity.

Line extension means all facilities excluding transfer, service connector and meter required to extend electric service from the City's existing permanent facilities to the point of delivery to the customer.

Minimum charge means amount the customer is charged if no power is consumed.

Point of delivery means the location at which the City's electric facilities make contact with the customer's service equipment.

Power means the time rate of transferring electric energy, usually expressed in kilowatts.

Premises means all real property, buildings, and appurtenances occupied by an owner, lessee, or tenant as a dwelling or business, commercial or industrial enterprise upon an integral parcel of land undivided by a street, highway or other public thoroughfare.

RV Park means a facility, at least one acre in size, designed to accommodate overnight parking of recreational vehicles, campers, and travel trailers.

(b) *Small commercial service.*

(1) *Applicability.* The small commercial rate is applicable for single-phase and three-phase service for commercial, business, professional, and small industrial loads. Customers with either an estimated consumption of 4,000 KWH or more per month or an estimated demand of 15 KW or more for any three months during a 12-month period will not be provided service under this schedule. All service shall be delivered at a single service location to be designated by the City. Service will be furnished in accordance with the City's rules and regulations and any subsequent revisions. These rules and regulations are available at the City's office. These rules and regulations are a part of this schedule as if fully written in this section.

(2) *New rate per month or part thereof.*

Customer charge - For single phase . . . \$10.00

For three-phase . . . 12.00

All KWH, per KWH, at . . . \$0.095

Adjustment. The base energy charge shall be increased or decreased in accordance with the adjustment paragraphs.

(3) *Reserved.*

(4) *Type of service.* The type of service available under this schedule will be determined by the City and would normally be either:

- a. 120/240 volt single-phase service and 240 volt three-phase service, or
- b. 120/208 volt three-phase service, or
- c. 277/480 volt three-phase service.

(5) *Meter reading.* The meter reading will normally be, as far as practicable, at intervals of approximately 30 days.

(6) *Limitation of rate.* Electric service under this schedule is not available for standby service and shall not be resold or shared with others. For those customers whose consumption meets or exceeds 4,000 KWH per month in any three months of a continuous 12-month period, or for any customer whose connected load meets or exceeds 15 KW, the city may require the billing of such customers' monthly consumption under Large

Commercial Service.

(7) *Automatic rate increase.*

- a. *Automatic rate increases.* At any time that there is an increase in the wholesale rate for electricity which is charged to the City, such wholesale rate increases may be automatically passed on to the customer on a pro rata basis except in the instance of written contracts for lighting.
- b. *Automatic pass through.* At any time there is an increase in wholesale cost of gasoline, diesel fuel, or other energy charges necessarily used by the Electric Department in the operation and maintenance of the Electric Utility Department which are charged to the City, such wholesale cost increases shall be automatically passed through to the customer on a pro rata basis.

(c) *Large commercial.*

- (1) *Applicability.* The large commercial rate is applicable to all customers who use the City's standard service for general power, lighting, and/or water pumping services and contract for a monthly billing demand of not less than 15 KW to customers whose consumption has exceeded 4,000 KWH or 15 KW per month for three months in any 12-month continuous period. Service will be furnished in accordance with the City's rules and regulations and any subsequent revisions. These rules and regulations are available at the City's office. These rules and regulations are a part of this schedule as if fully written in this section.
- (2) *New rate per month or part thereof.*

Base charges. If either the customer's billing demand for the month exceeds 15 KW or its consumption is greater than 4,000 KWH.

(3) *Demand charge.*

All KW at . . . \$8.00/KW

(4) *Energy charge.*

All KWH at . . . \$0.077/KWH

Adjustment. The base demand and energy charges shall be increased or decreased in accordance with the adjustment paragraphs.

- (5) *Determination of demand.* The customer's demand shall be the highest 15-minute integrated or thermal KW demand as determined by suitable metering equipment. The City reserves the right to measure the demand continuously or by periodic tests to be made by the City at suitable intervals. The City reserves the right to install separate demand meters or single-phase and three-phase services, in which event the billing demand shall be the arithmetical sum of two measured demands.
- (6) *Customer charge.* \$23.25/month single phase; \$25.50/month three phase.

- (7) *Type of service.* The type of service available under this schedule will be determined by the City and would normally be either:
 - (1) 120/240 volt single-phase service and 240 volt three-phase service;
 - (2) 120/208 volt three-phase service;
 - (3) 277/480 volt three-phase service; or
 - (4) 2,400/4,160 volts or 7,200/12,470 volts three phase service supplied at a single service location.
- (8) *Meter reading.* The meter reading will normally be, as far as practicable, at intervals of approximately 30 days.
- (9) *Limitation of rate.* Electric service under this schedule shall not be resold or shared with others.
- (10) *Automatic rate increases.*
 - a. *Automatic rate increases.* At any time that there is an increase in the wholesale rate for electricity which is charged to the City, such wholesale rate increase may be automatically passed on to the customer on a pro rata basis except in the instance of written contracts for lighting.
 - b. *Automatic pass through.* At any time there is an increase in the wholesale cost of gasoline, diesel fuel, or other energy charges necessarily used by the Electric Department in the operation and maintenance of the Electric Utility Department which are charged to the City, such wholesale cost increases shall be automatically passed through to the customer on a pro rata basis.

(d) *Residential service.*

- (1) *Applicability.* The residential rate is applicable only for normal domestic light and power use to individual residences, individual dwelling units, and individual apartments. All service shall be delivered at a single service location to be designated by the City. Service will be furnished in accordance with the City's rules and regulations and any subsequent revisions. These rules and regulations are available at the City's office. These rules and regulations are a part of this schedule as if fully written in this section.
- (2) *New rate per month or part thereof for each service location.*

Customer charge, per month: . . . \$8.00

Energy charge . . . \$0.09/KWH

Adjustment. The base energy charge shall be increased or decreased in accordance with the adjustment paragraph.

- (3) *Reserve.*

- (4) *Type of service.* Service available under this schedule will normally be 120/240 volt single-phase service with single-phase motor operations being permitted where the size of individual motors does not exceed five hp.
- (5) *Meter reading.* The meter reading will normally be, as far as practicable, at intervals of approximately 30 days.
- (6) *Limitation of rate.* Electric service under this schedule is not available for standby service and shall not be resold or shared with others. For those customers whose connected load meets or exceeds 25 KW, the City may require the billing of the customers' monthly consumption under general power service.
- (7) *Automatic rate increases and pass through.*
 - a. *Automatic rate increases.* At any time that there is an increase in the wholesale rate for electricity which is charged to the City, such wholesale rate increase may be automatically passed on to the customer on a pro rata basis, except in the instance of written contracts for lighting.
 - b. *Automatic pass through.* At any time there is an increase in the wholesale cost of gasoline, diesel fuel, or other energy charges necessarily used by the Electric Department in the operation and maintenance of the Electric Utility Department which are charged to the City, such wholesale cost increases shall be automatically passed through to the customer on a pro rata basis.

(e) *Municipal service.*

Municipal service, per KWH: . . . \$0.067

Municipal sewage plants, per KWH: . . . 0.067

Street lighting rate, per month per light: . . . 4.75

- (1) Rental service to renters within or without the City limits for installation on existing facilities with two foot to six foot mast arm, luminaire, ballast, and individually photoelectrically controlled lamp:

70 W high pressure sodium (minimum one-year contract), per month . . . \$5.57

250 W high pressure sodium (minimum one-year contract), per month . . . 9.02

400 W high pressure sodium (minimum one-year contract), per month . . . 15.91

* Note: 120 volt secondary services available

(f) *Street light rate.*

- (1) *Applicability.* The street light rate is applicable only to those citizens residing in the parts of the City that do not have electric service provided by the City's electric system.
- (2) *New rate per month or part thereof:* \$2.12 per month.

- (3) *Type of service.* The service covers the cost of providing 70 WHPS lighting according to the standards used by the City for streetlight installation.

(Code 1962, § 3-3-16; Ord. No. 401, § 1, 11-23-92; Ord. No. 479, § 1, 7-24-00; Ord. No. 496, § 1, 7-9-01; Ord. No. 516, § 1, 3-11-02; Ord. No. 524, § 1, 12-9-02)

Sec. 14-46. Water and electrical rates for Williamsburg.

The water and electrical rates set forth in this article shall be the rates applicable to and be charged to all customers and consumers in Williamsburg, New Mexico.

(Code 1962, § 3-3-17)

Sec. 14-47. Electric service regulations.

- (a) *Separate meters required.* A separate electric utility meter is hereby required for each permanent separate single-family residence and dwelling, including each mobile home, house trailer, or converted mobile home or house trailer, being served by the City electric utility system.
- (b) *Resale of electric energy prohibited.* The purchase for resale of electric energy by any customer receiving and purchasing electric energy from the City is prohibited.
- (c) *Providing electric service to customers.* Any customer receiving and purchasing electric energy from the City electric utility system may provide electric energy to such customers, tenants, or lessees from whom lease or rental payments are received; provided, however, that such electric energy shall only be provided as a service to such tenants or lessees for his or its use, and provided further, that there shall be no sale by the landlord or lessor to the tenant or lessee. If a charge for electric energy is separately stated, and electric energy received by tenant or lessee is metered, then the charge shall be exactly that paid by the master meter customer, and no profit, overhead, or other expense or charge shall be added or passed through to the final user. The customer making such charges and passing them on to the user shall certify annually, upon payment of the business registration fee, that such charges are exactly those charged by the City Electric Department and that there has been for the preceding year no sale or resale of electricity at a profit.
- (d) *Penalty for violation of section.* It shall be unlawful for any person to violate the provisions of this section, and any person determined to be guilty of any such violation shall be punished in accordance with section 1-10.
- (e) *Additional remedies.* The City shall have such other and further remedies as shall be provided by law, including the right and power to discontinue electric utility service for violation of this section, and including the right to enjoin the violation hereof.

(Code 1962, § 3-3-18)

Secs. 14-48—14-50. Reserved.

Sec. 14-51. Past due bill charges.

If any service rate or charge for any of the services provided under Chapter 11 and Chapter 14 of the Municipal City Code, is not paid within 45 days after such charge is due, the City shall charge an additional one and one-half percent late penalty per month on all such past due amounts.

(Ord. No. 482, § 1, 9-11-00; Ord. No. 512, § 1, 3-11-02)

Sec. 14-52. Discounted utility rates.

For any business that creates and maintains at least ten new full-time positions, the following rates for City provided utilities will apply for 18 months:

Electric:

Small Commercial Single Phase, per KWH . . . \$0.052

Small Commercial Three Phase, per KWH . . . 0.052

Large Commercial Single Phase, per KWH . . . 0.052

Large Commercial Three Phase, per KWH . . . 0.052

Water:

Commercial (1,000 gallons after 3,000 gallons usage) . . . \$1.79

Sewer:

Commercial (1,000 gallons metered water use) . . . \$1.08

Sanitation:

Trash Commercial Class I, per month . . . \$16.21

Trash Commercial Class II, per month . . . 25.83

Trash Commercial Class III, per month . . . 37.83

Trash Commercial Class IV, per month . . . 50.67

Trash Commercial Class V, per month . . . 145.90

All other charges and rates related to these commercial utility rates are as presented in sections 11-10, 14-38, 14-45, and 14-79 of the Code. At the expiration of the 18-month period, the businesses will be charged as provided elsewhere in this Code. Use of this Code can be continued as long as ten new full-time positions are created and maintained in subsequent 18-month periods. Rates specified in this section affect only the rates charged by the City for commercial customers located within the City. These rates do not apply to other, independent utilities that operate within certain sectors of the City.

(Ord. No. 504, 12-26-01)

Editor's note—

Ord. No. 504, adopted Dec. 26, 2001, did not specifically amend the Code. At the editor's discretion, it has been included herein as § 14-52.

Sec. 14-53. Declaration of lien and recovery of past due bills.

- (a) *Declaration of lien.* If a bill for use of any of the utilities described in Chapter 11 or 14 remains unpaid for more than 60 days after the rendition of the bill therefor, the City may record a notice of lien in the office of the County Clerk of Sierra County, and may proceed to foreclose the same. The notice shall consist of a sworn statement by the City Clerk setting forth:
- (1) A description of such real estate sufficient for the identification thereof;
 - (2) The amount of money due for the use of service of the utilities;
 - (3) The date when such amount became delinquent, and such other requirements as shall satisfy the statutes or laws of the state governing the establishment and foreclosure of liens.

If foreclosure proceedings are instituted, a reasonable attorney's fee, as fixed by the Court, shall be recovered.

- (b) *Recovery of past due bills.* As an alternative to filing foreclosure proceedings to recover any past due bill, the City may proceed with any other allowable legal proceedings to collect the amount owed. In such event, the City may also seek to recover its reasonable attorney's fees.

(Ord. No. 656, § 1, 11-22-14)

Secs. 14-54—14-65. Reserved.

ARTICLE III. SEWER USE [2](52)

- Sec. 14-66. Definitions.
- Sec. 14-67. Requirements—Connection.
- Sec. 14-68. Same—Facilities.
- Sec. 14-69. Same—Tap.
- Sec. 14-70. Same—Material.
- Sec. 14-71. Same—Lateral.
- Sec. 14-72. Same—Sewage discharge.
- Sec. 14-73. Same—Minimum for construction or connections to wastewater system.
- Sec. 14-74. Permit—General requirements.
- Sec. 14-75. Same—Private subdivision requirements.
- Sec. 14-76. Reserved.

- Sec. 14-77. Costs—Installation.
- Sec. 14-78. Same—Maintenance and repair.
- Sec. 14-79. Service charges.
- Sec. 14-80. Collection of rental—On City water.
- Sec. 14-81. Same—From other water sources.
- Sec. 14-82. Reserved.
- Sec. 14-83. Disconnections.
- Sec. 14-84. Inspection.
- Sec. 14-85. City subject to rates and charges.
- Sec. 14-86. First billing of new service.
- Sec. 14-87. Basis for charges.
- Sec. 14-88. Reserved.
- Sec. 14-89. Private disposal systems.
- Sec. 14-90. Village of Williamsburg wastewater treatment charges.
- Sec. 14-91. Same—Sanitary sewer service billing.
- Sec. 14-92. Same—Sanitary sewer lift station maintenance and call-out charges.
- Sec. 14-93. Reimbursement for wastewater treatment and sanitary sewer lift station maintenance and call-out services.
- Sec. 14-94. Periodic adjustments.
- Sec. 14-95. Water connection fees.
- Sec. 14-96. [Waste]water connection fees.
- Secs. 14-97—14-110. Reserved.

Sec. 14-66. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Premises means and includes a lot, parcel of land, building, or establishment used for human habitation or occupancy, and each of such buildings or establishments as are separated by a fire wall on each side thereof shall be considered a separate premises under this article, irrespective of the length or size of such building or establishment.

Sewage means a combination of water or waterborne waste conducted from residences, commercial buildings, and institutions, and which is known as domestic sewage. "Sewage" also means the liquid or water carried waste resulting from commercial

manufacturing or industrial operation or process, which water or waterborne wastes enter the system of sewerage or any part thereof of the City from any premises having a connection therewith or thereto, or anything that shall be deemed harmful to the operation of the sewage disposal works of the City, as determined by the Manager of the works.

(Code 1962, § 8-4-1)

Definitions and rules of construction generally, § 1-2.

Sec. 14-67. Requirements—Connection.

Every person owning premises in the City which abuts or adjoins a street or alley along which is located a public sanitary sewer which is accessible within 100 yards of the lot shall make an approved water and sewer connection with such premises. No person shall maintain, use, or operate a privy or cesspool located on premises accessible to a sanitary sewer within 100 yards of the premises and accessible to a water line within 100 yards of the premises, at any time. All septic tanks being used up to the time of the adoption of this article shall not be affected thereby, provided the tanks comply with all of the requirements of the Department of Public Health, but no septic tanks, after the adoption of this article, shall be replaced, nor new ones allowed or installed located on premises accessible to a sanitary sewer within 100 yards of the premises, and accessible to a water line within 100 yards of the premises, provided that no person shall be required to cross the private property of any other person to make such water or sewer connections, without permission of the owner thereof. All such connections shall be made in accordance with the Plumbing Code, and no person shall occupy any premises after the water supply has been cut off, except in cases where the water supply is cut off temporarily for the purpose of effecting necessary repairs. In lieu of a public sewer connection, and where no public sanitary sewer line is accessible as indicated in this section, a septic tank approved by the State Department of Public Health shall be installed.

(Code 1962, § 8-4-2)

Municipal authority to require utility connections, NMSA 1978, § 3-26-3.

Sec. 14-68. Same—Facilities.

No person shall build or remodel any premises within 100 yards of a water or sewer line within the City unless provision is made for water carried sewerage facilities.

(Code 1962, § 8-4-3)

Sec. 14-69. Same—Tap.

All taps shall be made by using a Y saddle to be furnished by the City and conforming to the requirements of the Building Inspector. The Y saddle shall be paid for by the customer at the actual cost, which shall be reviewed at least annually by the City Manager.

(Code 1962, § 8-4-7)

Sec. 14-70. Same—Material.

The suitability of all materials used in making connections shall be determined by the Building Inspector.

(Code 1962, § 8-4-9)

Sec. 14-71. Same—Lateral.

All laterals from the sewer line to the property owner's property line shall be installed according to specifications furnished by the City, and all such installations inspected and approved by the Building Inspector thereof.

(Code 1962, § 8-4-10)

Sec. 14-72. Same—Sewage discharge.

No person shall be permitted to discharge commercial or industrial waste, refuse, or sewage into the public sewer system without first obtaining from the Building Inspector a permit which shall be used subject to the approval of the Engineer and the Health Department, who shall, before giving their approval, ascertain whether or not such connections will be detrimental to the sewer system. No commercial or industrial waste, refuse, or sewage shall be discharged into the public sewer system until the duly qualified representative or agents of the City have determined beyond reasonable doubt that such waste, refuse, or sewage does not contain ingredients, chemicals, or other matter of such a nature that will not permit the proper, efficient, successful, and continuous operation and functioning of the sewage disposal works in a continuous and efficient manner.

(Code 1962, § 8-4-12)

Sec. 14-73. Same—Minimum for construction or connections to wastewater system.

- (a) New sewers and sewer connections added to the City's sewer system shall conform to the design and construction guidelines enumerated in the latest edition of Recommended Standards for Sewage Works, written by the Great Lakes-Upper Mississippi River Board of State Sanitary Engineers. These standards are published by Health Education Service, P.O. Box 7283, Albany, New York 12224. In addition, new sewer design and construction shall conform to Addenda to Recommended Standards for Sewage Works, written and published by the New Mexico Environmental Improvement Agency.
- (b) The provisions of the state statutes concerning sewage facilities are hereby adopted and incorporated as a part of this article.
- (c) When new customers are allowed to connect into the Truth or Consequences wastewater collection facilities, they shall comply with the requirements of this article.
- (d) Any portion of any previous City ordinance which is in conflict with the terms of this section is held to be invalid, revoked, and superseded by this section; but only to the extent or scope of such conflict, and the nonconflicting portions of such ordinances shall be held as remaining in full force and effect.

(Code 1962, § 8-4-25)

Sec. 14-74. Permit—General requirements.

No water or plumbing fixture shall be installed, and no building or toilet fixture shall be connected with a public or private sewer line or private septic tank, without first obtaining a plumbing permit. No private septic tank disposal system or other means of sewage disposal shall be installed until a permit for such installation shall have been issued by the Building Inspector. This permit shall be issued only when the size, design, and construction of such proposed sewage treatment facilities shall conform to the standards and requirements of the State Department of Public Health, and in no case shall the septic tank have a net working capacity of less than 500 gallons, and in no case shall the nitrification bed have less than 100 feet of drain tile for sandy soil, or 200 feet of drain tile for medium soil.

(Code 1962, § 8-4-4)

Sec. 14-75. Same—Private subdivision requirements.

- (a) It shall be the duty of every person owning or promoting the sale of lots in any private subdivision, before commencing the laying or constructing of a sewer or system of sewers in private streets or across private property in such subdivision, and before replacing, reconstructing, or extending any such sewer line or system of sewers, to file with the Clerk a written application for a permit therefor, together with plans, in duplicate, showing the location of such sewer or system of sewers, the size and material of the pipes, the nature and character of the easements on or over which the sewer will be built, the location of the outlet connection for the sewer, and the sewer or other disposal facility to which it is to be connected. Such application and plans shall be approved by the Building Inspector, and it shall be unlawful for any person to perform, or cause to be performed, any work of construction or repair upon any such sewer, or system of sewers, until the plans therefore have been approved and a permit issued, as provided in this section.
- (b) In passing upon such application and plans, the Building Inspector shall give consideration, among other things, to whether the contemplated pipe dimension is sufficient to provide adequate drainage of the type contemplated in the entire water shed in which the sewer or system is located, whether the easements are of a character which will permit entrance by the public authorities for future repairs and replacements, whether the grade at which the system will be built will provide for adequate flow and runoff from the properties adjacent to or to be served by the system without backup or obstruction, whether plans and specifications conform to the general sewer system as laid out on the master plan, and whether the sewer or system, as a whole, will be adequate, useful, and efficient. Plans may be approved pursuant to this section even though the entire system is not to be constructed at one time. Upon the approval of the application and plans, a permit shall be issued therefor, one copy of the plans to remain on file with the Clerk.
- (c) No connection of such sewer or system to any public sewer or other public disposal facility shall be made unless and until special connection permit therefor has been issued in writing and signed by the Building Inspector.
- (d) The Building Inspector shall make inspection of the sewer and sewer system as the work progresses, and there shall be no backfill of any sewer line after the

pipes have been laid and until the inspection has been made. The inspection shall be made for the purpose of ascertaining that the work is in accordance with the plans approved therefor, and the Building Inspector, before issuing the special connection permit, shall certify to the Clerk in writing his final approval and acceptance of the work.

- (e) The provisions of this section shall also apply to the construction, reconstruction, replacement, or extension of any private sewer or system of sewers in the City, except ordinary house connections provided for by this article.

(Code 1962, § 8-4-5)

Sec. 14-76. Reserved.

Editor's note—

Ord. No. 498, § 1, adopted July 9, 2001, repealed § 14-76 in its entirety. Formerly said section pertained to permit charges. See the Code Comparative Table.

Sec. 14-77. Costs—Installation.

All costs of installing sewer laterals from a main sewer line to the property line, as well as that portion of a sewer lateral on the property owner's premises, shall be borne by the property owner, and installation from the main to the property line shall be accomplished by the City at the averaged cost, including labor, to be determined each fiscal year by the City Manager. The laterals on the property owner's premises shall be installed only by a licensed plumbing contractor.

(Code 1962, § 8-4-8)

Sec. 14-78. Same—Maintenance and repair.

The cost of maintenance and repairs to laterals from the sewer lines to and including the customer's property shall be paid for by the property owner.

(Code 1962, § 8-4-11)

Sec. 14-79. Service charges.

- (a) *Residential use:*

Customer charge, per month . . . \$9.23

Usage charge, per each 1,000 gallons . . . \$3.12

- (1) Residential customers' billable wastewater flows will be calculated by averaging the three lowest of the four months' billings for each December, January, February, and March. Each April, the billable flows for each residential customer will be adjusted based on the average of three of the lowest four prior December, January, February, and March billing months. Where no prior December, January, February, and March billing is available to average for wastewater billing for an individual customer, an average consumption of 5,000 gallons will be used. If actual

water consumption during any month is less than the average winter months' consumption, based on the calculations as described above, the wastewater flow billed will be equal to the actual metered water consumption for that month.

- (2) For residences using the hot mineral water dedicated sewer lines and systems, the monthly charge shall be \$10.00.

Each July and every year hereafter, the fees shall be subject to be adjusted automatically to reflect a five percent increase.

(b) *Commercial use:*

Customer charge, per month . . . \$9.23

Usage charge, per each 1,000 gallons . . . \$3.12

- (1) The volume for each commercial use shall be based on the monthly water usage.
 - (2) From bathhouses using the sewer lines and system, the monthly charge shall be \$30.75.
- (c) *Users within the City limits not using City water.* From all persons, not otherwise provided for in this section, deriving their domestic or commercial water supply from a privately owned source or well not supplied by the City, the monthly service charge shall be \$19.10.
- (d) *Automatic pass through charge.* At any time there is an increase or decrease in production costs or in the cost of electricity or any other form of energy used in the processing of waste passing through the municipal sewer service, such cost adjustments shall be automatically passed on to the customer on a pro rata basis. The City Commission shall make appropriate rate adjustments each year during budget hearings which shall apply for the following year.
- (e) *Assessment.* An owner of an occupied building within the corporate limits of the City, which building is accessible to a sanitary sewer located within 100 yards of the premises and it is feasible for the building to be connected to the sanitary sewer, shall be assessed the applicable minimum charge as provided for in this section, whether or not the premises are connected to the sanitary sewer system.

Each July and every year hereafter, the fees shall be subject to be adjusted automatically to reflect a five percent increase.

(Code 1962, § 8-4-13; Ord. No. 385, 8-12-91; Ord. No. 387, 11-12-91; Ord. No. 405, 2-8-93; Ord. No. 411, 1-10-94; Ord. No. 476, § 1, 7-24-00; Ord. No. 498, § 2, 7-9-01; Ord. No. 508, § 1, 2-25-02; Ord. No. 529, § 1, 8-25-03; Ord. No. 536, § 1, 5-10-04; Ord. No. 598, §§ 1, 2, 8-25-09; Ord. No. 662, § 1, 3-10-15)

Sec. 14-80. Collection of rental—On City water.

The sewer rental specified in this section shall be charged, collected, and enforced in the same manner, and at the same time, and by the same person as are the charges for water

furnished by the City. The amount thereof shall be included in the total amount due for water. All provisions of this Code applicable to the charge, collection, and enforcement of rates for water furnished by the City are hereby made applicable to this section.

(Code 1962, § 8-4-15)

Sec. 14-81. Same—From other water sources.

If any lot, parcel of land, or premises which discharges sewage or industrial waste into the sanitary sewer system, either directly or indirectly, obtains part or all of the water used thereon from sources other than the water system of the City, then in such case the City shall permit the discharge of sewage or industrial waste into its sanitary sewer system only when the owner of such lot, parcel of land, or premises, shall pay and agree to pay the charges as have been set forth in this article, and the sewer rental therefor shall be charged, collected, and enforced as specified in section 14-80.

(Code 1962, § 8-4-16)

Sec. 14-82. Reserved.

Editor's note—

Section 2 of Ord. No. 656, adopted Nov. 22, 2014, repealed § 14-82 which pertained to declaration of lien, and derived from the 1962 Code, § 8-4-17. See § 14-53, declaration of lien and recovery of past due bills.

Sec. 14-83. Disconnections.

Any user of the City's sewer lines and system who shall fail to pay the sewerage service charge due by him within 60 days after such charge shall become due shall be subject to have his water and sewer lines, or either of such lines, disconnected from the City's system, and, if disconnected, no connection shall thereafter be made with the City sewer or water system, as the case may be, until such amounts due and all costs of disconnecting from and reconnecting with the system shall have been paid.

(Code 1962, § 8-4-18)

Sec. 14-84. Inspection.

The duly authorized agents of the City shall have the right to enter upon any premises to inspect, connect, or disconnect the system to the owner's or other property.

(Code 1962, § 8-4-19)

Sec. 14-85. City subject to rates and charges.

For the services rendered the City, the City shall be subject to the same rates and charges provided in this article or to charges and rates established in harmony therewith.

(Code 1962, § 8-4-20)

Sec. 14-86. First billing of new service.

The rates and charges fixed in this article shall be extended to and cover any additional premises hereinafter served without the necessity of any hearing or notice, the first billing to be a per diem pro rata amount based on the minimum charge per month from the time a sewer connection is made to such premises, or discharge into the City's sewerage system, either directly or indirectly, is begun, until the next following water meter reading date, except should the measured service exceed the minimum charge, the corresponding measured rate shall be charged.

(Code 1962, § 8-4-21)

Sec. 14-87. Basis for charges.

In order that the rates and charges may be justly and equitably adjusted to the service rendered, the City shall have the right to base its charges not only on volume but also on the strength and character of the sewage and wastes which it is required to treat and dispose of. The City shall have the right to measure and determine the strength and content of all sewage and wastes discharged, either directly or indirectly, into the City's sanitary sewerage system, in such manner and by such methods as it may find practicable in the light of the conditions and attending circumstances of the case, in order to determine the proper charge.

(Code 1962, § 8-4-22)

Sec. 14-88. Reserved.

Editor's note—

Section 3 of Ord. No. 656, adopted Nov. 22, 2014, repealed § 14-88 which pertained to recovery of past due bills, and derived from the 1962 Code, § 8-4-23. See § 14-53, declaration of lien and recovery of past due bills.

Sec. 14-89. Private disposal systems.

All private disposal systems shall conform in all respects with the State Plumbing and Health Codes.

(Code 1962, § 8-4-24)

Sec. 14-90. Village of Williamsburg wastewater treatment charges.

- (a) Residential and commercial users.
 - (1) A unit charge of \$3.12 per 1,000 gallons of "Established Water Use" for all Williamsburg consumers will be totaled each month and charged to the Village of Williamsburg for wastewater treatment.

Each July and every year hereafter the fees shall be subject to be adjusted automatically to reflect a five percent increase.

- (2) The unit charge for wastewater treatment shall be indexed to individual

consumer's "established water use," measured in gallons.

- (3) Each consumer's "established water use" shall be computed annually by averaging the monthly water use indicated on the consumer's November, December, and January water utility bills. Initial "established water use" shall be the average of bills issued to consumers in November and December, and January.

(Ord. No. 533, 1-29-04; Ord. No. 667, § 1, 11-10-15)

Sec. 14-91. Same—Sanitary sewer service billing.

- (a) Each month, the City of Truth or Consequences will bill Village of Williamsburg customers at the rate that has been established by the Village and collect the payments for sanitary sewer service.
- (b) The City will charge the Village a service fee of \$1.00 each month for each bill sent to Village of Williamsburg customers.

(Ord. No. 533, 1-29-04)

Sec. 14-92. Same—Sanitary sewer lift station maintenance and call-out charges.

- (a) The City of Truth or Consequences will perform regular lift station maintenance on Williamsburg Sanitary Sewer System Lift Stations once each month at the flat rate of \$90.00 per month.
- (b) Minimum charge for lift station call-outs shall be \$98.00 for the first two hours. After the first two hours, call-out time will be prorated to actual time required, at a rate of \$48.00 per hour.
- (c) Minimum charge for residential/commercial call-outs requiring special equipment will be billed at the rate of \$65.00 per hour. There is a minimum two-hour charge which contemplates that a City of Truth or Consequences employee and one piece of equipment shall be utilized. Other charges may apply, dependent upon the type of call-out service requested.
- (d) Call-out services shall be performed only at the request of Sierra County Dispatch and billed to the Village of Williamsburg. Regular maintenance and call-out service includes labor and equipment only, parts are not included.

(Ord. No. 533, 1-29-04; Ord. No. 667, § 1, 11-10-15)

Sec. 14-93. Reimbursement for wastewater treatment and sanitary sewer lift station maintenance and call-out services.

- (a) Payments due from the Village of Williamsburg to the City of Truth or Consequences for wastewater treatment, sanitary service billing, regular maintenance and call-out services on lift stations will be deducted from the total of all funds collected by the city from Williamsburg customers. The balance of said funds shall then be forwarded to the Village of Williamsburg by the tenth day of each month.

- (b) The City of Truth or Consequences will pay the Village of Williamsburg a sewer line use fee of \$45.50 per month for the City of Truth or Consequences residents that are connected to sewer lines owned by the Village of Williamsburg.

(Ord. No. 533, 1-29-04; Ord. No. 667, § 1, 11-10-15)

Sec. 14-94. Periodic adjustments.

- (a) The monthly volume of wastewater treated by the City of Truth or Consequences for the Village of Williamsburg shall be computed annually by averaging the water consumption on each customer's November, December, and January water utility bills. The wastewater treatment charge will be based upon the average water usage calculated for those three months. This three-month average will be the "established water use" and shall become effective on March first of the same year.
- (b) The aforementioned charges to be levied against the Village of Williamsburg by the City of Truth or Consequences in the amount of:
 - (1) Section 14-90: Wastewater treatment, \$3.12 per 1,000 gallons of "established water use" each month.

Each July and every year hereafter the fees shall be subject to be adjusted automatically to reflect a five-percent increase.

- (2) Section 14-91: Sanitary sewer service billing, \$1.00 for each utility bill sent each month.
- (3) Section 14-92: Regular sanitary sewer lift station maintenance, \$90.00 per month, lift station call-out service, minimum \$98.00, residential/commercial call out service, \$65.00 per hour, minimum two-hour charge.

(Ord. No. 533, 1-29-04; Ord. No. 667, § 1, 11-10-15)

Sec. 14-95. Water connection fees.

- (a) *Water service tap fees:*

<i>Size</i>	<i>Charge</i>
¾"	\$675.00
1"	867.00
2"	2,057.00

Costs for installation of services in excess of two inches will be estimated at the time of the service request. It is not the policy of the City to stock material for services larger than two inches. The estimate will be based upon costs of equipment, time, labor, and material in effect at the time of the service request.

- (b) *Facilities provided in tap fee:*

- (1) Excavation of trench to within 18 inches of the Customer's property line

with a maximum trench length of 25 feet.

- (2) Provide and install service saddle, corporation stop, curb stop, and plastic service line to a maximum of 25 feet.
 - (3) Meter box and meter with two meter couplings.
 - (4) Backfill and compact trench with rock and gravel free soil.
- (c) *Additional charges:* There will be additional charges to the basic water service tap fee under the following circumstances:
- (1) Excavation of trench for distances greater than 25 feet;
 - (2) Excavation of service line for distances greater than 25 feet;
 - (3) Soil or surface conditions that require the use of equipment other than our standard backhoe or trencher; or
 - (4) Removal and replacement of surface in paved streets or alleys.

The additional charges will be based on actual cost of equipment, time labor, and materials needed to install the service.

(Ord. No. 634, § 1, 1-8-13)

Sec. 14-96. [Waste]water connection fees.

- (a) *Wastewater service tap fees:*

<i>Size</i>	<i>Charge</i>
3"	\$675.00
4"	675.00
6"	725.00

- (b) *Facilities provided in tap fee:*

- (1) Excavation of trench to within 18 inches of the Customer's property line with a maximum depth of six feet and a maximum length of 25 feet.
- (2) Install service line to a maximum length of 25 feet.
- (3) Provide and install saddle and other required fittings.
- (4) Backfill and compact trench with rock and gravel-free soil.

- (c) *Additional charges:* There will be additional charges to the basic wastewater service tap fee under the following circumstances:

- (1) Excavation of trench in excess of six feet in depth or in excess of 25 feet in length;
- (2) Soil or surface conditions that require the use of equipment other than our standard backhoe or trencher;
- (3) Soil conditions that require a trench wider than four feet to safely install

the service;

- (4) Trench depths that require sloping of trench sides or shoring to safely install the service; or
- (5) Removal and replacement of surface in paved streets or alleys.

The additional charges will be based on actual costs of equipment, time labor, and materials needed to install the service.

(Ord. No. 634, § 2, 1-8-13)

Secs. 14-97—14-110. Reserved.

ARTICLE IV. INDUSTRIAL WASTES [3](53)

Sec. 14-111. Definitions.

Sec. 14-112. Wastewater discharges.

Sec. 14-113. Control of prohibited wastes.

Sec. 14-114. Commercial wastewater monitoring and reporting.

Sec. 14-115. Enforcement procedures.

Sec. 14-116. Permit required for the drilling of new domestic water wells.

Sec. 14-117. Management of geothermal waters after use.

Sec. 14-111. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Biochemical oxygen demand (BOD) means the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five days at 20° C, expressed in terms of weight and concentration (milligrams per liter).

Commercial wastewater means the liquid wastes resulting from the processes employed in industrial commercial trade or business establishments, as distinct from domestic wastes.

Compatible pollutant means BOD, suspended solids, pH and fecal coliform bacteria, and such additional pollutants as are now or may be in the future specified and controlled in this City's NPDES permit for its wastewater treatment works where such works have been designated and used to reduce and remove such pollutants.

Domestic wastes means liquid wastes from the noncommercial preparation, cooking, and handling of food or containing human excrement and similar matter from the sanitary conveniences of dwellings, commercial buildings, industrial facilities, and institutions.

Garbage means solid wastes from the domestic and commercial preparation, cooking, and dispensing of food, and from the handling, storage, and sale of food.

National Pollutant Discharge Elimination System (NPDES) means the program for issuing, conditioning, and denying permits for the discharge of pollutants from point sources into the navigable waters, the contiguous zone, and the oceans pursuant to section 402 of the Act.

Person means any individual, firm, company, partnership, corporation, association, group, or society, and includes the State of New Mexico, and agencies, districts, commissions, and political subdivisions created by or pursuant to state law.

pH means the logarithm of the reciprocal of the concentration of hydrogen ions in grams per liter of solution.

Suspended solids means the total suspended matter that floats on the surface of, or is suspended in, water, wastewater, or other liquids, and which is removable by laboratory filtering.

User means any person who discharges, causes, or permits the discharge of wastewater into the City's wastewater treatment system.

Wastewater treatment system means any devices, facilities, structures, equipment, or works owned or used by the City for the purpose of the transmission, storage, treatment, recycling, and reclamation of industrial and domestic wastes, necessary to recycle or reuse water at the most economical cost over the estimated life of the system, including intercepting sewers, outfall sewers, sewage collection systems, pumping, power, and other equipment, their appurtenances, extensions, improvements, remodeling, additions, and alterations thereof; elements essential to provide a reliable recycled supply, such as standby treatment units and clear well facilities; and any works, including site acquisition of the land that will be an integral part of the treatment process or is used for ultimate disposal of residues resulting from such treatment.

(Ord. No. 369, § 1, 1-22-90)

Definitions and rules of construction generally, § 1-2.

Sec. 14-112. Wastewater discharges.

(a) *Prohibitions.* No person shall discharge or deposit or cause or allow to be discharged or deposited into the wastewater treatment system any wastewater which contains the following:

(1) *Oil, sands, and grease.*

- a. Oil, sand, and/or grease concentrations or amounts from commercial facilities violating federal NPDES standards;
- b. Wastewater from commercial facilities containing floatable fats, wax, grease, or oils;
- c. Wax, grease, or oil concentrations of mineral origin of more than ten mg/l, whether emulsified or not, or containing substances which may solidify or become viscous at temperatures between 32 and 150 degrees Fahrenheit (0 and 65 degrees Celsius) at the point of discharge into the system;

- d. Total fat, wax, grease, or oil concentrations of more than ten mg/l, whether emulsified or not, or containing substances which may solidify or become viscous at temperatures between 32 and 150 degrees Fahrenheit (0 and 65 degrees Celsius) at the point of discharge into the system.
- (2) *Explosive mixtures.* Liquids, solids, or gases which, by reason of their nature or quantity, are, or may be, sufficient either alone or by interaction with other substances to cause fire or explosion or be injurious in any other way to the sewerage facilities or to the operation of the system. Prohibited materials include but are not limited to gasoline, kerosene, naphtha, benzene, toluene, zylene, ethers, alcohols, ketones, aldehydes, peroxides, chlorates, perchlorates, bromates, carbides, hydrides, and sulfides.
- (3) *Noxious material.* Noxious or malodorous solids, liquids, or gases, which, either singly or by interaction with other wastes, are capable of creating a public nuisance or hazard to life, or are or may be sufficient to prevent entry into a sewer for its maintenance and repair.
- (4) *Improperly shredded garbage.* Garbage that has not been ground or comminuted to such a degree that all particles will be carried freely in suspension under flow conditions normally prevailing in the public sewers, with no particle greater than one-half inch in any dimension.
- (5) *Solid or viscous wastes.* Solid or viscous wastes which will or may cause obstruction to the flow in a sewer, or otherwise interfere with the proper operation of the wastewater treatment system. Prohibited materials include but are not limited to grease, uncomminuted garbage, animal guts or tissues, paunch manure, bones, hair, hides, or fleshings, entrails, whole blood, feathers, ashes, cinders, sand, clay, spent lime, stone, or marble dust, metal, glass, straw, shavings, grass clippings, rags, spent grains, spent hops, waste paper, wood, plastic, tar, asphalt residues, residues from refining or processing of fuel or lubricating oil, and similar substances.
- (6) *Unpolluted waters.* Any unpolluted water including but not limited to water from cooling systems or of stormwater origin, which will increase the hydraulic load on the treatment system.
- (7) *Discolored material.* Wastes with objectionable color not removable by treatment process.
- (8) *Corrosive wastes.* Any waste which will cause corrosion or deterioration of the treatment system. All wastes discharged to the public sewer system must have a pH value in the range of six to nine standard unit. Prohibited materials include but are not limited to acids, sulfides, concentrated chloride and fluoride compounds, and substances which will react with water to form acidic products.
- (b) *Limitations.* No person shall discharge or convey, or permit or allow to be discharged or conveyed, to a public sewer any wastewater containing pollutants

of such character or quantity that will:

- (1) Not be susceptible to treatment or interfere with the process or efficiency of the treatment system;
- (2) Constitute a hazard to human or animal life, or to the stream or watercourse receiving the treatment plant effluent;
- (3) Violate treatment standards;
- (4) Cause the treatment plant to violate its NPDES permit or applicable receiving water standards.

(Ord. No. 369, § 2, 1-22-90)

Sec. 14-113. Control of prohibited wastes.

- (a) *Regulatory actions.* If wastewaters containing any substance described in section 14-112 are discharged or proposed to be discharged into the sewer system of the City or to any sewer system tributary thereto, the City Manager may take any action necessary to:
 - (1) Prohibit the discharge of such wastewater;
 - (2) Require the person making, causing, or allowing the discharge to pay any additional cost or expense incurred by the City for handling and treating excess loads imposed on the treatment system;
 - (3) Take such other remedial action as may be deemed to be desirable or necessary to achieve the purpose of this article.
- (b) *Admission to property.* Whenever it shall be necessary for the purposes of these rules and regulations, the Wastewater Superintendent or designated assistant, upon the presentation of credentials, may enter upon any property or premises at reasonable times for the purpose of:
 - (1) Copying any records required to be kept under the provisions of this article;
 - (2) Inspecting any monitoring equipment or method; and
 - (3) Sampling any discharge of wastewater to the treatment works.

The Wastewater Superintendent or designated assistant may enter upon the property at any hour under emergency circumstances.

(Ord. No. 369, § 3, 1-22-90)

Sec. 14-114. Commercial wastewater monitoring and reporting.

- (a) *Records and monitoring.*
 - (1) All commercial users who discharge or propose to discharge wastewaters to the wastewater treatment system shall maintain such records of production and related factors, effluent flows, and pollutant amounts or concentrations as are necessary to demonstrate compliance with the

requirements of this article and any applicable state or federal pretreatment standards or requirements.

- (2) The owner or operator of any premises or facility discharging commercial wastes into the system shall install at his own cost and expense a suitable monitoring vessel to facilitate the accurate observation, sampling, and measurement of wastes. Such equipment shall be maintained in proper working order and kept safe and accessible at all times.
 - (3) The monitoring vessel shall be located and maintained on the commercial user's premises outside the building. When such a location would be impractical or cause undue hardship on the user, the City Manager may allow such facility to be constructed in the public street or sidewalk area, with the approval of the public agency having jurisdiction over such street or sidewalk, and located so that it will not be obstructed by public utilities, landscaping, or parked vehicles.
- (b) *Inspection, sampling, and analysis.* Compliance determinations with respect to section 14-112 prohibitions and limitations may be made on the basis of either instantaneous grab samples or composite samples of wastewater. Composite samples may be taken over a 24-hour period, or over a longer or shorter time span, as determined necessary by the Wastewater Superintendent or designated assistant to meet the needs of specific circumstances.

(Ord. No. 369, § 4, 1-22-90)

Sec. 14-115. Enforcement procedures.

- (a) *Notification of violation.* Whenever the Wastewater Superintendent or designated agent finds that any person has violated or is violating this article, or any prohibition, limitation, or requirement contained in this article, the City Manager may serve upon such person a written notice stating the nature of the violation and providing a reasonable time, not to exceed ten days, for the satisfactory correction.
- (b) *Legal action.* Any discharge in violation of the substantive provisions of this article or an order of the hearing authority shall be considered a public nuisance. If any person discharges sewage, commercial wastes, or other wastes into the City treatment system contrary to the substantive provisions of this article, the City Attorney or City Manager may commence an action for appropriate legal and/or equitable relief in the Municipal Court.
- (c) *Penalty for violation of article.* Any person or entity convicted of a violation of this article shall be fined in a sum not to exceed \$300.00 for any one offense, and such person may be confined in the City or County Jail for a period of not more than 90 days.

(Ord. No. 369, § 5, 1-22-90)

Sec. 14-116. Permit required for the drilling of new domestic water wells.

- (a) *Authority and purpose.* This section is enacted pursuant to the authority of NMSA 1978, Sections 3-53-1.1 (2001), 3-53-2 (1965) and 3-53-2.1 (2007). The purpose of this section is to preserve and protect the City's water resources and to provide for the health, safety and general welfare of City residents and visitors.
- (b) *Permit required for new domestic water wells.* No new domestic water well shall be drilled or dug within the municipal boundaries of the City except pursuant to a domestic water well permit issued by the City's Water/Wastewater Utility Director.
- (c) *State Engineer approval.* Application for a new domestic water well permit from the City shall only be submitted after approval of a domestic water well permit issued by the New Mexico State Engineer, a copy of which shall be provided to the City with the application for a city domestic water well permit. The application to the City for a new domestic water well permit shall be accompanied by an application fee in the amount of \$100.00.
- (d) *Plans and specifications.* The application for a new domestic water well permit from the City shall be accompanied by plans and specifications for the proposed new domestic water well and associated plumbing and other equipment, prepared by an engineer, geologist, hydrogeologist, or New Mexico licensed well driller, with sufficient detail for review by the City. The City's Water/Wastewater Utility Director may deny an application not supported by adequate plans and specifications, or in his or her discretion may permit resubmittal of the application with revised plans and specifications, without requiring payment of a new application fee.
- (e) *No cross-connections with City water utility.* Cross-connections that could permit mingling of water from domestic water wells with water from the City water utility are prohibited.
- (f) *City action.* The City's Water/Wastewater Utility Director shall act on each domestic water well permit application and provide notice of the action to the applicant within 30 days after submittal of the application. If the Water/Wastewater Utility Director fails to act within 30 days after submittal of the application, the application shall be deemed to be approved and the applicant may proceed with the proposed installation. If the application is denied, the Water/Wastewater Utility Director shall state, in writing, the reasons for denial and shall also promptly notify the Las Cruces office of the New Mexico State Engineer that the application was denied and the reasons for denial. An applicant whose application is denied for any reason, or who is otherwise aggrieved by the decision of the Water/Wastewater Utility Director, may appeal the Water/Wastewater Utility Director's decision to the City Commission by filing a notice of appeal with the Municipal Clerk within 30 days from the date of the Water/Wastewater Utility Director's decision.
- (g) *Geothermal waters.* For purposes of this section, "geothermal waters" shall mean waters which in their natural state have both a temperature greater than 90 degrees Fahrenheit and a concentration of total dissolved solids (TDS) greater than 1,200 parts per million. The following conditions and limitations shall apply to new domestic water wells that are intended or reasonably expected to

divert geothermal waters, or that upon completion are found actually to produce geothermal waters.

- (1) There shall be no more than one domestic water well producing geothermal waters on any lot or parcel of land one acre in area or smaller. For purposes of this section 14-116, two or more adjacent lots or parcels of land in common ownership shall be considered a single lot or parcel. If an applicant seeks to drill or dig a new domestic water well to produce geothermal waters on a lot or parcel of land one acre in area or smaller where there is a pre-existing well producing geothermal waters, the City will require as a condition of approval that the pre-existing well shall be properly plugged and abandoned by a well driller licensed by the State of New Mexico within 60 days after the new well is completed. The City may, in its discretion, permit more than one domestic water well producing geothermal waters on a lot or parcel of land larger than one acre in area, provided that all wells on the property have been permitted by the New Mexico State Engineer.
 - (2) No new domestic water well producing geothermal waters shall be approved unless adequate provision has been made for the discharge of the geothermal waters after use.
 - (3) There shall be no cross-connection that could permit mingling of geothermal waters with any supply of drinking water, whether or not such drinking water supply is derived from the City water utility.
 - (4) A new domestic well producing geothermal waters shall be equipped with a totalizing meter of a design satisfactory to the City. The totalizing meter shall be properly calibrated and shall be capable of continuous, reliable operation in measuring the flow of warm waters with a high total dissolved solids content. The well owner shall record meter readings at least monthly, and shall annually report all meter readings made during each calendar year to the City, no later than February 1 of the subsequent year. The well owner shall also furnish the City copies of any meter readings or other reports required by the New Mexico State Engineer.
- (h) *Other waters.* The following conditions shall apply to new domestic water wells that are intended or reasonably expected to produce waters that are not geothermal waters.
- (1) An application for a new domestic water well to produce waters other than geothermal waters may be denied if the applicant's property is within the municipal boundaries, the nearest property boundary is within 300 feet of a municipal water utility distribution line, and the City can provide water utility service to the applicant's property within 90 days from the date of the application, unless the applicant's property is zoned and used primarily for agricultural purposes. If the application is denied, the City shall provide water utility service to the applicant's property within 90 days from the date of denial, subject to the City's standard charges and rate schedules.

- (2) Notwithstanding the foregoing subsection 14-116(h)(1), an application for a new domestic water well to produce waters other than geothermal waters shall be approved if the applicant's total cost of connection to the municipal water utility system, including costs incurred by extending the service line, purchasing a meter (not to include utility expansion charges or similar charges) and physically connecting to a residence is greater than the cost of drilling a new domestic water well, regardless of the property's distance from the municipal water utility distribution line. The applicant is responsible for demonstrating the cost of drilling a domestic water well on the property and shall present to the City a written quote by a well driller licensed by the State of New Mexico. The City shall determine whether the written quote is reasonable. Upon completion of any well drilled under this exemption, the applicant shall not use any water from the well before a sworn affidavit by the well driller showing the actual cost of drilling the well is submitted to, and accepted by, the City. If the actual cost of drilling the well exceeds the total cost of connection to the City water system, the well shall be plugged and abandoned and the City shall provide water service to the property. All applicable fees and costs of connection shall be paid by the applicant.
- (3) The owner of a municipally permitted well producing non-geothermal waters shall furnish the City copies of any meter readings or other reports required for that well by the New Mexico State Engineer.
 - (i) *Filing of well record.* Upon completion of any domestic well approved by the City, the applicant or well driller shall file with the City's water/wastewater utility director a copy of the well record that is required to be filed with the Office of the State Engineer. It is the responsibility of the applicant to ensure that the well record is properly filed. If the well record has not been filed within one year after City approval for a domestic well, such approval shall be considered void unless the applicant provides evidence satisfactory to the City that an extension of time has been granted for completion of the domestic well by the Office of the State Engineer, in which case the City will grant an extension of time commensurate with that granted by the Office of the State Engineer.
 - (j) *Protection from organic chemical contamination.* Notwithstanding any other provision of this section, the City may deny an application for a domestic water well under either of the following conditions:
 - (1) An application may be denied if it is determined by the City that the proposed well will be located within an area of existing ground water contamination, or in such close proximity to an area of existing ground water contamination, that it is reasonably expected to produce water containing any organic chemical contaminant in a concentration greater than the maximum contaminant level for that contaminant permitted under the Safe Drinking Water Act of 1974, as amended, and regulations promulgated thereunder, or greater than the allowable concentration for any organic chemical contaminant listed in Subpart A of Section 20.6.2.3103 of the New Mexico Administrative Code. This subsection shall not be deemed to prohibit or limit the production and use of water

containing inorganic chemical constituents in excess of drinking water standards, whether Federal or State, provided that such water is not contaminated by the presence of organic chemical constituents in excess of the concentrations stated in this subsection.

- (2) An application may be denied if it appears, based on information available to the City, that production of water from the well is likely to cause the migration or spread of contaminated water from an area of existing ground water contamination, even if the water actually produced by the proposed well does not exceed the organic contaminant levels described in the preceding subsection. Where the possibility of such migration or spread of contaminated water appears to exist, the City as a condition of permit approval may require that the applicant provide ground water flow modeling or other evidence and documentation by a qualified engineer or hydrogeologist, satisfactory to the City, demonstrating that the production of water from the proposed well will not cause the migration or spread of contaminated water to the detriment of other well users and property owners. The City may limit production of water from a well to an amount less than that approved by the New Mexico State Engineer, if it appears that such limitation is necessary to protect ground water quality.

(Ord. No. 651, §§ 1, 2, 2-11-14)

Editor's note—

Ord. No. 651, §§ 1, 2, adopted Feb. 11, 2014, repealed the former § 14-116, and enacted a new § 14-116 as set out herein. The former § 14-116 pertained to moratorium for the drilling of new domestic wells, and derived from Ord. No. 628, § 1, adopted Aug. 14, 2012; Ord. No. 638, § 1, adopted Aug. 13, 2013; and Ord. No. 650, § 1, adopted Nov. 21, 2013.

Sec. 14-117. Management of geothermal waters after use.

- (a) *Authority and purpose.* This section is enacted pursuant to the authority of NMSA 1978, § 3-23-1 (1965 and as subsequently amended) and NMSA 1978, §§ 3-26-1 through 3-26-3 (1965 and as subsequently amended), the Federal Clean Water Act, and the New Mexico Water Quality Act (NMSA 1978, §§ 74-6-1 through 74-6-17 (1967, and as subsequently amended)). The purpose of this section is to provide for the safe and appropriate disposal of geothermal waters produced from wells permitted by the Office of the State Engineer under NMSA 1978, § 72-12-1 ("domestic water wells") to ensure protection of the resource, to ensure compliance with environmental regulations, and to provide for the health, safety and general welfare of City residents and visitors.
- (b) *Geothermal waters; definition and scope.* This section applies to the discharge or disposal of geothermal waters produced from domestic water wells within the City after the application of the waters to beneficial use. For purposes of this section, "geothermal waters" shall mean waters which in their natural state have both a temperature greater than 90 degrees Fahrenheit and a concentration of total dissolved solids (TDS) greater than 1,200 parts per million (ppm). Due to possible residual heat and to the elevated concentration of TDS, geothermal waters require appropriate disposal and may require additional treatment before

disposal in order to ensure that there is no degradation of quality in the watercourse or subsurface reservoir to which the geothermal waters are disposed.

- (c) *Discharge or disposal of geothermal waters.* Each applicant seeking a City permit for a domestic water well that is expected or intended to produce geothermal waters shall describe the proposed method for discharge or disposal of such waters following their use. Discharge or disposal by the method proposed and approved shall be a condition of the permit, and any person seeking to alter the actual method of discharge or disposal shall apply to the City for approval of the altered method for discharge or disposal of the geothermal waters before making the change. Subject to the regulations and limitations of this section, a user of geothermal waters from domestic water wells within the City may discharge or dispose of such waters by one of three methods: (i) disposal to a French drain or land surface application if permitted by the New Mexico Environment Department (NMED) under applicable regulations; (ii) disposal to the City's hot water drain (the "hot ditch"); or (iii) disposal to the municipal wastewater utility system. An applicant may propose an alternative method of discharge or disposal which the City may approve if the applicant demonstrates to the City's satisfaction that the alternative method is at least as protective of water quality and the health, safety and general welfare as the specific methods enumerated in this subsection and is not contrary to any applicable regulation of the United States or the state of New Mexico.
- (d) *Discharge or disposal by infiltration.* An applicant seeking to discharge or dispose of geothermal waters produced from a domestic water well into the subsurface shall provide documentation showing that the discharge or proposed discharge has been permitted by NMED in accordance with Section 20.6.2.3104 of the New Mexico Administrative Code (NMAC) or other applicable regulation, or else that no NMED permit is required because the discharge or proposed discharge is exempted from the permit requirement pursuant to Section 20.6.2.3105 NMAC or other applicable regulation. If the applicant is required to provide reports or other documentation to NMED, then copies of such reports or other documentation shall be supplied to the City at the same time they are submitted to NMED. Notwithstanding any other provision of this section, the City may deny an application for a domestic water well permit seeking to discharge or dispose of geothermal waters into the subsurface if the disposal location is within 1,000 feet laterally of a municipal water supply well or other well that is a source of public drinking water supply.
- (e) *Discharge to the hot ditch.* Discharge of geothermal waters from a domestic water well to the hot ditch shall require a permit from the City. An application for permit to discharge to the hot ditch shall describe the location of the discharge, the volume of water to be discharged on a monthly or annual basis, the anticipated temperature and TDS concentration of the discharge, and any other pertinent information requested by the City. The application shall be accompanied by an application fee of \$100.00.
 - (1) A permit to discharge to the hot ditch will be valid for a period of five years and will be renewable upon application to the City within three months prior to the expiration date. Persons discharging geothermal

waters from a domestic water well to the hot ditch and intending to continue such discharge shall apply for a permit within one year after enactment of this section. Application for a permit to allow a new discharge to the hot ditch may be made at any time.

- (2) To defray City costs for maintenance and operation of the hot ditch, there shall be a monthly fee imposed for each point of discharge to the hot ditch from a domestic water well. The fee shall be in the same amount as the fee for discharge of geothermal waters to the wastewater utility system as provided in section 14-79, service charges.
 - (3) The volume of geothermal waters produced from a domestic water well and discharged to the hot ditch by each permittee shall be determined by either (i) accurate, continuous measurement of the discharge by a method satisfactory to the City, or (ii) measurement of the volume of geothermal waters produced by the well or wells serving the premises, which volume shall be deemed to be the volume of the discharge from the premises except for any adjustments that may be mutually agreed between the City and the permittee, for good cause shown. Water diversion (meter) reports required by and provided to the office of the New Mexico State Engineer shall constitute compliance with the requirement for measurement of the volume of geothermal waters produced.
 - (4) Permits for discharge of waters produced from domestic water wells to the hot ditch shall run with the well or wells producing the geothermal water to be discharged. If any domestic water well is sold or otherwise transferred to a different owner or owners, any permit issued to the former owners shall remain in good standing so long as the new owners file with the City a notice of change of ownership, along with a filing fee of \$25.00, within a reasonable time following the change of ownership. If the new owners fail to file a notice of change of ownership, after notification by the City that the notice is required, the City may require that the discharge of waters to the hot ditch be discontinued.
 - (5) Duly authorized officers, employees or agents of the City shall have the right to enter upon any premises at reasonable times to inspect, sample, and determine the flow rate of each discharge into the hot ditch, and to ensure the adequate maintenance and proper operation of the discharge facility.
- (f) *Discharge to the municipal wastewater utility system.* Discharge of geothermal waters from a domestic water well to the municipal wastewater (sewer) system for treatment and disposal shall be only in accordance with applicable sections of the Municipal Code, including but not necessarily limited to sections 14-66 through 14-115 and this section 14-117.
- (1) The monthly fee for discharge of geothermal waters to the wastewater utility system shall be as provided in section 14-79, service charges.
 - (2) The volume of geothermal waters from domestic water wells discharged to the wastewater utility system from each connection shall be

determined by either (i) accurate, continuous measurement of the discharge by a method satisfactory to the City, or (ii) measurement of the volume of geothermal waters produced by the well or wells serving the premises, which volume shall be deemed to be the volume of the discharge from the premises except for any adjustments that may be mutually agreed between the City and the permittee, for good cause shown. Water diversion (meter) reports required by and provided to the office of the New Mexico State Engineer shall constitute compliance with the requirement for measurement of the volume of geothermal waters produced.

- (3) Duly authorized officers, employees or agents of the City shall have the right to enter upon any premises at reasonable times to inspect, sample, and determine the flow rate of geothermal water discharges to the wastewater utility system, and to ensure the adequate maintenance and proper operation of the facilities and equipment required for such discharge.

(Ord. No. 654, § 1, 5-13-14)

Chapter 15 SUBDIVISION CODE [1](54)

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Sec. 15-2. Jurisdiction.

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- Sec. 15-19. Plat standards.
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- Sec. 15-21. Guarantees of improvements: One year warranty.
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- Sec. 15-24. Occupancy permit.
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Sec. 15-1. Title.

This chapter shall be known as the "Subdivision Code" of the City of Truth or Consequences, and is hereinafter sometimes referred to as "this Code".

(Ord. No. 555, 5-23-06)

Sec. 15-2. Jurisdiction.

All land within the incorporated limits of the City or within three miles of the incorporated boundary of the City and not within the boundaries of another municipality, are subject to the regulations contained in this Code.

(Ord. No. 555, 5-23-06)

Sec. 15-3. Costs of development: Subdivider's responsibility.

The subdivider shall be responsible for all costs, whether direct or indirect, associated with the approval and development of the subdivision submitted by that subdivider. Such costs shall include but not be limited to: all administrative costs, extension or improvement of roadways or utilities needed for connection of the subdivision to the City's roadways or approved utilities.

(Ord. No. 555, 5-23-06)

Sec. 15-4. Minimum standards and conflict.

- A. *Minimum standards:* The provisions of this Code shall be considered the minimum requirements to ensure the promotion of health, safety and welfare of the citizens of the City of Truth or Consequences; nothing herein prohibits the City of Truth or Consequences from adopting greater requirements to ensure the promotion of health, safety and welfare of the citizens of this City.
- B. *Local conflict:* Where the provisions of any local ordinance or regulation imposes greater restrictions than those of this Code, the provisions of such ordinance or regulation shall prevail.

- C. *Federal or state conflict:* Any provisions of U.S. or New Mexico State Law which impose a greater duty, standard or requirement on the activities or standards for subdivisions as governed by this Code shall supersede the provisions of this Code.
- D. *Conflict within the Code:* When two or more provisions of this Code are found to be in conflict, the more restrictive provision shall apply.

(Ord. No. 555, 5-23-06)

Sec. 15-5. Approvals required; three mile limit; interpretations.

- A. *Approval required to subdivide:* No land within the City of Truth or Consequences or within three miles of the City Limits of Truth or Consequences shall be subdivided into two or more lots or parcels or filed for record, nor any street laid out, nor any improvements made to the land, until the final plat of the subdivision or street improvements have been approved by action of the City Commission, unless the subdivision fall under the provisions of section 15-15, alternate summary procedure. This approval must be in writing and placed on the original reproducible tracing of the final plat according to the procedures contained herein.
- B. *Concurrent review of subdivisions within three miles of the City limits:* The City and Sierra County shall have concurrent review of any subdivision located outside the City and within three miles of the City limits and not within the corporate limits of another municipality. Any such subdivision shall conform to the requirements of this Code, and the regulations of Sierra County. Any person seeking the approval of a plat within the platting jurisdiction of both the City and Sierra County shall secure an endorsement of approval from both the City Commission and the Board of County Commissioners before the plat is filed in the office of the County Clerk.
- C. *Approval required to construct:* No improvements, such as sidewalks, water supply, storm water drainage, sewerage facilities, gas service, electric service or lighting, or grading, paving, or surfacing of streets, shall be made within any proposed subdivision until the final plat for the subdivision, along with plans for improvements thereto have been formally reviewed and approved in accordance with the standards contained herein.
- D. *Interpretations:* The City's Zoning Administrator shall have the right to make preliminary interpretations of the meaning of this Code. Interpretations by the Zoning Administrator may be appealed to the Planning and Zoning Commission, which may uphold, amend or reverse such interpretations. Interpretations by the Planning and Zoning Commission may be appealed to the City Commission, which may uphold, amend or reverse such interpretations. Interpretations by the City Commission may be appealed to a court having legal jurisdiction over the matter being appealed. Any appeal must be filed with the office of the City Clerk on or before 30 days following the date of the decision.

(Ord. No. 555, 5-23-06)

Sec. 15-6. Severability.

If any section, subsection, sentence, clause, or phrase of this Code is determined to be void, such decision shall not affect the validity of the remaining portions of this Code.

(Ord. No. 555, 5-23-06)

Sec. 15-7. Violation and penalties.

- A. *Construction of improvements:* Any person, firm or corporation who constructs any public improvement, or portion thereof in violation of the provisions of this Code shall be deemed guilty of a misdemeanor, and upon conviction, shall be fined not less than \$25.00 nor more than \$500.00 for each offense as prescribed in section 1-10 of this Code. A separate offense shall be deemed committed on each day during or on which a violation occurs or continues.
- B. *Transfer of ownership:* It shall be unlawful for any person or entity to sell or lease any lot or block, or any re-subdivision of any lot or block, within the incorporated limits of the City or within three miles of the City and not within the corporate limits of another municipality, before the plat is approved by the City Commission. Any person or entity who violates this section shall be fined \$100.00 for each lot transferred or sold, plus any purported sale or lease shall be deemed to be null and void. The description by metes and bounds in the instrument of transfer or the document used in the process of selling or transferring shall not exempt the transaction from such fine.

(Ord. No. 555, 5-23-06)

Sec. 15-8. Variances.

- A. *Cause:* Where, in the case of a particular proposed subdivision, it can be shown that strict compliance with the requirements of this Code would result in a substantial or unreasonable hardship to the subdivider because of exceptional topographic, soil or other surface or subsurface conditions, or that strict compliance with this Code would result in inhibiting the achievement of the objectives of this Code, the Planning and Zoning Commission may recommend and the City Commission may approve variances, modification or waivers of this Code's requirements. No variance shall be granted simply because the subdivider disagrees with or does not wish to meet the goals, objectives or standards of this Code.
- B. *Required findings:* Before recommending approval of a variance to the Planning and Zoning Commission, the City's Zoning Administrator shall make the following findings of fact. These same findings must be made by the Planning and Zoning Commission before it may recommend approval to the City Commission. The same findings must be made by the City Commission before it may approve a subdivision with variances and must form the basis of its decision when acting on an appeal regarding a variance. Granting a variance:
 - 1. Shall not constitute a grant of special privilege inconsistent with the

limitations on other properties in the area of notice;

2. Shall not result in detriment to the public health, safety, or welfare, or be materially injurious to properties or improvements in the area of notice;
3. Is justified because a physical hardship to the applicant is caused by existing size or shape of the lot, by existing structures, topographic or physical conditions on the site or in the area of notice, or if a physical hardship to the applicant would result from strict compliance with this Code;
4. Upholds the spirit and intent of this Code, public safety and welfare will be secured, and substantial justice done;
5. Will not result in the City being caused to absorb costs over and above those typically associated with subdivision approval;
6. Is not contrary to the requirements of state law;
7. Will not cause negative impacts on adjoining properties, properties in the area of notice, or to the public well being.

C. *Procedures and requirements:* The following procedures and requirements shall apply to all requests for variances under this Code.

1. Requests for variances and the review fee shall be submitted in writing prior to or at the time of request for preliminary plat approval.
2. Variances will be reviewed and acted on as separate agenda items from the subdivision as a whole, however, approval or denial of a subdivision by the City may be determined by the results of a vote on a variance.
3. The request shall describe in detail the specific sections of this Code from which a variance is being requested, and shall describe in detail the specific reasons that justify a variance. It is the subdivider's responsibility to address and prove each and every finding of fact.
4. Variance requests shall be reviewed by the City Planning and Zoning Commission in public hearings prior to or concurrent with public meetings that are held for recommendations for approval or denial of the subdivision.
5. Notice of the request for variance shall be given to all owners of record of property within 300 feet of the area proposed for subdivision, excluding streets, alleys, channels and other rights-of-way, and shall be published in the same manner as notice is provided for any public hearing required in this Code, and shall comply with the Open Meetings Act of the State of New Mexico
6. Variance requests shall be submitted to any reviewing agencies having expertise with respect to the subject matter for which the variance is sought. Comments on variances by such agencies shall be received by the City before the City acts on the subdivision requiring the review. In cases where a variance to the standards of any other entity is requested as part of a subdivision application, the City shall not approve the

subdivision until it has received certification from that entity, in writing, that the entity has approved the variance request.

- D. *Conditions on variances:* In granting variances, the City may impose conditions regarding further expansions, maximum height limits, time limits, types of construction, and other standards that will ensure that approval of the variance results in substantial conformity with the intent of this Code.
- E. *Notification of action:* The City's Zoning Administrator shall notify the subdivider in writing within five working days following consideration of a variance by the Planning and Zoning Commission and/or the City Commission. Said letter shall state the nature and conditions of approval of variances, or alternately, shall state the reasons for denial of a variance. Said letter shall also explain the next action required or available to the applicant.

(Ord. No. 555, 5-23-06)

Sec. 15-9. Appeals.

- A. *Grounds for appeal:* Any aggrieved person who is affected by a decision of an administrative official or Commission in the administration or enforcement of this Code may appeal such decision in writing, including a detailed statement of the grounds of the appeal, and including the specific sections of this Code or other codes, regulations, or ordinances or statute[s] which form the basis of the appeal, pursuant to State Statutes 3-19-8, and 39-3-1.1, NMSA 1978, et seq.
- B. *Where to appeal/filing deadline:* Appeals shall be filed with the Office of the City Clerk within 30 days of the action being appealed.
- C. *Authority of the Planning and Zoning Commission:* When an appeal alleges that there is an error in any order, requirement, decision or determination by an administrative official in the enforcement of this Code, the Planning and Zoning Commission, by a majority vote of a quorum of its members may, after all other procedures established by the provisions of this Code have been exhausted, reverse, affirm, or amend the order, requirement, decision or determination.
- D. *Appeal of a decision by the Planning and Zoning Commission:* Any aggrieved person who is affected by a decision of the Planning and Zoning Commission may appeal such decision to the City Commission. The appellant must show (in writing) how he or she is directly affected by the decision, the Zoning Administrator will determine if there is sufficient grounds for the appeal to proceed. The City Commission, by a majority vote of all its members may, after all other procedures established by the provisions of this Code have been exhausted, reverse, affirm, or amend the order, requirement, decision or determination.
- E. *Stay of proceedings:* An appeal shall stay all proceedings in furtherance of the action appealed unless the Administrative Official, Board or Commission from whom the appeal is taken certifies that by reasons of facts that a stay would cause imminent peril of life and property.
- F. *Notice:* Notice of all appeals to decisions of the Planning and Zoning Commission shall be sent by certified mail to all property owners (as shown on

the records of the County Assessor) within the area proposed for development, and within 300 feet of the area of the proposed development, excluding streets, alleys, channels and other rights-of-way. Notice to said property owners shall be mailed at least 21 days prior to the meeting at which the appeal will be heard. Notice of the meeting shall be published in a newspaper of general circulation in the Truth or Consequences area at least nine days prior to the meeting.

- G. *Fees:* Costs of the appeal shall be born by the appellant.

(Ord. No. 555, 5-23-06)

Sec. 15-10. Repealer.

- A. *Repeal of previous documents:* All previous ordinances or resolutions, or parts thereof, governing the subdivision of land effective prior to the adoption of this Code are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any ordinance or resolution, or part thereof, heretofore repealed.

(Ord. No. 555, 5-23-06)

Sec. 15-11. 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:]

Alley: A strip of land, 20 feet in width along the side or in the rear of properties, intended to provide a secondary means of access to these properties.

Building line: The line parallel to the front of a lot establishing the minimum open space to be provided between the front line of a building or structure and the street right-of-way.

City: The City of Truth or Consequences, New Mexico.

Commission (or City Commission): The Commission of the City of Truth or Consequences.

Cul-de-sac: A street having one open end and being permanently terminated by a vehicle turn-around.

Developer: A subdivider or subdivider's agent.

Easement: A grant by a property owner for the use of a strip or portion of land by the general public, a corporation, or a certain person or persons for a specific purpose or purposes.

Extra-territorial: The area of land within a radius of three miles around the City of Truth or Consequences that is not within the corporate limits of another municipality.

Final plat: The drawings and documents described in section 15-14 herein.

Lot: A portion of a subdivision or other parcel of land intended for the purpose, whether immediate or future, of development. It is also a tract of land described by meets and bounds and as shown on the records of the County Assessor.

Owner: Any person or successor in interest having a legal or equitable interest in a given property.

Person: Any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, joint venture, syndicate, or other entity.

Planning Commission: The Planning and Zoning Commission of Truth or Consequences, New Mexico.

Protective covenants: Private deed restrictions controlling some aspect of the use or development of the subject property.

Subdivider: An owner or an owner's agent who undertakes the subdivision of land as set forth in these regulations.

Subdivide/subdivision: For the area of land within the corporate boundaries of the City of Truth or Consequences or within the City's extraterritorial jurisdiction means, the division of land into two or more parts by platting or by metes and bounds description into tracts for the purposes set forth below:

- (A) Sale for building purposes;
- (B) Laying out a municipality or any part thereof;
- (C) Adding to a municipality;
- (D) Laying out suburban lots; or
- (E) Re-subdivision.

(Ord. No. 555, 5-23-06)

Sec. 15-12. Submitting subdivision master plans.

- A. *When a subdivision master plan is required:* A subdivision master plan is required when:
 - 1. A subdivider proposes development of a parcel of land in phases;
 - 2. A subdivider is proposing multiple land uses;
 - 3. A subdivision requires annexation of land into the City;
 - 4. Any single subdivision contains more than 100 lots.
- B. *Elective pre-application procedure:*
 - 1. Prior to filing an application for approval of a subdivision master plan, the subdivider may submit to the City a conceptual plan of the proposed development. This elective process allows a developer to work with the City to resolve potential problems prior to incurring the costs of full subdivision application. The conceptual plan shall be submitted to the City at least 25 working days prior to a regularly scheduled meeting of the Planning and Zoning Commission. The conceptual plan shall consist of all proposed restrictive covenants that will be applied within the subdivision as well as a scaled plat describing the major elements of the

subdivision and containing at least the following information.

- a. All lots, blocks and phases of the subdivision;
- b. Roads within and adjacent to the subdivision;
- c. Major easements, labeled by use;
- d. Open spaces, labeled by use;
- e. Flood zones, labeled by use;
- f. Proposed restrictive covenants;
- g. Existing and proposed zoning within the master planned area; and
- h. The proposed schedule of construction.

2. The Planning and Zoning Commission shall review the conceptual plan with the subdivider during a regular meeting of the Commission, and, based on the information presented to it, shall indicate any changes that it believes are necessary for the plan to be consistent with this Code.

C. *Subdivision master plan requirements:* A proposal for a subdivision master plan shall contain four copies of the following information.

1. *Written information:*

- a. Application.
- b. Submittal fee.
- c. Subdivision master plan report, including:
 - (1) Name of subdivision.
 - (2) Name and address of subdivider.
 - (3) Variance request and justification (if applicable).
 - (4) Total acreage, acreage and zone of each phase in the subdivision and the approximate time frame for development of each of the phases contained in the subdivision master plan.
 - (5) Estimated number of dwelling units in each of the subdivisions or in the case of an industrial/commercial subdivision, the total number of square feet under-roof and number of buildings.
 - (6) A statement of the total estimated trips per day that will be generated by the subdivision master planned area, and a statement on what proposed and existing roadways will carry that traffic, utilizing ITE Trip Generation information, as amended.
 - (7) A geological and soils hazards report detailing hazards of slope, erosion, and drainage, and suitability for liquid

waste disposal systems, if applicable.

- (8) Proof of water supply adequate for the estimated population.
- (9) Estimates of the utility requirements necessary for the subdivision, based on the number of dwelling units in the proposed subdivision multiplied by the average household size in New Mexico as defined in the most current United States Census Data available at the time of submittal. In the case of a commercial/industrial subdivision the applicant's engineer will estimate the utility requirements for the end-users.

2. *Subdivision master plan plat:* The subdivision master plan plat shall be prepared by a registered, licensed surveyor of New Mexico at a scale no less than 1": 400', and shall contain the following information. Individual phases may be shown on separate pages.

- a. Title of the subdivision master plan.
- b. Vicinity map showing the relationship of the subdivision master planned area to existing road networks and natural and/or man-made features that may impact the development or may be impacted by the development. Detail must be sufficient so that the subject property can be located in the field using the map.
- c. North arrow, date of preparation, and written and graphic scales.
- d. A general legal description including approximate survey ties and approximate acreage.
- e. Name, signature, stamp and address of the registered licensed surveyor who prepares the subdivision master plan plat. Such signature and stamp shall be notarized.
- f. Name, signature and address of the subdivider, with the statement "The subdivision of (insert a correct description of the land being planned), appearing on this plat is with the free consent and in accordance with the desire of the undersigned owner and proprietor of the land". Such signature shall be notarized;
- g. Name and address of the person(s) to whom a notice of the meeting shall be sent.
- h. Boundary lines of the subdivision master plan, with approximate lengths of lines.
- i. All lots, blocks and phases of the subdivision;
- j. Proposed land use, by blocks and phases. Residential parcels shall contain gross density range.
- k. Present zoning, and if a change is proposed, proposed zoning

- l. Zoning and structures of contiguous lands.
- m. Existing and post-construction contours at five-foot vertical intervals.
- n. Existing and proposed roads within and contiguous to the subdivision.
- o. Existing and proposed major easements, labeled by use.
- p. Existing and proposed open spaces, labeled by use.
- q. Conceptual drainage plan adequate to provide a general outline of the proposed handling of drainage, and specifically including flood zones, labeled by use, and boundaries of any FEMA designated 100-year flood plain that occurs within the subdivision master planned area.
- r. Connection points to all existing utilities which the subdivider proposes to use in development of the subdivision.
- s. Approval block with places for the signatures of the Planning and Zoning Commission Chairperson and the Mayor.

D. *Subdivision master plan submittal and review:* The subdivision master plan and supplemental material shall be submitted to the City no later than 25 working days prior to the date of the regular meeting of the Planning and Zoning Commission where the subdivision will be heard.

- 1. Upon receiving a submittal, the City's Zoning Administrator shall review the submittal for completeness. Incomplete submittals will not be reviewed by the Planning and Zoning Commission. If all required items are not submitted, the Zoning Administrator shall so inform the subdivider, and shall return the items submitted to the subdivider. If all required items have been submitted, the Zoning Administrator shall place the subdivision master plan on the agenda of the next permissible regular meeting of the Planning and Zoning Commission.
- 2. The Planning and Zoning Commission shall review and act on the subdivision master plan during a regular or special meeting of the Planning and Zoning Commission. Action by the Planning and Zoning Commission shall be in the form of recommendations of approval, conditional approval, or denial. A recommendation of approval or conditional approval shall be given if it is found that the plan and its support documents conform with the standards of this chapter. A recommendation of denial shall occur if the plan or its support documents are found to not conform with the standards of this chapter and the subdivider is unwilling or unable to amend the plan or its support documents to meet the standards of this chapter. The Commission may postpone action on any request if the Commission feels that more information is necessary before they may conclude the meeting. The Planning and Zoning Commission shall not act on a master plan unless the subdivider or the subdivider's representative is present at the meeting

or the subdivider provided a written waiver of this requirement.

3. Upon voting to recommend approval, conditional approval or denial of a plan, the Planning and Zoning Commission shall forward the final subdivision master plan and its recommendation to the City Commission for action.
4. Within 35 days of receiving a final subdivision master plan, the City Commission shall review the Planning and Zoning Commission's recommendation and shall approve, conditionally approve or disapprove the subdivision master plan. The person seeking approval of the plan may waive the 35-day limit on action and agree to an extension of this time period.
5. All recommendations by the Planning and Zoning Commission and the City Commission shall be done in the form of motion and vote, and shall be based on a statement of findings-of-fact regarding the completeness of the plan, its consistency with this Code, and the suitability of the site for the uses proposed in the subdivision master plan.
6. Upon approving a final master plan, the City Commission shall authorize the Mayor to endorse the plan and cause the plan to be filed in the records of the County Clerk. The subdivider shall receive three signed copies of the plan. The City shall keep one of the three copies for its files.
7. Upon receiving approval, the subdivider may proceed with submittal of any zoning applications, preliminary plats, or other documents needed for furtherance of the subdivisions contained in the subdivision master plan.

E. *Term of life of a subdivision master plan, and requests for extensions:*

1. The approval of a subdivision master plan shall be effective for a period of five years.
2. If the subdivisions contained within the subdivision master plan have not been completed during that five year period, the subdivider may submit a request for an extension of the subdivision master plan's approval.
3. An extension of a subdivision master plan may be approved for a period of up to two years, allowing the total permissible life of a subdivision master plan to be up to seven years.
4. Any request for extension will be reviewed by the Planning and Zoning Commission using the information submitted with the original application and such other information as has been developed by the subdivider or received by the City since the original application.
5. The approval of any subdivision identified in a subdivision master plan that has not been completed within five years, or seven years if an extension has been granted, shall be automatically voided.

F. *Amendment of a subdivision master plan:* Any proposed major amendment of an approved subdivision master plan that changes the size, shape, area, layout, drainage, number of lots or phases, or any other major element of the

subdivision master plan shall require approval of the revisions as a new subdivision master plan. However, minor amendments that do not change the impacts on utilities, drainage, or traffic, may be approved as an amendment by the Planning and Zoning Commission.

(Ord. No. 555, 5-23-06)

Sec. 15-13. Submitting a preliminary plat.

- A. *When a preliminary plat is required:* A preliminary plat shall be required for all subdivisions except those processed through the replat or alternate summary subdivision process.
- B. *Elective pre-application procedure:*
 - 1. Prior to filing an application for approval of a preliminary plat, the subdivider may submit to the City a conceptual plan of the proposed development. This elective process allows a developer to work with the City to resolve potential problems prior to incurring the costs of full subdivision application. The conceptual plan shall consist of all proposed restrictive covenants that will be applied within the subdivision as well as a plat describing the major elements of the subdivision and containing at least the following information:
 - a. Name of the potential subdivision;
 - b. Name and address of subdivider;
 - c. Variance request and justification (if applicable);
 - d. Total acreage within the subdivision;
 - e. All lots, blocks and phases of the subdivision;
 - f. Roads within and adjacent to the subdivision;
 - g. Major easements, labeled by use;
 - h. Open spaces, labeled by use;
 - i. Flood control areas, labeled by use;
 - j. Existing and proposed zoning within the area proposed for subdivision;
 - k. Proof of adequacy of the water supply for existing uses and the additional use that would be caused by the proposed subdivision, and a description of what provisions will be made for liquid waste disposal;
 - l. The availability of other required utilities, and the points of connection to those utilities;
 - m. The proposed schedule of construction; and,
 - n. Other information the subdivider believes will assist the Zoning Administrator in understanding the proposal.

2. The Zoning Administrator shall review the conceptual plan with the subdivider and, based on the information presented to it, shall indicate any areas of concern associated with the proposed site or layout of the potential subdivision.
- C. *Submittal requirements for preliminary plats:* The subdivider shall submit the following information.
1. *Preliminary plat:* Seven copies of the preliminary plat, conforming to the standards of section 15-19 shall be submitted to the City.
 2. *Supplemental plans:* Conforming in all respects to the standards set in section 15-20 of this Code.
 3. *Application:* The application shall be signed by all property owners, including all parties having an equitable interest, trustees of an estate, or all persons having a specific "power of attorney" for the subject property as recorded in the Sierra County Clerk's records. Any pending litigation of any Final Order entered by any Court of Law regarding the subject property shall be disclosed by the subdivider.
 4. *Application fee:* As established by the City.
 5. *Variance requests:* (If applicable).
- D. *Submittal and review procedures:*
1. Incomplete submittals will not be accepted for review.
 2. The subdivider shall submit all required materials to the City's Zoning Administrator.
 3. The City's Zoning Administrator shall review all materials, and shall request a review and response from applicable City departments, other governmental agencies and utility companies within two working days from the date the application is determined to be complete. All reviewing agencies shall have a minimum of 15 working days to review and comment on the subdivision. Within three working days of receiving a written report, comment or recommendation from any City department, governmental agency, or utility company, the Zoning Administrator shall make a copy of such materials available to the subdivider.
 4. The Zoning Administrator shall have the right to require that the subdivider provide additional information or to make amendments to the plat and supporting information if the Zoning Administrator determines by a review of the materials or from comments received from reviewing entities that the submittal is incomplete, incorrect or invalid.
 5. The subdivider shall have ten working days in which to make any corrections or additions required by the Zoning Administrator, or to request a postponement of action by the Zoning Administrator for up to 135 days.
 6. If a subdivision application does not meet the requirements of this Code

within 365 days of its original submittal, the Zoning Administrator shall summarily reject the application and notify the applicant in writing of the reasons for the rejection.

7. If a submittal meets all requirements of this Code within 365 days of its submission to the City, the Zoning Administrator shall inform the subdivider of the status of the submittal, and within three days of notifying the subdivider, place the proposed subdivision on the agenda of the next Planning and Zoning Commission with a recommendation of approval or conditional approval.
8. The Zoning Administrator shall maintain custody of the plats.

E. *Planning and Zoning Commission review, and action:*

1. The Planning and Zoning Commission shall recommend approval of a subdivision if it determines that the proposed subdivision's plat and supporting information conform with the requirements of this Code and that the subdivider will be able to fulfill the requirements of this Code. In making this determination, the Planning and Zoning Commission shall consult the official record of communications regarding the proposal for comments by offices of any and all local, state and federal entities charged with responsibility for monitoring and administration of any of the facets of development which the subdivision may impact, and shall consult with and receive a written opinion from the City's Public Utilities Advisory Board. The Planning and Zoning Commission shall not recommend approval if the PUAB recommends against such approval.
2. The Planning and Zoning Commission shall recommend disapproval of a subdivision if it determines that the subdivision submittal was incomplete or did not comply with the requirements of this Code and that the subdivider is unable or unwilling to bring the submission into compliance with this Code. In making this determination, the Planning and Zoning Commission shall consult the official record of communications regarding the proposal for comments by offices of any and all local, state and federal entities charged with responsibility for monitoring and administration of any of the facets of development which the subdivision may impact, and shall consult with and receive a written opinion from the City's Public Utilities Advisory Board.
3. The Planning and Zoning Commission may give Conditional Approval if the subdivision is substantially in compliance with the requirements of this Code, and if the subdivider is able and willing to bring the submittal into complete compliance with this Code prior to approval of the final map.

F. *Action on preliminary plat:*

1. A subdivision which receives a recommendation of approval, conditional approval or disapproval shall be acted on by the City Commission.
2. An approved preliminary plat shall remain in effect for not more than three years from the date of the City Commission meeting approving said plat. The subdivider may request an extension of not more than two years. The

Planning and Zoning Commission may grant the extension in one or two year increments if it finds that conditions leading to the original approval have not changed substantially.

(Ord. No. 555, 5-23-06)

Sec. 15-14. Submitting a final plat.

- A. *Submittal of final plat:* Upon receiving a recommendation of approval from the Planning and Zoning Commission, the subdivider shall prepare a final plat that is consistent with the standards of section 15-14 of this Code for submission to the City Commission and which is in conformance with any conditions placed upon it via the conditional approval of the preliminary plat. The final plat shall be submitted prior to the expiration date of the preliminary plat. The final plat shall contain all information contained in the preliminary plat and shall be accompanied by all supporting information required for review of the preliminary plat. Both plat and supporting documentation shall contain all changes required by the Planning and Zoning Commission in its decision to recommend approval or conditional approval. Such final plat shall be submitted to the City Commission within 15 working days of the Planning and Zoning Commission's vote on the final plat.
- B. *Action required:* The City Commission shall approve or disapprove a final plat within 35 days of the final plat being submitted.
- C. *Notice of meeting:* Notice of the time and place of a meeting on a final plat shall be sent by mail to the subdivider's address as shown on the plat not less than five days before the day of the meeting.
- D. *Taxes and fees to be paid:* Before final approval of a final plat, the subdivider shall have provided to the City certification from the Office of the County Treasurer of Sierra County that all due and delinquent taxes against the land included in the preliminary plat are fully paid. Additionally, the subdivider shall pay the necessary filing fee to the City Clerk.
- E. *Limit on City's liability:* Approval of the final plat by the City Commission shall not be deemed to constitute acceptance by the City or any of its officers or officials of any liability for the development of any street or other improvements within the subdivision.
- F. *Construction of improvements or filing of security:* Upon approval of the final plat, the subdivider may submit applications for construction permits for required improvements or secure and file a Letter of Credit and Guarantees of Performance and Indemnity Agreement for the subdivision. The subdivision shall not be filed with the County Clerk, and lots may not be advertised or conveyed until all required improvements have been completed and approved by the City, or, until a Letter of Credit and Guarantees of Performance and Indemnity Agreement for work within the subdivision are approved and filed with the City. The City will not issue any building permits for structures on any lot within the subdivision unless the improvements have been built or the bond has been posted.

- G. *City control of signed plats and support document:* Following approval of a final plat, the City's Zoning Administrator shall retain an original signed copy of the final plat, and all other documents required for approval of the final plat. The subdivider shall also provide the City with a digital copy of the final plat as well as as-built drawings of the subdivision.
- H. *Filing of plat:* Upon the completion and acceptance of all improvements, or the filing of a Letter of Credit and Guarantees of Performance and Indemnity Agreement for the subdivision, the subdivider shall file a signed copy of the final plat in the records of the County Clerk of Sierra County, shall provide the City with one of the signed copies. The subdivider shall pay all filing fees for the subdivision.
- I. *One year life of final plat:* If the subdivision's improvements have not been completed within one year of the filing with the County Clerk of the final plat, the City will cause the improvements to be made via the use of the security bond posted by the subdivider.

(Ord. No. 555, 5-23-06)

Sec. 15-15. Alternate summary procedure.

- A. *Approvals by Planning and Zoning Commission:* The Planning and Zoning Commission may approve or deny the following types of subdivisions:
 - 1. A re-plat of a previously filed subdivision when:
 - a. No more lots are created than exist in the area at the time of the submittal of the replat application; and,
 - b. All lots to be created have direct, legal, unobstructed access to an existing City maintained street;
 - c. All lots to be created have direct, unobstructed legal access to existing City water and wastewater lines;
 - d. The subdivider files with the City a Letter of Credit for funds adequate to pay for connecting the lots to the City's water and wastewater lines, or, pays to the City the City's fees for connecting the lots to the City's water and wastewater lines;
 - e. The new lots comply in all ways with the standards for lots contained within the City's Comprehensive Planning and Zoning Code;
 - f. All new lots are laid out in a manner which allows utility service to be provided to the purchasers of said lots;
 - g. All lots to be eliminated or created exist within the area of a single block of lots in a previously platted and filed subdivision; and,
 - h. No vacation of street dedications or utility easements is proposed; or,

- i. Lots are to be eliminated.
 2. The subdivision of previously unsubdivided land when:
 - a. No more than two lots are created;
 - b. Both lots to be created have direct, legal, unobstructed access to an existing City maintained and paved street with curb gutter and sidewalk;
 - c. Both lots to be created have direct, unobstructed legal access to existing City water and wastewater lines;
 - d. The subdivider files with the City a Letter of Credit for funds adequate to pay to connect both lots to the City's water and wastewater lines, or, pays to the City funds for connecting both lots to the City's water and wastewater lines;
 - e. The new lots comply in all ways with the standards for lots contained within the City's Comprehensive Planning and Zoning Code;
 - f. The new lots are laid out in a manner which allows utility service to be provided to the purchasers of said lots; and,
 - g. No vacation of street dedications or utility easements is proposed.
- B. *Limit on number of summary procedures:* The summary procedure shall be used only once on any one property, or within any group of contiguous or adjacent properties owned by a subdivider, unless the property has been master-planned, legally subdivided, and is zoned for industrial uses, and wherein the streets within those subdivisions have been dedicated to and accepted by the City. No subdivider who has received approval of a subdivision shall utilize the summary procedure to subsequently increase the number of lots within said subdivision.
- C. *Elective pre-application procedure:*
 1. Prior to filing a summary plat, the subdivider may submit a conceptual plan of the proposed subdivision to the City's Zoning Administrator. The conceptual plan shall provide enough information for the Zoning Administrator to locate the proposed subdivision and to comprehend its scope and potential impacts. Neither a written application nor an application fee are required for submittal of a conceptual plan.
 2. The City's Zoning Administrator shall place the proposed summary subdivision on the next possible agenda of the Planning and Zoning Commission for discussion, when the Planning and Zoning Commission shall consider the proposal with the subdivider or the subdivider's representative and shall indicate changes, if any, that will be required for the submittal process.
- D. *Summary plat submittal requirements summary plat submittal requirements are:*
 1. Application, signed by all property owners, including all parties having an equitable interest, trustees of an estate and all persons having a specific

- "power of attorney" in such land;
2. A record of any pending litigation or any final order entered by any court of law regarding the ownership of the subject property;
 3. Application fee as established by the City;
 4. Documentation from the Sierra County Assessor's Office that the current year's property taxes are paid and that no taxes are owed on the property;
 5. A plat conforming to section 15-13.A of this Code; and,
 6. Releases by the Public Utilities Advisory Board, and all utility companies which are proposed as providers for the subdivision.

E. *Submittal and review procedures:*

1. Incomplete submittals will not be accepted for review.
2. The subdivider shall submit all required materials to the City's Zoning Administrator.
3. The City's Zoning Administrator shall review all materials, and shall within three working days from the date the application is determined to be complete, request opinions of applicable City departments, other governmental agencies, and utility companies for review, comments and recommendations. City departments shall have ten calendar days in which to review and respond in writing to any such request. Within three working days of receiving any written reports, comments or recommendations from any City department, governmental agency, or utility company, the Zoning Administrator shall make available to the subdivider a copy of such materials.
4. The Zoning Administrator shall have the right to require that the subdivider provide additional information or to make amendments to the plat and supporting information if the Zoning Administrator determines that the information originally submitted by the subdivider was incomplete, incorrect or invalid.
5. The subdivider shall have ten working days in which to make any corrections or additions required by the Zoning Administrator, or to request a postponement of action by the Zoning Administrator for up to 135 days.
6. If a subdivision application does not meet the requirements of this Code within 180 days of its original submittal, the Zoning Administrator shall summarily reject the application and notify the applicant in writing of the reasons for the rejection.
7. At such time as the subdivider meets the requirements of this Code, the subdivider shall provide the Zoning Administrator with a copy of the final plat.
8. At such time as receiving a submittal that meets all requirements of this

Code, the Zoning Administrator shall recommend that the Planning and Zoning Commission approve the final plat by consent agenda action during its next regularly scheduled meeting, and the Planning and Zoning Commission shall approve the subdivision by consent agenda action during its next regularly scheduled meeting.

9. The subdivider shall file a signed copy of the final plat in the records of the County Clerk of Sierra County, and shall provide the City with one of the signed copies.
- F. *Divisions for the purpose of mortgage:* Divisions for purposes of mortgage are not allowed. If a property is to be mortgaged it must be done so in its entirety or properly subdivided as required in this chapter.

(Ord. No. 555, 5-23-06)

Sec. 15-16. Replats.

- A. *Occurrence:* Replatting occurs when changes take place to the layout or number of lots in a filed subdivision plat.
- B. *Creation of lots when the summary subdivision process is not applicable:* When a replat is proposed that does not meet the standards for a summary procedure, the subdivider shall follow the procedures required for approval of preliminary and final plats. The fee schedule for replats shall be as approved by the City of Truth or Consequences.

(Ord. No. 555, 5-23-06)

Sec. 15-17. Amendment of plats.

- A. *Administrative amendment:* Any change that is required to correct an error in lettering, numbering or other minor detail on a filed plat which does not affect any material aspect of the subdivision will be considered a minor amendment. Administrative amendments may be processed and approved by the City's Zoning Administrator, who shall have the right to require review and approval by the Planning and Zoning. The City's Zoning Administrator shall insure that the corrections are noted on the original filed plat. The fee schedule for administrative amendments shall be as approved by the City of Truth or Consequences.
- B. *Minor amendment of plat:* Any proposed amendment that is greater than an administrative amendment which does not have the effect to significantly alter the impacts on utilities, drainage, or traffic, may be approved as an amendment by the Planning and Zoning Commission.
- C. *Major amendment of plat:* Any proposed correction or amendment of a filed plat that affects material aspects of the subdivision shall be considered by the Planning and Zoning Commission, with approval by the City Commission, the Planning and Zoning Commission shall determine if the subdivider may use the alternate summary procedure or if the subdivider shall be required to vacate a portion or all of the filed plat and follow the procedures appropriate for the

approval of a new subdivision. The fee schedule for major amendments shall be as approved by the City of Truth or Consequences.

(Ord. No. 555, 5-23-06)

Sec. 15-18. Vacation of plats.

- A. *Purpose of vacation of plat:* A vacation of plat occurs when part or all of a filed subdivision plat is eliminated.
- B. *Cause:* All of or any part of a final plat filed with the County Clerk may be vacated if:
 - 1. The owners of record of the land proposed to be vacated sign an acknowledged statement declaring their wish that the plat or portion of a plat be vacated; or
 - 2. The City Commission finds that the plat's approval was obtained by misrepresentation or fraud and orders a statement of vacation to be prepared.
- C. *Processes of vacation:* Vacations of plat that result in the decrease in the number of lots by not more than one lot may be processed using the Alternate Summary Process.
- D. *Statement of vacation:*
 - 1. The vacation of all or a portion of a final plat by the owners of land within a subdivision may be initiated by submittal to the City's Zoning Administrator of the statement of vacation bearing the acknowledged signatures of all owners of record of property within the subdivided land to be vacated.
 - 2. The vacation of all or a portion of a final plat by the owners of land within a subdivision may also be initiated by a vote of a majority of the City Commission.
 - 3. Statements of vacation shall be accompanied by a list of the names of all owners of record of property within and contiguous to the subdivided land to be vacated, and shall also be accompanied by acknowledged statements by the authorized representatives of all utility companies that have easements within the area proposed for vacation, which statements shall state the utilities' agreement to or opposition to such vacation insofar as it affects their rights to use dedicated easements in the subdivision.
- E. *Scheduling and notification:* Within 60 days of receiving a statement of vacation and the appropriate review fee, the City Commission shall approve or deny the vacation, subject to the following:
 - 1. Action shall be taken in a public meeting;
 - 2. At least 15 days prior to the meeting, notice of public hearing shall have been transmitted by first class mail to all owners of private property

contiguous to or within 300 feet of the land to be vacated, and to all utilities with easements within or adjacent to the land proposed for vacation.

- F. *Action:* In approving conditionally approving or denying a vacation, the City Commission shall determine if the vacation is in the best interests of the public well-being, and whether any person is adversely affected by the vacation.
- G. *Right to retain roadways and utility easements:* The City Commission may require that dedicated roads within the area proposed for vacation remain dedicated, and may require that the rights of any utility existing before the vacation not be affected by the vacation.
- H. *Filing:* The City Commission's decision shall be filed in the records of the County Clerk of Sierra County by the applicant who shall also pay all required fees. When a vacation is approved, The County Clerk shall mark the final plat with the words "vacated" and shall refer on the final plat to the volume and page on which the statement of vacation is recorded. When a plat is partially vacated, both the City Commission's decision and the plat showing the partial vacation shall be filed in the records of the County Clerk of Sierra County. The County Clerk shall mark the final plat with the words "partially vacated" and shall refer on the final plat to both the volume and page on which the statement of vacation is filed, and the volume and page of the plat showing the area vacated.

(Ord. No. 555, 5-23-06)

Sec. 15-19. Plat standards.

A. *Preliminary plats:*

- 1. *Preliminary plat:* The preliminary plat shall be prepared on 18" × 24" (unless the Zoning Administrator allows a different size) sheets of paper or mylar, and the contents shall be clearly legible. More than one sheet may be used, but the following information shall be included:
 - a. Proposed name of the subdivision.
 - b. Location by township, range, section, or by other legal description.
 - c. Acreage of the subdivision to the nearest one-tenth of an acre.
 - d. Written and graphic scale of plan, 1" to 100' or larger.
 - e. Date.
 - f. North arrow.
 - g. Detailed area map clearly showing the surrounding area and the proposed subdivision's relationship to existing road networks, and existing natural and/or man-made features that may impact or be impacted by the proposed subdivision. Detail must be sufficient for the subject property to be located in the field using the map.
 - h. Signature block, containing designated spaces for all utility providers who are proposed as providers within the subdivision,

as well as spaces for the name, signature and address of the licensed surveyor who prepares the plat, and for the owner of the land being subdivided. The signature of the legal and equitable land owner must be notarized and shall be accompanied by the statement "The subdivision of (insert a correct description of the land being planned), appearing on this plat is with the free consent and in accordance with the desire of the undersigned owner and proprietor of the land". Approval blocks for the Planning and Zoning Commission Chairperson, the Public Utilities Advisory Board Chairperson, and the Mayor, and a block for attestation of filing by the County Clerk shall be included.

- i. An accurate and complete survey of the land to be subdivided giving the bearings in degrees, minutes and seconds. Distances shall be shown in feet and in hundredths of feet. Curved boundaries or lines on the plat shall include central angle and arc length, radius and chord bearing, tangents and length. The location and description of all monuments set or found shall be included. Permanent monuments shall be placed at all corners and points of tangency of curve lines along the boundary of the subdivision, and center line monuments shall be placed at the intersection of every other block, at a spacing that shall not exceed an interval of 1,500 feet.
- j. An accurate description of each lot and block, numbered or lettered in progression, with their dimensions and the dimensions of all land dedicated for public use or for the use of the owners of lots fronting or adjacent to the lot, and minimum setbacks permitted by the City's Zoning Code.
- k. Location, width, names of all existing or prior platted streets, and the location, width, and use of all rights-of-way and all other public ways, and utility rights-of-way, parks, and other public open spaces.
- l. Existing and proposed utilities on and adjacent to the site, including locations and size of water wells, reservoirs, water lines, sanitary and storm drains, irrigation canals, drains, gas lines, fire hydrants, electric and telephone poles and street-lights. For proposed utility locations, the system loads and locations of proposed connections shall be indicated, and all necessary off-site improvements shall be described in detail.
- m. Existing zoning of proposed subdivision and application for proposed zoning change if such change is necessary or desired by the subdivider.
- n. Existing and proposed contours at five-foot vertical intervals.
- o. Layout of streets, widths of rights-of-way, and also widths of easements.
- p. Parcels of land intended to be dedicated or temporarily reserved

for public use or set aside for use of the property owners in the subdivision.

- q. The subdivider shall provide a proposed name for all streets, with an additional five names to be used if some of the proposed names are rejected. The City Commission shall approve all street names upon recommendation from the Planning and Zoning Commission.

- B. *Final plat:* The final plat shall include all of the elements required for a preliminary plat, with such changes or amendments required by the Planning and Zoning Commission in its recommendation of approval.

(Ord. No. 555, 5-23-06)

Sec. 15-20. Plans and design standards.

- A. *Street plan:* The subdivision of land, including the arrangement, character, extent and width of all streets, alleys or other land to be dedicated for public use shall conform to the transportation, parking and traffic plan as submitted with the City's Comprehensive Plan and/or a subdivision master plan as approved by the City Commission. If such plans do not exist, all elements of a proposed subdivision shall be reviewed in such a way as to ensure that the subdivision will not negatively impact the public health, safety and welfare. All streets shall be designed and constructed to the standards of the New Mexico State Specifications Manual for Roadways and Bridges, according to usage and type.
 - 1. Residential streets shall be so laid out that their use by through traffic will be discouraged.
 - 2. Street jogs with center line offsets of less than 125 feet shall be avoided.
 - 3. All street intersections and confluences shall encourage safe traffic flow.
 - 4. The maximum length cul-de-sac shall be 500 feet measured along the center line of the road from its point of origin at the intersection with another road through the center of cul-de-sac to the end of the right-of-way.
 - 5. Half streets shall be prohibited, except where essential to the reasonable development of the subdivision in conformity with the other requirements of these regulations; and where the Planning Commission or the City Commission finds it will be practicable to require the dedication of the other half when the adjoining property is subdivided. Wherever a half street is adjacent to a tract to be subdivided, the other half of the street shall be planned within such tract. No strip or area shall be reserved along any portion of a street or alley which will prevent adjacent property owners access to their properties. The construction of a half street shall include half the street plus ten percent beyond the midpoint of the right of way.
 - 6. No street designations may be used which will duplicate or be confused with the designation of existing streets.

7. If the tract of land proposed to be subdivided or any part thereof lies adjacent to a highway that is under the jurisdiction of the NM Department of Transportation (NMDOT) and an entrance or entrances are desired from such highway to the proposed subdivision, then the subdivider shall submit to the Zoning Administrator a written permit from the NMDOT granting permission to construct such an entrance or entrances.
8. All rights-of-way shall conform to the following minimum dimensions:

Street Classification and Type	Width of Right-of-Way (In Feet)
Major Arterial	110
Minor Arterial	80
Major Collector	70
Minor Collector	60
Local Road	50
Alley	20
Utility Easements	20 feet or as required by the utility
Cul-de-sac Turn-around	35 foot radius

9. Grades shall not exceed six percent on primary arterials or minor traffic streets, nor eight percent on other streets, nor have a grade of less than one percent, unless special provisions are made for storm drainage.
10. All streets within the corporate limits of the City, except those within the R-4 Zoning District, shall be improved with roadways, bounded by integral concrete curbs and gutters to an overall width in accordance with the following dimensions:

Street Classification	Minimum Pavement Width (In Feet)
Major Arterial	64
Minor Arterial	52
Major Collector	52
Minor Collector	36
Local Road	36
Cul-de-sac	25 foot radius

11. Residential service streets shall be surfaced with two inches of hot mix on a base not less than six inches thick.
12. Integral rolled-type curbs and gutters on collector and local streets shall be not less than 24 inches in over-all width and not less than seven inches thick where curb abuts the street pavement. A right angle curb and gutter unit shall be used on streets designed to carry the major

portion of the storm runoff of a subdivision.

13. All curb corners shall have radii of not less than 15 feet and not less than 25 feet at major intersections.
14. Minimum tangents on reverse curves shall not be less than 100 feet.
15. ADA compliant concrete sidewalks shall be constructed within the road right-of-way along both sides of every street shown on the plat of a subdivision.
16. Sidewalks may be placed adjacent to the curb when parking lanes are provided; however, in cases where moving traffic lanes are adjacent to the curb, the sidewalks shall be set back to the property line.
17. Provisions shall be made by the subdivider for the lighting of public streets within the proposed subdivision in accordance with standards and requirements established by the City and the State of New Mexico.
18. Provision shall be made by the subdivider to furnish street signs for all intersections within the subdivision as approved by the applicable governing authorities.
19. Where curb-side waste pickup is anticipated, the subdivider shall furnish the appropriate waste containers for both rubbish and green waste.

B. *Block standards:*

1. Blocks shall not exceed 1,500 feet in length.
2. Blocks must fit easily into the overall plan of the subdivision and their design must evidence consideration of lot planning, traffic flow and public areas.
3. Blocks intended for commercial and industrial use should be designated as such, and the plan shall show adequate off-street areas to provide for parking, loading docks, and other such facilities that may be required to accommodate motor vehicles.

C. *Lot standards:*

1. The minimum lot area and width shall conform to the requirements of the Zoning Code of the City for the specific zoning district in which the subdivision is located.
2. All lots shall have access from and abut on a dedicated public street.
3. Lots abutting an irrigation ditch, water course, drainage way, channel or stream, shall have additional width and depth as required to provide an adequate building site, drainage way, easements and afford the minimum useable area required in the Zoning Code for front, rear, and side yards.
4. Locations of utility easements on each lot shall be coordinated with the utility companies providing service in the subdivision. Sewer lines shall be located in public streets or alleys or in sewer easements of not less than 25 feet in width. In all cases, the sewer easements shall be of adequate

width to allow trenching to the sewer line with a 45 degree slope on the trench walls.

5. All utilities shall be placed underground unless a variance is granted by the Planning Commission.

D. *Parks:* The subdivider of any subdivision containing over 50 lots shall provide open space for park and recreational facilities within the subdivision at the rate of .5 acre per 12 acres. In the case of industrial/commercial subdivisions the subdivider shall provide .25 acres per 12 acres. The subdivider may wish to pay a parks fee in lieu of dedicating land. The fee shall be calculated at the same rate as indicated above with the proviso that the fee will equal the value of the property that would have been dedicated.

E. *Sewers:*

1. All subdivisions approved under this Code shall be connected to the City wastewater treatment facility. Proof of the system's ability to handle the capacity of flow going through the system prior to the subdivision's increase in flow, and proof of the system's ability to function with the additional flow that would result from the subdivision's approval shall be submitted with the preliminary plat.
2. The minimum size of all sanitary sewer mains shall not be less than eight inches in diameter and shall be of SDR 35 PVC.
3. The subdivider shall pay all costs of extending sewer lines from existing City sewer facilities to the subdivision and shall pay all costs of expansion for the sewer collection system to the end of the subdivision and furnish the necessary collection laterals for servicing the proposed development. The subdivider shall also pay the utility expansion fee as set by City Commission Resolution.
4. Manholes shall be constructed at all changes of alignment and grade, and shall not be more than 400 feet apart. In areas having substantial ground water, the exterior walls of the manholes shall be covered with an asphalt or epoxy waterproof membrane. All covers shall be of a class to withstand anticipated wheel loads of passing vehicles. Covers and rims shall be grouted around their entire circumference to insure full bearing of the entire circumference.
5. All sewer mains (eight inches and larger) shall be terminated in a manhole, except that a main of less than 100 feet in length may end in a "clean-out" which rises to the surface of the pavement and is capped by a traffic grade removable cover.
6. All service connections shall join the mains with a "y" connection which shall be at an angle of at least 45 degrees from the horizontal.
7. Leakage of sub-surface water into the sewer mains shall not be more than 100 gallons per mile of main per day.
8. Minimum grades for sewer mains and collectors shall not be less than the following:

8 inch—0.40%

10 inch—0.30%

12 inch—0.25%

Grades shall be so designed as to furnish a minimum velocity of two feet per second at peak daily flow.

9. A backfill of sand or earth that has passed through a 3/8" screen shall be used for at least 12 inches around all sewer mains.
10. Service lines shall be constructed to each dwelling unit and shall contain ample provision for cleaning of the upper end.
11. Sewer service lines shall be permanently located on the curb with a suitable impression and all service lines shall connect at right angles to the sewer mains.
12. Inspection of new sewer pipe installation shall include checks on alignment and grade; caulking and grouting of the entire circumference of each joint; displacement of pipe during the back filling of the operations; and continuity of flow at manholes.

F. *Water supply:*

1. The subdivider shall transfer or assign to the City all water rights appurtenant to the land to be subdivided, or water rights adequate for the uses anticipated to result from development of the subdivision.
2. If the land to be subdivided has no water rights assigned to it, the subdivider shall pay a fee of \$1,000.00 per lot to the City for development of water infrastructure.
3. The subdivider shall transfer water rights appurtenant to the land, or pay \$1,000.00 per lot, before the final plat may be filed with the Clerk.
4. Such transfers shall be done in conformance with the rules and procedures of the State Engineer of New Mexico.
5. Adequate water rights are .50 acre feet per lot within a subdivision.
6. Any and all subdivisions approved under this Code which are located within 300 feet of a municipal water distribution line and which are within the municipal limits of the City of Truth or Consequences shall utilize water from a community water system approved by the State of New Mexico. Description of the water supply needed for the proposed subdivision shall be submitted with the preliminary plat.
7. The minimum size for all water main extensions shall not be less than six inches in diameter if serving no more than one fire hydrant. For extensions serving more than one hydrant, the minimum size shall be eight inches diameter. All water main extensions shall be of C-900 PVC.
8. The subdivider shall pay all costs for extending water mains from existing City water facilities to the proposed subdivision, and shall pay all costs of

extension of water mains, water hydrants, and laterals to the end; the subdivision. Additionally, the subdivider shall provide the necessary loops and cross-laterals for servicing the proposed development.

9. Before the individual service lines are connected to the water main, the necessary water tap deposit shall be made in compliance with the City Code of Ordinances.
 10. Concrete thrust block and mega lugs shall be used at all changes of direction, junctions, and fire hydrant locations.
 11. Minimum ground cover for water mains and service connections shall not be less than 36 inches.
 12. Valves shall be located in such manner as to adequately control the water lines and shall be generally integrated into the system as follows: Three valves used at all four-way crosses; two valves at all tee connections; and one valve used on each fire hydrant assembly. Straight runs of distribution main shall have one valve spaced at intervals of 500 feet maximum.
 13. Hydrants shall be "traffic type" or "break-away". All valves, hydrants and other components shall conform with the City's specifications. At least two cubic feet of crushed rock or gravel shall be used at each hydrant to provide free drainage.
 14. A backfill of sand or earth that has passed through a 3/8" screen shall be used for at least 12 inches around all water mains.
 15. Water service lines shall be permanently located on the curb with a suitable impression and all service lines shall connect at right angles to the water main.
 16. Water meter boxes and valve risers and covers shall be used at all locations. The boxes and covers shall be of a design approved by the City.
- G. *Water quality:* Water from any private system approved for any and all subdivisions approved under the standards of this Code shall conform to the New Mexico Drinking Water Regulations (Title 20, Chapter 7, part 1) as amended or replaced.
- H. *Flood plain and terrain management:* All flood plain and terrain management plans shall be prepared by a professional engineer registered in the State of New Mexico. The plan shall comply with and include the following elements.
1. *Flood plain and terrain management report:* The report shall be typed and bound on 8½" × 11" paper and be prepared using a method approved for subdivisions by the Soil and Water Conservation Service (SCS). When using the SCS method, the initial time is five minutes and the time of concentration shall be not less than ten minutes. The report shall contain at least the following calculations and analysis:
 - a. Peak flow from all off-site tributary drainage areas;

- b. Peak flow within the proposed subdivision for all onsite drainage basins;
 - c. Closed sub-basin analysis including identification of water into or out of sub-basins;
 - d. Drainage problems and solutions which are anticipated within the subdivision;
 - e. Effects of 10- and 100-year 24-hour storm events; routing and accumulative flows for 10-year and 100-year 24-hour storm events at all critical points in the drainage system, which shall include points of intersection, change of flow, change of slope, change of structural elements, and any other critical point in the system; and
 - f. Function, analysis and capacity calculations for all drainage system components that are part of the subdivision proposal, including inlets, storm drains, channels, streets, culverts, ponds, swales, dams, berms, etc.
2. *Grading and drainage plan:* The plan shall include at least the following:
- a. Existing contours for the development with a contour interval based on mean sea level datum at a minimum two-foot contour interval if the slope is two percent or less, or a five-foot contour interval if the slope is greater than two percent;
 - b. Proposed grades represented as contours and/or spot elevations as necessary to define construction requirements and drainage patterns within the proposed subdivision;
 - c. Location and elevations of USGS, Bureau of Reclamation, Elephant Butte Irrigation District, State Highway Department and/or International Boundary and Water Commission benchmarks used in determining the location of improvements within the subdivision;
 - d. A project benchmark, established within or adjacent to the project limits; descriptions of existing irrigation and drainage facilities and structures such as ditches, drainage ways, gutters and culverts, including all pertinent information such as size, slope and material;
 - e. Overall drainage area boundaries and drainage sub-area boundaries;
 - f. Proposed drainage improvements designed in accordance with subsection 3, below, including storm drains, open drainage ways, rights-of-way, easements, storm system inlets, gutters, manholes, culverts, erosion control and energy dissipation devices, ponds, and any other required structures or drainage system components which will be constructed within the subdivision;

- g. All pertinent drainage information, including drainage flow arrows, flow rates, volumes, proposed inflow and outfall points for runoff from the study area; and,
 - h. Subdivision limits and individual lots, including setbacks, rights-of-way, easements and proposed street improvements.
3. *Construction plans:* These plans shall be prepared by a registered professional engineer licensed in the State of New Mexico, and shall be prepared on 24" × 36" sheets, and shall contain at least the following:
- a. Title of the subdivision;
 - b. Graphic and written scales;
 - c. Subdivision limits and individual lot lines, existing and proposed easements and rights-of-way;
 - d. All street and paving improvements, including street names, sections and widths;
 - e. Existing and proposed utilities affected by the proposed construction;
 - f. Existing ground surface and proposed ground surface grades clearly delineated;
 - g. Project bench marks;
 - h. Information on proposed pipes and culverts including:
 - (1) Stationing;
 - (2) Profile;
 - (3) Size of pipes;
 - (4) Grades of pipes;
 - (5) Distance between manholes or other access points;
 - (6) Typical details for all bedding situations encountered in the subdivision;
 - (7) Construction details, station numbers, invert elevations and top elevations for all inlets and outlets, manholes and all connections to existing drainage systems; and
 - (8) Construction notes, including pipe composition and specification references as required;
 - i. Details on proposed open channels including:
 - (1) Stationing;
 - (2) Profile indicating grade of invert of channel, top of lining (if any), and adjacent ground grade;

- (3) Typical cross sections;
 - (4) Rip-rap and bedding details with gradation requirements;
 - (5) Lining details;
 - (6) Structural details including sub-grade, foundation, and lining for all inlet, outlet, and other structures; and
 - (7) Construction notes and specification references as required.
4. *Maintenance agreement:* This statement shall clearly define the responsibilities and requirements of the individuals responsible for maintaining all elements of the drainage system.
 5. *General design considerations:* Compliance with the following criteria is required for the proper preparation of a plan:
 - a. Runoff analysis shall take into consideration all contributing runoff from areas outside the subdivision. The analysis of storm runoff from existing developed areas lying outside the subdivision shall be based upon present land use and topographic features. Runoff from undeveloped land lying outside the subdivision shall be calculated using coefficients appropriate for the current land use of the runoff source;
 - b. Flow pattern in undeveloped areas adjacent to the proposed subdivision shall be based on existing natural topographic features;
 - c. Average land slope in both developed and undeveloped areas may be used in computing runoff, however, for areas in which a plan has previously been approved, those slopes shall be used;
 - d. Planning and design of drainage systems shall be such that no increase in volume or velocity of runoff is transferred beyond the subdivision's boundaries;
 - e. Outfall points shall be designed in such a manner that they will not cause damage from increased flooding downstream; irrigation facilities shall not be used as outfall points unless such outfall is shown to be without hazard and is approved in writing by the irrigation district;
 - f. Drainage easements or dedicated rights-of-way shall be required in all situations where concentrated flow occurs; where the developer wishes to dedicate rights-of-way, written acceptance from the entity to which the rights-of-way are to be dedicated must be received by the City; any dedication of drainage system components must be agreed to and accepted by the City;
 - g. Encroachment that impairs drainage easements or rights-of-way are prohibited;

- h. When a subdivision or part of a subdivision lies within a FEMA designated flood plain, the subdivider shall provide a hydrologic engineering analysis acceptable to the City to determine the flood inundation area and the anticipated depth of flood waters resulting from a 100-year 24-hour storm event;
 - i. The primary purpose of streets is the safe conveyance of vehicular traffic; streets and rights-of-way may also be used as drainage ways for storm runoff, however, any runoff carried by a street shall be very limited.
 - j. Minimum size of storm drain conduit or pipe shall not be less than 18 inches in diameter.
 - k. Drop inlets for street drainage shall be so placed as to intercept storm water above or before pedestrian crossings.
 - l. Concentrated channels of storm drainage crossing asphalt roadways shall consist of concrete valleys of at least eight inches thick and extending five feet on each side of a normal water elevation.
 - m. Drop inlets shall be of the "self-cleaning" type with provisions in the design for removal of grates or covers for maintenance.
 - n. Clean-out boxes or inlets shall be used at all changes of alignment in drains.
 - o. Whenever a subdivision is traversed by a water course, drainage way, channel or stream, the subdivider may at his own expense, make adequate provision for straightening or widening the channel so that it will properly carry the surface water, and shall also provide and dedicate to the City an easement containing and along each side of the channel or drainage way. The width of such easement shall not be less than 20 feet and shall be computed from the outside center of the channel or drainage way. Further, the total width of the easement shall be adequate to provide for any necessary channel relocations and straightening. This easement must be in addition to the required yard setback requirements of each respective Zoning District.
6. *Control of dust during construction:* Adequate provisions shall be made for the prevention of nuisances, including watering, to control blowing dust any time the natural ground surface is disturbed and further to control the erosion, drainage, siltation or any other factors which might adversely affect other persons or adjoining property owners.
- I. *Underground utilities:*
- 1. All utility lines for telephone, electric services, cable television or the like shall be placed underground within easements or dedicated public ways in a manner which will not conflict with other underground services. Further, all transformer boxes shall be located so as not to be unsightly or

hazardous to the public.

2. The subdivider shall pay all costs for extension of utilities from existing facilities to and throughout the proposed subdivision.
- J. *Private facilities:* Where the subdivision is to contain sewage facilities, water supply systems, park areas or other physical facilities which will not be maintained by existing public agencies, provision shall be made by trust agreement for the continuous maintenance, supervision, operation and reconstruction of such facilities by the lot owners in the subdivision. This agreement shall be a part of the deed restrictions and shall be in a form acceptable to the public agencies having jurisdiction over the respective facilities.
- K. *Existing non-conforming plats:* Plats that were in existence prior to the original date of this chapter (11/12/02) shall not be required to conform to the provisions of this Code. Specifically, those provisions that require the construction of streets and utilities prior to recordation of the subdivision. These prior plats shall be known as "legal-non-conforming plats". Said non-conforming status shall protect these plats for a period not to exceed five years from the original date of this chapter. The legal-non-conforming status of all subdivisions that have not had residences, businesses or industrial building constructed upon them, or had any lots sold shall expire on 11/12/07. From that date forward, any person wishing to receive a building permit for a structure authorized by the Zoning Code on land that was platted prior to the requirements of this chapter and that has not conformed to the requirements of this chapter, will not be issued a building permit until such time as said property comes into compliance with the requirements of this chapter specifically related to the provision of utilities and street improvements.

(Ord. No. 555, 5-23-06)

Sec. 15-21. Guarantees of improvements: One year warranty.

All subdivisions shall be insured by a one year warranty of improvements. That warranty shall be in the format included in the appendices of this chapter. If, after final inspection and acceptance of work performed and prior to the expiration of one year from the date of acceptance or such longer period of time as may be prescribed by the law or by the terms of any applicable special guarantee required by the contract documents associated with the approval of a subdivision, any work is found to be defective, whether the failure is due to construction or materials failure, the subdivider shall promptly and without cost to the City, in accordance with the City's written instruction, either correct such defective work or, if it has been rejected by the City, remove it from the site and replace it. The City may have the defective work corrected or the rejected work removed and replaced and all direct and indirect cost of such removal and replacement including compensation for additional professional services shall be paid by the subdivider.

(Ord. No. 555, 5-23-06)

Sec. 15-22. Construction letter of financial assurance and indemnity agreement.

- A. *Procedure:* If a subdivider files a construction letter of financial assurance and

indemnity agreement for improvements within the subdivision the form contained in the appendices of this chapter shall be used. If a subdivider wishes to draw on that letter of financial assurance, the following procedure shall be applied:

1. As any phase of construction within a subdivision is completed but no more frequently than once a month, and at least ten days before the release can be accomplished, the subdivider may submit to the City a letter requesting partial release of funds from a letter of financial assurance. Any request for release shall contain the following information:
 - a. Description of the work including quantities of materials used in the component parts of the work for which the partial release is being requested;
 - b. Dollar amount including unit prices for each element in the description of work;
 - c. Percentage of the total amount of work involved in the subdivision represented by the requested release;
 - d. Total dollar amount requested for release;
 - e. Balance of dollars remaining in the City's control of the letter of credit;
 - f. Balance of dollars required to complete the subdivision's improvements.
- B. *Types of partial releases component:* Parts of the work for which partial releases may be requested include, but are not limited to, the following:
 1. Earthwork consisting of: clearing and grubbing, removal of structures and obstructions, excavation, borrow and embankment work, sub-grade preparation, construction of pads;
 2. Base work consisting of base course and sub-bases and, other approved bases;
 3. Surface treatments and pavements including hot mix, prime coats, bituminous surface treatments, and other approved pavements.
 4. New structures and constructions, including: concrete, steel and wood structures, culverts and storm drains, contour ditches, rip-rap, guardrails, fences, sidewalks and median improvements, curbs and gutters, cattle guards, irrigation ditches, drop inlets;
 5. Traffic control devices including signs and support structures, pavement markings, signal and lighting structures.
- C. *City's review:* The City's release of funds shall be based on reviews of the application, accompanying data, and on-site observations of work in progress by the City's Zoning Administrator, Road Superintendent and the City's Utility Director, and shall occur only upon written approval by those staff members. Such written approval shall constitute the City's agreement that the work has

progressed to the point indicated in the request, and that to the best of the City's knowledge, information and belief, the work quality is in accordance with the contract documents, the City's design standards and the approved plans for the subdivision being constructed.

- D. *Limits on release:* The City's Utility Director, Road Superintendent and Zoning Administrator may recommend denial of the release of the whole or any part of any requested release if they individually or jointly find that the work does not meet the criteria listed in item (C) above. The City may also reduce subsequent releases for any amount required to correct defective work or to complete work for which a release has been permitted if subsequently discovered evidence or the results of subsequent inspections or tests show that the work does not meet the criteria listed above.
- E. *Notification of decision on releases:* Within 14 days of receiving a request for release of funds, the City's Zoning Administrator shall notify the City Commission of having received the application for release of funds, and shall inform the City Commission of the staff's recommendation for release, partial release, or non-release of funds. The City Commission may ratify, amend or reject the staff's recommendation. All decisions by the City Commission regarding releases of funds from letters of credit shall be based on compliance or non-compliance with the standards of this Code. Within one week of the City Commission's meeting, the City's Zoning Administrator shall, in writing, inform the applicant of the City's acceptance of the request, or in case of a rejection of the request, shall return the request along with a letter stating the City's reasons for not releasing funds.
- F. *Re-submittal of requests for release:* If the City does not release funds, the subdivider may make the necessary corrections and resubmit the application. In the event that natural events or actions by the subdivider or the subdivider's agents causes changes to completed work which result in it falling below the City's design standards, the dollar amount required to bring the completed work back to City standards shall be held back from succeeding releases until such time as the damage has been eliminated and the completed work once again meets City design standards.
- G. *Form of releases:* Release of funds by the City shall be done in the form of a letter from the City's Zoning Administrator to the subdivider and to the subdivider's lending institution, which letter shall specify the date the City Commission approved the release, the amount released, what work is represented by the release, previous amounts released, and the balance remaining in the letter of credit. The letter shall request a written response from the lending institution verifying its receipt of the release letter, verifying the accuracy of the contents of the release letter, and describing its actions regarding the release of funds.
- H. *Final releases:* As the time when all required work in the subdivision is complete and the developer has satisfied all contractual requirements within the subdivision to meet the City's standards, the City's Utilities Director, Road Superintendent, and Zoning Administrator shall write a letter to the City Commission indicating satisfaction and acceptance of performance by the

subdivider and acceptance of final release of the funds remaining in the letter of credit. Within two weeks of receiving those letters, the City Commission shall send a letter to the subdivider and to the subdivider's lending institution, which letter shall specify the amount released, what work is represented by the release, previous amounts released, and the balance remaining in the letter of credit. The letter shall request a written response from the lending institution verifying its receipt of the release letter, verifying the accuracy of the contents of the release letter, and describing its actions regarding the release of funds.

(Ord. No. 555, 5-23-06)

Sec. 15-23. Inspection at the subdivider's expense.

- A. *Subdivider responsible:* All public improvements proposed to be made under the provisions of this Code shall be inspected during the course of construction by the City's Director of Utilities, Road Superintendent, and Zoning Administrator. The subdivider shall pay all fees and costs connected with such inspection and the review of plans and specifications for such improvements at rates established in the City Code of Ordinances.

(Ord. No. 555, 5-23-06)

Sec. 15-24. Occupancy permit.

- A. *Final inspection required:* No occupancy permit shall be granted by any governing official for the use of any structure within a subdivision approved under this Code until the final inspection by the City or duly appointed official has been made. At that time all required utility facilities shall have been installed and made ready to service the property; roadways providing access to the subject lot or lots and sidewalks along the street shall have been constructed and street signs shall have been erected.

(Ord. No. 555, 5-23-06)

Sec. 15-25. Disclosure statement.

All subdividers are required to disclose the following information with their preliminary plan and final plats, and shall provide all purchasers of land within an approved subdivision with the following information. Some of the elements (such as summaries of opinions by state agencies) may not be available to a subdivider at the time of preliminary plat submittal: in such instances the subdivider shall include the statement "information pending" in the appropriate space. All required information shall be included at the time of submittal of a final plat. Upon City approval of a final plat for a subdivision, the disclosure statement shall be filed in the miscellaneous records section of the County Clerk's files, and the book and page of such filing shall be written in permanent ink and made prominently visible on the filed final plat. The cost of filing shall be borne by the subdivider. The following disclosure statement format shall be used in all instances.

- A. *Name of subdivision.*
- B. *Name and address of subdivider.*

- C. *Name and address of person having equitable title.*
- D. *Name and address of person in charge of sales or leasing in New Mexico.*
- E. *Name and address of escrow agent.* Provide the name and address of any and all escrow agents involved in the financing of land within the subdivision, and disclose whether or not the subdivider has any interest or financial ties with the escrow agent.
- F. *Condition of title.* Include here at least the following information.
 - a. Number of mortgages on the property, name of each mortgagee, the balance owed on each mortgage, a summary of release provisions in each mortgage, and the book and page and place of filing of such mortgages
 - b. Number of real estate contracts on the subdivided land, the balance owed on each contract, and a summary of release provisions in each contract and the book and page and place of filing of such contracts.
 - c. Any and all other encumbrances or conditions of title on the land.
 - d. Description of the consequences to purchasers or lessees if the subdivider or property owner if the terms of mortgages, contracts or other encumbrances or conditions of title are not met.
- G. *Statement of all restrictions or reservations of record subjecting the land being subdivided to any unusual conditions affecting its use or occupancy.* Specifically describe any and all existing and proposed deed and plat restrictions affecting the land.
- H. *Size of subdivision.* Include here the acreage contained in the subdivision, the number of phases, the total number of lots in the Subdivision, and the number of lots in each phase.
- I. *Size of largest parcel offered for sale or lease within the subdivision.*
- J. *Size of smallest parcel offered for sale or lease within the subdivision.*
- K. *Description of utility providers.* Give the name and address of all utility providers whose systems will be utilized in the subdivision.
- L. *Installation dates for utilities.* Describe here the date each utility will be available for use of purchasers in each and every phase of the subdivision.
- M. *Costs of connection.* Describe here the cost of connecting an average lot in the subdivision to each and every utility available within the subdivision.
- N. *Life expectancy of the water supply.* Describe here the State Engineer's estimated life expectancy for water supplies utilized by the subdivision.
- O. *Liquid waste disposal.* Describe here the precise type of liquid waste disposal system that will be used in the subdivision, and include the approved summary of the New Mexico Environmental Department's statement on the system's ability to meet the demands created by the subdivision.

- P. *Solid waste disposal.* Describe the means of solid waste disposal proposed for use within the subdivision.
- Q. *Terrain management.* Describe the suitability of soils within the subdivision for residential use and any and all other uses proposed within the subdivision. Disclose, by phase and lot number, any and all lots within the subdivision that are subject to flooding. Describe all storm drainage systems in the subdivision, including their completion dates.
- R. *Subdivision access.* Describe the width and type of surfacing of all roads leading to and located within the subdivision. Describe the public entity responsible for maintaining the roads. Include here the approved summary of the New Mexico State Highway Department's opinion on whether or not the subdivision's access meets the Department's access requirements if such an opinion is required.
- S. *Miscellaneous development.* Describe here any and all homes, recreational facilities and structures, and other community improvements to be provided by the subdivider in the subdivision and not previously mentioned in this Disclosure Statement. Include the dates on which these structures will be completed.
- T. *Maintenance.* Describe here any and all maintenance and construction responsibilities of purchasers or lessees of land within the subdivision.
- U. *Adverse conditions.* Describe any and all activities or conditions adjacent to or nearby the subdivision which would subject the subdivided land to any unusual conditions affecting its use or occupancy.
- V. *Fire protection.* Describe here the distance from the subdivision of the nearest fire station, the route over which fire protection will travel, and whether the fire department is full time or volunteer.
- W. *Police protection.* Describe the law enforcement units that will patrol the subdivision or respond to emergency situations that may arise within the subdivision.
- X. *Schools.* Provide the names of the elementary, middle and high schools that students living within the subdivision will attend. Also provide the distance of the schools from the subdivision, and whether school busses will serve the subdivision.
- Y. *Medical facilities.* Give the name of the nearest hospital and medical clinic, and the distance of that facility from the subdivision.

(Ord. No. 555, 5-23-06)

APPENDIX ONE

IRREVOCABLE LETTER OF CREDIT

LETTER OF CREDIT NUMBER _____

BENEFICIARY: City Commission of the City of Truth or Consequences

505 Sims Street

Truth or Consequences
NM 87901

Commissioners:

_____(Bank Name)_____, of _____(City, State)_____, hereby opens and establishes its Irrevocable Letter of Credit in your favor for any sum or sums not exceeding in total (\$ _____) available by your draft(s) at sight for account of _____(Subdivision Name)_____.

This letter of credit is issued for compliance with your land subdivision regulations as they pertain to the approved subdivision, covering costs, expenses, damages, liabilities and fees of improvements for the _____(Subdivision Name)_____. Any draft(s) drawn herein under must state they are drawn against Letter of Credit Number _____, and shall be accompanied by a letter from you stating whether or not such improvements have been constructed by _____(Date)_____ to such land subdivision regulation's specifications, and your satisfaction. Such draft(s) with your letter shall be duly honored on presentation at _____(Bank)_____.

This letter of credit will expire on _____(Date)_____, unless you inform _____(Bank)_____ that a one year extension of this letter of credit is required to guarantee completion of such improvements as are mentioned herein and which have not been completed to your land subdivision regulation's specifications and your satisfaction by _____(Date)_____. Such letter must be received by _____(Bank)_____ by _____(Date)_____ in order for such extension to take effect.

This letter of credit is subject to Uniform Commercial Code as adopted by the State of New Mexico.

Lending Institution

Authorized Signature and Title of Signatory

APPENDIX TWO

GUARANTEES OF PERFORMANCE AND INDEMNITY AGREEMENT FOR IMPROVEMENTS SECURED BY AN IRREVOCABLE LETTER OF CREDIT

This agreement is made and entered into this _____ day of _____ / _____ / _____

, by and between _____, hereinafter "the Subdivider(s)") and the City Commission of the City of Truth or Consequences, New Mexico, (hereinafter, "the City").

Whereas, The Subdivider(s) is/are the Subdivider(s) of the subdivision known as _____(Subdivision Name)_____ (hereinafter, "the Subdivision") in the City of Truth or Consequences, New Mexico; and,

Whereas, in order to comply with the Subdivision Code of the City of Truth or Consequences as they pertain to the Subdivision, certain performance guarantees and indemnification for the development of improvements in the Subdivision are required; and,

Whereas, the Subdivision has received final approval by the City; and,

Whereas, the Subdivision's plat has not been released for filing since the Subdivider(s) has not

completed required improvements; and,

Whereas, the Subdivider(s) desire(s) that the City release the approved subdivision plat for filing to allow the Subdivider(s) to apply for building permits for the Subdivision in consideration for the Subdivider(s) entering into this agreement and posting an Irrevocable Letter of Credit.

NOW THEREFORE, in consideration of the above, the Subdivider(s) and the City agree as follows:

1. (Name of Subdivider(s)) is the Subdivider(s) of the Subdivision known as _____, in the City of Truth or Consequences, New Mexico, and in order to comply with the Subdivision Code of the City of Truth or Consequences and their subsequent amendments in force at the time of the City's approval of the Subdivision, certain performance guarantees and indemnification for the development of improvements in the Subdivision are required.
2. The Subdivider(s) shall indemnify the City from any and all costs, expenses, damages, liabilities and fees of attorney(s) that the City suffers and/or incurs as a result of having to construct the improvements in the Subdivision to the City's standards and specifications.
3. The Subdivider(s) shall construct and complete the improvements for the Subdivision on or before (Date) in compliance with the Subdivision Code of the City of Truth or Consequences and their subsequent amendments in effect as of the date of approval of the Subdivision.
4. The Subdivider(s) shall provide and deliver to the City an Irrevocable Letter of Credit in the amount of \$ _____ from the (Bank) of (City, State), a copy of which is attached and incorporated by reference to secure the development of the improvements in the Subdivision. The letter is effective until (Date). If all construction of improvements for the Subdivision are not completed by (Date), the funds of the letter of credit shall be released to the City to complete construction of such improvements. The contracting for and providing of the Irrevocable Letter of Credit by the Subdivider(s) does not in any way limit, negate or modify the Indemnification of the City as set forth in paragraph 2 of this Agreement.
5. The City shall cause the subdivision plat to be filed upon receipt and acceptance of this fully executed Agreement and the Irrevocable Letter of Credit.
6. At the City's discretion, this Agreement and its accompanying Letter of Credit may be extended for an additional one year beyond its expiration date for the purpose of guaranteeing completion of improvements not completed by (Date), provided that the City gives the Subdivider(s) notice of such action at least thirty (30) days before the original date of expiration.
7. The laws of the State of New Mexico shall govern this Agreement.
8. Any covenant, term, agreement, condition or provision herein contained that is held to be invalid by any court of competent jurisdiction shall be considered deleted from this Agreement, but such deletion shall in no way affect any other covenant, term, agreement, condition or provision herein contained, so long as such deletion does not materially prejudice the City in its rights contained in the

valid covenants, terms, agreements, conditions or provisions of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date and year first written above.

INDEMNITORS/SUBDIVIDERS _____

.

ACKNOWLEDGMENT

State of New Mexico		
)	
		SS
)	

County of Sierra

The foregoing instrument was acknowledged before me this _____ day of _____

/ _____
/ _____
, 20_____
, by _____

.

My Commission expires: _____

/ _____
/ _____

.

Notary Public: _____

.

INDEMNITEE/THE CITY	_____
	Mayor
ATTEST:	_____
	City Clerk

APPENDIX THREE

ONE YEAR WARRANTY OF IMPROVEMENTS

This agreement is made and entered into this _____ day of _____

/ _____
/ _____
, 20_____
, by and between _____

, hereinafter referred to as the Subdivider, and the City Commission of the City of Truth or

Consequences, New Mexico, hereinafter referred to as the City.

WHEREAS, _____
is the Subdivider of the subdivision known as (Subdivision name) , (hereinafter, the Subdivision) in the City of Truth or Consequences, New Mexico; and,

WHEREAS, in order to comply with the Subdivision Code of the City of Truth or Consequences as they pertain to the Subdivision, certain performance guarantees for the improvements to the Subdivision are required; and,

WHEREAS, the Subdivision has received final approval from the City, and the City has caused the plat of the subdivision to be filed with the office of the County Clerk of Sierra County.

NOW, THEREFORE, in consideration of the premises hereinabove expressed and the terms, covenants, conditions and agreements hereinafter stated, the Subdivider(s) and the City agree as follows:

1. _____
is/are the Subdivider(s) of the Subdivision known as _____
, in Truth or Consequences, New Mexico, and in order to comply with the Subdivision Code of the City of Truth or Consequences in force at the time of the City's approval of the Subdivision, certain performance guarantees for the improvements to the Subdivision are required.
2. The Subdivider(s) shall indemnify the City from any and all costs, expenses, damages, liabilities and fees to attorney(s) that the City suffers and/or incurs as a result of the City having to repair the improvements in the Subdivision to City standards and specifications.
3. The Subdivider(s) shall, for a period of one year dating from the date of final inspection by the City of the improvements in the Subdivision, repair to City standards and specifications the improvements for the Subdivision in compliance with the Subdivision Code of the City of Truth or Consequences and their subsequent amendments and such improvement plans in effect as of the date of final approval of the Subdivision by the City.
4. The laws of the State of New Mexico shall govern this Agreement.
5. Any covenant, term, agreement, condition or provision herein contained that is held to be invalid by any court of competent jurisdiction shall be considered deleted from this Agreement, but such deletion shall in no way affect any other covenant, term, agreement, condition or provision herein contained, so long as such deletion does not materially prejudice the City in its rights contained in the valid covenants, terms, agreement, conditions or provisions of this Agreement.

WITNESS THEREOF, the parties have executed this Agreement on the date and year first written above.

INDEMNITORS/SUBDIVIDERS _____

ACKNOWLEDGMENT

State of New Mexico		
)	

		SS
)	

County of Sierra

The foregoing instrument was acknowledged before me this _____
day of _____
/_____
/_____
, 20_____
, by _____
.

My Commission expires: _____
/_____
/_____
.

Notary Public: _____
.

INDEMNITEE/THE CITY	_____
	Mayor
ATTEST:	_____
	City Clerk

Chapter 16 COMPREHENSIVE PLANNING AND ZONING CODE [1](55)

ARTICLE I. PURPOSE, AUTHORITY AND SCOPE OF THE COMPREHENSIVE PLANNING AND ZONING CODE

- Sec. 11-1-1. Title.
- Sec. 11-1-2 Purpose and Intent.
- Sec. 11-1-3. Statutory Authority and Jurisdiction.
- Sec. 11-1-4. Interpretation and Conflict.
- Sec. 11-1-5. Establishment of Official Planning and Zoning District Map, and Planning and Zoning District Boundaries.
- Sec. 11-1-6. Access to the Comprehensive Planning and Zoning Code.

Sec. 11-1-1. Title.

This chapter shall be known as the "Comprehensive Planning and Zoning Code" of the

City of Truth or Consequences (herein, "this Code").

Sec. 11-1-2 Purpose and Intent.

The purpose of this Code is to encourage the most appropriate use of land and to promote the health, safety, morals and general welfare of the community through a comprehensive and planned approach. The regulations, plans, and maps are deemed necessary to:

- A. Prevent congestion in the streets and other rights-of-way;
- B. Secure safety from fire, panic, and other dangers;
- C. Promote health and general welfare;
- D. Assure adequate light and air for all properties;
- E. Prevent overcrowding of land and undue concentration of population;
- F. Facilitate adequate provisions for transportation, water, sewer, schools, parks, and other public facilities and reduce the effect of natural hazards;
- G. Control and abate the unlawful use of structures, buildings, or land;
- H. Encourage the conservation of energy in the use of structures, buildings and land in the City.

Sec. 11-1-3. Statutory Authority and Jurisdiction.

This Code is created and adopted pursuant to the authority set forth in the New Mexico State Statutes 1978, Section 3-21-1 through Section 3-21-24, as amended, and shall be applicable to all property within the corporate limits of the City of Truth or Consequences, New Mexico, referred to as "the City" elsewhere herein, except for state and federal land being used for public purposes.

Sec. 11-1-4. Interpretation and Conflict.

The regulations of this Code are held to be the minimum standards to carry out the purpose of this Code. This Code is not intended to interfere with, abrogate, or annul any easement, covenant, or other agreement between parties, or other valid ordinances. Where this Code imposes a greater restriction upon the use of land or building, or upon the height of building, or requires larger open space than is imposed by other rules, regulations, easements, covenants, agreements, or ordinances, the provisions of this Code control.

- A. *Severability.* If any article, section, subsection paragraph, sentence, phrase or part hereof is declared unconstitutional, illegal or invalid, the remaining portions of this Code shall not be affected.
- B. *Federal and state conflict.* Any provision of U.S. or New Mexico State Law, which imposes a greater duty, standard or requirement than those contained herein shall supersede the provisions of this Code. Should federal or state controlled lands be exempt from local zoning authority, the provisions of this Code do not apply. However, the zoning designation is made should the lands be passed to private ownership and to provide a framework to the federal or state

governments for the desired types of uses of the land.

- C. *Conflict within this Code.* When two or more provisions of this Code are conflicting, the most restrictive provision shall apply.
- D. *Repeal.* Any Municipal Code or portion thereof, in direct conflict with the provisions of this Code is hereby repealed.

Sec. 11-1-5. Establishment of Official Planning and Zoning District Map, and Planning and Zoning District Boundaries.

- A. *Planning and zoning district map.* For the purpose of this Code, The City shall be divided into planning and zoning Districts and these shall be shown on a map entitled the "Official Planning and Zoning District Map" of the City of Truth or Consequences, New Mexico.
- B. Designation of official districts. The following shall be the official planning and zoning Districts:

Overlay Districts;

[Industrial Planned Unit Development District (PUD)];

R-1 Single Family, Low Density Residential District;

R-2 Medium Density Residential District;

R-3 High Density Residential District;

R-4 Rural Residential District;

RR-1 Riverside Residential District;

C-1 General Commercial District;

M-1 Light Manufacturing District;

T-1 Transition District.

- C. *Interpretation of district boundaries.* Where uncertainty exists concerning boundaries of any District shown on the Official Planning and Zoning District Map, the following rules shall apply:
 - 1. Boundaries shall be construed as the centerline of existing, future or vacated streets, highways, alleys, drainage, or irrigation canals or other public right-of-way.
 - 2. Where property has been subdivided into block and lot, 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 Planning and Zoning District Map.
 - 4. In cases where property has not been specifically a part of the City by annexation, these areas shall be classified by District by the City Commission after recommendation by the Planning and Zoning

Commission.

([Ord. No. 573, 8-28-07;] Ord. No. 574, 8-28-07)

Sec. 11-1-6. Access to the Comprehensive Planning and Zoning Code.

The Code and Official Planning and Zoning District Map shall be filed with the City Clerk and shall be available for examination by any citizen.

ARTICLE II. ADMINISTRATION OF THE CODE

Sec. 11-2-1. Administrative Official.

Sec. 11-2-2. The Planning and Zoning Commission.

Sec. 11-2-3. The City Commission.

Sec. 11-2-1. Administrative Official.

This Code shall be administered by the Building Inspector for the City until a Zoning Official is specifically designated by the City Commission. Throughout this Code, "designated Zoning Official" shall mean the Building Inspector, or a zoning official subsequently designated by the City Commission. Except as otherwise provided in this Code, the designated Zoning Administrator shall:

- A. Administer and enforce this Code;
- B. Receive applications;
- C. Inspect premises for Code compliance;
- D. Issue permits and certifications;

No building permit or certificate of occupancy shall be issued by the designated Zoning Administrator except where compliance with the provisions of this Code have been met.

Sec. 11-2-2. The Planning and Zoning Commission.

- A. *Purpose.* A Municipal Planning and Zoning Commission is hereby established for the purpose of interpretation of this Code, approving certain actions, receiving requests for modifications to this Code and re-zoning, and making recommendations to the City Commission concerning matters pertaining to zoning within the City.
- B. *Administrative review and interpretations.*
 - 1. The Planning and Zoning Commission shall review an administrative action of the designated Zoning Administrator when it is alleged that there is an error in the order, requirement, determination, or refusal made by the designated Zoning Administrator and reverse, affirm, or modify the administrative action.
 - 2. The Commission shall interpret this Code when the designated Zoning

Administrator is in doubt as to the exact meaning of the text.

3. The Commission shall interpret the Official Planning and Zoning District Map in accordance with the standards set forth in the Comprehensive Planning and Zoning Code when the designated Zoning Administrator is uncertain as to the exact boundary of a District shown on the Official Planning and Zoning District Map.

C. *Powers and duties.*

1. Recommend to the City Commission either approval, denial or modification of a request for annexation, special use permit, variance, subdivision, zoning, amendment of this Code, or any other land use consideration within the planning and zoning jurisdiction of the City.
2. Grant final approval or denial of a home occupation or conditional use permit after public meeting, provided there is not an appeal to the City Commission within fifteen (15) days in accordance with Article 7 of this Code.

D. *Composition of the Planning and Zoning Commission.* The Planning and Zoning Commission shall consist of five (5) members each to be appointed by a simple majority of the City Commission. Eligibility requirements for membership shall be established by the City Commission. Members shall serve staggered terms of two (2) years each. A recording secretary shall be provided to assist the Planning and Zoning Commission by the City. The recording secretary shall not be a member of the Planning and Zoning Commission and shall be only responsible for those duties requested by the Planning and Zoning Commission and approved by the City Manager.

E. *Organization of the Planning and Zoning Commission.* The Planning and Zoning Commission shall elect a chairman, vice-chairman, and second vice-chairman in July of each year, or as required due to unforeseen vacancies. They shall serve for one (1) calendar year following their elections.

F. *Voting.* A simple majority vote of a quorum of the Planning and Zoning Commission is required for approval of all Planning and Zoning Commission actions. A quorum requires at least three members of the Commission present.

In order for a vote to be valid on a particular issue, a quorum must actually vote regarding the measure. A member who abstains from voting on an issue is deemed to have not voted on the issue.

G. *Findings of facts for recommendations and decisions.* In considering all requests, the Planning and Zoning Commission shall review applicable plans and determine whether the request will:

1. Impair an adequate supply of light and air to adjacent property;
2. Unreasonably increase the traffic in public streets;
3. Increase the danger of fire or endanger the public safety;
4. Deter the orderly and phased growth and development of the community;

5. Unreasonably impair established property values within the surrounding area;
6. In any other respect impair the public health, safety and general welfare of the City; or
7. Constitute a spot zone and therefore adversely affect adjacent property values.

All actions or recommendations by the Planning and Zoning Commission shall be based on Findings of Facts as to the impacts of the proposal, using the criteria listed in numbers 1 through 7, above. The Planning and Zoning Commission shall review each of the above listed factors and accord each factor the necessary weight on a case-by-case basis in making its determination.

- H. *Report to the City Commission.* The Planning and Zoning Commission shall provide written minutes, with recommendations as necessary, to the City Commission on all matters that are brought before the Commission. Such minutes shall include a statement of the findings of facts that were the basis of any decision or recommendation made by the Planning and Zoning Commission.

Sec. 11-2-3. The City Commission.

The City Commission shall make all final decisions concerning amendments to this Code, original zoning, re-zoning, variances, appeals, and special use permits, and subdivisions.

All actions by the City Commission shall be based on and stated as a Findings of Facts of the impacts of the proposal, using the criteria listed in Section 1-2-2 H1 through 7, above. The City Commission shall review each of the above listed factors and accord each factor the necessary weight on a case-by-case basis in making its determination.

ARTICLE III. ENFORCEMENT OF THE CODE

Sec. 11-3-1. Duty to Enforce.

Sec. 11-3-2. Building Permits and Plans.

Sec. 11-3-3. Certificate of Occupancy.

Sec. 11-3-4. Legal Documents to Insure Compliance.

Sec. 11-3-5. Violations of this Code.

Sec. 11-3-1. Duty to Enforce.

It shall be the duty of the designated Zoning Administrator or his/her designee, to enforce this Code.

Sec. 11-3-2. Building Permits and Plans.

No building or structure shall be erected, constructed, reconstructed, structurally altered, substantially repaired, or converted in use until a building permit has been issued, and approval

of all substantially repaired, or converted in use until a building permit has been issued, and approval of all plans has been granted by the Building Inspector. All structures must conform to the New Mexico Building Code, latest edition, on file in the Office of the Building Inspector. The Building Inspector may require soils and/or concrete tests to assure compliance with the New Mexico Building Code.

- A. A permit issued in conflict with this Code is void.
- B. The Building Inspector and the designated Zoning Administrator or their designated representatives may inspect all buildings and premises in observance of this Code.
- C. In case of building construction of any manner, or a building or land use in violation of the Code, the designated Zoning Administrator shall:
 - 1. Prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use;
 - 2. Restrain, correct or abate the violation;
 - 3. Prevent the occupancy of such building, structure or land;
 - 4. Prevent any illegal act, conduct, business or use in or about such premises;
 - 5. Notify the Planning and Zoning Commission and other applicable agencies of such violation.

Sec. 11-3-3. Certificate of Occupancy.

A certificate of occupancy approving a structure or use of land shall be required from the designated Zoning Administrator for any of the following prior to occupancy:

- A. Occupancy and use of a building hereafter erected or structurally altered;
- B. Change in use of an existing building to a use of a different classification;
- C. Occupancy and use of vacant land;
- D. Change in the use of land to a use of a different District classification;
- E. Change in the use of a non-conforming use.

Sec. 11-3-4. Legal Documents to Insure Compliance.

The designated Zoning Administrator may require affidavits, disclosure statements, deed restrictions, easements or other legal documents to assure compliance with the provisions of this Code. Such documents may be approved for use in specific cases by the City Attorney.

(Ord. No. 574, 8-28-07)

Sec. 11-3-5. Violations of this Code.

It shall be a violation of this Code for any person, firm, or other corporation to neglect, refuse to comply with, or resist the enforcement of any provision of this Code or any

requirement pursuant thereto, or in any way use, change or construct a building or structure in non-conformance with this Code. Any person or persons found guilty of violating any provision of this Code shall be punished by a fine of not less than ten dollars (\$10.00) nor more than two hundred dollars (\$200.00) or by imprisonment in jail for a period not to exceed thirty (30) days, or by both fine and imprisonment. Each day that such violation exists shall constitute a separate offense.

Violations of this Code shall be brought into compliance, abated, removed or taken to municipal court for judgment. In all cases that the court rules to allow a structure to remain in non-conformance with this Code, there shall be a pro forma action by the City Commission permitting such use. Such action shall be consistent with the court's ruling, and thereafter said use shall be considered as a legal non-conforming use and be subject to the provisions thereof.

ARTICLE IV. NON-CONFORMING USES, BUILDINGS, AND LOTS

- Sec. 11-4-1. Definition of Non-conforming Uses and Continuity of Use.
- Sec. 11-4-2. Maintenance Permitted.
- Sec. 11-4-3. Repairs and Alterations.
- Sec. 11-4-4. Restoration of Damaged Buildings.
- Sec. 11-4-5. Discontinuance or Abandonment.
- Sec. 11-4-6. Transfer of Ownership.
- Sec. 11-4-7. Change of Use.
- Sec. 11-4-8. Non-conforming Lots.
- Sec. 11-4-9. Subdivisions in Process Prior to aAoption of this Code.
- Sec. 11-4-10. Amortization of Non-conforming or Unlawful Buildings, Structures, Lots, or Uses.

Sec. 11-4-1. Definition of Non-conforming Uses and Continuity of Use.

A non-conforming use is any existing use of land, building, or structure that does not conform to the land use provisions of this Code at the time of its passage.

- A. *Non-conforming use of land.* The legal non-conforming use of land, existing at the time this Code became effective, may be continued, provided that no such non-conforming land use shall in any way be expanded, extended or increased in intensity of use, either on the same or adjoining property, and provided that if such non-conforming use of land or any portion thereof, is abandoned for a period of one (1) year or more, any future use of such land shall be in conformity with the provisions of this Code.
- B. *Legal non-conforming uses, lots, buildings, structures.* Uses, lots, buildings, and structures existing lawfully prior to the effective date of this Code which, by reason of this Code, are no longer conforming, shall be considered as legally non-conforming and shall be subject to all regulations imposed hereafter.

- C. *Illegal non-conforming uses, lots, buildings, and structures.* Uses, lots, buildings, and structures existing unlawfully prior to the effective date of this Code, and which remain unlawful, shall be considered illegal and unless remedial action is taken (e.g. special use authorized or brought into conformance by another acceptable zoning device permitted by this Code) shall be amortized in conjunction with Section 11-4-10 hereinafter.
- D. Previous non-conforming, uses, lots, buildings, and structures which become conforming as a result of the Comprehensive Code amendment. Uses, lots, buildings, and structures existing lawfully or unlawfully prior to the effective date of this Code, which are made lawful as a result of the provisions of this Code, shall be considered as conforming.

Unless otherwise specifically provided for in this Code, non-conforming uses and lots that were otherwise lawful on the effective date of this Code may be continued regardless of ownership until the current use changes.

Sec. 11-4-2. Maintenance Permitted.

A legal non-conforming building or structure may be maintained and the occupancy of such building or structure may be continued, however, the non-conforming use shall not be changed or expanded, unless such changes or expansions brings the use further into compliance with this Code.

Sec. 11-4-3. Repairs and Alterations.

Repairs and structural alterations may be made to a non-conforming manufactured or mobile home, building or to a building housing a non-conforming use, however, the non-conforming use shall not be expanded or changed, unless such changes or expansions brings the use further into compliance with this Code.

Sec. 11-4-4. Restoration of Damaged Buildings.

A legal non-conforming building, manufactured or mobile home or a building housing a non-conforming use which is damaged or destroyed by fire, flood or other calamity or act of nature may be restored and the building, structure or use of such building, structure or part thereof may be continued or resumed, provided that such restoration is started within a period of one (1) year from the date of destruction. Such restoration shall not increase the floor space devoted to the non-conforming use over that which existed at the time the building came into non-conforming status. A building permit or manufactured home installation permit shall be obtained and countersigned by the designated Zoning Administrator or other zoning official designated by the City noting any restrictions and/or requirements to enable the non-conforming use to continue without violation of this Code.

Sec. 11-4-5. Discontinuance or Abandonment.

A legal non-conforming use, building, manufactured or mobile home or structure or portion thereof, or a lot occupied by a non-conforming use which is or which hereafter becomes abandoned or which is discontinued for a continuous period of one (1) year, shall not thereafter be occupied except by a use which conforms to the regulations of the District in which it is

located.

Sec. 11-4-6. Transfer of Ownership.

If a legal non-conforming use is sold, leased or otherwise transferred, the use may continue with no change or expansion of use, unless the change is to a conforming use.

Sec. 11-4-7. Change of Use.

The legal non-conforming use of a building or structure may not be changed except to a conforming use, but where such change is made, the use shall not thereafter be changed back to a non-conforming use.

Sec. 11-4-8. Non-conforming Lots.

When a legal non-conforming lot can be used in conformity with all of the regulations applicable to the intended use, except that the lot is smaller than the required minimum set forth in Article 14 of this Code, the lot may be used as if it were conforming.

Sec. 11-4-9. Subdivisions in Process Prior to aAdoption of this Code.

A subdivision on which an application was submitted to the City Planning and Zoning Commission prior to the adoption of this Code shall be allowed in any District, regardless of any new District requirements of lot size, if the requirements for final approval have been met and the plat approved within fifteen (15) months of the adoption of this Code.

Sec. 11-4-10. Amortization of Non-conforming or Unlawful Buildings, Structures, Lots, or Uses.

Non-conforming building, structure, lot or use, as detailed below, which existed at the adoption of this Code and which remains non-conforming, and any such building, structure, or use which shall become non-conforming upon the adoption of this Code or of any subsequent amendment thereto, shall be discontinued and cease in accordance with the following.

- A. It shall be the responsibility of the owner of any illegal non-conforming buildings, structures, lots, or uses, to remove to bring such into conformance with the ordinances of this City within one (1) year of the effective date of this Code.
- B. It shall be the responsibility of the owner of any legal non-conforming commercial or industrial buildings, structures, or uses that exceed the home occupancy use standards of this ordinance, that exist in any of the residential zones at the time of adoption of this Code, to remove or bring them into compliance with this Code according to the schedules defined below:
 - 1. Where all or substantially all of the improvements employed in a non-conforming building, structure, or use, which have an assessed valuation on the effective date of this Code of less than twenty thousand dollars (\$20,000), the use shall be discontinued or brought into compliance within five (5) years.
 - 2. Where all or substantially all of the improvements employed in a

non-conforming building, structure, or use, which have an assessed valuation on the effective date of this Code of more than twenty thousand dollars (\$20,000), the use shall be discontinued or brought into compliance within ten (10) years.

ARTICLE V. ADMINISTRATIVE PROCEDURES—PERMITS AND FEES CERTIFICATES

Sec. 11-5-1. Building Permit and Sign Approval Fee Schedule.

Sec. 11-5-2. Certification of Occupancy.

Sec. 11-5-3. Conditional Use Permit.

Sec. 11-5-4. Home Occupation Permit.

Sec. 11-5-5. Variance.

Sec. 11-5-6. Special Use Permit.

Sec. 11-5-7. Manufactured home installation permits.

Sec. 11-5-8. Appeals and protests.

Sec. 11-5-1. Building Permit and Sign Approval Fee Schedule.

No building or structure shall be erected, constructed, reconstructed, structurally altered, substantially repaired, or converted in use until a building permit has been issued, and approval of all plans has been granted by the Building Inspector.

- A. *Fee.* Fees for a building or sign permit review shall be submitted with the appropriate application form. The fee shall be as set by City Commission Resolution.
- B. *Submission requirements.* The application for a building permit or zoning approval shall be on the form supplied by the designated Zoning Administrator or Building Inspector and shall contain plans, and other information as required by the designated Zoning Administrator or Building Inspector as well as that information required elsewhere in this Code. Soil reports, and compaction data are required for all building permits unless waived by the Building Inspector.
- C. *Limitation.* A permit under which no work is commenced within 180 days after issuance shall expire by limitation, in accordance with the New Mexico Building Code.
- D. *Revocation.* The designated Zoning Administrator may revoke a permit issued under this Code in case there has been any false statement or misrepresentation as to a material fact in the application on which the permit or approval was based.

Sec. 11-5-2. Certification of Occupancy.

Certification of occupancy shall be issued in conformance with this Code and all

applicable sections of the New Mexico Building Code, on file in the office of the designated Zoning Administrator. The fee for a certificate of occupancy shall be included in the fee for a Building Permit.

Sec. 11-5-3. Conditional Use Permit.

A permit may be authorized by the Planning and Zoning Commission for uses stipulated as conditional within specific Districts and as presented in Article IX of this Code.

A. *Provisions for conditional use.*

1. The use must be desirable or essential to the public welfare, safety, health, morals or convenience of the residents in that District.
2. The use must be compatible to the existing uses in that District.
3. The use may be important to the development of an undeveloped area.
4. The applicant shall notify all property owners of his/her intent in a manner specified in Section 11-7-2 and shall be subject to a public hearing as specified therein.

B. *Fee.* A non-refundable application as set by City Commission Resolution must accompany each application.

C. *Submission requirements.* The application for a conditional use permit shall be in the format stipulated by the City and shall contain plans and other information as required by the City. The completed application for a conditional use permit,, shall be submitted to the City Clerk for placement upon the agenda of the Planning and Zoning Commission.

D. *Review.* A conditional use permit shall be subject to review on each annual anniversary following its approval. If it is determined from the review that the current use is significantly different or larger in scale than that originally approved, the conditional use permit may be revoked by the Planning and Zoning Commission.

E. *Transferal.* Conditional use permits shall not be transferable from location to location, building owner to building owner, or applicant to other party.

Sec. 11-5-4. Home Occupation Permit.

A home occupation permit enables a homeowner to pursue specified business or commercial activities that are considered compatible with residential areas within property Districted for residential use. Home occupations shall be categorized into three classifications: Level I, Level II, and Level III.

A. *The following conditions apply to all classifications of home occupation:*

1. In all cases, the home occupation shall be clearly incidental and subordinate to the primary residential use of the property.
2. Proprietors shall be in complete compliance with this Code and all other current local, state and federal regulations. Failure to comply may result in revocation of the Home Occupation Permit.

3. The proprietor of the business shall be the property owner or a lawful resident of the property where the business is to be located.
4. Any business activity or equipment use shall not adversely affect adjoining properties, impair established property values, or endanger public safety.
5. Only one home occupancy permit will be issued per residence. Multiple businesses or commercial activities will be combined into one permit.
6. Only one vehicle associated with the Home Occupation shall be allowed on the property where the Home Occupation occurs.
7. Any combination of shipments and deliveries will not exceed four (4) times per calendar month. This does not include parcel deliveries by the U.S. Mail, UPS, Federal Express, or other similar services.
8. Commercial vehicles will be of Class VI (AAMA Standard) and below. They will be no greater than single axle, not exceeding either 26,500 lbs., GCVW or twenty-four (24) feet in total length. Vehicles may either be straight trucks or stake-bed trucks. Businesses that require regular deliveries by larger vehicles will not be permitted.
9. Shipping and receiving is permitted between the hours of 10:00 a.m. and 2:30 p.m. only.

B. *For Home Occupation Levels I and II Home Occupations, the following additional criteria must be met:*

1. Outside storage of business-related materials, inventory, supplies, or equipment is not permitted. Flammable products are prohibited.
2. Business-related signs shall be non-lighted and limited to not more than one square foot in size. Signs are governed by Section 11-13-3.
3. Deliveries and shipments via vehicles greater than 10,000 lbs. and having more than six (6) wheels are prohibited.
4. Approval shall be done administratively by the designated Zoning Administrator of the City, provided the required criteria of the Code are met with respect to the permit.

C. *For Level I Home Occupations, which are allowed in all residential classifications, the following additional criteria must be met:*

1. Only two persons, residing at the premises where the business is located, may be employed at the business.
2. All business-related operation and storage shall be confined to within no greater than five hundred (500) square feet or twenty-five percent (25%) of the floor area of the primary dwelling unit, whichever is less. Accessory structures shall not be used for business-related purposes.
3. Business-related client visitations on the premises shall be limited to no more than one client visitation at any one time. Hours of visitation shall be

between the hours of 6:00 a.m. to 8:00 p.m.

4. The following businesses shall be permitted as Level I Home Occupations:
 - a. Accountant;
 - b. Answering service;
 - c. Appraiser;
 - d. Architect;
 - e. Attorney;
 - f. Computer services, such as programming, data entry, software development;
 - g. Consultant, planner;
 - h. Direct sales and mail order;
 - i. Dressmaking and tailoring;
 - j. Engineer, surveyor;
 - k. Musical instrument repair;
 - l. Real estate agent;
 - m. Arts, crafts, and leather work;
 - n. Similar uses to the above-mentioned uses, as interpreted by the designated Zoning Administrator.

D. *For Level II Home Occupations, the following additional criteria must be met:*

1. One employee not permanently residing at the business location may be employed in addition to those residents of the property where the business is located.
2. Business may be performed either in the primary dwelling or in an accessory structure.
 - a. All business-related operation and storage shall be confined to within no greater than five hundred (500) square feet or twenty-five (25) percent of the floor area of the primary dwelling unit, whichever is less, or
 - b. All business-related operation and storage within one (1) accessory structure shall be confined to within no greater than five hundred (500) square feet within the structure.
 - c. Hours of operation shall be limited to between 8:00 a.m. and 7:00 p.m.
3. No more than one client visitation at any time will be permitted during the course of business operation.

4. Business-related signs shall be non-lighted and limited to not more than four (4) square foot in size. Signs are governed by Section 11-13-3.
 5. The following businesses shall be permitted as Level II Home Occupations:
 - a. Counselor;
 - b. Music teacher;
 - c. Tutorial services;
 - d. Hairdresser and similar services;
 - e. Watch, clock, and jewelry repair;
 - f. Similar uses to the above-mentioned uses, as interpreted by the designated Zoning Administrator.
 - g. All uses permitted as Level I Home Occupations.
- E. *For level III Home Occupations, the following requirements must be met:*
1. A site plan review and approval by the Planning and Zoning Commission is required.
 2. The business shall employ no more than two (2) employees not living at the premises on site.
 3. Business operations may be performed within either the primary dwelling, one (1) accessory structure, or both.
 - a. Business-related operation and storage shall be confined to within no greater than five hundred (500) square feet of the floor area of the primary dwelling or twenty-five percent (25%) of the floor area, whichever is less.
 - b. Business-related operation and storage within one accessory structure shall be confined to no greater than five hundred (500) square feet of the floor area.
 - c. Hours of operation shall be limited to between 8:00 a.m. and 6:00 p.m., Monday through Friday.
 4. Outside storage of business-related materials is limited to four hundred (400) square feet and shall be screened from view by a site obscuring fence or wall that is a minimum of five (5) feet in height. Materials shall not be stacked higher than the fence. Outside storage area shall not be located in the front yard or to the side of the primary dwelling.
 5. One non-lighted on-site business sign shall be permitted. The sign shall be a maximum of six (6) square feet, and may be located on the ground or attached to the building, which contains the business. Signs are governed by Section 11-13-3. If located on the ground, it shall maintain minimum six (6) feet front and side setbacks. If mounted on the building, no part of the sign shall be over eight (8) feet high measured from the top

of the sign to ground level. All signs shall display a street address. Lighted signs are not permitted.

6. Client visitations shall not exceed five clients at any one time. The business shall provide sufficient off-street parking spaces and a designated loading area, if necessary.
 7. The business shall have no more than one (1) business vehicle.
 8. The following businesses shall be permitted as Level III Home Occupations:
 - a. Catering, subject to NMED review;
 - b. Child or adult care, with no overnight provisions and subject to local and state regulatory requirements;
 - c. Computer hardware assembly and repair;
 - d. Light welding;
 - e. Photography studio, subject to NMED review;
 - f. Small appliance repair;
 - g. Small electronics and radio repair;
 - h. Similar uses to the above-mentioned uses, as interpreted by the designated Zoning Administrator;
 - i. Those uses permitted as Level I or Level II Home Occupations.
 9. The applicant shall notify all property owners of his/her intent in a manner specified in Section 11-7-2 and shall be subject to a public hearing as specified therein.
- F. *Business registration.* A Business Registration License is required for Home Occupation business or commercial activity. Approval of a business registration supporting a home occupation or Home Occupation Permit does not nullify any private covenants or deed restrictions that apply to the property upon which the home occupation is based. It is the responsibility of the proprietor to be fully aware of the need to comply with any such agreements.
- G. *Fee.* A non-refundable application fee as set by City Commission Resolution must accompany each application.
- H. *Submission requirements.* The application for a home occupation permit shall be in the format stipulated by the City and shall contain plans and other information as required by the City. The completed application for a home occupation permit shall be submitted to the City Clerk for placement upon the agenda of the Planning and Zoning Commission when applicable.
- I. *Review.* A home occupation permit shall be subject to review on each anniversary following its approval. If it is determined from the review that the current use is significantly different or larger in scale than that originally approved, the Home Occupation permit may be revoked by the Planning and Zoning Commission.

- J. *Transferral.* Home occupation permits shall not be transferable from location to location, building owner to building owner, or from the applicant to any other party.

Sec. 11-5-5. Variance.

A Variance may be authorized by the City Commission after hearing the recommendation of the Planning and Zoning Commission. The variance shall provide relief from the strict application of dimension, distance, parking or setback requirements of this Code.

A. *Provisions for variance.*

1. The subject property must be irregular, narrow, shallow, or steep or otherwise, have physical conditions where application of the requirements of this Code would result in practical difficulty or unnecessary hardship to the owner in the use of his land or building.
2. The applicant shall notify all property owners of his/her intent in a manner specified in Section 11-7-2 and shall be subject to a public hearing as specified therein.
3. Variance shall not be granted in such cases where it would adversely affect adjoining properties, impair established property values, or endanger public safety.
4. Variances shall not be granted where spot zoning would occur.

B. *Fee.* A non-refundable application fee as set by City Commission Resolution must accompany each application.

C. *Submission requirements.* The application for variance shall be in the format stipulated by the City and shall contain plans and other information as required by the designated Zoning Administrator. The completed application for a variance, shall be submitted to the City Clerk for placement upon the agenda of the Planning and Zoning Commission.

D. *Revocation.* A variance shall be automatically revoked in the event of building permit for the approved Variance has not been obtained within ninety (90) days, or construction has not begun within one hundred eighty (180) days after the building permit has been issued. The Planning and Zoning Commission may grant ninety (90) days extension if deemed appropriate.

E. *Re-application for variance.* In the event of a denial decision by the City Commission, there shall be no re-application for the same variance for a period of one (1) year after the date of the decision of the Commission.

Sec. 11-5-6. Special Use Permit.

A special use permit may be authorized by the City Commission after hearing the recommendation of the Planning and Zoning Commission. A special use permit is required for a special land use, which is not permitted by right within the District wherein it is requested.

A. *Provisions for special use permit.*

1. In making a decision on a Special Use Permit, the Planning and Zoning Commission and the City Commission shall review the following factors and accord each factor the necessary weight on a case-by-case basis.
 - a. The increase in congestion of streets and other rights-of-way;
 - b. Diminishment of safety from fire, panic and other dangers;
 - c. Diminishment to the health and general welfare of the public;
 - d. Degradation of light and air for all properties in the immediate area of the proposed Permit; increases of overcrowding of land and undue concentrations of populations;
 - e. Adverse affects on provisions for transportation, water, sewer, schools, parks and other public facilities or increases in the effects of natural hazards;
 - f. Increases or facilitation of the unlawful use of structures, buildings or land; and
 - g. Promote the use or waste of energy in the use of structures, buildings, and land.
 2. Special Use Permits shall not be granted in such cases where the use will result in negative impacts, which substantially outweigh the positive impacts of the purposed use.
- B. *Fee.* A non-refundable application fee to be set by City Commission Resolution must accompany each application.
- C. *Submission requirements.* The application for a special use permit shall be in the format stipulated by the City. There shall be a comprehensive statement included with each application indicating in detail the reason for the request, the purpose and proposed use of the property, all improvements to be made, and a site plan including the following:
1. Location of existing and proposed structures including the dimensions of setbacks;
 2. Existing and proposed vehicular circulation systems, including parking areas, storage areas, service areas, loading areas, and major points of access, including street pavement width and right-of-way;
 3. Location and treatment of open spaces including landscaping plan and schedule;
 4. Lighting;
 5. Signage;

A drainage plan, site plan and grading plan shall be required for all developments exceeding one (1) acre and to all new and all re-development within the C-1 and M-1 Planning and Zoning Districts, to all manufactured home parks, manufactured home subdivisions, recreational vehicle parks, and to all special and conditional uses in other Districts. For lesser developments when the designated Zoning Administrator determines said plans to be necessary, the

designated Zoning Administrator shall so inform the applicant prior to accepting an application.

- D. *Public hearing and notice procedure.* A public hearing shall be held by the Planning and Zoning Commission for all special use permits. All property owners shall be notified in accordance with the provisions of Article 7 of this Code.
- E. *Review and approval.* The City Commission may deny special use permits, or may grant final approval in accord with certain conditions, with right of appeal in accordance with Article VII of this Code. Approval may also be granted with additional conditions imposed, which are deemed necessary to insure that the purpose and intent of this Code is met and to protect and provide safeguards for persons and property in the vicinity.
- F. *Time limitation and revocation.* If a special use is not initiated within one (1) year following approval or if a special use is discontinued for a period of one (1) year, said permit shall be automatically revoked. The City Commission may impose a different time limitation on a special use permit. All improvements shall be in accord with the development standards of the District except as otherwise authorized by the special use permit. Significant variation from the approved special use and related improvements shall result in the automatic revocation of the special use permit.
- G. *Re-submittal of application for special use permit.* Application for a special use permit shall not be resubmitted or reconsidered for a period of one (1) year after it has been acted upon by the City Commission except that an application may be made for a different special use permit on the same parcel of land six (6) months after such previous action has been taken.
- H. *Special use.* Special uses shall not be considered a District boundary change.

Sec. 11-5-7. Manufactured home installation permits.

- A. A Manufactured Home Installation Permit is required before any person or entity may move a manufactured home within or into the City limits. It is unlawful for a person or entity to move a manufactured home within or into the City limits without first obtaining a Manufactured Home Installation permit. If the contemplated move is within the "flood plain area" as that term is defined in Section 4-167 of the City Code, an appropriate elevation certificate shall also be obtained in accordance with Article III, Flood Damage Prevention, of Chapter 4 of the City Code.
- B. A building permit shall be obtained prior to building a permanent foundation for a manufactured home.
- C. The following penalty provision shall govern for any violation of subsection A of this Code.
 - 1. *First week after notification of offense—\$200.00;*
 - 2. *Second week (or part of a week) after notification of offense—\$500.00 or up to 90 days in jail or both;*
 - 3. *Third week (or part of a week) after notification of offense—\$1,000.00 or up to 90 days in jail or both.*

Sec. 11-5-8. Appeals and protests.

Appeals and protests of decision made under this article may be made in accord with Article 7 of this Code.

ARTICLE VI. AMENDMENTS TO THE COMPREHENSIVE PLANNING AND ZONING CODE AND MAP

Sec. 11-6-1. Amendment.

Sec. 11-6-2. Annexation.

Sec. 11-6-3. Appeals and Protests.

Sec. 11-6-1. Amendment.

Amendments to this Code or the Official Planning and Zoning District Map may be initiated by a private landowner, government agency, the Planning and Zoning Commission, or by the City Commission. The City Commission after considering the recommendation of the Planning and Zoning Commission, may amend, supplement, or repeal any portion or all of this Code.

- A. *Application.* If initiated by a private land owner, an application for an amendment shall be in the format stipulated by the City and shall include all information considered necessary by the designated Zoning Administrator.

The application must be filed with the City Clerk for placement upon the agendas of the Planning and Zoning Commission and the City Commission.

- B. *Fee.*

- 1. *Map Change:* Any application for a change to the Official Planning and Zoning District Map shall be submitted with a non-refundable fee as set by City Commission Resolution.
- 2. *Amendment to the text of this Code:* Any application for a change to the text of this Code shall be submitted with a non-refundable fee as set by City Commission Resolution.

Sec. 11-6-2. Annexation.

Since an application for annexation may result in changes to the Official Planning and Zoning District Map, an application for a change to the Official Planning and Zoning District Map must be filed and processed in accordance with this Article.

Sec. 11-6-3. Appeals and Protests.

The decision of the City Commission shall be final concerning amendments to the Comprehensive Planning and Zoning Code and Official Planning and Zoning District Map subject to the appeal and protest procedures in accord with Article VII of this Code.

ARTICLE VII. MEETINGS, HEARINGS, APPEALS, AND PETITIONS TO THE DISTRICT COURT

Sec. 11-7-1. Meetings of the Planning and Zoning Commission.

Sec. 11-7-2. Hearings of the Planning and Zoning Commission.

Sec. 11-7-3. Meetings of the City Commission.

Sec. 11-7-4. Appeals.

Sec. 11-7-5. Petition to District Court.

Sec. 11-7-1. Meetings of the Planning and Zoning Commission.

The Planning and Zoning Commission shall hold regular monthly meetings open to the public and advertised at least seven (7) calendar days in advance in one newspaper of general circulation in the City. Special meetings may be held by the Planning and Zoning Commission for items of urgency following twenty-four (24) hours advance notification of place, time and date of the meeting and items to be considered. The notice shall be posted at three (3) public places.

The Planning and Zoning Commission may decide administrative items and summary replats in open meetings. Recommendations to City Commission on subdivision applications may be made in open meetings. Level III Home Occupation and Conditional Use applications may be decided only after a public hearing is duly publicized. Recommendations to the Commission on variances, special use permits, annexations or amendments to this Code or the Official Planning and Zoning District Map may be made only after a public hearing is duly publicized. Hearings may be held in conjunction with scheduled meetings of the Planning and Zoning Commission.

Sec. 11-7-2. Hearings of the Planning and Zoning Commission.

The following applications reviewed by the Planning and Zoning Commission may be done only after a public hearing at which all parties in interest and citizens shall have an opportunity to be heard.

- A. *Requirements of public notice.* A Public Notice for Conditional Use Permits, Special Use Permits, Level III Home Occupation Permits, Annexations, Change of Districting, Variances, or Amendments to this Code, shall state the time and place of the public hearing, shall be published at least fifteen (15) days prior to the date of the hearing in one newspaper of general circulation in the City.
- B. *Requirement of notice to property owners.*
 1. Notice of the public hearing shall be mailed by certified mail, return receipt requested, to the owners as shown by the records of the County Treasurer, of lots or land within the area proposed to be changed and within one hundred (100) feet, excluding public right-of-way, of the area proposed to be changed. Whenever:

- i. A change of Districting is proposed for an area of one block or less
 - ii. An application is for a Conditional Use, Special Use, Variance, or Level III home occupation permit.
 2. Whenever a change in Districting is proposed for an area of more than one block, the procedure stated in the preceding paragraph shall be following except that property owners shall be advised by first class mail. If a notice by first class mail to an owner is returned undelivered, City staff shall attempt to discover the owner's most recent address and shall remit the notice by certified mail, return receipt requested, to that address.
 3. Notice shall be mailed not less than fifteen (15) days prior to the required public hearing.
 4. Notice of the proposed hearing date, time, and location shall be placed on the subject property fifteen (15) days prior to the required public hearing.
 5. Fees and costs: The applicant shall bear the cost of mailing, envelopes and publication of all notices and shall provide the maps and property owner information to the City staff in a timely manner. The City staff shall calculate the costs of mailing and publishing and require payment prior to publishing the notice or sending out the mailed notices. The application form shall specify the manner and format in which the mailing list (property owners) shall be delivered to the City staff. The City staff may charge an additional fee as specified by Commission Resolution for doing the research required to create the property owner list.
- C. *Recommendations of the Planning and Zoning Commission.* Recommendations of the Planning and Zoning Commission shall be made in accordance with the criteria stated in Article II of this Code.
- D. *Report to the City Commission.* The Planning and Zoning Commission shall provide a written recommendation within its minutes and in a special letter to the City Commission on all matters.

Sec. 11-7-3. Meetings of the City Commission.

The City Commission shall hold meetings open to the public and advertised in accordance with the City's Open Meetings Resolution whenever the City Commission is to consider a recommendation of the Planning and Zoning Commission. Approval of most decisions concerning this Code and Official Planning and Zoning District Map shall require a simple majority vote of a quorum of the City Commission. In order for a vote to be valid on a particular issue, a quorum must actually vote regarding the measure. A member who abstains is not deemed to have voted on the issue. The City Commission shall not allow a change under the conditions imposed by Section 11-7-4(H) of this Code or decide an appeal unless voted by a majority of all members of the Commission.

Sec. 11-7-4. Appeals.

- A. *Grounds for appeal.* Any aggrieved person, officer, department, board or bureau of the City that is affected by a decision of an administrative officer, board, or commission in the administration or enforcement of this Code, or any other resolution, rule or regulation, adopted pursuant to Sections 3-21-1 through 3-22-12 of the New Mexico State Statutes 1978, as amended may appeal such decision to the City. Such appeal must be initiated in writing within fifteen (15) days after all other procedures authorized by this Code have been exhausted.
 - 1. Appeal of any action of the designated Zoning Administrator or his/her designee is to the Planning and Zoning Commission. The Commission may decide such appeals or refer the appeal to the City Commission with its recommendation for action. The decision of the Commission may be appealed to the City Commission. Decisions of the City Commission may be appealed to District Court.
 - 2. Appeal of all other matters concerning this Code shall be to the City Commission.
- B. *Appeal submission.* An appeal of a decision by City Staff or the Planning and Zoning Commission shall state specifically the claim of error or abuse and shall demonstrate that the decision is not supported by evidence in the matter. The appeal shall be filed with the City Clerk for placement upon the agenda of the Planning and Zoning Commission or City Commission, respectively. Any appeal of a decision of the City Commission shall be filed with the District Court.
- C. *Authority of the City Commission.* When an appeal alleges that there is error in any order, requirement, decision or determination by an administrative official or board in the enforcement of this Code, or any other resolution, rule or regulation adopted pursuant to the above stated state statutes, the City Commission, by a majority vote of all its members, may, after all other procedures established by the provisions of this Code have been exhausted, reverse or affirm any order, requirement, decision or determination of an administrative official or board; or make determination of an administrative official or board; or make any change in an order, requirement, decision or determination of an administrative official.
- D. *Stay of proceedings.* An appeal shall stay all proceedings in furtherance of the action appealed unless the officer, official, commission, or board from whom the appeal is taken, certified that by reason of facts a stay would cause imminent peril of life and property. Upon certification, the proceedings shall not be stayed except by order of District Court after notice to the official, commission, or board from whom the appeal is taken.
- E. *Notice of appeal.* Public notice of an appeal must be given in the manner of hearings of the Planning and Zoning Commission and as stated at Section 11-7-2(A) of this Code.
- F. *Fee.* A non-refundable fee as set by City Commission Resolution must accompany each appeal.
- G. *Time for decision.* An appeal that is to be ruled on by the City shall be decided by

the City within sixty (60) days of its filing at each level after filing.

- H. *Protest of district change by property owners.* If the owners of twenty (20) percent or more of the area of the lots and land included in the area proposed to be changed or within one hundred (100) feet excluding public right-of-way, object to the area proposed to be changed, the proposed change in Districting shall not become effective unless approved by a majority vote of all the members of the City Commission.

Sec. 11-7-5. Petition to District Court.

Any person aggrieved by a determination of the City Commission, or any officer, department or board of the City may present to the District Court a petition, duly verified, setting forth that the decision is illegal, in whole or in part, and specifying the grounds of the illegality. The petition shall be presented to the court within thirty (30) days after the decision is entered in the records of the City Clerk and shall be as required under applicable statutes.

ARTICLE VIII. DEFINITIONS

[Sec. 11-8-1. Definitions.]

[Sec. 11-8-1. Definitions.]

For the purpose of this Code, the following definitions shall apply:

Accessory Building or Use. A subordinate, non-dwelling, building or use, the use of which is incidental to and customarily found in connection with the principle building or use, and located on the same lot with the principle building or use. An accessory use shall not exceed one-fourth ($\frac{1}{4}$) of the use or area of the main business or building.

Accessory Dwelling Unit: A subordinate dwelling, the use of which is incidental to the principle dwelling or commercial structure or use, and located on the same lot with the principle dwelling structure or use. An accessory dwelling unit shall not exceed one-fourth ($\frac{1}{4}$) of the livable area of the area of the main dwelling, structure or use.

Adjacent: Within the area of legal notice required for any given action, and when no other standard exists for notification, then within three hundred (300) feet of the property which is the subject of an action.

Adult Entertainment Facility: Any use, such as adult bookstore, adult movie theater, or adult news rack, which has books, materials, movies or illustrations which depict sexual or erotic behavior of a prurient nature.

Aeronautical Uses: Uses which are directly associated with the operation, maintenance or storage of aircraft or that are necessary for aviation activities.

Alley: A public thoroughfare, which affords only a secondary means of access to abutting property. An alley is not to be used for through traffic or as a primary access to a property.

Apartment: A dwelling unit used exclusively for lease or rent of a residence.

Arterial Street: A street, which accommodates large volumes of comparatively high speed traffic from one area of the City to another.

Attached: Any structure or building having a common wall with another structure or building.

Aviation Related Uses: Uses associated with airport operations or that provide services or facilities for aircraft, pilots, crew or passengers.

Avigation Easement: A right to use the airspace over real property whereby an airport proprietor and aircraft owners and operators are granted the right to operate aircraft in the airspace over the real property of another.

Billboard: A freestanding pole sign at least one hundred twenty-eight (128) square feet in size, and eight (8) feet above the ground surface, which advertises or directs attention to a business, product, service, or event, not appurtenant to the use(s) of the property on which it is located.

Block: Property bounded on one side by a street, railroad, right-of-way, waterway, un-subdivided areas, or other definite boundaries.

Boarding House: A dwelling, other than a hotel, motel, or tourist facility, where, for compensation and by pre-arrangements, food and/or lodging are provided for five (5) or more persons, eighteen (18) years of age or older, unrelated by blood or marriage, including sorority and fraternity houses.

Body Shop: A shop where vehicle exteriors are replaced and reconditioned. Waxing, prefabrication, stripping, or similar activity shall not be considered body work.

Building: Any structure having a roof supported by columns or walls for the shelter or enclosure of persons or property.

Building Area: That area of a lot that is or may be occupied by buildings or structures pursuant to the requirements of this Code.

Building Height Of: The vertical distance from the grade to highest point of the coping of a flat roof or to the deck line of a mansard roof, or to the average height of the highest gable on a pitched or hip roof.

Building Depth: The depth of the lot remaining to be built upon after the required front and rear yards are provided.

Buildable Width: The width of a lot remaining to be built upon after the required side yards are provided.

Caretaker Living Quarters: A subordinate dwelling unit, the use of which is incidental to the principle use and located on the same lot as the principal building or use. Caretaker living quarters shall not exceed one-fourth ($\frac{1}{4}$) the use or area of the main business or building, or 900 square feet, whichever is smaller, and shall be located in the rear yard or side yard of the property.

Child Care Center: A commercial or publicly-sponsored establishment for the day or night care of more than six (6) individuals under the age of eighteen (18), not to include a half-way house.

Church: A church shall be defined as any religious, non-profit organization with a membership of more than ten (10) persons. Any secular commercial use associated with a church that involves the sale of merchandise shall be subject to the requirements of the Comprehensive Planning and Zoning Code pertaining to that use, and shall not be considered as a church use for the purpose of this Code.

Clear-Sight Triangle: An area of unobstructed vision at street intersections, exists, or entrances between three (3) feet, and eight (8) feet above the finished grade of the street at the street corner, which is bounded by the front street and side street property lines of a corner lot and a line connecting points twenty-five (25) feet distance from the intersection of the property line of such lot.

Clinic: An establishment where patients are not lodged overnight, but are admitted for examination or treatment by a physician, chiropractor, dentist, optometrist, or group that is practicing together. As used in this Code, clinic does not refer to a veterinarian clinic.

Club: Buildings and facilities owned or operated by a corporation, association, person or persons for a social, intellectual, educational, or recreational purpose, but not for profit; includes lodge.

Collector Street: A street which carries moderate volumes of traffic from local or minor residential streets to arterial streets and highways, and is labeled as a major street in the City Street Plan.

Conditional Use: A use that is considered compatible to a permitted use and is described as conditional in specific Districts in Article 9 of this Code.

Condominium: A residential, professional, commercial, official, or industrial development, in which each unit is owned individually, whether the unit includes air space, walls, floors, or any combination thereof, and in which other areas and facilities within the development are owned and maintained jointly by a group, association or corporate entity. Ground beneath each unit is owned in common by the group, association, or corporate entity.

Convenience Store: a retail sales establishment dealing primarily in groceries and sundry items which is typically open approximately sixteen (16) hours per day, seven (7) days per week.

Cul-de-sac: A minor street with one outlet, the end of which provides a circular turnaround.

DNL: Day-night average sound level (DNL) is a noise measure used to describe the average sound level over a 24-hour period, typically an average day over the course of a year. In computing DNL, an extra weight of 10 decibels is assigned to noise occurring between the hours of 10 p.m. and 7 a.m. to account for increased annoyance when ambient noise levels are lower.

Dedicated Easement: A public easement that is dedicated for public use and is recorded as such in the office of the County Clerk. (See definition of Easement.)

Detached: A unit, building, or structure that is apart or separate from another.

District: Any District in the City of Truth or Consequences within which certain zoning and land use requirements are specified and are uniform, and which are designated on the Official Planning and Zoning District Map.

Dwelling: A building or unit thereof designed and used exclusively for residential occupancy.

Dwelling (Single-family): A dwelling designed for and occupied exclusively by one family.

Dwelling (Two-family): A building or buildings designed for two families occupying separate, attached or detached living units.

Dwelling (Multiple-family): A building or buildings designed for three (3) or more families occupying separate, attached or detached living units.

Easement: A non-possessing interest held by one person, party, or entity in land of another, whereby, that person is accorded partial use of such land for a specific use and enjoyment of his land. (See Dedicated Easement). Road easements are not to be used for primary access to a property.

Family: Person(s) related by blood or marriage, or a group of not more than five (5) persons who need not be related by blood or marriage, living together as a single housekeeping unit in a dwelling.

Flea or Open Market: An open-air market in which spaces are rented or leased for the purpose of selling second-hand articles and home crafts.

Flood Zone: A special flood hazard area as defined by the Federal Emergency Management Agency or by the City.

Flood Area: The gross square feet of floor area within a building or portion thereof. For the purpose of this Code, floor area and gross floor area shall be the same, and shall be based on the outside dimensions of a building as shown on a plot plan, and shall include interior balconies, mezzanines, stairwells, storage areas, mechanical equipment areas and basements.

Frontage: Property on one (1) side of a street measured along the line of the street.

Garage, Private: An accessory building designed or used for the storage of not more than three (3) motor driven vehicles owned and used by the occupants of the building to which it is accessory. Not more than one (1) of the vehicles may be a commercial motor vehicle of not more than two (2) tons capacity.

Garage, Public: A building or portion thereof, other than a private or storage garage designed or used for servicing, repairing, equipping, hiring, selling or storing motor driven vehicles.

Garage, Storage: A building or portion thereof designed or used exclusively for housing four (4) or more motor driven vehicles.

Gasoline Station or Service Station: A business where the primary use is to sell motor vehicle fuels at retail prices.

Grade:

- a. For buildings having walls adjoining only one (1) street, only the elevation of the sidewalk at the corner of the wall adjoining the street.
- b. For buildings having walls adjoining more than one (1) street, the average of the elevation of the sidewalk at the center of all walls adjoining the streets.

- c. For buildings having no wall adjoining the street, the average level for the finished surface of the ground adjacent to the exterior walls of the building.

Any wall approximately parallel to and not more than five (5) feet from a street line is to be considered as adjoining the street.

Gross Floor Area: The sum of the horizontal square footage of all existing, proposed and phantom stories of a building may or may not be completely enclosed within the exterior surface of the surrounding exterior walls.

Ground Surface Level: Ground surface level is that surface of a yard, which directly abuts a wall, fence, building, or structure, or the average grade level, whichever is most appropriate.

Halfway House: a residential facility located in a structure or dwelling or any living unit thereof designed, used, or intended to be used as human habitation, the principal use or goal of which is to serve as a place for persons seeking, rehabilitation, recovery or counseling from any physical, mental, emotional, penal or legal infirmity, in a family setting, as part of a group rehabilitation or recovery program.

Home Occupation: A home occupation is a business or commercial activity that is considered compatible with residential areas within a District zoned for residential use. Home occupations shall be categorized into three (3) classifications: Level I, Level II, and Level III.

Home Space: Same as Manufactured Home Space.

Hotel: A building in which lodging or boarding is offered to the public and in which room assignments are made for compensation and in which entrance to and exit from all rooms is made through an inside lobby or office supervised by a person in charge at all times.

Impervious Surface Area: That ground area of a lot, tract, or parcel, that is not penetrable by water, to include, but not limited to buildings, structures, pavement, sidewalks, and certain land covers for landscaping.

Institution: Building(s) housing an organization dedicated to public or non-profit service.

Junk Yard: The use of a premises of any size for the storage, handling, dismantling, wrecking, keeping, or sale of wrecked or discarded automobiles and/or other vehicles and parts thereof, or for the storage of wood, plastic, fiber, or any other tangible scrap materials.

Kennel, Commercial: Any premises on which a total of seven (7) or more dogs, and/or cats, four (4) months of age or older, are kept; and/or where the business of buying, selling, breeding, training, or boarding of dogs and/or cats is conducted, does not include veterinary hospitals, or the humane societies, or animal shelters or pounds approved by a governmental agency.

Kennel, Private: Shall be as defined in 3-8.1 of the City Code.

Less Restrictive District: A District in which the uses, requirements and development standards are predominantly less intensive or are limited to a lesser extent than other Districts. For example, R-3 is less restrictive than R-1.

Lot: A portion of a legally platted subdivision that is shown as a lot, tract or parcel of land and held in separate ownership, as shown on the record of the County Assessor. A legal lot is a parcel that has been subdivided in accordance with present or past zoning and subdivision

requirements.

Lot, Corner: A lot abutting two or more streets at their intersection.

Lot, Depth: The mean horizontal distance between the front and rear lot lines.

Lot, Interior: A lot other than a corner lot.

Lot of Record: A legal lot, tract or parcel, the map or deed of which has been recorded in the office of the County Clerk of Sierra County prior to the effective date of this Code.

Lot Splits: The subdivision or division of a lot, tract or parcel of land into separate lots, tracts or parcels.

Lot, Triple Frontage: A lot fronting on three (3) streets.

Lot Width: The width of a lot at the front property line.

Lumber Yards: A business enterprise or storage facility the primary purpose of which is the sale or storage of lumber in large quantities.

Main Building(s): The primary building or buildings on a lot used for any use.

Manufactured Housing (MH): A manufactured home that is a single-family dwelling 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, as amended at the date of the unit's construction, and installed consistent with the Manufactured Housing Act [Chapter 60, Article 14, NMSA 1978] and with the regulations made pursuant thereto relating to permanent foundations. Manufactured housing is regulated by the State of New Mexico Manufactured Housing Division.

- a. A single section manufactured home is at least 54' by 14' and at least seven hundred fifty-six (756) square feet of heated area.
- b. A multi-section manufactured home is a single-family dwelling with a heated area of at least 36' by 24' and at least eight hundred sixty-four (864) square feet.

Manufactured Home Lot (MHL): A privately owned parcel of land within a Manufactured Subdivision, including required yards, parking area, attached and/or detached accessory buildings and open spaces, used or intended to be used for setting up one (1) manufactured home. MHL's are the subdivided parcels of Manufactured Home Subdivisions and can be sold, fee simple, to prospective owners. It is also known as a mobile home lot.

Manufactured Home Park (MHP): A privately owned tract of land in which there are three or more manufactured or mobile home and trailer spaces which may be rented or leased for long-term residential use. It is also known as a Mobile Home Park, Mobile Home Court or Trailer Court.

Manufactured Home Space (MHSP): A parcel of land within a Manufactured Home Park rented or intended to be rented to prospective renters by the owner. MHSP's include required yards, parking yards, parking areas, attached and/or detached accessory buildings, open spaces and utilities. It is also known as a mobile home space.

Manufactured Home Subdivision (MHS): A tract of land at least five (5) acres in size, subdivided into manufactured home lots designed for long-term residential use, with public

streets and utilities for manufactured homes. It is also known as a mobile home subdivision.

Mini-Storage Unit: A mini-storage unit shall be construed as small storage units, each used for the sole purpose of domestic storage for individuals and strictly prohibiting the use for a business activity conducted from the unit. (This does not preclude a business from using storage units solely for storage of commercial or business related items provided that the actual commercial operation or business is conducted elsewhere, and there is no external evidence of the business at the storage unit.)

Mobile Home: A movable or portable housing structure larger than 40' in body length, 8' in width or 11' 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, as amended at the date of the unit's construction, or built to the standards of any municipal building code.

Modular Home: A movable or portable housing structure that is a single-family dwelling with a heated area of at least 24' by 36' and at least eight hundred sixty four (864) square feet that is built to the standard of the Uniform Building Code. Modular housing is regulated by the State of New Mexico Construction Industries Division.

More Restrictive District: A District in which the uses, requirements, and development standards are predominantly more intensive or are limited to a greater extent than other Districts. For example, an R-1 District is more restrictive than R-3 District.

Motel (Motor Court, Motor Hotel, Motor Lodge): Building or buildings in which lodging and/or boarding are offered to the public for compensation, and which has separate entrance to the exterior from each unit with at least one parking space for each unit.

Non-Conforming Use: The use of land or a building, or a portion thereof, which does not conform with the current land use regulations of the zoning District in which it is located.

Nuisance: The use of property or land, which creates unusual, unnecessary or undue problems or situations for persons in the vicinity that, would not have normally occurred otherwise.

Open Space: That area of a lot, tract or parcel not devoted to any building or structure.

Overlay District: supplemental regulations that that been tailored to a specific area of the City. The regulations are applied in conjunction with a general, or base, zone to address specific issues, such as development adjacent to the airport.

Parking Lot: A parcel of land devoted to unenclosed parking spaces.

Parking Space: A surfaced area, enclosed or unenclosed sufficient in size to store one (1) automobile, together with a surfaced driveway connecting the parking space with a street or alley and permitting ingress and egress of an automobile.

Permanent Accessory Building: A building or structure, which is permanently attached to a slab or foundation, the use of which is clearly incidental to the principal building and which is located on the same lot. An accessory building shall not be used for a business or dwelling.

Porch: A roofed patio entrance or exit area, open on one least one (1) side.

Propane or Liquefied Petroleum Gas Bulk Plants: A commercial establishment where propane or liquefied petroleum gas is stored awaiting transfer.

Propane or Liquefied Petroleum Gas Distribution Plant: A facility with the primary purpose of distribution of propane or liquefied petroleum gas, which receives gas in tank cars, truck transport or truck lots, and distributes such gas to end-users by delivery truck or through gas piping; such plants have bulk storage of two thousand (2,000) gallons water capacity or more, and usually have container-filling and truck-loading facilities on the premises.

Propane or Liquefied Petroleum Gas Distribution Point: A facility other than a distribution plant which normally receives gas by tank truck and which fills small containers or the engine fuel tank of motor vehicles on the premises.

Property Line: The official boundary of a parcel, lot or tract of land as designated by either a metes and bounds description or subdivision plat filed in the records and maps of the County Clerk.

Public Right-of-Way: Land area deeded, reserved or otherwise acquired by the City, the County or the State of New Mexico for public use.

Quasi-Institutional House: (Same as Halfway House.)

Recreational Vehicle (RV):

- a. Travel trailers, camping trailers, fifty-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.
- 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 structure or vehicles constructed integrally with a truck or motor van chassis and incapable of being separated there from, 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 (Camper Park): A facility, at least one (1) acre in size, designated to accommodate overnight parking of recreational vehicles, campers, and travel trailers.

Residential Street: A street of relatively short length and width that provides direct access to a limited number of abutting residential properties, and is designed to discourage its use for through traffic, designated as local street in the City Street Plan.

Roof: An overhead structure used for protection of shielding from the sun, rain, or other elements of weather.

School, Commercial: A school, conservatory, or business operated for a profit, which is not approved by the State as a kindergarten, elementary or secondary school, and where the

primary function is instruction or teaching.

School, Private: A school approved by the State with a curriculum the same as ordinarily given in a public kindergarten, elementary, junior high or high school.

Screening and Buffering: The use of walls, thick shrubbery or similar materials to minimize the potentially adverse impact of one land use on another.

Special Use: A specific land use of unusual character or potentially incompatible in an area and which requires City Commission approval for its use on one specific parcel of land, such use being subject to a particular set of conditions as approved in accordance with the provisions of this Code, and not permitted by right in a zoning District.

Spot Zoning: The singling out of a lot or small area for a District change, which is out of harmony with the comprehensive plan and surrounding land to secure special benefits for a particular property owner without regard for the rights of adjacent landowners.

Story: A single-level area between a floor and its ceiling, excluding all subterranean building area.

Street, Curb Level: A level measured from the top of an abutting curb.

Street Line: The outer most boundary or property line of a street surface or the top of an abutting curb.

Street, Public: A public thoroughfare, which affords the principal means of access to abutting property.

Street, Private: A private roadway, which affords the traffic circulation within a developed or parcel of land, and gives access to apartments, townhouses, condominiums, offices or businesses. Such streets are privately maintained, and usage is typically defined in an agreement between those parties having rights to the use of the street.

Structure: Anything constructed or erected between the ground and sky, the use of which requires permanent location on the ground or attachment to something having permanent location on the ground.

Structure Alterations: Any change in the supporting members of a building, such as bearing walls or partitions, columns, beams or girders, or any substantial change in the roof or in the exterior walls.

Temporary Accessory Building: A building or structure, which is not attached permanently to a foundation, the use of which is clearly incidental to the principal building and which is located on the same lot. An accessory building shall not be used for a business or dwelling.

Thoroughfare: A road giving public access to a property or parcel of land.

Total Height: The distance between the ground surface level of a building or structure and the highest point of the structure.

Tower: A vertical structure consisting of either a single pole or latticework frame, or other similar structure, which is normally used for commercial radio, television or microwave communications, or for purposes other than a building having some form of occupancy.

Townhouse: Any single-family dwelling unit, including the land underneath, designed to

be sold (fee simple) as a unit, but forming one of a group or series of two (2) or more attached dwellings separated from one another by common property lines, but limited to a maximum of ten (10) attached units in one group.

Trailer (House Type): Any movable or portable housing structure, which does not conform to the definition of a recreational vehicle or to a minimum size requirements for a manufactured or mobile home. Trailers may be used by no more than one (1) family for sleeping purposes.

Usable Open Space: Open space within a lot, tract, parcel or development site excluding areas devoted to roadways and parking. At least one half (½) of all acres designated as usable open space must have a slope of less than ten (10) percent.

Use: The purpose, for which land or buildings are arranged, designated, maintained or occupied.

Warehouse: A building used primarily for storage of products or wares, in conjunction with retail stores, not including accessory uses, such as storerooms or stockrooms. Mini storage or self-storage of household goods and similar uses shall not be constructed or used as a warehouse use.

Yard: The space on a lot unobstructed by buildings from the ground to the sky, including sidewalks, driveways, patios, and other ground level surfaces.

Yard, Front: The required yard between the front property line and a building or structure. Lots having two or more streets frontages shall have the primary frontage defined by which street the property is addressed on. The rear yard of the property shall be defined as the side opposite the front property line. Remaining frontages shall be considered as secondary front yards. Remaining yards that do not front on streets shall be considered side yards.

Yard, Rear: The required yard between a rear property line and a building or structure.

Yard, Side: The required yard between a side property line and a building or structure.

Zero-Lot Line: The construction of a building upon one side property line, leaving a zero setback or distance from the property line to the structure or building.

(Ord. No. 573, 8-28-07; Ord. No. 574, 8-28-07)

ARTICLE IX. COMPREHENSIVE PLANNING AND ZONING DISTRICT

Sec. 11-9-1. Purpose.

Sec. 11-9-2. R-1 Single Family, Low Density Residential District.

Sec. 11-9-3. R-2 Medium Density Residential District—(Maximum of 15 Dwelling Units Per Acre)

Sec. 11-9-4. R-3 High Density Residential District.

Sec. 11-9-5. R-4 Rural Residential District.

Sec. 11-9-6. RR-1 Riverside Residential District.

Sec. 11-9-7. C-1 General Commercial District.

Sec. 11-9-8. M-1 Light Manufacturing District.

Sec. 11-9-9. T-1 Transition District.

Sec. 11-9-1. Purpose.

General Districts are the residential, commercial, light manufacturing, and transitional planning and zoning Districts in the City. This Section outlines the intended purpose of each general District and states the permitted, special and conditional uses for each District.

- A. *PERMITTED USE DEFINED.* A permitted use, which is listed as permitted by right in a District. Non-specified uses which are similar to those specified are also permitted, by right, except as otherwise restricted within this Code.
- B. *SPECIAL USE DEFINED.* A special use is a use which is of an unusual or unique character and which may be offensive or compatible in some cases within a District. A special use requires review and approval by the City Commission, after a recommendation by the Planning and Zoning Commission to determine impacts on the surrounding area. See Section 11-5-6 for procedures governing a Special Use Permit.
- C. *CONDITIONAL USE DEFINED.* A conditional use is a use that is considered compatible to a permitted use and is described as conditional in specific Districts. A conditional use permit requires review and approval by the Planning and Zoning Commission to determine if the use is desirable or essential to the public welfare, safety, health, morals or convenience of the residents in that District. See Section 11-5-3 for procedures governing a conditional use permit.

Sec. 11-9-2. R-1 Single Family, Low Density Residential District.

- A. *PURPOSE.* The R-1 District is intended to accommodate detached single-family dwelling units and to maintain and protect a low-density residential character of development. Accessory uses, which are incidental to and customarily found within the R-1 District are also permitted.
- B. *DEVELOPMENT REQUIREMENTS.* Development standards and other requirements are provided in Articles X through XIV.
- C. *R-1 PERMITTED USES.* The following uses are permitted by right in R-1 Districts.
 - 1. Accessory Building.
 - 2. Accessory Dwelling Unit: Subject to meeting all setback, building and development standards of this Code.
 - 3. Construction Yard or Building (Temporary): Such yard or building shall be removed upon completion of construction or within three (3) years from date of permit, whichever is sooner. Construction yards and buildings shall be maintained in fences at least six (6) feet in height. However, there shall be no fence or wall more than three (3) feet in total height above street-curb level located within the clear sight triangle of a street intersection as defined in Article 8 of this Code.

4. Detached Single Family Dwellings.
 5. Dish Antennas: These shall be for the non-commercial reception of satellite signals.
 6. Garage or Yard Sale or Similar Use: Three (3) sales are permitted in a one (1) year period at a single address. A sale shall not exceed three (3) consecutive days.
 7. Greenhouse (Non-Commercial), Garden Sheds, Tool Sheds: When detached from the main dwelling such structures are subject to the provisions of Accessory Buildings.
 8. Home for Handicapped, Disabled, Retarded, or Retired: Subject to requirements of the New Mexico Statutes, 1978, Section 3-21-1, Paragraph C, as amended. There shall be no more than five (5) persons in one home, and a minimum of two (2) parking spaces must be provided.
 9. Home Occupation.
 10. Kennel (Private, Residential).
 11. Manufactured Homes.
 12. Public Park, Playground, Ball Fields or Tennis Courts:
 13. Real Estate Office (Temporary): Permitted only in conjunction with a residential subdivision, provided such use shall be discontinued upon the completion of the development or within three (3) years from date permit issued, whichever is sooner.
 14. Storage, Residential Vehicles: Storage of personal recreational vehicles, boats, trailers or similar uses shall be limited to a maximum of one (1) per dwelling unit in the side yard, with no limit in the rear yard separated by at least five (5) feet from any property line.
 15. Swimming Pool (Private): Permitted only when a protective fence four (4) feet in height is provided around the yard, lot or pool area. The pool shall be no closer than five (5) feet from any property line and approval from all utilities is required to insure overhead safety.
 16. Tennis Courts (Private for Residential Use).
- D. *R-1 SPECIAL USES.* The following uses require a public hearing and approval of the City Commission after a recommendation by the Planning and Zoning Commission. Specific conditions and provisions for special uses may be referred to in Section 11-5-6.
1. Cemetery: Shall contain at least ten (10) acres and shall provide landscaping, screening and buffering.
 2. Child Care Center (six or more children).
 3. Church.

4. Community Building.
5. Gas Regulation Station (Public Utility).
6. Golf Course and Country Club.
7. Offices in Historic Structures.
8. Schools (public, private, university, junior college and parochial).
9. Telephone Exchange Stations.
10. Telephone and Radio Towers and all other Free-standing Towers (Public and Private Use): Towers shall have manufacturer's specifications to withstand a 75 mph wind and shall be constructed to meet New Mexico Building Code standards.

Sec. 11-9-3. R-2 Medium Density Residential District—(Maximum of 15 Dwelling Units Per Acre)

- A. *PURPOSE.* The R-2 District is intended for single and multi-family dwellings, residential condominiums, townhouses, and apartment units in which a medium-density residential character is protected and maintained. Manufactured housing is permitted with specific conditions.
- B. *DEVELOPMENT REQUIREMENTS.* Development standards and other requirements are provided in Articles X through XIV.
- C. *R-2 PERMITTED USES.* The following uses are permitted by right in R-2 Districts:
 1. Accessory Buildings.
 2. Apartments: Maximum of four (4) attached units.
 3. Boarding Houses.
 4. Condominiums (Residential): Maximum of four (4) attached units.
 5. Construction Yard or Building (Temporary): Such yard or building shall be removed upon the completion of construction or within three (3) years from date of permit, whichever is sooner. Construction yards and buildings shall be maintained in a neat and orderly fashion, and open yards shall be enclosed by a sight obscuring fence at least six (6) feet in height. However, there shall be no fence or wall more than three (3) feet in total height above street-curb level located within the clear sight triangle of a street intersection as defined in Article 8 of this Code.
 6. Dwellings: Maximum of four (4) dwelling units, not to exceed a maximum density of fifteen (15) dwelling units per acre.
 7. Garage or Yard Sale or Similar Use: Three (3) sales are permitted in a one (1) year period at a single address. A sale shall not exceed three (3) consecutive days.
 8. Greenhouses (Non-Commercial), Garden Sheds, Tool Sheds: When

detached from the main dwelling such structures are subject to the provisions of Accessory Buildings.

9. Home for Physically or Mentally Handicapped, Disabled, or Retired: Subject to requirements of the New Mexico State Statutes, 1978, Section 3-21-1, Paragraph C, as amended. There shall be no more than ten (10) persons in one home, and a minimum of four (4) parking spaces must be provided.
 10. Home Occupation.
 11. Manufactured Homes.
 12. Public Park, Playground, Ball Field or Tennis Court.
 13. Kennel (Private, Residential).
 14. Real Estate Office (Temporary): Permitted only when used in conjunction with a residential subdivision provided such use shall be discontinued upon the completion of the development or within three (3) years from date permit issued, whichever is sooner.
 15. Storage (Recreational Vehicles): Storage of personal recreational vehicles, boats, trailers, or similar uses shall be limited to a maximum of one (1) per dwelling unit in the side yard, with no limit in the rear yard, separated at least five (5) feet from any property line.
 16. Swimming Pools (Private): Permitted only when a protective fence four (4) feet in height is provided around the yard, lot or pool area. The pool shall be no closer than five (5) feet from any property line, and approval from all utilities is required to insure overhead safety.
 17. All Uses Permitted by Right in the R-1 Zoning District.
- D. *R-1 SPECIAL USES.* The following uses require a public hearing and approval of the City Commission after a recommendation by the Planning and Zoning Commission. Specific conditions and provisions for special uses are described in Section 11-5-6.
1. Athletic Clubs or Bathhouses.
 2. Cemetery: Shall contain at least ten (10) acres and shall provide landscaping, screening and buffering.
 3. Child Care Center: For six (6) or more children.
 4. Church.
 5. Community Building (Public or Private).
 6. Gas Regulating Station (Public Utility).
 7. Golf Course and Country Club.
 8. Manufactured Home Subdivisions.
 9. Nursing or Retirement Home: (Eleven (11) or more residents).

10. Offices in Historic Structures.
11. Schools (Primary, Secondary and Parochial).
12. Swimming Pools (Public, Commercial, Private).
13. Telephone Exchange Station.
14. Television and Radio Towers, and all other Free-standing Towers (Public and Private Use): Towers shall have manufacturer's specifications to withstand a 75 mph wind and shall be constructed to meet New Mexico Building Code standards.
15. All Uses Permitted by Special Use Permit in the R-1 District.

Sec. 11-9-4. R-3 High Density Residential District.

- A. *PURPOSE.* The R-3 District is intended to accommodate multiple family dwelling units and accessory structures and uses. The District is intended to maintain and protect high density residential development that is characteristic of apartment, townhouses, condominiums and manufactured home subdivisions. This District also permits one and two family homes, modular homes, and manufactured homes.
- B. *DEVELOPMENT STANDARDS.* Development standards and other requirements are provided in Articles X through XIV.
- C. *R-3 PERMITTED USES:* The following uses are permitted by right in R-3 Districts:
 1. Accessory Buildings.
 2. Apartments.
 3. Boarding House.
 4. Condominiums (Residential and Professional).
 5. Child Care Center, Nursery or Similar Use: Play areas shall be in accord with state licensing requirements and enclosed with a solid wall or fence five (5) feet in height.
 6. Construction Yard or Building (Temporary Use): Such yard or building shall be removed upon the completion of construction or within three (3) years from date of permit, whichever is sooner. Construction yards and buildings shall be maintained in a neat and orderly fashion and open yards shall be enclosed by a sight-obscuring fence at least six (6) feet in height. However, there shall be no fence or wall more than three (3) feet in total height above street-curb located within the clear sight-triangle of a street intersection as defined in this Code.
 7. Dwellings: Single or multi-family units, apartments, townhouses and condominiums.
 8. Garage or Yard Sale or Similar Use: Three (3) sales are permitted in a

one (1) year period at a single address. A sale shall not exceed three (3) consecutive days.

9. Greenhouses (Non-Commercial), Garden Sheds, and Tool Sheds: When detached from the main dwelling, such structures are subject to the provisions of Accessory Buildings.
 10. Home for Handicapped, Disabled, Retarded or Retired: Subject to state requirements of the New Mexico Statutes, Section 3-21-1, Paragraph C, as amended. A minimum of two (2) parking spaces must be provided, in addition to one space for each five (5) persons.
 11. Home Occupation.
 12. Manufactured Home Subdivision.
 13. Manufactured Home Park.
 14. Manufactured Homes.
 15. Kennel (Private, Residential).
 16. Private Club or Lodge: Permitted when used in conjunction with non-profit organizations such as Lions Club, Elks Lodge, and the like. Building(s) shall not be located within one hundred (100) feet of an R-1 or R-2 District. Private clubhouses and game rooms are also permitted when used as a part of an apartment, condominium, or townhouse complex, provided such building(s) shall not be located within fifty (50) feet of an R-1 or R-2 District.
 17. Public Park, Playground, Ball Field and Tennis Courts.
 18. Real Estate Office (Temporary): Permitted only when used in conjunction with a residential subdivision provided such use shall be discontinued upon the completion of the development or within three (3) years from date of permit, whichever is sooner.
 19. Storage (Recreational Vehicles): Storage of personal recreational vehicles, boats, trailers, or similar uses shall be limited to a maximum of one (1) per dwelling unit in the side yard, with no limit in the rear yard, separated at least five (5) feet from any property line.
 20. Swimming Pool (Private): Permitted only when a protective fence four (4) feet in height is provided around the yard, lot or pool area. The pool shall be no closer than five (5) feet from any property line, and approval from all utilities is required to insure overhead safety.
 21. Tennis Courts (Private for residential use).
 22. Townhouses (Maximum of eight (8) attached units).
- D. *R-3 SPECIAL USES.* The following uses require a public hearing and approval of the City Commission after a recommendation by the Planning and Zoning Commission. Provisions for special use permits are stated in Section 11-5-6 of this Code.

1. Athletic Clubs and Bathhouses.
2. Barber and Beauty Shops.
3. Bed and Breakfast Inn.
4. Church.
5. Community Building (Public or Private).
6. Gas Regulating Station (Public or Private Utility).
7. Golf Course and Country Club.
8. Halfway House and Quasi-Institutional Houses.
9. Offices in Historical Structures.
10. Offices: Offices which provide health services such as medical, chiropractic, or rental and certain professional offices which have a low traffic volume such as attorneys or accountants, provided such offices maintain the residential character of the neighborhood where they are located.
11. Residential Vehicle Park.
12. School (Public, Private, or Parochial).
13. Swimming Pool (Public or Commercial).
14. Telephone Exchange Station.
15. Television and Radio Towers, and all other Free-standing Towers (Private Use): Towers shall have manufacturer's specifications to withstand a 75 mph wind and shall be constructed to meet New Mexico Building Code standards.

Sec. 11-9-5. R-4 Rural Residential District.

- A. *PURPOSE.* The R-4 District is comprised primarily of single-family frame, modular and/or manufactured dwellings. It is intended that the R-4 District provide a pleasant and fairly low-density rural setting for those who desire to live within the City limits of the City of Truth or Consequences and have a country atmosphere.
- B. *DEVELOPMENT STANDARDS.* All lots, tracts, buildings, structures and streets or alleys in the R-4 District will be developed in accordance with this Article and other related provisions of this Code and independent of all other Districts within this Code. Additional development standards and requirements are contained in Articles X through XIV of this Code.
- C. *PUBLIC RIGHT-OF-WAY REQUIREMENTS AND STANDARDS.* In order to maintain the integrity of the rural atmosphere, there shall be no curb or gutter and sidewalks in the R-4 District except as provided herein.

If eighty (80) percent of the property owners within the R-4 District desire City sewer hook-up,

curb, gutters, and sidewalks, it shall be constructed at the expense of the property owners by means of an assessment. Votes by property owners shall be calculated at the rate of one vote per lot.

- D. *UTILITY REQUIREMENTS AND STANDARDS.* All utilities shall meet the current City and state codes and the cost of said utilities shall be the responsibility of the sub-divider and/or property owner by means of assessment. Utilities placed in public rights-of-way shall become the property of the City of Truth or Consequences. All underground services placed in public rights-of-way shall be extended to the private property line prior to street or alley construction. All lots shall be connected to City potable water system.
- E. *SEPTIC SYSTEMS.* Septic systems shall be governed by Section 14-67 and Section 14-68 of the City Code, except as follows:
 - 1. If within one hundred (100) yards of a sewer connection, the sub-divider can demonstrate to the City Commission that hook up to City sewer system would not be feasible or would create an undue hardship, and
 - 2. The sub-divider, prior to lot sale, provides an engineers certificate stating that the soil is adequate for septic system installation; and
 - 3. The property owner provides a certificate from a qualified City employee stating that the septic system installation meets or exceeds all state and local requirements prior to occupancy of a dwelling.
- F. *FIRE PROTECTION.* Placement of fire hydrants and water volume requirements shall be determined by the State of New Mexico Uniform Fire Code and said costs for installation of fire hydrants and water supply lines shall be the responsibility of the sub-divider and/or property owners, except as provided in the City Subdivision Ordinance Section 10-1-6B.1.
- G. *MANUFACTURED HOMES REQUIREMENTS.* The home must be a minimum of twenty-four (24) feet in width and no more than five (5) yeas old. Damaged or deteriorated homes shall not be permitted. Requirements set forth in Article XI and Article XIV of this Code shall apply.
- H. *R-4 PERMITTED USES.*
 - 1. Accessory Buildings: Greenhouses (non-commercial), Garden Sheds, Tool Sheds and Garages or similar structures, when detached from the main dwelling are subject to the provisions of Article 10 and shall not exceed an accumulative total of two thousand (2,000) square feet.
 - 2. Construction Yard or Building (Temporary): Such yard or building shall be removed upon completion of construction or within three (3) years from date of permit, whichever is sooner. Construction yards and building shall be maintained in a neat and orderly fashion and open yards shall be enclosed by a fence at least six (6) feet in height. No fence shall be permitted within the site triangle of street corners or alleys.
 - 3. Detached Single Family Dwellings.
 - 4. Garage or Yard Sale or Similar Use: A maximum of three (3) sales

permitted in a one (1) year period at a single address and shall not exceed three (3) consecutive days.

5. Home Occupation.
 6. Horses: No more than two (2) horses per acre.
 7. Manufactured Homes.
 8. Public Parks and Playgrounds.
 9. Storage (Recreational Vehicle): Storage of personal recreational vehicles shall be limited to a maximum of three (3) per dwelling unit in the rear yard only. Additional recreational vehicles are allowed, if stored in an enclosed structure.
 10. Swimming Pool (Private): Permitted only when a protective fence four (4) feet in height is provided around the yard, lot or pool area. The pool shall be no closer than five (5) feet from any property line and approval from all utilities is required to insure overhead safety.
 11. Tennis Courts: Private for residential use only.
- I. *R-4 SPECIAL USES*. No Special Uses are allowed.

Sec. 11-9-6. RR-1 Riverside Residential District.

- A. *PURPOSE*. The RR-1 District is a low density residential District comprised primarily of single family frame and/or manufactured dwellings. It is intended that the RR-1 District provide a pleasant and fairly low density setting for those who desire to live near the Rio Grande.
- B. *DEVELOPMENT STANDARDS*. Development standards and other requirements are provided in Articles X through XIV of this Code.
- C. *RR-1 PERMITTED USES*. The following uses are permitted by right in RR-1 District.
 1. Accessory Building.
 2. Construction Yard or Building (Temporary): Such yard or building shall be removed upon completion of construction or within three (3) years from date of permit, whichever is sooner. Construction yards and buildings shall be maintained in a neat and orderly fashion, and open yards shall be enclosed by a sight obscuring fence at least six (6) feet in height. However, there shall be no fence or wall more than three (3) feet in total height above street-curb level located within the clear sight triangle of a street intersection as defined in this Code.
 3. Detached Single Family Dwellings.
 4. Garage or Yard Sale or Similar Use: Three (3) sales are permitted in a one (1) year period at a single address. A sale shall not exceed three (3) consecutive days.
 5. Greenhouse (Non-Commercial), Garden Sheds, Tool Sheds: When

detached from the main dwelling such structures are subject to the provisions of Accessory Buildings.

6. Home Occupation.
 7. Horses: Permitted only on lots or parcels of one (1) acre or more; provided that the total number of such animals not exceed three (3) per acre.
 8. Manufactured Homes.
 9. Public Park, Playground, Ball Fields or Tennis Courts.
 10. Kennel (Private, Residential).
 11. Storage (Residential Vehicles): Storage of personal recreational vehicles. Storage of personal recreational vehicles, boats, trailers or similar uses shall be limited to a maximum of one (1) per dwelling unit in the front yard, with no limit in the side or rear yard separated at least five (5) feet from any property line.
 12. Swimming Pool (Private): Permitted only when a protective fence four (4) feet in height is provided around the yard, lot or pool area. The pool shall be no closer than five (5) feet from any property line and approval from all utilities is required to insure overhead safety.
 13. Tennis Courts: Private for residential use.
- D. *RR-1 SPECIAL USES.* The following uses require a public hearing and approval of the City Commission after a recommendation by the Planning and Zoning Commission. Specific conditions and provisions for special uses are described in Section 11-5-6.
1. Athletic Clubs or Bathhouses.
 2. Community Building (Public or Private).
 3. Gas Regulating Station (Public or Private Utility).
 4. Manufactured Home Park.
 5. Recreational Vehicle Park.
 6. Swimming Pools (Public and Commercial).
 7. Telephone Exchange Station.
 8. Television and Radio Towers and all other Free-Standing Towers (Public and Private Use): Towers shall have manufacturer's specifications to withstand a 75 mph wind and shall be constructed to meet New Mexico Building Code.

Sec. 11-9-7. C-1 General Commercial District.

- A. *PURPOSE.* The intent of the C-1 District is to provide for certain commercial/retail uses which serve both transient and local trade. The District is intended for areas surrounding major arterial or collector streets where a wide

range of automobile-related service facilities, convenience goods and personal services are desirable and appropriate as a land use.

B. *DEVELOPMENT STANDARDS.* Development standards and other requirements are provided in Articles X through XIV of this Code.

C. *C-1 PERMITTED USES.*

• Accountant Office	• Arts and Crafts Studio
• Advertising Services	• Auditoriums
• Animal Hospital and Clinic	• Automobile Parking Lot
• Auto and Camper Sales, Service and Rental	• Gasoline Pumps
• Automotive Equipment	• Gasoline Stations
• Bakery	• Gift Shop
• Banking and Financial Institution	• Glass Cutting and Finishing
• Barber Shop and Beauty Parlor	• Golf Course
• Bathhouse or Spa	• Grocery Store
• Bicycle Sales and Service	• Gymnasium
• Boat and RV Storage	• Hardware Store
• Bookstores and Stationery Shops	• Heavy Equipment Sales
• Building and Other Construction-Contractor: office only	• Hobby Shop
• Business Service Establishment	• Hospital or Overnight Clinic
• Butcher Shop and Meat Sales	• Hotel and Motel
• Catering	• Household Appliance Sales and Service and Repair
• Cigarette and Cigar Shop	• Insurance Services
• Clinic	• Institutions, Public and Quasi-Public
• Clothing Store and Apparel Shop	• Jewelry Store
• Coffee Shop	• Kennel, Commercial
• Columbarium	• Laboratory (medical, dental or engineering)
• Community Center or Public Office Building	• Liquor Store - Taverns and Package Stores
• Convenience Store	• Pet Shop or Grooming Parlor
• Convention or Exhibition Hall	• Photographic Studio and Supply Store
• Country Club	• Plant Nursery
• Dance Hall or Music Academy	• Plumbing and Heating Shop
• Dentist Office	• Pool and Billiard Room
• Department Store	• Post Office
• Dressmaking Shop	• Private Club or Lounge
• Drugstore	• Public Park, Playground and Recreational
• Dry-cleaning and Steam cleaning Establishment	• Radio, Television Broadcasting Studios, Music Store
• Electrical Shop and Electricians	• Real Estate Services

• Farm Machinery	• Restaurant
• Farm and Ranch Products and Supplies	• Retail Sales
• Fast Food Sales including Drive-In Sales	• Roofing and Sheet Metal Shop
• Firewood Sales	• Shoe Repair
• Florist Shop	• Show and Sales Room for Business Products
• Food Store	• Skating Rink
• Frozen Food Locker	• Sporting Goods Store
• Funeral Home, Mortuary (including crematorium)	• Tailoring
• Furniture and Home Furnishings	• Taverns and Cocktail Lounges
• Taxicab Transportation	• Travel Agency
• Telephone Exchange Station	• Upholstery
• Telegraph and Messenger Service	• Variety Store
• Tire Sales and Service	• Warehousing and Storage
• Title and Abstracting Services	• Watch and Clock Sales and Service

D. *PERMITTED USES—WITH CONDITIONS.* The following C-1 uses are permitted in accordance with stated conditions and upon approval by the Planning and Zoning Commission.

1. Adult Entertainment Uses: Uses such as adult bookstores, adult movie theaters, and adult news racks, as defined in Article 8 of this Code, shall be permitted provided such use is located a minimum of three hundred (300) feet from a property line of any:
 - a. School;
 - b. Church;
 - c. Public park or recreational facility;
 - d. Residential District;
 - e. Another adult entertainment facility.

There shall be no public display visible outside of the building. In addition, display of adult pictures of other materials within a grocery store, bookstore, or other retail or wholesale store shall be concealed from public view.

2. Amusement Park or Enterprise: Subject to any other provisions and requirements of the Municipal Code. Temporary amusement enterprises are prohibited within three hundred (300) feet of any residential zoning District. Permanent amusement enterprises are prohibited within five hundred (500) feet of any residential zoning District.
3. Automobile Body and Repair Shop: Not permitted within one hundred (100) feet of any residential District.

4. Bank Drive-up Windows: Stacking lane(s) of one hundred eighty (180) feet by ten (10) feet for each drive-up must be provided and designed to insure that no bank traffic backs onto the street giving access. Banks must be located on a collector or arterial streets as shown on the City Street Plan.
5. Bowling Alley: Subject to approval of site and related plans. Bowling alleys are prohibited within three hundred (300) feet of any residential zoning District.
6. Bus or Motor Freight Terminal: Only when located on an arterial street as designated on the City Street Plan.
7. Car Washes: There shall be no run-off onto neighboring properties or streets resulting from the use. Any discharge into public liquid waste disposal systems shall be approved by the administrator of the system prior to approval of the business. If the subject property is not served by a public waste disposal system, approval from the New Mexico Environmental Department shall be required.
8. Child Care Center, Nursery or Similar Use: Play areas shall be in accord with State licensing requirements and enclosed by a solid wall or fence five (5) feet in height.
9. Christmas Tree Sales: Temporary, not prior to November 15, provided lots are cleaned and removed by December 31.
10. Church: Only when located on an arterial or collector street as designated on the City Street Plan.
11. Construction or Contractor's Yard: Yard shall be maintained in a neat and orderly fashion and enclosed by a fence at least six (6) feet in height except that the height shall be limited to three (3) feet above street curb within a clear site triangle as defined in this Code.
12. Drive-In Theater: Subject to approval of site and related plans.
13. Firewood Sales: No more than twenty (20) cords stored on site.
14. Flea Market: Subject to any other requirements of the Municipal Code.
15. Furniture Assembly (Accessory Use): Permitted only as an incidental or accessory use to retail sales. Maximum floor area for assembly shall not exceed three thousand (3,000) square feet, not exceed thirty percent (30%) of the total business floor area, and shall be within the same building.
16. Gas Pressure Control Stations: (Public or Private Utility.)
17. Heavy Equipment Repair (Accessory Use): Permitted only as an incidental or accessory use to heavy equipment sales. Floor area for repair shall not exceed three thousand (3,000) square feet and not exceed thirty percent (30%) of the total gross floor area. Welding is permitted only in conjunction with repair and shall not be used for the

purpose of heavy equipment assembly.

18. Miniature Golf Course: Subject to approval of site and related plans. Not permitted within one hundred (100) feet of any residential District.
19. Mini Storage Units: Units shall not be used for commercial sales of products, merchandise, service or repair. (This does not preclude a business from using storage units solely for storage of commercial or business related items provide that the actual commercial operation or business is conducted elsewhere, and there is no external evidence of the business at the storage unit.)
20. School, Public, Private or Trade: Sites shall be located on an arterial or collector street as shown on the City Street Plan.
21. Shopping Center: Providing site, drainage, and related plans for the entire development are approved.
22. Storage of Wrecked or Dismantled Vehicles and Parts (Accessory Use): The storage of wrecked and dismantled vehicles and parts thereof shall be permitted only as an incidental accessory use to a vehicle repair establishment or a body shop:
 - a. Storage shall be within an enclosed building or within a sight-obscuring fence at least six (6) feet in height;
 - b. Vehicles and parts stored at the exterior of the building shall be owned by customers of the business and such storage shall be only for the purpose of repair and return to customer;
 - c. Exterior storage of vehicles shall not remain on the premises for a period exceeding three (3) months;
 - d. A maximum of five (5) wrecked vehicles may be stored at the building exterior during any one time;
 - e. Exterior storage shall be a minimum of one hundred (100) feet from a residential District.
23. Swimming Pools: Permitted only when a protective fence four (4) feet in height is provided around the yard, lot or pool area. The pool shall be no closer than five (5) feet from any property line, and approval from all utilities is required to insure overhead safety.
24. Television and Radio Towers and all Other Free Standing Towers (Public and Private Uses): Towers shall have manufacturer's specifications to withstand a 75 mph wind and shall be constructed to meet New Mexico Building Code standards.
25. Welding (Accessory Use): Welding shall be permitted only as an incidental or accessory use necessary for the repair of vehicles or equipment permitted in the C-1 District. Welding uses shall be approved by the Fire Department and shall be in accord with any other provisions of the Municipal Code.

26. Wrecker Service: In accord with storage of wrecked vehicle provisions of Item D.22 of this Section.
- E. *SPECIAL USES FOR C-1 DISTRICT.* The following uses require approval of the City Commission. Specific conditions and provisions for special use may be referred to in Article V.
1. Dwelling Unit: Special Use Permits are required for dwellings within the C-1 District upon lots or other parcels located directly adjacent to Broadway Avenue, Main Street or Date Street. Dwellings elsewhere within the C-1 District are permitted by right. Manufactured Homes (MH's) are permitted within the C-1 District subject to the provisions stated herein and in Articles 11 and 14.
 2. Apartments ten (10) unit minimum)
 3. Concrete Sales and Ready Mix
 4. Correctional Facilities and Institutions
 5. Heavy Equipment Repair and Service
 6. Kennel (Commercial)
 7. Manufactured Home Park or Subdivision: Subject to the provisions of Articles 11 and 14.
 8. Propane or Liquefied Petroleum Gas Distribution Point: Up to two thousand (2,000) gallons, not be located within three hundred thirty (330) feet of any residential zoning district, or within the area bounded by Date, Main and Austin Streets.
 9. Racetrack
 10. Residential Vehicle Park
 11. Recycle Purchase Center
 12. Stadium: Baseball, Football, Soccer or Track.
 13. Townhouses (R-2 Development Standards apply)
 14. Welding Shop

Sec. 11-9-8. M-1 Light Manufacturing District.

- A. *PURPOSE.* The M-1 District is intended to accommodate a wide variety of light packaging, compounding, wholesaling and distribution operations with no limitations on size. Such uses shall be constructed and operated to insure 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 it is located. Excessive is defined as a degree exceeding that caused in their customary manner of operation by uses permitted in the M-1 District, a degree injurious to the public health, safety, welfare or to a degree in which it is a nuisance by reason of excessiveness. Residential uses shall not be

permitted except for a resident watchman, caretaker or proprietor of a commercial use.

B. *DEVELOPMENT REQUIREMENTS.* Development standards are provided in Articles 12, 13 and 14.

C. *M-1 PERMITTED USES.* The following uses are permitted by right in the M-1 District:

• Animal Hospital and Clinic	• Auto and Camper Sales, Service and Rental
• Arts and Crafts Studio	
• Auditoriums	• Automotive Equipment
• Automobile Repair or Body Shop	• Banking and Financial Institution
• Barber Shop and Beauty Parlor	
• Bathhouse	• Laboratory (medical, dental or engineering)
• Bicycle Sales and Storage	
• Boat Storage, Sales and Service	• Law Office
• Bowling Alley	• Lessons (art, music, dance and the like)
• Business Service Establishment	
• Butcher Shop and Meat Sale	• Liquor Store - Taverns and Package
• Child Care Center Sales	• Clothing Store and Apparel Shop • Lumber and Construction Materials
• Coffee Shop	• Medical Center
• Commercial or Trade School	• Metalwork and Machine Shop
• Community or Public Office Building	• Microwave Radio Relay Structure
• Concrete Sales and Ready Mix	• Miniature Golf Course
• Convention or Exhibition Hall	• Mining and Mineral Excavation
• Department Store Office	
• Drugstore	• Motion Picture Theater
• Dry Cleaning and Steam Cleaning	• Motorcycle Sales, Service and Repair Establishment
• Motor Freight Terminals	
• Electrical Shop and electricians	• Newspaper Establishment
• Fabrication Shop	• Paint Sales
• Farm Machinery	• Printing Shops
• Farm and Ranch Products and Supplies	• Pet Shop
• Firewood Sales and Storage	• Photographic Studio and Supply Store
• Food Store	• Plant Nursery
• Freight House or Truck Terminal	• Plumbing and Heating Shop
• Freight Warehouse and Dock	• Pool and Billiard Room
• Frozen Food Locker	• Printing and Publishing
• Funeral Home, Mortuary (including Crematorium)	• Public Park, Playground and Recreational

• Furniture and Home Furnishings	• Radio and Television Broadcasting Studios
• Gasoline Pumps	• Restaurant
• Gasoline Station	• Retail Sales
• Glass Cutting and Finishing	• Roofing and Sheet Metal Shop
• Golf Course	• Shoe Repair
• Grocery Store	• Schools: Public and Private
• Gymnasium	• Show and Sales Room for Business Products
• Hardware Store	• Skating Rink
• Heavy Equipment Sales, Service and Repair	• Taverns and Cocktail Lounges
• Hotel and Motel	• Taxicab Transportation
• Household Appliance Sales, Service and Repair	• Telephone Exchange Station
• Laboratory	• Telegraph and Messenger Service
• Warehousing or Wholesale Distribution of Goods	• Upholstery Shop
• Warehousing and Storage	• Tires, Blocks and similar products
• Watch and Clock Repair	• Packaging of: Food Products, Cosmetics
• Welding Shop	• Pharmaceuticals, Toiletries
• Assembly of: Electronic or Mechanical Parts and Equipment	• Processing and Compounding of: Bakery Goods, Candy or Food Products
• Manufacturing of: Consumer goods such as: Appliances, Batteries, Furniture, Garments, (including distribution office)	• Storage of products: Merchandise, Domestic Goods, and Raw Materials

D. *CONDITIONAL USE.* The following M-1 uses are permitted in accordance with stated conditions and approval of the Planning and Zoning Commission.

1. Adult Entertainment Uses: Uses such as adult bookstores, adult movie theaters, and adult news racks, as defined in Article 8 of this Code, shall be permitted provided such use is located a minimum of three hundred (300) feet from a property line of any: a) school; b) church; c) public park or recreational facility; d) residential District and e) another adult entertainment facility. There shall be no public display visible outside of the building. In addition, display of adult pictures of other materials within a grocery store, bookstore, or other retail or wholesale store shall be concealed from public view.
2. Amusement Park or Enterprise: Subject to other provisions and requirements of the Municipal Code. Permanent amusement enterprises are prohibited within three hundred (300) feet of a residential District.
3. Automobile Washing Establishments: A waiting aisle of forty (40) feet in length shall be provided for each stall. All related traffic shall be contained off-street.

4. Bank Drive-Up Window: Stacking Lane(s) one hundred eighty (180) feet long and ten (10) feet wide for each drive-up window must be designed to insure that no bank traffic backs onto the street giving access. Banks must be located on a collector or arterial street as shown on the City Street Plan.
5. Body Shop: Buildings shall be located a minimum of three hundred (300) feet from a residential District boundary and shall have Fire Department approval.
6. Construction or Contractor's Yard: Yard shall be maintained in a neat and orderly fashion and enclosed by a sight obscuring fence a minimum of six (6) feet in height. However, there shall be no fence or wall more than three (3) feet in height within the clear sight triangle of a street intersection as defined in Article 8 of this Code.
7. Drive-In Theater.
8. Dwellings (Accessory Use) - Proprietor, Resident Watchman or Caretaker Only: Provided such use shall be a single-family dwelling located on the same property as the business.
9. Flea Market: Subject to other requirements of the Municipal Code.
10. Open or Exterior Storage and Display (Merchandise, Materials): Storage or display of materials on the exterior or a building shall be completely enclosed by a fence or wall of solid construction, no less than six (6) feet in height, except for manufactured homes, cars, trucks or motorcycles.
11. Paint Shop (Mixing, Treatment and Spraying): Buildings shall be located one hundred (100) feet from any residential zoning District and shall have Fire Department approval.
12. Storage of Wrecked or Dismantled Vehicles and Parts Thereof: The storage of wrecked and dismantled vehicles and parts thereof shall be permitted only as an incidental or accessory use to a vehicle repair establishment or body shop, permitted in the M-1 District. Such use shall be in accordance with the following requirements.
 - a. Storage shall be within an enclosed building or within a sight obscuring fence at least six (6) feet in height.
 - b. Vehicles and parts stored at the exterior of a building shall be owned by customers of the business and such storage shall be only for the purpose of repair and return to customers.
 - c. Exterior storage of vehicles shall not remain on the premises for a period exceeding three (3) months.
 - d. There shall be a maximum of twenty (20) wrecked vehicles stored at the building exterior during any one time.
 - e. Exterior storage shall be a minimum of one hundred (100) feet from a residential zoning District.

13. Swimming Pools: Permitted only when a protective fence four (4) feet in height is provided around the yard, lot or pool area. The pool shall be five (5) feet from any property line, and approval from all utilities is required to insure overhead safety.
 14. Wrecker Services: Provided vehicle storage conforms to Item 2 (1) of this paragraph.
- E. *M-1 SPECIAL USES*. The following uses require approval of the City Commission. Specific conditions and provisions for special uses are included in Section 11-5-6.
1. Asphalt Materials Production Plant.
 2. Kennel: Commercial.
 3. Junk Yard.
 4. Metal or other used materials, Sales, Recycling, or Purchase Center.
 5. Racetrack.
 6. Recreational Vehicle Park.
 7. Sand and Gravel Pit.
 8. Stables: Commercial.
 9. Slaughter or Packing House.
 10. Television and Radio Towers and all other Free Standing Towers or Private Uses).

Sec. 11-9-9. T-1 Transition District.

- A. *PURPOSE*. The T-1 District is a low density semi-rural residential District comprised primarily of single family frame and manufactured housing units. This is a temporary classification intended to allow development of a predominantly undeveloped area.
- B. *DEVELOPMENT STANDARDS*. Development standards and other requirements are provided in Article 10 through 14 of this Code.
- C. *T-1 PERMITTED USES*. The following uses are permitted by right in the T-1 Districts:
 1. Accessory Buildings.
 2. Detached Single Family Dwellings.
 3. Manufactured Housing on individual lots, tied down and skirted according to the provisions in Article 11 of the Comprehensive Planning and Zoning Code with one manufactured housing unit allowed per lot.
 4. Guest Dwellings or accessory living quarters.
 5. All types of Horticulture.

6. 4-H or FFA animal raising in accordance with other applicable regulations.
 7. Keeping of small animals and fowl in accordance with other applicable regulations.
 8. Keeping of large animals in accordance with other applicable regulations.
 9. Recreational Courts, including but not limited to, tennis and other similar uses.
 10. Home Occupations.
 11. Produce stands for agricultural products.
 12. Greenhouse (commercial or non-commercial), garden sheds, and tool sheds. When detached from the main dwellings, such structures are subject to the provisions of Accessory Buildings.
 13. Private swimming pools five (5) feet from property lines and surrounded with four (4) feet fencing for safety.
 14. Garage or yard sale or similar use. There (3) sales are permitted in a one (1) year period at a single address. A sale shall not exceed three (3) consecutive days.
 15. Real Estate Office (temporary.) Permitted only when used in conjunction with a residential subdivision, provided such use shall be discontinued upon the completion of the development or within three (3) years from date permit issued, whichever is sooner.
 16. Recreational Vehicles. Storage of personal recreational vehicles, boats, trailers or similar uses shall be limited to a maximum of one (1) per dwelling unit in the front or side yard, with no limit in the rear yard, separated at least five (5) feet from any property line.
 17. Television and Radio Towers and all other Free Standing Towers (public or private.) Towers shall have manufacturer's specifications to withstand a 75 mph wind and shall be constructed to meet New Mexico Building Code standards.
 18. The sale of agricultural and farm products, nursery stock, poultry, rabbits, chinchillas, fish, frogs, earthworms and bees.
- D. *T-1 SPECIAL USES.* The following uses require a public hearing and approval of the City Commission:
1. Boarding Houses and Rest Homes.
 2. Cemetery.
 3. Child Care Center (Six (6) or more children).
 4. Church.
 5. Community and publicly owned recreational centers, clubhouses, and similarly, used buildings and structures open to the public.

6. Manufactured Home Parks.
7. Manufactured Home Subdivision.
8. Recreational Vehicle Park.
9. Schools (Primary, Secondary, Private and Parochial).
10. Veterinary Facilities.

ARTICLE X. ACCESSORY BUILDINGS

- Sec. 11-10-1. Accessory Building.
- Sec. 11-10-2. Temporary Accessory Building.
- Sec. 11-10-3. Permanent Accessory Building.
- Sec. 11-10-4. Water Run-Off.
- Sec. 11-10-5. Use.

Sec. 11-10-1. Accessory Building.

A subordinate building, the use of which is incidental to and located on the same lot with the principle building. An accessory building shall not exceed one-fourth ($\frac{1}{4}$) of the use or area of the main business or building.

Sec. 11-10-2. Temporary Accessory Building.

A maximum of one (1) temporary building which is not attached permanently to a foundation and that does not exceed a maximum of one hundred twenty (120) square feet in gross floor area, and ten (10) feet in height shall be permitted as an accessory building on a lot, provided it is located in the rear yard, and provided such building shall be secured to the ground in a manner approved by the designated Zoning Administrator.

Sec. 11-10-3. Permanent Accessory Building.

Permanent accessory buildings and structures shall be permanently attached to a slab or foundation and shall be subject to the following provisions:

- A. *Height:* A maximum height of fifteen (15) feet is permitted.
- B. *Accessory Use or Structure:* A subordinate use or structure customarily incidental to and located on the same lot with the principal use or building, and shall not occupy more than thirty percent (30%) of the rear yard.
- C. *Set-back Requirements (All Districts):*
 1. *Interior lot:* No less than ten (10) feet from main use or structure and in conformance with the front setback for that district and no less than five (5) feet from the property lines of side and rear yards.

2. *Lots with more than one street frontage:* No less than ten (10) feet from main use or structure, and no less than five (5) feet from the property line of yards without street frontage.
3. *Permanent Accessory Building, Setback Requirements:* Open-sided carports may be adjacent to main use or structures and no closer than five (5) feet from property lines in yards other than the primary front yard. Such carports may not encroach in the clear-sight triangle.

Sec. 11-10-4. Water Run-Off.

There shall be no water run-off on an adjacent property caused by an accessory building structure. Side gutters may be required by the designated Zoning Administrator.

Sec. 11-10-5. Use.

An accessory building shall not be used for commercial or dwelling purposes unless approved by the City for Home Occupation uses.

ARTICLE XI. MANUFACTURED HOMES, MANUFACTURED HOME PARKS, MANUFACTURED HOME SUBDIVISIONS, RECREATIONAL VEHICLE PARKS

Sec. 11-1-1. Purpose and Intent.

Sec. 11-11-2. Manufactured Homes (MH'S).

Sec. 11-11-3. Manufactured Home Parks (MHP'S).

Sec. 11-11-4. Manufactured Home Subdivisions (MHS).

Sec. 11-11-5. Recreational Vehicle Parks (RVP'S).

Sec. 11-11-6. Recreational Vehicles, Boats, Camping and Travel Trailers and Truck Campers As Dwellings.

Sec. 11-1-1. Purpose and Intent.

The purpose of this Section is to present minimum standards for the installation of manufactured homes in appropriate Districts as well as Manufactured Home Parks, Subdivisions and RV Parks within the City of Truth or Consequences.

The City of Truth or Consequences encourages the installation of well-constructed aesthetically pleasing manufactured homes in the Districts in which they are permitted. The City realizes that most such installations will be more or less permanent, and will provide a permanent housing source for residents of the City. Therefore, this article attempts to create the proper standards for manufactured home installation, which are pleasing to the eye and lend to the improvement of the overall community.

Sec. 11-11-2. Manufactured Homes (MH'S).

- A. *DISTRICT RESTRICTIONS.* A manufactured home located in a District as a

single-family house shall conform to specific standards in that District. Individual MH's are permitted by right in the R-1, R-2, R-3, RR-1 and T-1 Districts; by right and by special use in specified portions of C-1 Districts, and allowed by right in Manufactured Home Parks and Subdivision. MHP's are permitted by right in R-3 Districts and are permissible by special use in R-2, C-1 and T-1 Districts. RVP's are permissible by special use in R-3, RR-1, C-1, M-1 and T-1 Districts.

- B. **MANUFACTURED HOMES ON INDIVIDUAL LOTS.** The following provisions apply to manufactured homes placed on individual lots not located within MHP's, MHS's or RVP's and are in addition to the General Conditions stated in Article 11-11-2 (E).
1. *Placement in R-1 Districts:*
 - a. Home must be a minimum of one thousand, two hundred (1,200) square feet in heated area and twenty-four (24) feet in width.
 - b. Home must meet the definition for modular or prefabricated housing as defined in this Code and for manufactured housing as defined in the New Mexico Manufactured Housing and Zoning Act of 1987, and shall not be a home built on permanent chassis for towing.
 2. *Placement in Other Districts:*
 - a. *R-2 District:* Home must be a minimum of nine hundred (900) square feet in heated area and twenty-four (24) feet in width.
 - b. *R-3, C-1 or T-1 Districts:* Home must be a minimum of five-hundred fifty (550) square feet.
 - c. *RR-1 District:* Home must be a minimum of eight-hundred (800) square feet.
 - d. *R-4 District:* Home must be a minimum of one thousand, two hundred (1,200) square feet.
 3. *For all Districts, except within MHP's:* Homes must be on a permanent foundation as specified by the New Mexico Manufactured Housing Division Regulations (MHD 93-1) as now adopted and hereafter amended.
- C. **DEVELOPMENT REQUIREMENTS.** Development standards and additional requirements are provided in Articles X, and XII through XIV of this Code.
- D. **MANUFACTURED HOME INSTALLATION PERMIT REQUIRED.** In addition to any permits required by the state for moving and placement, or foundation/other construction, a Manufactured Home Installation Permit must be obtained from the City before placement of a manufactured home within the City limits. Permit application forms may be obtained from the designated Zoning Administrator's Office.
- E. **GENERAL CONDITIONS.** Except for installations in MHP's, all manufactured homes within the City are required to be set up on permanent foundations in accordance with the State Manufactured Housing Division Rules and

Regulations. Installations in MHP's can be on non-permanent foundations in accordance with the State Manufactured Housing Division Rules and Regulations.

1. *Wheels to be removed:* Since MH's are considered to be permanent housing units, the City requires that the wheels of the MH's, if present, shall be removed during the installation process.
 2. *Non-Exposure of Undercarriage:* MH undercarriages, if present, shall be concealed by either:
 - a. An appropriate skirting installed in accordance with the 1993 Manufactured Housing Act of the state as now adopted and hereafter amended. If the tongue is not removed from the MH, it must be skirted in like manner and material as the MH.
 - b. Entrenching the home to a depth equal to the height of the undercarriage. Any such entrenching shall have provisions for drainage away from the unit.
 - c. Concealment of the undercarriage must be completed within sixty (60) days of placement of the unit.
 3. *Damaged Units:* The City will not allow damaged units to be installed within the City limits. In the event it is determined by the designated Zoning Administrator's office that a MH is damaged the Manufactured Home Installation Permit shall not be approved unless repair to the unit is made as part of the application, and repairs must be completed before the final inspection approval is given.
 4. *Steps:* All MH units shall have permanent steps affixed to all exits.
 5. *Maintenance:* all manufactured housing units shall meet all existing City Codes related to proper appearance and maintenance of buildings and properties.
 6. *Standards:* All MH units shall be constructed according to the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 USC 5401. et seq. as amended or carry NMBC state approval. Any unit to be used for non-residential purposes shall meet all NMBC standards and shall be in full compliance with requirements for access to the disabled as required by State Rule MHD 90-1 as amended.
 7. *Removal:* If a MH is removed the site shall be restored to original or better condition.
- F. **OTHER CONSTRUCTED IMPROVEMENTS.** All porches, patios, permanent steps, accessory buildings, additional to a manufactured housing unit and any other constructed improvements shall be required to comply with the New Mexico Building Code and the building permit obtained in accordance with City ordinances.
- G. **OTHER REQUIREMENTS.** All other requirements not covered herein shall be as required by the State Manufactured Housing Act and Regulations.

Sec. 11-11-3. Manufactured Home Parks (MHP'S).

- A. *PURPOSE.* A special use permit is required in RR-1, C-1, and T-1 Districts for all MHP developments and is intended to provide for the development of manufactured home parks at standards consistent with the health, safety and welfare of the community. MHP's are permitted by right in R-1 District. Special use permits must be acquired in accordance with Article 5 of the Code. All properties that contain three (3) or more manufactured or mobile homes or trailers shall be considered manufactured home parks.
- B. *DEVELOPMENT REQUIREMENTS.* Development standards and other requirements are provided in Articles X, and XII through XIV of this Code. A site plan, landscaping plan and a drainage plan must be approved by the City of any MHP.
- C. *DESIGN STANDARD.*
1. Swimming pools are permitted only when a protective fence four (4) feet in height is provided around the yard, lot or pool area. The pool shall be no closer than five (5) feet from any property line or home space boundary, and approval from all utilities is required to insure safety. All gates in fences shall be self-closing and equipped with self-latching devices.
 2. All manufactured home parks shall have perimeter walls or sight obscuring fences at least five (5) feet in height as approved by the City.
 3. All manufactured home parks shall have a landscape concept, as approved by the City, for all areas not devoted to structures, streets, alleys, drives, walks and paths.
 4. Walls, fences and hedges shall conform to Article 13, with the following exception:
 - a. A clear-sight triangle of twenty-five (25) feet in both directions on the home space from the corner of the internal streets is required. A clear-sight triangle of at least twenty-five (25) feet is required at all MHP entrances and exists.
 5. Utility placement shall be approved by the City.
 6. A paved or concrete patio of not less than one hundred (100) square feet adjacent to each unit foundation is required.
 7. Open Space; a minimum of thirty-three percent (33%) of each home space shall be preserved as open space.
- D. *STREETS AND ACCESS STANDARDS.*
1. All MHP's shall have vehicular access from an arterial or collector street.
 2. Each home space when occupied shall have direct access to an internal street. Direct access to exterior public streets shall be prohibited.

3. Street layout shall be designed for preservation of natural features and to follow topography to the greatest extent possible and to encourage the orientation of manufactured homes in such a manner as to permit the use of solar energy systems.
 4. No street within a manufactured home park shall dead end, except for cul-de-sac streets, which shall have a minimum turning radius of fifty (50) feet at the termination point.
 5. There shall be a network of pedestrian walks connecting home spaces with each other and with MHP facilities.
 6. Private driveways shall be designed for ease of access, privacy, and safety.
 7. All spaces and streets shall be designed to insure proper drainage.
 8. Street lighting shall be provided to illuminate all private and public access ways and walkways for the safe movement of vehicles and pedestrians at night.
 9. Parking shall conform to Section 11-12-2.A.
- E. *REFUSE.* The management of the manufactured home park shall provide adequate refuse collection facilities. These collection facilities shall be constructed and maintained in accordance with all municipal health regulations, shall be properly screened, and shall be designed to bar animals from access to refuse. Refuse shall be removed from collection sites at least once a week.
- F. *STORAGE.* Each home space shall have a personal storage unit. Such storage unit shall have a capacity of at least one hundred (100) cubic feet. Each storage unit shall be anchored permanently to the ground.
- G. *UTILITIES.* All utility placement shall be underground and shall be approved by the City.

Sec. 11-11-4. Manufactured Home Subdivisions (MHS).

- A. *PURPOSE.* Special use permits are required for MHS in R-2, C-1 and T-1 Districts and are intended to provide for the development of such subdivision at standards consistent with the health, safety, and welfare of the community. MHS's are permitted by right in R-3 Districts. Special use permits must be acquired in accordance with Article V of this Code.
- B. *DEVELOPMENT REQUIREMENTS.* Development standards and other requirements are provided in Article X, and II through XIV of this Code. Subdivision must meet all applicable provisions of the Municipal Subdivision Regulations. A site plan, landscaping plan and a drainage plan must be approved by the City Commission for any MHS.
- C. *MHS STREET ORIENTATION.* Street layouts shall be designed for preservation of natural features and to follow topography to the greatest extent possible and to encourage the orientation of homes in such a manner as to permit the use of

solar energy systems.

- D. *UTILITIES*. All utility placement shall be underground and shall be approved by the City.
- E. *LANDSCAPING*. A landscaping concept, as provided by the City Commission shall be required for all areas not devoted to structures, streets, alley, drives, walks and paths.
- F. *GARDENS*. Gardens, non-commercial nurseries and greenhouses are permitted in MHS's provided:
 - 1. Such uses are private and non-commercial; and
 - 2. Greenhouses meet setback requirements for Accessory Buildings.

Sec. 11-11-5. Recreational Vehicle Parks (RVP'S).

- A. *PURPOSE*. A special use permit is required for all RVP developments and is intended to provide for the development of recreational vehicle parks at standards consistent with health, safety, and welfare of the community. Recreational Vehicle Parks are permitted by Special Use in R-3, RR-1, C-1, M-1 and T-1 Districts.
- B. *DEVELOPMENT REQUIREMENTS*. Development standards and other requirements are provided in Articles X, and XII through XIV. A site plan, landscaping plan and a drainage plan must be approved by the City Commission for any RVP.
- C. *DESIGN STANDARDS*.
 - 1. Swimming pools are permitted only when a protective fence four (4) feet in height is provided around the yard, lot or pool area. The pool shall be no closer than five (5) feet from any property line home space boundary, and approval from all utilities is required to insure overhead safety. All gates in fences shall be self-closing and equipped with self-latching devices.
 - 2. A landscaping concept shall be approved by the City Commission for all areas not covered by structures or paved.
 - 3. Screening the perimeter of a recreational vehicle park by a wall and/or other approved landscaping material shall be required.
 - 4. There shall be an active, usable recreational area for tenants comprising five percent (5%) of the gross site area, which shall not include required setback areas or similar areas not usable for recreational activities.
 - 5. There shall be a community building or buildings, which shall provide for the recreational and service needs of occupants of the recreational vehicle park. It shall include restrooms, showers, and a laundry. No dry-cleaners shall be permitted in the RV Park. The community building or buildings may not be included as part of the required recreational area.
 - 6. Adequate refuse collection facilities shall be provided, constructed, and

maintained in accordance with all municipal health regulations, and shall be screened and designated to bar animals from access to refuse. Refuse shall be removed from collection sites at least once a week.

7. Lighting shall be provided to illuminate access ways and walkways from the safe movement of vehicles and pedestrians at night.
8. A means for emptying sewage holding tanks shall be provided and approved by the health department.

D. *STREETS AND ACCESS STANDARDS.*

1. All RVP's shall have vehicular access from an arterial or collector street.
2. Each RV space when occupied shall have direct access to an internal street. Direct access to exterior public streets shall be prohibited.
3. Street layout shall be designed for preservation of natural features and to follow topography to the greatest extent possible and to encourage the orientation of homes in such a manner as to permit the use of solar energy systems.
4. No street within a recreational vehicle park shall dead end, except for cul-de-sac streets, which shall have a minimum turning radius of fifty (50) feet at the termination point.
5. Private driveways shall be designated to increase ease of access, increase privacy, and provide safety.
6. All spaces and streets shall be designated to insure proper drainage.
7. One space for automobile parking shall be provided for each RV space.
8. Minimum road width is twenty-four (24) feet.

E. *UTILITIES.* All utility placement shall be underground and shall be approved by the City.

F. *DESIGNATED ZONING ADMINISTRATOR.* It shall be the right and duty of the designated Zoning Administrator of the City of Truth or Consequences to impose all design standards for Recreational Vehicle Parks in accordance with Standards for Recreational Vehicle Parks and Campgrounds, latest edition, as published by the National Fire Protection Association.

Sec. 11-11-6. Recreational Vehicles, Boats, Camping and Travel Trailers and Truck Campers As Dwellings.

Recreational vehicles, boats, camping and travel trailers, and truck campers shall not be used as permanent dwellings or immobile living quarters. Utility connections except for temporary electrical service are permitted for said units only within recreational vehicle parks (RVP's) and manufactured home parks (MHP's). The use of said units or other temporary living quarters shall not exceed six months at a single location and shall be restricted to RVP's, MHP's or on a lot upon which a permanent dwelling is being constructed.

ARTICLE XII. PARKING REQUIREMENTS

- Sec. 11-12-1. Purpose.
- Sec. 11-12-2. Parking Spaces For The Handicapped.
- Sec, 11-12-3. Space Criteria.
- Sec. 11-12-4. Loading Space Requirements.
- Sec. 11-12-5. Enlargement of Existing Business or Use.
- Sec. 11-12-6. Joint Use of Parking Areas.
- Sec. 11-12-7. Size of Parking Spaces.
- Sec. 11-2-8. Parking Plan Approval.
- Sec. 11-12-9. Construction Standards.

Sec. 11-12-1. Purpose.

Parking requirements shall be based on the use or type of business. Uses not specified herein shall follow the parking requirements within the category most appropriate to that use. Off-street parking is permissible in all front yards except as otherwise specified. Number of spaces shall be rounded to the nearest whole number. All parking spaces shall be provided on the same lot as the structure served, except as otherwise allowed in this Code.

Sec. 11-12-2. Parking Spaces For The Handicapped.

The minimum number of designated parking spaces are as follows:

Total Spaces in Parking Lot	Minimum Designated Parking Spaces	Number Required to be Van Accessible
0—25	1	1
26—35	2	1
36—50	3	1
51—100	4	1
101—300	8	1
301—500	12	2
501—800	20	2
801—1,000	20	3
Over 1,000	20 spaces plus 1 space for every 100 spaces or fraction thereof or 1,000	1 of every 8 accessible parking spaces or fraction thereof

The designated parking spaces shall be located so as to provide the most convenient access to

entryways or to the nearest curb cut.

Sec, 11-12-3. Space Criteria.

A. RESIDENTIAL AND LODGING USES.

1. *One-Family and Two-Family Dwellings:* One and one-half (1½) off-street parking spaces per dwelling unit shall be provided. One-third (1/3) of any part of a front yard of a dwelling may be used for parking, except in cases of cul-de-sac where two-thirds (2/3) of a front yard is permissible, and on existing fifty (50) foot lots where twenty (20) foot width parking is permissible.
2. *Multi-Family Dwellings (three (3) or More Units):* One and one-half (1½) spaces per dwelling unit shall be provided.
3. *Boarding Houses and Similar Uses:* Two (2) spaces in addition to one (1) space for each person, resident or member.
4. *Hotels and Motels:* One (1) space for each guest room in addition to requirements for auxiliary uses such as restaurants or shops.

B. OFFICES AND PERSONAL SERVICE ESTABLISHMENTS.

1. *Professional Services—(Medical and dental offices, barbers, hairdressers, and similar uses):* One (1) space for each two hundred fifty (250) feet of gross floor area.
2. *Small Office Establishment—(Law, accounting, engineering, and real estate offices):* Two (2) spaces plus one (1) space for each three hundred (300) square feet of gross floor area.
3. *Large Business Offices—(Banks, telephone, electric companies, and other similar offices):* One (1) space for each company-owned vehicle, in addition to one (1) space for each three hundred (300) square feet of gross floor area.
4. *Low Volume Service Establishment—(Dry cleaning, equipment rentals, small and large item repair shops and similar uses):* One (1) space for each three hundred (300) square feet of floor space.
5. *High Volume Service Establishment—(Coin-operated laundry):* One (1) space for each two hundred fifty (250) square feet of floor space.
6. *Drive-In Bank:* One (1) space for each full-time employee plus stacking lane requirements stated in Item B (9) below for each drive-in window.
7. *Child Care Center—(Institutional home, nursery and similar use):* One (1) space per employee per shift in addition to one (1) space for each ten (10) children of maximum occupancy.
8. *Funeral Homes:* One (1) space for each fifty (50) square feet of floor area in funeral service and slumber rooms. Parking lane(s) shall be provided, fifteen (15) feet in width, and a total length of one hundred (100) feet.

9. *Drive-up Window Service Establishment*: Establishments having drive-up window services shall provide lane(s) ten (10) feet in width, and a total length of one hundred eighty (180) feet, and all service traffic and parking shall be maintained off-street.

C. **RETAIL ESTABLISHMENTS.**

1. *Large Volume Retail Sales—Large volume retail sales of small domestic products and groceries, and shopping centers*: One (1) space for each two hundred (200) square feet of gross floor area.
2. *Small Volume Retail Sales—(Small volume retail sales of domestic and specialized products such as plumbing, electrical and hardware stores, furniture stores, parts stores, cabinet stores, carpet stores, clothing and shoe stores, and similar business)*: Three (3) spaces, plus one (1) space for each three hundred (300) square feet of gross floor area.
3. *Retail Sales of Vehicles, Heavy Equipment and Other Large Products—(Automobile, boats, manufactured/modular home and recreation vehicle sales, farm equipment and similar business)*: One (1) space for each company vehicle, in addition to one (1) space for each three hundred fifty (350) square feet of gross interior floor area, or five (5) spaces, plus one (1) space for each employee, whichever is greater.
4. *Storage Area in Retail Business*: When a building used for retail sales has an area larger than twenty percent (20%) of its gross floor area, being used specifically for storage or products sold within the store, eighty percent (80%) of the total area used for storage may be subtracted from the gross floor area used for off-street parking computations.

D. **RESTAURANTS AND ENTERTAINMENT ESTABLISHMENTS.**

1. *Food and Beverage Establishments—(Restaurants, cafes, bars and lounges, coffee shops, donut shops and similar uses)*: One (1) space for each one hundred (100) square feet of gross floor area, in addition to one (1) space for each two (2) employees on the maximum shift. One (1) space is required for each two hundred (200) square feet of outdoor patio area. Drive-up window establishments are required to provide lane(s) ten (10) feet in width and one hundred eighty (180) feet in length.
2. *Entertainment and Amusement Enterprise—(Auditoriums, theaters, sports areas, dance halls, private clubs and lodges, meeting halls, skating rinks, and similar uses)*: One (1) space for each one hundred (100) square feet of gross floor area, in addition to one (1) space for each employee on the maximum shift.
3. *Court or Alley Entertainment—(Uses which involve courts and alleys such as tennis courts, handball courts, basketball courts, bowling alleys, and similar uses)*: Four (4) spaces for each court or alley, in addition to one (1) space for each employee on the maximum shift.

E. **SCHOOLS, CHURCHES, COMMUNITY CENTERS AND HOSPITALS.**

1. *Schools*: High Schools and Junior High Schools must provide one (1) space for each two hundred fifty (250) square feet of floor area, including seventy (70) percent of the area used for gymnasiums and auditoriums. Elementary Schools must provide one (1) space for each classroom, plus one (1) space for each employee on the maximum shift.
 2. *Community Buildings, Libraries, Museums, Administration Buildings, Art Galleries and Centers*: One (1) space for two hundred fifty (250) square feet of floor area.
 3. *Churches*: One (1) space for four (4) seats of maximum occupancy in the principal assembly room.
 4. *Hospitals and Nursing Homes*: One (1) space for each two (2) beds, in addition to one (1) space for each employee on the maximum shift.
- F. **INDUSTRY, MANUFACTURING, WAREHOUSE AND WAREHOUSE ESTABLISHMENTS.**
1. *Production Line Industries—Industries and businesses employing large numbers of office and production workers*: One (1) space per maximum number of employees per shift, plus one (1) space for each company-owned truck/vehicle, in addition to one (1) visitor space for each one thousand (1,000) square feet of floor area, up to twenty thousand (20,000) square feet.
 2. *Warehouse—(Facilities for which the primary use is storage and requires few employees)*: One (1) space for each employee, plus one (1) space for each two thousand (2,000) square feet of floor area up to thirty thousand (30,000) square feet, plus one (1) space for all company-owned trucks and vehicles. Spaces for company trucks and vehicles shall be sized as necessary.
 3. *Wholesale Establishments—(The primary use of which is wholesale sales)*: One (1) space for each five hundred (500) square feet of floor area.
 4. *Storage Areas*: One (1) space for each one thousand (1,000) square feet of floor area.

Sec. 11-12-4. Loading Space Requirements.

Loading space shall be provided for appropriate uses to accommodate the specific needs for a business, as determined by the designated Zoning Administrator or his/her designee.

Sec. 11-12-5. Enlargement of Existing Business or Use.

Whenever an existing building or use is enlarged to the extent of thirty percent (30%) or more of the original floor area, the entire building shall then and thereafter comply with the parking requirements set forth herein. Whenever a building or use is enlarged in floor area less than thirty (30) percent of the original floor area, additional spaces shall be provided upon the

basis of only the enlargement.

Sec. 11-12-6. Joint Use of Parking Areas.

When it can be established that two (2) business located on adjacent property operate at different hours, parking requirements may be shared jointly according to the maximum parking requirements of the two (2) properties, provided there is a written agreement thereby assuring retention for such purposes and stating 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 and Zoning Commission and filed with the application for a building permit.

Sec. 11-12-7. Size of Parking Spaces.

Parking spaces shall be provided according to the following criteria:

Parking Angle	Stall Width	Stall Base	Stall Depth	Width of Aisles	
				1-Way Traffic	2-Way Traffic
45°	9'	14'	21'	13'	24'
60°	9'	12'	22'	18'	24'
90°	9'	9'	19'	27'	27'
Parallel Parking	9'	9'	22'	12'	24'

A parking space is further defined as having ingress and egress to a public street without moving any other automobile. Ingress and egress to an alley is permissible only for a single family or duplex dwelling. All other parking must ingress and egress to a public street.

Sec. 11-2-8. Parking Plan Approval.

Detailed plans for on street or off-street parking and driveway openings shall be submitted to the designated Zoning Administrator for approval prior to construction. All curb cuts require approval from the designated Zoning Administrator.

Sec. 11-12-9. Construction Standards.

All parking spaces and areas provided under the provisions of this Code shall:

- A. Be paved with asphalt, double-penetration chip-seal or other appropriate surface as approved by the designated Zoning Administrator.
- B. Afford adequate drainage. A drainage plan will be required for major developments, including parking, as determined by the designated Zoning Administrator, and said plan must be approved by the City Commission prior to issuance of a building permit.
- C. Have bumper guards where needed.
- D. Be provided with necessary space and aisle safety markings.

ARTICLE XIII. SIGN, WALL, AND FENCE REQUIREMENTS

DIVISION 1. SIGNS

Sec. 11-13-2.1. Title.

Sec. 11-13-2.2. Purpose and Scope.

Sec. 11-13-2.3. Definitions.

Sec. 11-13-2.4. On-Premises Signs.

Sec. 11-13-2.5. Off-Premises Signs.

Sec. 11-13-2.6. Temporary Signs.

Sec. 11-13-2.7. Signs Not Requiring Permits.

Sec. 11-13-2.8. Prohibited Signs.

Sec. 11-13-2.9. General provisions.

Sec. 11-13-2.10. Enforcement.

Sec. 11-13-2.11. Freestanding Sign Development Standards.

Sec. 11-13-3. Residential Fence and Wall Requirements.

Sec. 11-13-4. Commercial and Manufacturing Fence and Wall Requirements.

Sec. 11-13-2.1. Title.

This Division shall be entitled The Truth Or Consequences Sign Code hereinafter referred to as "this Article".

Sec. 11-13-2.2. Purpose and Scope.

- A. *Purpose:* The purpose of this Article is to permit signs that will not, by their size, location, or construction endanger the public health and safety of individuals, or confuse, mislead, or obstruct the vision necessary for traffic safety. Furthermore, it is the purpose of this Article to maintain property values and to create a more aesthetically pleasing community, through the preservation of the natural beauty, historic amenities, and natural environment of Truth or Consequences, by preventing the over-concentration, improper placement, and density of signs, but keeping in mind the importance of signage to the business and tourism community, is a vital element of the free enterprise system.
- B. *Scope:* The provisions of this Article shall apply to all "signs", as the term is defined in Section 11-13-2.3 of this Article, within the City limits.

Sec. 11-13-2.3. Definitions.

[The following words, terms and phrases, when used in this Article, shall have the

meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:]

ABANDONED SIGN: An on- or off-premises sign which no longer directs, promotes, or advertises a bona fide business, lessee, owner, product, or activity conducted, or product or service available on the premises where such sign(s) is displayed.

ADVERTISING: The action of calling something to the attention of the public by verbal or visual presentation.

ATTACHED SIGN: Any sign which is fastened to, connected to, or painted on, and wholly or partially supported by a building.

AWNING: A hood or cover which projects from the wall of a building and is composed of rigid or non-rigid materials.

AWNING SIGN: A sign which is fastened to or painted on an awning.

BANNER: A sign composed of lightweight, flexible material on which letters, symbols or pictures are painted or printed.

BENCH SIGN: Any sign affixed to or printed on a functional bench.

BILLBOARD: Any off-premises sign directing attention to a business, activity, commodity, service, entertainment, or communication, none of which may be conducted, sold or offered on the premises where the billboard is located.

BONUS: An allowance for additional sign area as an incentive to reduce the legal height permitted, or to remove non-conforming signs.

BUSINESS/SERVICE CENTER: A group of two (2) or more businesses planned, constructed, owned and managed independently or as a total entity, which share access, parking, or landscaping.

CANOPY (OR MARQUEE): A permanent roof-like shelter extending from part or all of a building or independent of a building. It is usually constructed of the same material as the roof on the building; however it may also be constructed of flexible canvas type material with rigid backing.

CANOPY SIGN: A sign attached to or painted on a canopy.

CITY: The City of Truth or Consequences, New Mexico.

CLEAR-SIGHT TRIANGLE: A triangular area of unobstructed vision at street intersections, alleys and at curb cut entrances and exits. A full definition is found in the City Zoning Code.

CODES: Any other applicable City, State, or Federal Codes.

COLLECTOR STREET: A street which collects traffic from local streets and connects with major and minor arterials.

CONSTRUCTION/RENOVATION SIGN: Any temporary sign erected on the premises where construction/renovation is taking place and indicating the names of the architects, engineers, landscape architects, financial institutions, contractors or similar artisans, and the owners, sponsors, and similar individuals or firms having a role or interest with respect to the structure or project.

COPY: The verbal, visual or pictorial portion of any sign.

CORPORATE: Pertaining to any organization incorporated pursuant to a law.

DECORATIONS: Any display which calls attention to a community organized event or to a State or national holiday.

DEVELOPMENT IDENTIFICATION SIGN: A permanent sign installed or constructed at the entrance/exit to a residential or commercial development to identify the development name and logo only.

DIRECTIONAL SIGN: Any sign erected for the convenience of the public, such as the directing traffic movement, parking or identifying restrooms, public telephones, walkways and/or other similar features or facilities, and bearing no advertising message (excluding those erected by the United States Department of Transportation and the New Mexico Department of Transportation).

DOWNTOWN: The area generally described as lying between Main Street, Austin Street, and the two intersections of Broadway and Main Streets.

FLAG/DECORATIVE: Any rectangular display constructed of lightweight material having no logo or advertising message printed or printed on it.

FREESTANDING SIGN: Any sign attached to, or supported from the ground, and not attached to a building.

GARAGE SALE SIGN: See definition of Private Sale or Event Sign.

GATE ENTRANCE SIGN: Any sign installed or constructed over the entrance to the premises in specific zoning districts as described herein.

GOVERNMENT SIGN: Any sign erected by any City, County, State or Federal agency or its designee, setting forth information pursuant to law.

GROUND SIGN: Any sign which is attached to either the ground or to a footing set flush with the ground.

HOUSE OR BUILDING SIGN OR NAMEPLATE: A sign limited to identifying the street name, building or property number, and/or the name of the owner or occupant of the building or property and pertinent historical information.

ILLUMINATED SIGN: Any sign which is lighted internally, externally (including neon) or by lights directed towards the sign by any light source.

INFORMATION SIGN: Any sign whose purpose is to indicate a business, hours of operation or similar identification information.

LEGAL NOTICES: Any sign required by law or pursuant to a court order.

LOCAL STREET: A street designed to provide access to abutting property and local streets, and to discourage through traffic.

LOGO: An identifying symbol used for advertising purposes.

LOT: A unit of land that is recognized by the City and the County Assessor's Office as having been legally created or having a legal status as unit of land. Said lot may be joined with other lots to create a parcel.

MAINTENANCE: The total upkeep of a sign; structurally and electrically, in terms of safety, and cosmetically, in terms of visual attractiveness.

MAJOR ARTERIAL: A street with access control, channelized intersections, restrictive parking, and which distributes and collects traffic to and from minor arterial streets.

MARQUEE (OR CANOPY): See definition of Canopy.

MARQUEE SIGN: A sign attached to, mounted on or painted on a marquee.

MINOR ARTERIAL: A street with signals at important intersections and stop signs on side streets and which collects and distributes traffic to and from collector streets.

MODEL COMPLEX SIGN: Any sign located on a complex site, limited in time until the complex ceases to be a model complex.

MURAL: A picture or graphic illustration applied directly to a wall of a building or structure which does not advertise or promote a particular business, service or product.

NATIONAL, STATE AND CORPORATE FLAGS: Any rectangular display constructed of lightweight material used to identify a nation, state or corporation.

NON-CONFORMING SIGN: Any sign legally erected and permitted in compliance with codes at the time it was erected and permitted, but which does not conform to correct codes or this Article.

OFF-PREMISES SIGN: Sign which advertises or directs attention to a business, product, service or activity which is not available on the premises where the sign is located.

ON-PREMISES SIGN: Sign which advertises or directs attention to a business, product, service or activity which is available on the premises where the sign is located.

PARCEL: A unit of land that is recognized by the City and the County Assessor's Office as having been legally created or having a legal status as unit of land. Said parcel may consist of one or more lots but is recognized as a single unit of land.

PENNANT: A display made of a lightweight material which tapers to a point, having no logo or advertising message printed on it.

PERSON: An individual, company, corporation, partnership, association or any other entity.

POINT-OF-SALE SIGN: Any sign which is located or attached directly to the product to be sold.

POLE SIGN: Also known as Pylon Sign. Any freestanding sign whose primary means of support is one or more poles set into a concrete footing, located at ground level.

POLITICAL SIGN: A sign pertaining to any national, State or local election.

PORTABLE SIGN: A freestanding sign not permanently affixed, anchored or secured to the ground or the building, which may be rolled or moved about.

PRIVATE SALE OR EVENT SIGN: A temporary sign advertising private sales of personal property at garage, yard or estate sales and the like, private fundraising events, such as nonprofit carwash, or food/clothing drive, etc.

PRODUCT IDENTIFICATION SIGN: Any sign used to identify the supplier/contractor of the construction product being used.

PROHIBITED SIGN: Any sign not expressly permitted within this Article, or any sign which is specifically prohibited in this Article (see Section 11-13-2.8 of this Article).

PROJECTION SIGN: Any attached sign that is placed perpendicular to a wall of a building.

PROMOTIONAL DISPLAY (COMMERCIAL): Special advertising for grand openings, anniversaries, special or seasonal events, and which is for a limited time, in addition to the legal signage permitted.

PROMOTIONAL DISPLAY (RESIDENTIAL): Special advertising using pennants, flags, streamers, banners, open house signs and other similar signs, for the duration of an open house or similar showing.

REAL ESTATE DIRECTIONAL SIGN: A sign which advertises or directs attention to real property or properties not available on the premises where the sign is located.

REAL ESTATE SIGN: A sign intended to advertise the financing, development, sale, transfer, lease, exchange or rent of real property or properties.

ROOF SIGN: Any sign which is attached to the roof of a building or structure.

ROOF LINE: The physical edge of a building's roof, this is to include the parapet in the case of a flat roof.

SETBACKS: The distances required from the property line or from other buildings/structures or businesses.

SHOPPING CENTER: A group of commercial establishments planned, constructed and managed as a total entity with customer and employee parking provided on-site, provision for goods delivery separated from customer access, aesthetic considerations and protection from the elements.

SIGN: Any advertisement, announcement, direction or communication produced in whole or in part by the construction, erection, attachment or placing of a structure or object on any land, or on any other structure, or produced by painting on, posting or placing any printed, lettered, pictured, figured or colored material on any building, structure or surface.

STREAMERS: A display made of light, flexible material, consisting of long, narrow, wavy strips having no logo or advertising message printed or painted on them.

STRUCTURAL REQUIREMENTS: The safety standards which apply to those signs which are governed by the requirements in the International Building Code and other companion documents.

TEMPERATURE/TIME/DATE SIGN: Any sign with the purpose of displaying the temperature, time, date and/or logo/name.

TEMPORARY SIGN: Any sign intended for a limited period of display. Said limited period shall not exceed 30 consecutive calendar days and shall not be allowed more than 4 times per calendar year.

TOTAL FRONT FOOTAGE: The total length of a building which fronts on a public street.

TRADEMARK/LABEL/NAME: Identification applied or attached to each permitted sign to designate the manufacturer and installer.

UNLAWFUL SIGN: Any sign ever erected which does not have a valid permit, or after erection, did not comply with all the applicable provisions of the permit under which it was constructed and erected, or did not comply with all provisions of codes, or which did not meet the necessary requirements to be considered non-conforming.

UNLICENSED COMMERCIAL SIGN: Any sign erected by an individual, group, organization or club for fundraising or other monetary gain.

UNSAFE SIGN: Any sign identified by the Zoning Administrator or his/her designee as being improperly constructed and installed, erected or secured, thereby subject to falling and creating a safety hazard, with supported findings.

VARIANCE: An authorization granted to a property owner to depart from the numerical requirements of the zoning regulations (as applied here, the sign regulations).

VEHICLE SIGN: A sign painted on or attached to either a vehicle, or a trailer designed to be pulled behind a motorized vehicle, which relates to a business, activity, use, service or product.

WALL SIGN: Any sign affixed to or painted upon the wall of any building.

WINDOW SIGN: Any sign that is applied or attached to the exterior or interior of a window or a window frame.

Sec. 11-13-2.4. On-Premises Signs.

A. *General Conditions:*

1. *Attached Sign:* An attached sign may extend five (5) feet beyond the highest point of a roof line. No attached sign may project beyond the edge of a vertical wall.
2. *Decorations:* Any display shall be removed no later than five (5) days after the event/holiday.
3. *Development Identification Sign (Permanent):*
 - a. Maximum sign area shall not exceed thirty-two (32) square feet.
 - b. Maximum height shall not exceed ten feet (10').
 - c. This sign may be used in addition to any other freestanding sign allowed pursuant to this Article.
4. *Directional Sign:* Directional signs visible from the public right-of-way (i.e., entrance/exit) shall not exceed six (6) square feet in sign area and four feet (4') in height.
5. *Flags:*
 - a. Displays incorporating the identification of a nation, state or corporation shall follow accepted flag protocol. Only one corporate flag will be allowed per parcel.

- b. Displays used to serve as decoration (exclusive of decorations used in fiestas, community-wide festivals or national holidays) shall have no logo or advertising message printed or painted on them. These may be used in addition to the regular signage allowed per business.
6. *Freestanding Sign:* All signs classified as freestanding are limited to locations along street segments meeting specific zoning criteria further defined elsewhere in this Article.
7. *Gate Entrance Sign:*
 - a. Said sign may identify the owner, resident or name of a certain parcel of property (i.e., John Doe Ranch, etc.).
 - b. Total sign height (including poles) shall not exceed twenty feet (20'). The sign face itself shall not exceed three feet (3') in height and thirty feet (30') in width.
8. *Information Sign:* Signs visible from the public right-of-way shall have a maximum size of four (4) square feet in sign area.
9. *Legal Notices:* The signs are exempt from the requirements of this Article; however, they must comply with provisions of the clear-sight triangle.
10. *Pennant:* These displays may be used in addition to the regular signage allowed per business.
11. *Point-Of-Sale Sign:*
 - a. This sign shall limit its advertisement to the product, its price, and/or its manufacturer.
 - b. The cumulative sign area for these signs shall not exceed twenty (20) square feet.
 - c. Each sign shall be no larger than two (2) square feet in sign area.
12. *Portable Sign:*
 - a. Portable signs, although not incorporating a permanent footing in their design, shall be temporarily securely anchored to the ground to prevent overturning in high winds.
 - b. Portable signs shall be placed on level ground only or leveled during setup.
 - c. Portable signs shall for purposes of this Article be subject to all on-premises provisions governing freestanding signs.
13. *Product Identification Sign:* Sign shall be placed on the structure and shall not exceed one-third (1/3) square foot in sign area.
14. *Projection Sign:* A Projection Sign may not extend beyond the property line of the building upon which it is attached without an encroachment

permit. The sign may be of any size that is allowed for that building, however it may not project more than five (5) feet from the building and it must maintain clearance to the ground greater than eight (8) feet. The method of attachment must conform to requirements of the City's Building Codes.

15. *Streamers:* These displays may be used in addition to the regular signage allowed per business.
 16. *Wall Sign:* No wall sign may extend more than twelve inches (12") (depth) out from the wall to which it is attached.
 17. *Window Sign:*
 - a. Permanent window signs may be substituted for wall signage with a corresponding reduction of wall signage.
 - b. A window sign does not include merchandise or models of products or services incorporated in a window display.
- B. *Residential Zones:* The following sign types are permitted: development identification sign, directional sign, garage sale sign, government sign, house or building sign or nameplate, legal notices, model complex sign, national, State and corporate flags, political sign, private sale or event sign, historic designation plaques, real estate sign, and Home Occupation Signs as follows:
1. One single face sign that identifies trade or services conducted within a residence.
 2. The sign shall not exceed the area specified in Article 11-5-4.
 3. The sign shall not be illuminated.
 4. the sign shall be attached and parallel with the dwelling.
 5. only one sign shall be allowed per dwelling unit.
- C. *Commercial and Industrial Zones:*
1. *Attached Sign:* One and one-half (1½) square feet of signage for each linear foot of exterior wall. The sign(s) shall be placed on the side of the building used to calculate the square footage of the sign. The following are considered attached signs: awning/canopy/marquee (with signage on them) signs, banners, roof signs, window signs and wall signs. These attached signs are subject to the design standards of all applicable codes.
 2. *Freestanding Signage:* These signs must comply with the following conditions:
 - a. Locations which permit freestanding signs are determined by zoning districts along specific segments of streets (see Development Standards).
 - b. Maximum height and minimum setbacks for freestanding signs are determined by street classification. See Appendix 1,

Development Standards, Section 11-13-2.11 of this Article.

- c. Individual freestanding signs shall be limited to those businesses which own direct, unobstructed (on-site) access to the public street.
- d. Frontage on a controlled access public street, where under normal conditions a driveway permit would not be granted to that business, shall not be included in the calculation for freestanding signage.
- e. Size of freestanding signs are determined as follows:

Linear Street Frontage	Size Allowed
0—100 feet	100 square feet
101—300 feet	150 square feet
301—600 feet	200 square feet
>600 feet	200 square feet

On buildings with more than one street frontage, only one street frontage shall be used to calculate the permitted sign size, height, and number of signs.

- f. Number of freestanding signs is limited to one per parcel, except where the frontage of the parcel exceeds six hundred (600) linear feet. For those parcel, two (2) freestanding signs are permitted, provided there is a minimum distance of two hundred feet (200') between the signs.

Sec. 11-13-2.5. Off-Premises Signs.

- A. *Attached Signs:* Attached sign may be permitted on a building under the following provisions:
 - 1. *Location:* The off-premise sign may only be located on a commercially zoned building.
 - 2. *Size:* The cumulative square feet of allowable signage for the host building may not be exceeded. The square footage of the off-premise sign shall be added to all other signs on the building in order to ascertain that the total allowable square footage is not being violated.
 - 3. *Distance:* The content of the off-premise sign may be goods, services, or another business that is located within the corporate limits of the City of Truth or Consequences.
- B. *Bench Signs:* With the approval the City Commission, bench signs may be placed in the public right-of-way along bus routes or in areas frequented by pedestrians. Bench signs are exempt from the location provisions for freestanding.
- C. *Billboards:*
 - 1. *General Location:*

- a. All billboards shall be located only in areas zoned Commercial or Industrial and only along streets designated as major arterials or interstate highways, billboards shall not be located within any other zoning district.
 - b. Billboards must be located along street segments having a minimum of five (5) percent office, commercial and/or industrial zoning.
 - c. No billboards will be erected within the downtown area as defined in Section 11-13-2.3 of this Article.
2. *Total Sign Area, Spacing, Height, Location, And Setbacks:* Billboards shall be subject to the following requirements:
- a. Billboards located along interstate highways (also known as "Freeway Billboards") shall not exceed four hundred (400) square feet of total sign area, shall be spaced a minimum of one thousand feet (1,000') apart measured radially and shall not exceed forty feet (40') in height measured from ground level.
 - b. Billboards located along major arterials (also known as "Street Billboards") shall not exceed three hundred (300) square feet of total sign area, shall be spaced a minimum of one thousand feet (1,000') apart measured radially and shall not exceed thirty feet (30') in height measured from ground level. There shall be a minimum clearance of fifteen feet (15') measured from the ground level to the bottom of the billboard face.
 - i. Street billboards may only be located within one (1) mile of the end (as defined by the State Department of Transportation) of an Interstate 25 off-ramp.
 - c. A maximum of two (2) faces, parallel back-to-back is permitted, provided both faces are of the same size and attached to the same pole(s) for support.
 - d. Billboards shall be supported by a maximum of two (2) upright poles.
 - e. Vertical or horizontal stacking of billboards is prohibited.
 - f. Billboards shall be setback a minimum of Five feet (5') from the property line fronting along major arterials and thirty feet (30') from the property line fronting along interstate highways. In each case there shall be a minimum of five feet (5') setback from all other property lines measured from said property lines to any portion of the billboard structure.
 - g. Billboards shall have a minimum sign area of seventy-two (72) square feet.

D. *Garage, Private Sale Or Event Sign:*

1. Signs may be used to advertise any event listed above provided that the signs are not over three (3) square feet in sign area, and are used only during the duration of the event.
 2. The person erecting the sign and/or the property owner at the sign location shall be responsible for the sign removal and all other requirements concerning signs.
- E. *Government Signs:*
1. Traffic-control and similar signs are exempt from all requirements of this Article.
 2. Building identification signs and similar signs do not require permits; however they must meet the numerical requirements of this Article.
- F. *Political Signs:*
1. No individual sign shall exceed thirty-two (32) square feet in sign area.
 2. All political signs may be erected no sooner than ninety (90) days before the election to which they pertain and shall be removed within ten (10) days following same election.
 3. Advertising on a duly permitted billboard shall be exempt from the size and time limits herein stated.
- G. *Vehicle Signs:*
1. A vehicle may have a sign placed upon it if the vehicle is for sale and the purpose of the sign relates to its sale; or
 2. A vehicle may have a sign placed upon it if the vehicle is contributing to the legitimate purposes of the business for which it is used; and
 3. A vehicle with a vehicle sign may not be parked on or within thirty (30) feet of a public right-of-way for longer than one hour, except if the vehicle is for sale.

Sec. 11-13-2.6. Temporary Signs.

- A. *Construction/Renovation Signs:* The signage shall not exceed sixty-four (64) square feet in sign area, and shall not be erected until a building permit has been secured. The sign shall be removed no later than fourteen (14) days after the issuance of a certificate of occupancy or the building permit expires.
1. Signs less than sixteen (16) square feet in sign area do not require a sign permit and shall not be assessed a permit fee.
 2. Signs which exceed sixteen (16) square feet in sign area require a sign permit and shall be assessed the applicable permit fee.
- B. *Real Estate Signs:*
1. *Residentially-Zoned Lots Or Parcel:*

- a. *Less than 1 (one) acre:* one sign per street frontage not to exceed four (4) square feet in per sign. Sign(s) shall not exceed seven feet (7') in height.
 - b. *1.01 to 5.00 acres:* one sign per street frontage not to exceed thirty-two (32) square feet in sign area per sign. Sign(s) shall not exceed eight feet (8') in height.
 - c. *5.01 to 10.00 acres:* two (2) signs not to exceed thirty-two (32) square feet in sign area per sign. Sign(s) shall not exceed eight feet (8') in height.
 - d. *Greater than 10.00 acres:* three (3) signs not to exceed thirty-two (32) square feet in sign area per sign. Sign(s) shall not exceed eight feet (8') in height.
2. *All Other Zoned Lots Or Parcels:*
- a. *Less than 1.00 acre:* one sign per street frontage not to exceed sixteen (16) square feet in sign area per sign. Sign(s) shall not exceed eight feet (8') in height.
 - b. *1.01 to 5.00 acres:* one sign per street frontage not to exceed thirty-two (32) square feet in sign area per sign. Sign(s) shall not exceed ten feet (10') in height.
 - c. *5.01 to 10.00 acres:* two (2) signs not to exceed thirty-two (32) square feet in sign area per sign. Sign(s) shall not exceed fifteen feet (15') in height.
 - d. *Greater than 10.00 acres:* three (3) signs not to exceed sixty-four (64) square feet in sign area per sign or two (2) signs not to exceed one hundred twenty-eight (128) square feet in sign area per sign. Sign(s) shall not exceed fifteen feet (15') in height.
3. *Real Estate Directional Signs:* These signs shall not exceed six (6) square feet in sign area.
4. *Model Complex Signs:* These signs shall be located on the project site and conform to the following requirements:
- a. One sign per complex not to exceed thirty-two (32) square feet in sign area.
 - b. One sign per model not to exceed four (4) square feet in sign area.
 - c. Signs are to be removed when the complex ceases to be a model home complex.
5. *Removal Of Signs:* Signs shall be removed within 14 (fourteen) days after closing of sale or lease of property.
6. *Placement Near Public Ways:* No real estate signs shall be erected in the public rights-of-way or in clear-sight triangles.

7. *Exception To Permit and Fee Requirements:* Signs which do not exceed sixteen (16) square feet in sign area do not require a sign permit and shall not be assessed a permit fee.
8. *Permit and Fee Required:* Signs which exceed sixteen (16) square feet in sign area require a sign permit and shall be assessed the applicable permit fee.

C. *Promotional Displays:*

1. *Commercial:* In addition to authorized attached and freestanding signs, occasional events requiring special advertising shall be subject to the following conditions:
 - a. Each business shall be limited to one freestanding and three (3) attached signs. Each sign shall not exceed ten (10) square feet in size.
 - b. Displays incorporating balloons, banners, streamers, flags and pennants will be permitted and are not limited to size and number.
 - c. Each business shall be allowed one permit for a grand opening display during its first six (6) months of operation. The permit for this display shall be for twenty (20) consecutive days.
 - d. Each business shall be allowed six (6) promotional displays during each calendar year. The permit for each of these displays shall be for ten (10) consecutive days.
 - e. Each business shall be allowed one bona fide going out of business display. The permit for this display shall be for sixty (60) consecutive days.
 - f. The applicant shall provide to the Sign Administrator the name and address of the business where the display is to be placed and the first day of the display. No portion of a display (i.e., structure or sign) shall be erected prior to the first day of the event as stated on the permit.
2. *Residential:* In the event of an open house or other similar showing, the following displays and conditions shall apply:
 - a. Displays incorporating pennants, flags, streamers, banners, open house signs, welcome signs and other like signs will be allowed.
 - b. The sign display may be erected any time on the day prior to the event and must be removed within twenty-four (24) hours following the event.

Sec. 11-13-2.7. Signs Not Requiring Permits.

Accessory use signs:

Change of copy on legally established signs.

Construction/renovation signs (those not exceeding sixteen (16) square feet in sign area).

Decorations for national holidays or community-wide festivals and fiestas.

Directional signs.

Flags/decorations.

Garage sale signs.

Government signs.

House or building signs or nameplates.

Information signs.

Legal notices.

Model complex signs (those not exceeding sixteen (16) square feet in sign area).

National, State and corporate flags following accepted flag protocol.

Pennants.

Point-of-sale signs.

Political signs (except billboards).

Private sale or event signs.

Product identification signs.

Promotional displays—Residential.

Railroad signs.

Real estate broker identification signs.

Real estate directional signs.

Real estate signs (those not exceeding sixteen (16) square feet in sign area).

Streamers.

Vehicle signs.

Sec. 11-13-2.8. Prohibited Signs.

- A. Any sign not expressly permitted within this Article is prohibited.
- B. Any sign constructed to resemble any official marker or sign normally erected by City, State or Federal Government agency or a sign using words, phrases, movement, symbols or characters in such a manner as to interfere with, mislead or confuse traffic.
- C. A sign advertising activities that are illegal according to Federal or State laws, rules or regulations and County or City ordinances or resolutions.
- D. Any sign erected on, attached to or painted on retaining walls, fences, rocks of natural features. This prohibition shall not include development identification

signs placed on walls used for landscaping purposes.

Sec. 11-13-2.9. General provisions.

A. *Calculation of Sign Area:*

1. The cumulative area of all attached signs shall be used to determine that the total cumulative sign area does not exceed the total sign area allowed for that building.
2. The area of a freestanding sign is measured by determining the sign area of all sides that are visible from any one vantage point, except only one side of a sign shall be measured if the two (2) sides are back to back or separated by an angle of forty-five degrees (45) or less. If the two (2) sides are not of equal size, the larger side shall be measured.

B. *Variances:*

1. *Administrative Variance:* There shall be no administrative variances issued for any provision addressed in this Article.
2. *Variance allowed:* Any sign variance request must be reviewed and acted upon by the Planning and Zoning Commission in the manner established by the City Comprehensive Planning and Zoning Code.
3. *Design Excellence:* Since it is the goal of the City to promote excellence in design, in addition to the established requirements for the issuance of a Variance, the Planning and Zoning Commission may allow signs that exceed the requirements of this Code if the proposed sign is considered to have a quality of architecture, design or construction that far exceeds normal sign standards. If a sign exhibits an excellence in design and construction the Commission may allow a twenty (20) percent increase in sign area and/or height.

C. *Structural Requirements:*

1. All signs shall conform to the structural design requirements set forth in the International Building Code and companion documents.
2. Sign permit applications for freestanding signs must conform to the City Building Code requirements.

D. *Sign Maintenance And Removal:*

1. *Damaged Signs:* When any sign is substantially damaged, destroyed, taken down or removed for any purpose other than copy change or normal maintenance operation, it shall not be re-erected, reconstructed or rebuilt except in full compliance with this Article.
2. *Unsafe Signs:* If, in the opinion of a Sign Administrator or designee, any sign becomes unsecured, unsafe or subject to fall, the Sign Administrator upon supported findings shall give written notice of the sign's condition to the person responsible for the sign (owner or lessee). The person so notified, shall correct the unsafe condition of the sign and within seven (7)

working days. The repair or replacement of the sign shall be done in conformance with the provisions of this Article.

3. *Maintenance:*

- a. All signs shall be kept in good repair, both structurally and in appearance. All braces, bolts, clips, fastenings and supporting frame shall be securely affixed to the support structure or wall and shall be free from insect infestation, rot or other deterioration.
- b. If the message portion of a sign is not maintained or if it is removed, leaving only the supporting "shell" of a sign or the supporting braces, anchors or similar components, the owner of the sign or the owner of the property where the sign is located or other person having control over such sign shall, within thirty (30) days of the removal of the message portion of the sign, either replace the entire message portion of the sign or remove the remaining components of the sign. The subsection shall not be construed to alter the prohibition on the replacement of a non-conforming sign. Nor shall this subsection be construed to prevent the changing of the message of the sign.

4. *Repair, Alteration or Removal of Signs:* Any written notice to repair, alter or to remove a sign will be sent via certified mail by the Sign Administrator to the owner, lessee, or person responsible for the sign. If such order is not acted on within seven (7) days, the Sign Administrator may initiate proceedings contained herein to revoke the permit and remove the sign at the expense of the owner, lessee, or person responsible for the sign.

5. *Unlawful Signs:* If any sign is installed, erected, constructed or maintained in violation of any of the terms of this Article, or the applicable code it was erected under, the City may issue a written warning to the sign owner, lessee, property manager or landowner. This warning shall outline the violation(s) and order the designated responsible party to bring the sign into compliance with this Article and any other applicable codes within fourteen (14) days from the date of the warning. Only one warning per violation will be issued. Said warning shall remain in effect for the duration of the business.

6. *Violations and Penalties:* Any person who shall violate any provision of this Article shall be guilty of an offense and shall, upon conviction thereof, be punished as provided in Section 1-4-1 of the City Code. Each day in which any violation shall occur shall constitute a separate offense. In addition, the City Attorney is hereby authorized to take all actions, both legal and equitable, necessary to ensure compliance with this Article.

E. *Non-conforming Signs:*

1. Subject to the remaining restrictions of this Section, non-conforming signs that were otherwise lawful (i.e. had a lawfully issued permit by the City) on the effective date of this Article may be continued.

2. No person may engage in any activity that causes an increase in the extent of nonconformity of a non-conforming sign. Without limiting the generality of the foregoing, no non-conforming sign may be enlarged or altered in such a manner as to aggravate the non-conforming condition. Nor may illumination be added to any non-conforming sign.
3. Any change in the use of any building or property on which a non-conforming sign is located, will require that all non-conforming signs on that property be brought into compliance with all applicable provisions of this Article within nine (9) months of said change.
4. A non-conforming sign may not be moved or replaced except to bring the sign into complete conformity with this Article. For the purpose of this subsection, "replaced" means the replacing of any or all parts of a sign that would extend the normal life span of a sign. An example is replacing wood pole supports with metal I-beam supports.
5. If a non-conforming sign is destroyed, damaged or in need of repair, it may not thereafter be repaired, reconstructed or replaced except in conformity with all the provisions of this Article and the remnants of the former sign structure shall be cleared from the land. For purposes of this subsection, a non-conforming sign is "destroyed" if damaged up to fifty (50) percent of the cost of repairing the sign to its former stature or if the cost of replacing it equals or exceeds the tax value (tax value if listed for tax purposes)/sign valuation (as stated on the original permit) of the sign so damaged, whichever is less.
6. The message of a non-conforming sign may be changed so long as this does not create any new non-conformities (for example, by creating an off-premises sign under circumstances where such a sign would not be allowed).
7. If a non-conforming sign other than a billboard advertises a business, service, commodity, accommodation, attraction or other enterprise or activity that is no longer operating or being offered or conducted, that sign shall be considered abandoned and shall be removed within ninety (90) days after such abandonment by the sign owner, owner of the property where the sign is located or other person having control over such sign.
8. If a non-conforming billboard remains blank for a continuous period of ninety (90) days, that billboard shall be deemed abandoned and shall be altered to comply with this Article or be removed by the sign owner, owner of the property where the sign is located or other person having control over such sign. For purposes of this subsection, a sign is "blank" if:
 - a. It advertises a business, service, commodity, accommodation, attraction or other enterprise or activity that is no longer operating or being offered or conducted; or
 - b. The advertising message it displays becomes illegible in whole or

substantial part; or

c. The advertising copy has been removed.

9. The City shall reserve the right to remove a non-conforming sign in accordance with State law.

10. This subsection shall not apply to any benches placed under the terms of any contract in effect on the date of passage of this Article.

F. *Permits*: Sign permits shall be required for all signs unless otherwise stated in this Article.

G. *Sign Placement Provisions*:

1. No sign shall be permitted to violate the "clear-sight triangle" as defined in the City Zoning Code.

2. No sign shall obstruct any door, stairway, fire escape or opening intended to provide ingress and egress for any building or structure.

3. Signs may not be located in a manner that obscures or interferes with the effectiveness of any official sign, signal or device. A sign shall not be placed at any location where it obscures or interferes with the clear view of any traveler on any street.

4. No sign shall be constructed within any public right-of-way or sidewalk nor shall any portion of any sign extend onto or over a public right-of-way or sidewalk unless a specific exception is provided for elsewhere in this Article.

5. No permit for a sign that extends beyond private property onto a public street, public sidewalk or public alley will constitute a permanent easement. Every such permit shall be revocable by the Sign Administrator. The City shall not be liable for any damages to the owner because of such revocation.

6. No banner shall be erected across any street or sidewalk in the City unless express (written) consent has been granted by the City Commission.

7. Any sign extending over an area intended for pedestrian use shall not be less than seven feet four inches (7'4") above the finished grade below it.

8. No sign shall be placed on any property without written consent of the owner(s) or the owner(s)' authorized agent.

9. No part of any sign may protrude into the setback except in the following instances:

a. If the right-of-way extends fifteen feet (15') beyond the back of curb, a sign may be placed on the property line. A written agreement between the City and the property owner shall be initiated to assure that the said sign will be relocated at the owner's expense in the event that the roadway is ever widened at the sign location.

- b. Real estate signs may be located within the setback; however, they shall not encroach in any way into the public right-of-way or clear-sight triangles.
10. Every sign shall be identified by a label, nameplate or trademark designating the manufacturer and installer of the sign. Signs not requiring permits shall be exempt from this provision.
11. No sign (temporary or permanent) shall be placed on private property with the exception of signs lawfully permitted. Any unlawful sign found in a public right-of-way or on public property shall be summarily removed by the Zoning Administrator or his/her designee.

H. *Lighting Provisions:*

1. *Shading:* Light from any (light) source intended to externally 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 pedestrian or vehicle operators on public or private streets, driveways, or parking areas, and shall not adversely affect any of the surrounding premises. Illumination from any sign shall not interfere with the effectiveness of any official traffic sign, signal or device.
2. *Types of Lighting:* Any type of lighting may be used to either illuminate a sign or may be the sign itself as long as said lighting meets the requirements of this Article.
3. *Distance:* Signs which face residentially zoned parcels having a linear distance of seventy five feet (75') or less from the zone shall not be illuminated.
4. *Residential Zones:* Signs in residential zones shall not be illuminated with the exception of a house or building sign or nameplate.
5. *Dark Sky:* The State of New Mexico Dark Sky Legislation requires that all lighting be shielded in order to prevent the escape of light into the sky. This not only requires the use of shields but also does not allow the use of "up-lighting" or the use of lights in any manner that will cause light to be emitted in an upward direction.
6. *Movement:* Signs that simulate movement by use of lighting may be allowed at the discretion of the Planning and Zoning Commission. The Commission must make a finding that stipulates that said movement will not cause an undue distraction to motorists and thereby be classified as a traffic hazard.

Sec. 11-13-2.10. Enforcement.

A. *Offenses:*

1. Every violation of this Article constitutes an offense.
2. Each day a violation of this Article exists constitutes a separate offense.

B. *Enforcement Authority:*

1. The Zoning Administrator is authorized to issue citations for violations of this Article and file criminal complaints in Municipal Court alleging violations of this Article.
2. The Municipal Court may impose a fine for each offense, as provided in the City of Truth or Consequences City Code for each day the violation is found to have occurred. In addition to any fines thus imposed, the Municipal Court is authorized to issue orders for removal or other judgments. Failure to pay fines previously imposed shall constitute contempt of court and may be separately punished at the discretion of the Municipal Court.

Sec. 11-13-2.11. Freestanding Sign Development Standards.

Table 1: Maximum Sign Height By Street Classification (In Feet)

Street Classification	Zone Classification	
	Residential Industrial	Commercial
Local		
12	0	8
Collector		
12	0	12
Minor arterial		
12	0	12
Major arterial		
18	0	18
Freeway*		
26	0	**

* In order for a sign to be considered to be freeway oriented it must be located within 300 feet of a freeway right-of-way and must be visible from said freeway. The maximum square footage per sign shall be the same as that of other signs.

** The maximum height shall be determined by the City Commission upon recommendation by the Planning and Zoning Commission through the Special Use Permit process established by the City Comprehensive Planning and Zoning Code. It shall be the applicant's responsibility to propose the need for the height of the sign based on visibility from the freeway. The City Commission may establish the height of the sign based on

information provided by the applicant, recommendation by the Planning and Zoning Commission, public input, or on any other pertinent facts the Commission may deem appropriate.

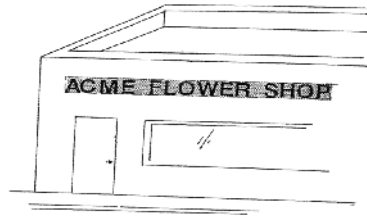
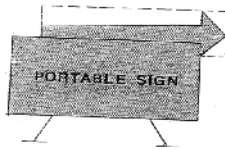
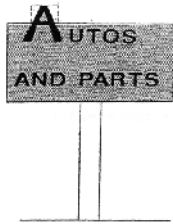
NOTE: Freestanding signs which are allowed by right and erected in the zones listed above shall follow those height requirements enumerated above, unless specific requirements are stated elsewhere in this Article.

Table 2: Minimum Setback By Street Classification

Street Classification Setback	Front Setback	Side
Local		
side yard	10 feet from property line	5 feet
Collector		
side yard	12 feet from property line	5 feet
Minor arterial		
side yard	15 feet from property line	5 feet
Major arterial		
side yard	15 feet from property line	5 feet

The following illustration are to be used only for assistance in applying the regulations contained in this Code, they are for illustrative purposes only.

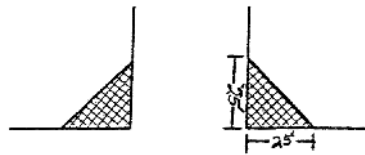
DETERMINING SIGN AREA



--- Indicates boundary to be used to calculate sign area in the event the applicant does not provide the actual square footage of the sign.

■ SHADED AREA INDICATES SIGN AREA

DETERMINING SIGN AREA



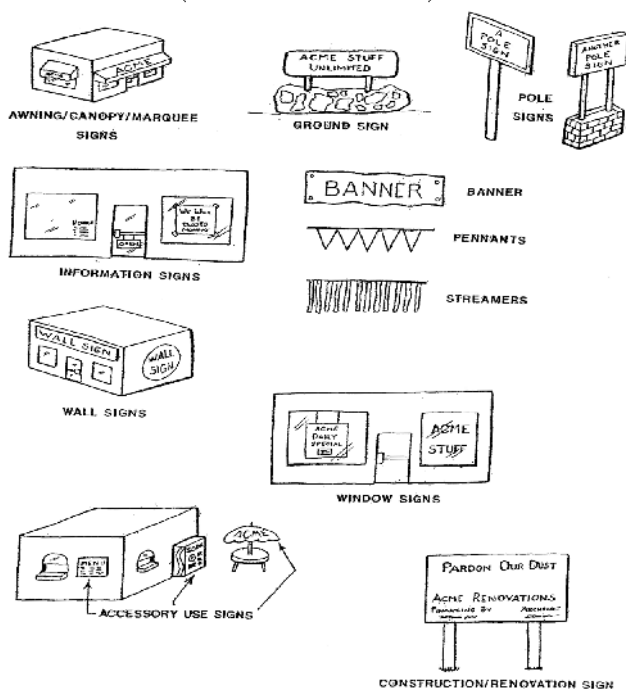
Clear Site Triangle

STREET



CLEAR SIGHT TRIANGLE

ON-PREMISE SIGNS
(FOR ILLUSTRATIVE PURPOSES ONLY)



ON-PREMISE SIGNS

Sec. 11-13-3. Residential Fence and Wall Requirements.

A. HEIGHT.

1. Six (6) foot maximum height above ground surface level shall be permitted on any part of the required front yard, provided such fence is in accord with subparagraph 3 below. A three (3) foot maximum height wall above ground surface shall be permitted on any part of the required front yard.
2. An eight (8) foot maximum height fence or wall above ground surface level shall be permitted on any part of the lot that is to the rear of the required front yard(s), provided such wall is in accord with subparagraph 3 below and is constructed to New Mexico Building Code standards.
3. There shall be no fence, wall or obstruction more than three (3) feet above street curb level within the clear sight triangle, as defined under "Clear Sight Triangle" in Article 8 of this Code, or in the clear sight triangle for entry and exit or off-street multi-parking area.
4. A wall retaining four (4) or more feet of soil must be designed and stamped (signed) by a Professional Engineer, registered in the State of New Mexico.

B. EXCLUSION FROM PUBLIC RIGHT-OF-WAY. No wall or fence shall be

permitted in a public right-of-way.

- C. **WALL AND FENCE FOR SWIMMING POOLS.** All swimming pools or yards in which swimming pools are located shall be completely enclosed by a wall or fence at least four (4) feet in height.
- D. **BARBED WIRE FENCE.**
 - 1. **Security Fences:** Barbed wire is not permitted except when located at least six (6) feet above the highest adjacent ground surface.
 - 2. **Other:** Barbed wire fence other than security fence, described above is permissible only in T-1 District.
- E. **ELECTRICAL FIELD FENCE.** Electrical field fence is permissible only in T-1 District and shall be only utilized for Livestock fence.
- F. **EXCEPTIONS.**
 - 1. Tennis courts may have walls or fences a maximum of sixteen (16) feet in height, provided they shall be located in the side or rear yard and shall be seven (7) feet from any property line.
 - 2. Walls and fences may be eight (8) feet in height in the rear yard of double-frontage lots, provided all such adjacent yards between the two intersection streets are also rear yards.
 - 3. Fences or walls eight (8) feet or less in height as measured from the highest directly adjacent ground surface may be permitted on any part of a lot that is as far back from streets and lot lines as minimum required setbacks.

Sec. 11-13-4. Commercial and Manufacturing Fence and Wall Requirements.

- A. **HEIGHT:**
 - 1. A six (6) foot maximum height above ground surface level fence or wall shall be permitted on any part of the required front yard, provided it is in accordance with subparagraph 3 below.
 - 2. An eight (8) foot maximum height above ground surface level fence or wall shall be permitted on any part of the lot that is to the rear and the required front yard(s) in commercial District, and in all yards in a manufacturing District, provided such construction is in accord with paragraph #3 below and is constructed to New Mexico Building Code standards.
 - 3. There shall be no fence or wall more than three (3) feet of total height above street-curb level within the clear-sight triangle as defined under "Clear Sight Triangle" in Article 8 of this Code, or in the clear-sight triangle for entry and exit of off-street multi-parking area.
- B. **EXCLUSION FROM PUBLIC RIGHT-OF-WAY.** No wall or fence shall be permitted in public right-of-way.

- C. *WALLS AND FENCES FOR SWIMMING POOLS.* All swimming pools or yards in which swimming pools are located shall be completely enclosed by a wall or fence at least four (4) feet in height.
- D. *BARBED WIRE FENCES.* Barbed wire is not permitted, except when located above a wall or fence that is at least six (6) feet in height.
- E. *EXCEPTIONS.*
 - 1. Tennis courts may have walls or fences a maximum of sixteen (16) feet in height, provided they shall be located in the side or rear yard and shall be seven (7) feet from the property line.
 - 2. A six (6) foot height fence shall be permitted in the front yard of any apartment complex over twenty (20) units, and for patios or courtyards in townhouses or condominiums, except as otherwise prohibited in the clear sight triangle.
 - 3. Walls and fences may be eight (8) feet in height in the rear yard of a double-frontage lot, provided all such adjacent yards between the two (2) intersecting streets are also rear yards.

ARTICLE XIV. DEVELOPMENT STANDARDS

Sec. 11-14-1. General Development Standards.

Sec. 11-14-2. Standards For Districts.

Sec. 11-14-3. Residential and Transition Districts: Additional Provisions and Exceptions.

Sec. 11-14-4. Commercial and Manufacturing Districts: Additional Provisions and Exceptions.

Sec. 11-14-5. Manufactured Home Parks (MHP's), Manufactured Home Subdivision (MHS's) and Recreational Vehicle Parks (RVP's): Additional Provisions and Exceptions.

Sec. 11-14-6. Landscaping and Erosion Control: All Planning And Zoning Districts.

Sec. 11-14-7. Landscaping Plans For The C-1 and M-1 Planning and Zoning Districts, Manufactured Home Parks and Subdivisions, Recreational Vehicle Parks and Special and Conditional Uses In All Zones.

Sec. 11-14-8. Height Exceptions.

Sec. 11-14-9. Drainage and Grading and Site Plans.

Sec. 11-14-10. Site Plans.

Sec. 11-14-11. Development in Hazard Area.

Sec. 11-14-12. Metal Buildings.

Sec. 11-14-13. Propane and LP Gas Tanks.

Sec. 11-14-14. Subdivision Regulations and Fees.

Sec. 11-14-15. Fees.

Sec. 11-14-1. General Development Standards.

All lots, tracts, buildings and structures in the City shall be developed in accordance with this Article and other related provisions of this Code. All development standards of this Code shall apply to each lot, tract, or parcel independent of all other lots, tracts, or parcels.

Sec. 11-14-2. Standards For Districts.

District	Lots: Minimum Front Setback	Yards: Minimum Rear Setback	Yards: Minimum Side Setback
R-1	25'	25'	8'
R-1	25'	20'	6' or 0**
R-3	20'	15'	5' or 0**
R-4	25'	25'	5'
RR-1	25'	15'	5'
C-1	20'	15'	5' or 0**
M-1	25'	25'	5' or 0**
T-1	25'	25'	15'

* As permissible per Section 11-14-3 and 11-14-4.

District	Lots: Minimum Area	Lots: Minimum Width	Dwelling: Minimum Area	Maximum Height
R-1	9,000 s. f.	60'	1,200 s. f.	26'
R-2: Single-Family	5,000 s. f.	60'	900 s. f.	26'
R-2: Two-Family	4,000 s. f./unit	60'	650 s. f./unit	35'
R-2: Multiple-Family	3,500 s. f./unit	60'	600 s. f./unit	35'

R-2: Apartments	3,500 s. f./unit	60'	500 s. f./unit	35'
R-2: MH*	5,000 s. f.	60'	900 s. f.	26'
R-3: Single-Family	4,500 s. f.	45'	700 s. f.	35'
R-3: Two-Family	3,000 s. f./unit	45'	500 s. f./unit	35'
R-3: Multiple-Family	3,000 s. f./unit	45'	450 s. f./unit	35'
R-3: Apartments	2,000 s. f./unit	45'	400 s. f./unit	35'
R-3: NM*	4,500	45'	550 s. f.	26'
R-4	1 acre	75'	1,200 s. f.	26'
RR-1	5,000 s. f.	50'	800 s. f.	26'
C-1	5,000 s. f.	60'	" "	35'
C-1: MH*	4,000 s. f.	45'	550 s. f.	26'
M-1	" "	60'	" "	35'
T-1	21,780 s. f.	100'	800 s. f.	35'
T-1: MH*	21,780 s. f.	60'	550 s. f.	26'

* Not located within MHP

Sec. 11-14-3. Residential and Transition Districts: Additional Provisions and Exceptions.

The following provisions shall apply to all development in a residential or transition District:

A. SETBACK EXCEPTIONS:

1. A minimum side yard setback of zero (0) feet in a residential District only, providing all the following requirements are met:
 - a. The setbacks are authorized by the City Commission as part of an approved development.
 - b. There shall be no less than ten (10) feet, including roof overhang, between structures, except approved condominium and townhouse developments with common wall construction.
 - c. All zero (0) lot lines shall be on the same side of all lots in a development.
2. The minimum setback distance shall be maintained for both front yards of a corner lot. A lesser setback for one front yard of a triple frontage lot shall be considered upon application for variance to the Planning and Zoning Commission.
3. New dwellings may be erected as close to a front property line as the average distance established by existing dwellings on that side of the block, provided the lots on the same side of the block are fifty (50) percent developed.

4. An addition to a main dwelling shall be permitted as an extension of existing building lines, which have non-conforming setbacks. Setbacks for such addition shall be the same as the main dwelling.
 5. There shall be a minimum setback of one (1) foot for each foot in height of any building, other than a single or two family dwelling, abutting on R-1 or R-2 District.
- B. *FRONT-YARD PARKING.* Parking areas shall not cover over one-third (1/3) of any open area between the front of a dwelling and the front property line; except in cases of a cul-de-sac, two-thirds (2/3) of a front yard can be used; and on existing lots less than fifty (50) feet, a twenty (20) feet parking area is permitted. Townhouses and apartment lots may use three fourths (¾) of the front yard for parking.
- C. *MINIMUM DISTANCE BETWEEN STRUCTURES.* There shall be no less than ten (10) feet between buildings or structures located on the same lot, tract, or parcel.
- D. *EASEMENT ENCROACHMENTS.* There shall be no permanent structures located on easements without written approval of the City Commission.

Sec. 11-14-4. Commercial and Manufacturing Districts: Additional Provisions and Exceptions.

The following provisions shall apply to all development in a commercial or manufacturing Districts:

- A. *SETBACK EXCEPTION.*
1. A zero (0) foot side yard shall be permitted only when:
 - a. A building on the abutting side is at least five (5) feet from the property line; or
 - b. Both buildings share a common wall on the side property line; or
 - c. When the abutting property is undeveloped. Otherwise, a five (5) foot setback is required.
 2. There shall be a minimum setback of one (1) foot for each foot in height of any building abutting a residential District. There shall be at least a minimum distance of thirty (30) feet maintained between any residential dwelling and any commercial or industrial structure.
- B. *MINIMUM DISTANCE BETWEEN STRUCTURES.* There shall be no less than ten (10) feet between buildings or structures located on the Same lot, tract, or parcel.
- C. *PRIVATE STREETS.* All non-dedicated streets or private drives shall be a minimum of twenty-four (24) feet In width.

Sec. 11-14-5. Manufactured Home Parks (MHP's), Manufactured Home Subdivision

(MHS's) and Recreational Vehicle Parks (RVP's): Additional Provisions and Exceptions.

The following provisions shall apply to all MHP's, MHS's, and RVP's:

A. STANDARDS.

	Minimum Development Area	Minimum Space or Lot Area	Maximum Density/Acre	Maximum Height
MHP	1 acre*	3,000 s. f.	12	26'
MHS R-2 District	5 acres	5,000 s. f.	8	26'
Other Districts	5 acres*	4,000 s. f.	11	35'
RVP	1 acre*	1,250 s. f.	20	26'

* Minimum Distances.

	Lots or Spaces Minimum Width	MH to MH	MH to Primary Building	MH to Secondary Building
MHP	30'	15'	15'	10'
MHS R-2 District	60'	20'	20'	10'
Other Districts	50'	15'	15'	10'
RVP	20'	15'	15'	10'

SETBACKS

	Yards: Minimum Front Depth	Yards: Minimum Rear Depth	Yards: Minimum Side Width**
MHP	15'	10'	10' (main entrance side) 5' (non-entrance side)
MHS R-2 District	25'	20'	5'
Other Districts	20'	15'	5'
RVP	15'	10'	5'

* Unless otherwise approved by Special Use Permit

**Whichever is greater of minimum distance between MH and other structure or minimum side width shall govern.

B. *MANUFACTURED HOME PARK (MHP'S): MINIMUM DWELLING SIZE.* Dwellings within HMP's may be manufactured homes (MH's), trailers, or recreational vehicles. There are no minimum dwelling area requirements for dwellings within MHP's.

C. *MANUFACTURED HOME SUBDIVISIONS (MHS'S): MINIMUM DWELLING SIZE.* Dwellings within MHS's must meet or exceed the minimum area for

Manufactured Housing (MH) units within the District in which the subdivision is located as stipulated in Article 11-14-2. Minimums for R-3 MH shall apply for manufactured homes located in MHS's in Districts for which no minimums are otherwise stated.

- D. *PRIVATE STREETS.* Non-dedicated streets or private drives within a MHP, MHS, or RVP shall be a minimum of twenty-four (24) feet in surface width not including curb and gutter if installed. Streets shall be surfaced with asphalt, double penetration chip seal, or other appropriate surface as approved by the City.
- E. *EASEMENT ENCROACHMENTS.* Structures, home spaces, or recreational vehicle spaces shall not be located within easements without written approval of the City Commission.

Sec. 11-14-6. Landscaping and Erosion Control: All Planning And Zoning Districts.

Unless left in its natural vegetative state, there shall be yard grass or other measures to control water or wind erosion on all previous areas of development and constructed lots, tracts or parcels.

Sec. 11-14-7. Landscaping Plans For The C-1 and M-1 Planning and Zoning Districts, Manufactured Home Parks and Subdivisions, Recreational Vehicle Parks and Special and Conditional Uses In All Zones.

- A. *APPLICABILITY: DISTRICTS AND USES.* The standards of this Section apply to all new and all re-development within the C-1 and M-1 Planning and Zoning Districts, to all manufactured home parks, manufactured home subdivisions, recreational vehicle parks, and to all special and conditional uses in other Districts.
- B. *AREA TO BE LANDSCAPED.* A minimum area equal to ten percent (10%) of the total parking area of the new development shall be landscaped.
- C. *TYPES OF LANDSCAPING.*
 - 1. Xeriscaping is a preferred design element in the City of Truth or Consequences.
 - 2. At least one-half (½) of plant materials in the landscaping shall be trees.
 - 3. Minimum requirements for tree plantings is one tree per four parking spaces.
 - 4. All plants shall be selected from the following lists or any other species recommended by the Sierra Soil and Water Conservation District, the Sierra County Cooperative Extension Service or the New Mexico State Forestry.

PLANT MATERIALS LISTS

Trees

Arizona Cypress	Cupressus glabra
Ash	Fraxinus, sp.
Black Locust	Robinia pseudoacacia
Chinese Pistache	Pistacia chinensis
Desert Willow	Chilopsis linearis
Honey Locust	Gleditsia triacanthos
Italian Black Cypress	Cupressus Italiensis (Negra)
Mesquite	Proposis, sp.
Mimosa	Albizia julibrissin
Oak	Quercus, sp.
Palms	Washingtonia, sp.
Pine	Pinus, sp.
Single-seed Juniper	Juniperus Monosperma
Sycamore	Platanus, sp.
Shrubs	
Abelia (Glossy)	Abelia grandiflora
Acacia	Acacia, sp.
Apache Plume	Fallugia paradoxa
Armstrong Juniper	Juniperus chinesis "Armstrongi"
Bar Harbor Juniper	Juniperus horizontalis "Bar Harbor"
Barrel Cactus	Ferocactus, sp.
Big Sage	Artemisia tridentata
Broadmoor Juniper	Juniperus sabina "Broadmoor"
Buffalo Juniper	Juniperus sabina "Buffalo"
Burning Bush	Euonymous alata
Chamisa	Chrysothamnus Nauseaeousus
Cherry Sage	Artemisia, sp.
Crepe Myrtle	Lagerstroemia indica
Desert Broom	Bacharis sarothroides
Euonymus	Euonymus, sp.
Forsythia	Forsythia, sp.
Four Wing Saltbush	Atriplex canescens
Fraser's Photinia	Photinia fraseri
Gold Tip Pfitzer Juniper	chinensis "Phitzerana Aurea"
India Hawthorn	Raphiolepis indica
Lilac	Syringa, sp.
Nandina	Nandina Domestica

Oregon Grape Holly	Mahonia auifolium
Pampas Grass	Cortaderia selloana
Pyracantha	Pyracantha, leylandei
Red Leaf Barberry	Berberis thunbergii "Atropurpurea"
Rock Cotoneaster	Cotoneaster horizontalis
Sea Green Juniper	Juniper chinensis "Seagreen"
Silverberry	Eleagnus pungens "Gruitlandii"
Sotol	Daslirion wheeleri
Spanish Broom	Spartium junceum
Spartan Juniper	Juniperus chinensis "Spartan"
Tam Juniper	Juniperus sabina "Tam"
Texas Sage	Artemisia, sp.
Three Leaf Sumac	Rhus trilobata
Torulosa Juniper	Juniperus chinensis, "Torulosa"
Turpentine Bush	Haplopappus Laricifolis
Yucca	Yucca pendula
Ground Cover	
Creeping Mahonia	Mahonia repens
Green Santolina	Santolina chamaecyparissus
Grey Santolina	Santolina virens
Vinca Major	Creeping myrtle
Vinca Minor	Dwarf periwinkle
Vines	
Banks Rose	Rosa banksiae
Canyon Grape	Vitis arizonica
Trumpet Vine	Campsis radicans
Virginia Creeper	Parthenocisus quinquefolia
Grasses: Lawn	
Bermuda	Cynodon dactylon
Perennial Rye	Lolium perenne
Fescue	Festuca, sp.
Grasses: Low Water Consumption and Erosion Control	

Alkali Sacaton	Sporobolus airoides
Blue Gramma	Bouteloua gracilis
Buffalo	Buchloe dactyloides
Indian Ricegrass	Oryzopsis hymenoides
Needle and Thread Grass	Stipa comata
Sand Dropseed	Sporobolus cryptandrus
Grasses: Ornamental	
Big Bluestem	Andropogon gerardii
Purple Treeeawn	Aristida purpurea
Sacaton	Sporobolus wrightii
Threadgrass	Stipa tenuissima

- D. *IRRIGATION SYSTEM.* All landscaping required by this Code shall consists of an underground system with automatic or manual controls that include a reduced principle back-flow preventor, pipes, valves, and heads adequate to provide water to all plants within the landscaped area. The use of drip irrigation systems is preferred.
- E. *INSTALLATION.* The landscaping and irrigation system shall be installed, and the irrigation system functioning, before the issuance of a certificate of occupancy.
- F. *MAINTENANCE.* The owner of the landscaped property shall be responsible to maintain the landscaping in a healthy, clean, trimmed, weed and litter-free condition. Dead plants shall be replaced by the owner with new plants of the same type or an approved alternate type within thirty (30) days of the death of a plant or at the next season best supporting plant survival.
- G. *ENFORCEMENT.* The designated Zoning Official shall enforce this ordinance.
- H. *LOCATION CRITERIA.* At least one-half (½) of the total area required to be landscaped shall be located between the street curb and the principal structure(s). On corner lots, double frontage lots or triple frontage lots, at least one-fourth (¼) of the required landscape shall be located within each frontage. All new parking lots with more than one hundred (100) parking spaces shall contain at least one-quarter (¼) of the total required landscaping.
- I. *SITE PLAN REQUIRED.* A site plan showing all elements of the landscaping, including xeriscape elements, types of plants, irrigation system, and drainage control elements is required.

Sec. 11-14-8. Height Exceptions.

- A. *SPIRES, BELFRIES, TOWERS, AND SIMILAR STRUCTURES.* Such uses may be constructed in any District to a height ten (10) feet above that permitted by right for other structures.

- B. *TELEVISION, RADIO, AND OTHER FREE STANDING TOWERS.* Towers shall meet manufacturer's specifications and withstand a 75 mph wind. Towers must conform to New Mexico Building Code standards.

Sec. 11-14-9. Drainage and Grading and Site Plans.

Drainage and grading and site plans shall be required for all developments over one (1) acre, for all development in the C-1 and M-1 Planning and Zoning Districts, and for all Special and Conditional Uses. The designated Zoning Administrator may require that the plans and associated information be prepared by a registered civil engineer.

On-site retention of all drainage created by a development is required.

Sec. 11-14-10. Site Plans.

- A. *ELEMENTS OF A SITE PLAN.* A site plan shall consist of a scale drawing done at a scale of not less than 1":100', and shall contain the following information:
1. Location, arrangements and dimensions of all existing and proposed parking facilities, turning spaces, drives, aisles and landscaping;
 2. The name and location of all streets adjacent to the property, and all proposed points of ingress and egress;
 3. Size, location, and setbacks of all existing and proposed structures;
 4. Location of all proposed drainage structures;
 5. Location of all proposed signs;
 6. Location of all proposed exterior lighting;
 7. The location of existing watercourse(s) (if any) that conduct any intermittent or ephemeral flow.

Sec. 11-14-11. Development in Hazard Area.

All development in flood hazard areas as designated in the City of Truth or Consequences Special Flood Hazard Area Boundary Maps or as otherwise designated by the designated Zoning Administrator shall conform to the requirements for Flood Hazard Areas as stated in Section 4 of the Municipal Code. The designated Zoning Administrator shall require building pads and related construction to be raised or filled above the flooding danger level.

Sec. 11-14-12. Metal Buildings.

All new metal buildings in the C-1 and M-1 Planning and Zoning Districts shall have a facade or veneer consisting of a non-structural facing of brick, concrete, stone, tile, wood or lumber, plastic or other similar approved material on all sides of the structure that face a public street.

Sec. 11-14-13. Propane and LP Gas Tanks.

Propane and LP Gas tanks for the supply of fuel for residential and commercial establishments (not bulk plants, distribution plants or distribution points) can be no greater than 500 gallon capacity.

Sec. 11-14-14. Subdivision Regulations and Fees.

The Subdivision regulations for the City are found in a separate City Ordinance, fees for the processing of subdivisions and related issues shall be set by City Commission Resolution.

Sec. 11-14-15. Fees.

The City has an obligation to charge a fee for services to applicants who wish to process a request based on what this ordinance allows. If the City does not charge a fee to recover its costs for processing an application, it may be considered a gifting of public funds, which is disallowed by State law. The City Commission shall impose fees related to this Ordinance in a manner that will offset the cost of providing said service including but not limited to: research, person-hours, filing fees with the county clerk, mailing costs, printing, publishing, etc.

ARTICLE XV. RESIDENTIAL/COMMERCIAL PLANNED UNIT DEVELOPMENT DISTRICT (RCPUD)

Sec. 11-15-1. Purpose.

Sec. 11-15-2. Permissive Uses and Limitations.

Sec. 11-15-3. Special Use Permit.

Sec. 11-15-4. Uses Permitted Without RCPUD Permit.

Sec. 11-15-1. Purpose.

The purpose of this Zone is to provide for residential and/or commercial uses in a planned, mixed-use development. Industrial uses are not allowed under this designation. The ideal development under this RCPUD will be friendly to the environment by use of modern planning, architectural and engineering techniques meant to reduce air, water, ground and scenic contamination. The use of pedestrian friendly development is also encouraged and will be a standard used by the Planning and Zoning Commission and the City Commission in reviewing the proposed projects. It is also the intent and purpose of this designation that through the use of a Special Use Permit all adjacent property owners and citizens will participate in the planning process through public meetings. Further, it is the expressed intent that development take place in an orderly manner that includes the existing or potential uses of surrounding properties and all property under the proponent's control. In order to provide maximum flexibility in design and quality of development, the City Commission may agree to proposed modifications in the requirements of the City's Zoning and Subdivision regulations.

Sec. 11-15-2. Permissive Uses and Limitations.

Standards for residential/commercial planned unit development (RCPUD) zone.

- A. *Permit.* The City Commission may grant (upon recommendation from the Planning and Zoning Commission) an RCPUD permit for such land in the RCPUD zone which it finds meets the requirements of this ordinance. The City Commission may impose such additional conditions and requirements upon a RCPUD permit as it finds are reasonable and necessary to carry out the purposes and requirements of this ordinance.
- B. *General Requirements.* The general requirements for the planned unit development zone are as follows:
 - 1. *Application.* An application for a RCPUD permit (Special Use Permit—SUP) may be filed by the owner of the property or his/her authorized agent. Such application requests shall be filed with the Zoning Administrator. No application request shall be accepted for filing and processing unless it conforms to the requirements of the Comprehensive Planning and Zoning Code, and the public hearing noticing procedures set forth in said title for Special Use Permits. The requested average number of units per acre shall not exceed four (4) per gross acre, and must be consistent with the master plan land use designation (if one exists). The City Commission may allow density averaging in order to maximize the amount open space provided. An increase in density to not more than eight (8) units to the gross acre may be approved if the development proposes a large amount (one (1) acre per twenty (20) residential units minimum) of passive or active open space.
 - 2. *Content of Applications.* The content of the RCPUD permit application shall be accompanied by the prescribed number of copies of a project plan and such other detailed elevations, plans and other information as may be required to adequately evaluate the proposed development. For a commercial and/or residential subdivision project requiring a RCPUD permit, a plat map application shall not be complete until an application is also filed and determined complete for a RCPUD permit consistent with the requirements of this ordinance and the Comprehensive Planning and Zoning Code.

The following information is required for submittal for an application under the SUP procedures. The information is to be supplied in a booklet form (and in digital form) that may later be used by the City as an addendum to City regulations related to land use and building permit issuance. The project plans shall include the following information:

- a. A map showing division of the land for the sale of the individual property, if any;
- b. Existing contours at two (2) foot intervals if the existing ground slope is less than ten (10) percent and not less than five (5) foot intervals for existing ground slopes greater than or equal to ten (10) percent. Contour intervals shall not be spread more than one hundred fifty (150) feet apart and existing contours shall be represented by dashed lines or by screened lines;
- c. Location of all living trees having a trunk diameter of four (4) inches or more measured at four and one-half (4½) feet above the root crown, and other major natural features shall be shown;

- d. Proposed automobile and bicycle access and pedestrian way locations and dimensions.
 - e. Proposed off-street parking, including the location, number of stalls, dimensions and circulation system;
 - f. Proposed loading areas, including the location, dimensions, and number of berths;
 - g. Lot dimensions and all recorded easements;
 - h. Areas proposed to be dedicated or reserved for parks, parkways, playgrounds, school sites, golf course, public or quasi-public buildings and other uses;
 - i. Areas proposed for commercial uses, multi- and single-family dwellings, or other uses proposed to be established within the project;
 - j. Proposed location and elevations of buildings on land including, dimensions, the size of the structure, height, setback, materials and yard areas;
 - k. Proposed location including dimensions, and site plan of RV and boat storage areas;
 - l. All proposed signs and their locations, size and height;
 - m. Proposed landscaping walls, fencing, screening, trash collections areas, and usable open space areas;
 - n. Location and size of existing and all proposed utility lines and drainage;
 - o. A schedule for the development if phasing is proposed;
 - p. Tabulation of total number of acres in the proposed project and the percent thereof designated for various uses; and the number of dwelling units proposed by type of dwelling for each unit of development;
 - q. Construction materials and colors;
 - r. Such additional information as may be required by the Zoning Administrator, to clarify, amplify, correct, or otherwise supplement the information required for the application, and to comply with the provisions of the Comprehensive Planning and Zoning Code. The Zoning Administrator may waive or modify the RCPUD permit application requirements, listed above, if such items are found not to be applicable to the proposed development, said waiver will be approved, denied or modified by the Planning and Zoning Commission and the City Commission as the project flows through the review process;
 - s. If the applicant disagrees with the application requirements enumerated herein and as determined by the Zoning Administrator, he/she may appeal the Administrator's decision to the P and Z Commission within sixteen (16) days of the Administrator's decision. The cost of the appeal shall be as established by City Commission Resolution.
3. *Development Standards.* Development standards, including but not limited to building height, minimum lot size, and setbacks for the respective residential or commercial zones, shall be consistent with the

standards and requirements set forth in the Comprehensive Planning and Zoning Code, unless modified by the City Commission.

- a. *RCPUD Zone Setback Regulations.* The following regulations shall apply to the RCPUD zone unless modified by the City Commission. (Setbacks for structures and uses not listed below shall be consistent with applicable setback requirements of the Truth or Consequences Zoning Code unless modified.)
 - b. *Setbacks for Single-Family Residential Projects.*
 - i. *Front setback:* overall average of twenty (20) feet is required for tract with a minimum setback of twenty (20) feet. The front setbacks of dwelling units shall be varied to provide visual variety.
 - ii. *Minimum side setback from any public street:* ten (10) feet.
 - iii. *Minimum side setback on an interior lot:* five (5) feet.
 - iv. *Sum of side yards on any lot:* minimum of ten (10) feet.
 - v. *Minimum distance between structures that are separated by a side lot line and do not share a common wall:* ten (10) feet for single story; fifteen (15) feet for two (2) stories (even if only one unit is a two-story residence).
 - vi. *Minimum setback from a rear lot line:* twenty (20) feet for a house, ten (10) feet for an open patio cover or balcony, and five (5) feet for an accessory structure. Structures that do not require a building permit may have a zero setback.
 - vii. Two (2) story residences with windows facing the adjacent property shall have a minimum ten (10) foot side yard setback (second story only) and a minimum twenty (20) foot rear yard setback from the adjacent property line.
 - c. *Setbacks for Multifamily Residential Development Projects.*
 - i. Minimum landscaped setback of twenty (20) feet with an average landscaped setback of twenty-four (24) feet from any primary or secondary arterial street and twenty (20) feet from any collector, minor or cul-de-sac street.
 - ii. Minimum interior yard side setback: ten (10) feet.
 - iii. Minimum rear setback: as determined by the RCPUD permit.
 - iv. In the case of RCPUD subdivisions involving townhouse developments, the setbacks shall be measured from the exterior property lines surrounding the project.
4. Height Requirements. The following regulations shall apply to the RCPUD zone unless modified by the City Commission:

- a. The maximum height of a single-family residence may be increased above twenty-five (25) feet, to a maximum of thirty-five (35) feet, if the side yard is at least fifteen (15) feet.
 - b. The maximum height for a multifamily residential structure shall be thirty-five (35) feet.
 - c. For single-family and multifamily residential structures, no more than three (3) stories shall be permitted.
 - d. The maximum height of accessory structures shall be fifteen (15) feet, with the exception that the maximum height of a patio cover shall be twelve (12) feet.
5. *Minimum Lot Area.* Shall be as specified by the RCPUD permit.
 6. *Parking Requirements.* Parking shall be provided consistent with the provisions in the Comprehensive Planning and Zoning Code
 7. *Utilities.* All utilities shall be located underground. If the project proposes the elimination of rear yard refuse collection via the use of alleys, the applicant shall provide each unit with one 90-gallon polycart for refuse and one 90-gallon polycart for green waste of a design specified by the City.
 8. *Findings.* An RCPUD permit may only be granted if all of the following findings can be made based on factual evidence and testimony presented at the public hearing:
 - a. Finding that the planned development is consistent with the intent and provisions of any applicable Master Plan, Zoning Code and/or Specific Plan;
 - b. Finding that the planned development is compatible with the character of surrounding development;
 - c. Finding that the planned development would not be obnoxious or harmful, or impair the utility of the neighboring property or uses;
 - d. Finding that the planned development would not be detrimental to the public interest, health, safety, convenience or welfare.
 - e. Finding that the planned development has met or exceeded the requirements and recommendations of the "Purpose" of this zone designation

Sec. 11-15-3. Special Use Permit.

The requirements of the Comprehensive Planning and Zoning Code for granting a Special Use Permit shall be followed.

Sec. 11-15-4. Uses Permitted Without RCPUD Permit.

Those uses allowed in the T-1 zone are permitted if the property owner does not wish to

proceed with the application for an RCPUD permit.

D.1 *SEXUALLY ORIENTED BUSINESS.*

- a. *PURPOSE:* It is the purpose and intent of this chapter to regulate sexually oriented businesses to promote the health, safety, morals, and general welfare of the citizens of the City and to establish reasonable and uniform regulations to prevent any deleterious location and concentration of sexually oriented businesses within the City, thereby reducing or eliminating the adverse secondary effects from such sexually oriented businesses. The provisions of this chapter have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent nor effect of this chapter to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of the chapter to condone or legitimize the distribution of obscene material to minors.
- b. *DEFINITIONS:* Definitions related to Sexually Oriented Businesses as follows (other definitions in the Comprehensive Zoning and Planning Code apply when not in conflict with these definitions):

SEXUALLY ORIENTED ARCADE: An establishment where, for any form of consideration, one or more obscene still or motion picture projectors, slide projectors or similar machines, or other image producing machines, for viewing by five (5) or fewer persons each, are used to show films, motion pictures, video cassettes, slides or other photographic reproduction which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas"

SEXUALLY ORIENTED BOOKSTORE, SEXUALLY ORIENTED NOVELTY STORE OR SEXUALLY ORIENTED VIDEO STORE: A commercial establishment which a) devotes a significant or substantial portion (more than twenty-five (25) percent of the stock or more than Twenty-five (25) percent of the value of the stock is Obscene Sexually Oriented Material) of its stock-in-trade or interior floor space to; b) receives a significant or substantial portion of its revenues from; or c) devotes a significant or substantial portion of its advertising expenditures to the promotion of: the sale, rental or viewing (for any form of consideration) of obscene books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, CD's, slides or other visual representations which are characterized by an emphasis on the depiction or description of "specified sexual activities" or "specified anatomical areas"

SEXUALLY ORIENTED BUSINESS: A sexually oriented arcade, sexually oriented bookstore, sexually oriented novelty shop, sexually oriented video store, sexually oriented cabaret, sexually oriented motel, sexually oriented motion picture theater, sexually oriented peep booth, sexually oriented theater, sexual encounter establishment, sexually oriented novelty store. The definition of "Sexually Oriented Businesses" shall not include an establishment where a medical practitioner, psychologist, psychiatrist or similar professional person licensed by the State engages in medically approved and recognized sexual therapy.

SEXUALLY ORIENTED CABARET: means a commercial establishment which regularly features any one of the following:

- I. Persons who appear in a state of nudity or state of seminudity;
- II. Live performances which are characterized by an emphasis on specified anatomical areas or by specified sexual activities;
- III. Films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the emphasis on specified sexual activities or specified anatomical areas.

SEXUAL ENCOUNTER ESTABLISHMENT: A business or commercial establishment, that as one of its primary business purposes, offers, for any form of consideration, a place where two (2) or more persons may congregate, associate, or consort for the purpose of "specified sexual activities" or the exposure of "specified anatomical areas" or activities when one or more of the persons is in a state of nudity or seminudity. A sexually oriented motel will not be classified as a sexual encounter establishment by virtue of the fact that it offers private rooms for rent.

SEXUALLY ORIENTED MATERIAL: Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, CD's, slides, any artificial or simulated specified anatomical area or other device or paraphernalia that is designed in whole or part for specified sexual activities, or other visual representations which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas".

SEXUALLY ORIENTED MOTEL: a motel, hotel or similar commercial establishment which: offers public accommodations for any form of consideration and provides patrons with closed-circuit television transmissions, obscene films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas" and which advertises the availability of this obscene sexually oriented type of material by means of a sign visible from the public right-of-way, or by means of any off-premises advertising, including but not limited to newspapers, magazines pamphlets or leaflets, radio or television.

SEXUALLY ORIENTED MOTION PICTURE THEATER: means a commercial establishment which regularly features the showing of films, motion pictures, video cassettes, slides or similar photographic reproductions which are distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas.

ADULT NOVELTY STORE: means a commercial establishment where a significant or substantial portion of the business involves the sale or rent of sexually oriented devices and or material.

SEXUALLY ORIENTED THEATER: A theater, concert hall, auditorium or similar commercial establishment which, for any form of consideration, features persons who appear in a state of nudity or obscene live performances which are characterized by exposure of "specified anatomical areas" or by "specified sexual activities".

SEXUALLY ORIENTED PEEP BOOTH: A viewing room of less than one hundred fifty (150) square feet of floor space where obscene films, motion pictures, video cassettes, slides or similar photographic reproductions depicting or describing "specified sexual activities" or "specified anatomical areas" are shown for any form of consideration, or features persons who appear in a state of nudity or obscene live performances which are characterized by exposure of "specified anatomical areas" or by "specified sexual activities".

Associated Sexually Oriented definitions include:

EMPLOYEE: A person who works or performs in and/or for a sexually oriented business, regardless of whether or not said person is paid a salary, wage or other compensation by the operator of said business.

ESTABLISHMENT: In regard to a sexually oriented business, means and includes any of the following:

- I. The opening or commencement of any such business as a new business;
- II. The conversion of an existing business into an sexually oriented business;
- III. The addition of an sexually oriented business to any other existing sexually oriented business; or
- IV. The relocation of a sexually oriented business.

LICENSING OFFICER: The City Clerk.

MANAGER: An operator, other than a licensee, who is employed by a sexually oriented business to act as a manager or supervisor of employees or is otherwise responsible for the operation of the business.

NUDE MODEL STUDIO: means a commercial establishment where a significant or substantial portion of the business involves the viewing of person who appear in a state of nudity or state of seminudity or persons who display specified anatomical areas in order to be observed, sketched, drawn, painted, sculptured, photographed or similar depicted by other persons.

NUDITY OR STATE OF NUDITY: a) The appearance of human bare buttocks, anus, genitals or the areola or nipple of the female breast; or b) a state of dress which fails to opaquely and fully cover a human buttocks, anus, male or genitals, pubic region or areola or nipple of the female breast or c) the showing of the covered male genitals in a discernable turgid state.

OPERATOR: Includes the owner, permit holder, custodian, manager, operator or person in charge of any permitted or licensed premises.

PEEP BOOTH: A viewing room of less than one hundred fifty (150) square feet of floor space.

PERMITTEE AND/OR LICENSEE: A person in whose name a permit and/or license to operate a sexually oriented business has been issued, as well as the individual listed as an applicant on the application for a permit and/or license.

PERSON: An individual, proprietorship, partnership, corporation, limited liability company, association or other legal entity.

PREMISES OR PERMITTED OR LICENSED PREMISES: Any premises that requires a license and/or permit and that is classified as a sexually oriented business.

PRINCIPAL OWNER: Any person owning, directly or beneficially, a) ten (10) percent or more of a corporation's equity securities; b) ten (10) percent or more of the membership interests in a limited liability company; or c) in the case of any other legal entity, ten (10) percent or more of the ownership interests in the entity.

PRIVATE ROOM: A room in a sexually oriented motel that is not a peep booth, has a bed and a bath in the room or adjacent room, and is used primarily for lodging.

SEMINUDE: A state of dress in which clothing covers no more than the genitals, pubic region, and areola of the female breast, as well as portions of the body covered by supporting straps or devices.

SEXUAL AROUSAL: To rouse or stimulate to action or to physiological readiness for activity.

SIGNIFICANT OR SUBSTANTIAL PORTION: where more than twenty-five (25) percent of the stock or more than twenty-five (25) percent of the value of the stock is Sexually Oriented Material.

SPECIFIED ANATOMICAL AREAS:

- I. Less than completely and opaquely covered human genitals, pubic region, buttocks, anus or female breast below a point immediately above the top of the areola; or
- II. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

SPECIFIED CRIMINAL ACTS: Sexual crimes against children, sexual abuse, rape or crimes connected to a sexually oriented business, including distribution of obscenity, prostitution, or pandering.

SPECIFIED SEXUAL ACTIVITIES:

- I. The fondling or other intentional touching of human genitals, pubic region, buttocks, anus or female breasts;
- II. Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation or sodomy;
- III. Masturbation, actual or simulated; or
- IV. Human genitals in a state of sexual stimulation, arousal or tumescence;
- V. Excretory functions as part of or in connection with any of the activities set fourth in subsections (I) through (IV).

TRANSFER OF OWNERSHIP OR CONTROL OF A SEXUALLY ORIENTED BUSINESS: Means and includes any of the following:

- I. The sale, lease or sublease of the business;
- II. The transfer of securities which constitute a controlling interest in the business, whether by sale, exchange or similar means;
- III. The establishment of a trust, management arrangement, gift or other similar legal devise which transfers ownership or control of the business, except for transfer by bequest or other operation of law upon the death of a person possessing the ownership or control."

- c. *SPECIFIC USE LIMITATIONS.*

- I. *Location of sexually oriented businesses:* Sexually Oriented Businesses may only locate in the zone classified as M-1 (Light Manufacturing). It shall be unlawful to operate or cause to be operated a sexually oriented business in any location in the City except as provided in this Code.
- II. *Distance Requirements:* It shall be unlawful to operate or cause to be operated a sexually oriented business within one thousand (1,000) feet of:
 - i. A church;
 - ii. A school or childcare facility and/or other youth facilities;
 - iii. A public park (including trails);
 - iv. A community correctional facility;
 - v. Any residential zoning district;
 - vi. Another sexually oriented business as defined by this Code.

The distance between any such businesses and those businesses specified in subsection b. III of this Section shall be measured in a straight line, without regard to intervening structures or objects, from the closest property line in which the sexually oriented business is located.

- III. *Multiple Sexually Oriented Businesses:* It shall be unlawful to cause or permit the operation or maintenance of more than one sexually oriented business in the same building, structure or portion thereof.
- IV. *Nonconforming Status:* If a sexually oriented business use or structure and premises in combination exists lawfully on the effective date of this Ordinance, that would not be allowed in the district under the terms of this Ordinance, the lawful use may be continued so long as it remains otherwise lawful, subject to the provisions as defined in Sections 11-4-1 through 11-4-10 of the Comprehensive Zoning and Planning Ordinance.
- V. *Other Uses Effect On Nonconforming Status:* A sexually oriented business lawfully operating is not rendered a nonconforming use by the subsequent location of a church, school, childcare facility, public park, residential district, or a residential lot within one thousand feet (1,000') of the sexually oriented business; however, if the sexually oriented business ceases operation for a period of one hundred eighty (180) days or more regardless of any intent to resume operation, it may not recommence operation in that location.
- VI. *Permit For Sexually Oriented Business:* A sexually oriented business shall be required to obtain a City business license on forms as provided by the City Clerk's office and annually renew the business license. Application for a City Business license shall be accompanied by a map that locates all uses defined in Section 11-9-8-D.1.b. within the one thousand (1,000) foot radius of the sexually oriented business. In addition, all other sexually oriented business within the same radius shall be shown. Further:

- i. The City Clerk is responsible for granting, denying, revoking, renewing, suspending, and canceling sexually oriented business permits for proposed or existing sexually oriented businesses.
- ii. The City Manager, may designate any other officer or employee to deal with the provisions of this chapter.
- iii. An application for a permit must be made on a form provided by the City.
- iv. The completed application shall contain the following information and shall be accompanied by the following documents:
 1. If the applicant is:
 - a. An individual, the individual shall state his/her legal name, any aliases, and date of birth;
 - b. A partnership, the partnership shall state its complete name, and the names of all general partners;
 - c. A corporation, the corporation shall state its complete name, the names and capacity of all officers, directors and the name and address of the registered corporate agent for service of process.
 2. If the applicant intends to operate the sexually oriented business under a name other than that on the application, he/she must state the sexually oriented business's fictitious name.
 3. A statement as to whether the applicant or any other individuals identified in the application, excluding any agent for service of process who is not also listed as a director or officer, has had a previous permit under this chapter, or any other similar sexually oriented business ordinance of the City, denied, suspended or revoked, including the name and location of the sexually oriented business for which the permit was denied, suspended or revoked, as well as the date of the denial, suspension or revocation.
 4. A statement as to whether the applicant or any other individuals identified in the application, excluding any agent for service of process who is not also listed as a director or officer, has been a sole proprietor, general partner, officer, or director of a sexually oriented business that has had a previous permit under this chapter, or any other similar sexually oriented business ordinance of the City denied, suspended or revoked by the City, including the name and location of the sexually oriented business for which the permit was denied, suspended or revoked, as

well as the date of denial, suspension or revocation.

5. The name(s) of the responsible person(s) who will be on the premises to act as manager during the times that the business is open, or a statement that the applicant has not yet selected the manager(s)
 6. The classification, as defined in this chapter, of sexually oriented business for which the applicant is seeking a permit;
 7. The location of the proposed sexually oriented business, including a legal description of the property, street address, and telephone number(s) currently in service;
 8. The applicant's address;
 9. A recent photograph of the applicant;
 10. The applicant's driver's license or permit number or identification number and social security number and/or the applicant's state or federally issued tax identification number;
 11. A sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared, but it must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches;
 12. Each individual listed on the application pursuant to this chapter, excluding any agent for service or process who is not also listed as a director or officer, shall sign the application.
- v. The applicant shall be required to pay a nonrefundable application fee of one hundred dollars at the time of filing an application pursuant to this chapter.
 - vi. The fact that a person possesses other types of state or City permits and/or licenses does not exempt him/her from the requirement of obtaining a sexually oriented business permit.
 - vii. By applying for a permit under this chapter, the applicant shall be deemed to have consented to the provisions of this chapter and to the exercise by the City or its designee, the police chief's office, and all other City departments charged with enforcing the laws, ordinances and codes applicable in the City, of their respective responsibilities under this chapter.
 - viii. An operator shall promptly update, correct or supplement the information contained in the application for a sexually oriented

business permit on file with the City as necessary to keep the information contained therein accurate.

- ix. Upon receipt of an application properly filed with the City and upon payment of the nonrefundable application fee, the City or its designee shall immediately stamp the application as received on that date.
- x. Notice of an incomplete application shall be given to the applicant within the seven day review period.
- xi. Issuance of permit. Within seven business days of receipt of a completed application, the City shall issue a sexually oriented business permit upon verification of the following facts:
 - 1. The location of the business complies with all applicable zoning laws;
 - 2. The configuration of the premises, as set out in the sketch or plan submitted with the application, does not reveal any violation of applicable health, zoning, fire and safety laws of the state and ordinances of the City applicable thereto, including those set out in this chapter.
 - 3. The applicants or individuals identified therein, excluding any agent for service of process who is not also listed as a director or officer, are not otherwise disqualified from lawful operation of a sexually oriented business pursuant to any state, county, federal or local law, including those set out in this chapter.
 - 4. The applicant is eighteen (18) years of age or older.
 - 5. The applicant has provided all information required by this chapter, none of which is known to the City to be incorrect.
 - 6. The application or permit fees required by this chapter have been paid.
- xii. The City, or its designee, shall grant or deny a completed application for a permit within seven business days from the date receipt of the City of a complete application. Upon the expiration of the seventh day, unless the City or its designee has given written notice to the applicant, the application shall be deemed granted and the operator shall be excused from the requirement that a duly issued permit be posted at the premises until such time as said permit is issued pursuant to this Section.
- xiii. If the City or its designee denies the application, he/she shall notify the applicant of the denial and state the reason(s) for the denial. Any subsequent application which has been supplemented to cure the grounds for prior denial shall be treated as a new application.

- xiv. The annual fee for a sexually oriented business permit is one hundred dollars, to partially offset the costs of monitoring and policing the operations of the business entities involved.
- xv. The City Commission determines that the actual cost of monitoring and policing each such business is at least that amount.
- xvi. Said fee shall be due yearly on the anniversary of the issuance of the permit and shall be deemed delinquent thirty days thereafter.
- xvii. Every operator shall permit representatives of the City and/or police, fire or health departments to inspect the premises of a sexually oriented business for the purpose of insuring compliance with the law at any time it is occupied or open for business.
- xviii. Any decision to deny or issue a permit under this chapter may be appealed to the City Commission.
- xix. Any appeal of a decision to deny or issue a permit that regulates expressive conduct protected by the State Constitution or the First Amendment to the United States Constitution is eligible for expedited administrative review by the City Commission.
- xx. Determinations by the City Commission after review of the issuance or denial of said applications are deemed to constitute final determinations by the City.
- xxi. *Transfer of permit.*
 - 1. A permittee shall not operate sexually oriented business under the authority of a permit at any place other than the address designated in the application for permit.
 - 2. A permittee shall not transfer his/her permit to another person unless and until such other person satisfies the following requirements:
 - a. Obtains an amendment to the permit from the City or its designee, which provides that he/she is now the permittee, which amendment may be obtained only if he/she has completed and properly filed an application with the City or its designee, setting forth the information called for under Section xxii of this chapter in the application; and
 - b. Pays a transfer fee of fifty (50) percent of the annual permit fee set by this chapter.
 - 3. No permit may be transferred during the pendency of administrative procedures following notice by the City or its designee to the permittee that suspension or revocation proceedings have been or will be brought against the permittee, until such proceedings have been completed,

withdrawn or otherwise canceled.

4. A permittee shall not transfer his permit to another location.
5. Any attempt to transfer a permit either directly or indirectly in violation of this Section is hereby declared void, and the permit shall be considered abandoned and shall automatically revert to the City.

xxii. *Business operations.*

1. *Visibility of Interior.*

- a. The entire interior of an adult arcade, adult bookstore, adult novelty store, adult cabaret, adult video arcade, and the entire concession area of an adult motion picture theater or adult theater, the entire common areas of an adult motel, and the entire exhibition area of an adult motion picture theater or adult theater, shall be visible upon entrance to such areas.
- b. Visibility from the entrance shall not be obstructed by any curtain, door, wall, merchandise rack, or any other thing.
- c. No partially enclosed booths shall be maintained.

2. *Exceptions to Visibility Requirements.*

- a. Section xxvii.1 shall not apply to those areas of a sexually oriented business to which only employees are permitted access and patrons are excluded and which cannot be viewed from any area accessible to patrons.
- b. Section xxvii.1 shall not apply to a restroom; however, no restroom shall contain any merchandise, materials, product, or service referenced in Section 11-9-8-D.1.b.

3. *Private Viewing Booths or Rooms.*

- a. No viewing room or booth of an adult arcade or adult video arcade may be occupied by more than one person at any time.
- b. The walls or partitions between viewing rooms or booths shall be maintained in good repair at all times, with no holes between any two such rooms such as would allow viewing from one booth into another or such as to allow physical contact of any kind between the occupants of any two such booths or rooms.

- c. The floors, seats, walls and other interior portions of all viewing rooms or booths shall be maintained clean and free from waste and bodily secretions.
 - d. Doors or curtains for booths shall be installed so as to allow a clear space of 18 inches from the bottom of the door or curtain to the floor.
 - 4. *Lighting.* The entire premises of every adult arcade, and adult bookstore, shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than two foot-candles as measured at the floor level.
 - 5. *Posting Permit.* A valid sexually oriented business permit duly issued pursuant to this chapter shall be posted in conspicuous place at or near the entrance to the sexually oriented business so that it can be easily read at all times.
 - 6. *Manager on Duty.*
 - a. There shall be a responsible person on the premises to act as manager at all times during which the business is open.
 - b. Every permittee shall ensure that all employees are familiar with the provisions of this chapter as amended from time to time and with all other regulations adopted by the City related to sexually oriented businesses.
- xxiii. *Prohibited contact between nude and seminude employees and patrons.*
 - 1. *Nudity and Seminudity Prohibited.* When in a state of nudity or seminudity, no employee shall be present in any portion of the premises accessible to (a) patron(s). For purposes of this chapter, "patron" means any individual who is not an employee.
 - 2. *Nudity and Seminudity Permitted in Designated Areas.* An employee may perform live entertainment in a state of nudity or seminudity on a stage raised at least eighteen (18) inches above the immediate floor level and removed at least six feet from the nearest portion of the premises accessible to the patron(s).
 - a. No patron shall be permitted within six feet of any stage utilized for such entertainment.
 - b. A separate dressing room facility, to which no patron shall be permitted access, shall be provided

for the exclusive use of the employee(s) performing such entertainment.

- c. Access between the dressing room facility and the stage shall be provided for the exclusive use of the employees performing such entertainment and shall be separated from the nearest portion of the premises accessible to the patron(s) by at least six feet.

3. *Direct Tipping Prohibited.* There shall be no physical contact between any employee in a state of nudity or seminudity and a patron. No patron shall directly give any gratuity to any employee while the employee is in a state of nudity or seminudity. No employee, when in a state of nudity or seminudity, shall solicit or accept any gratuity from any patron. For purposes of this chapter, "gratuity" shall mean any thing of value or potential value, including but not limited to money or token(s). For purposes of this chapter, to "directly give" means to transfer from a patron to the person, or any extension from the person, of a nude or seminude employee. Nothing in this chapter is intended to prohibit the placing by the patron of a gratuity into or onto any item placed or located at least six feet from the nude or seminude employee(s).

xxiv. *Exterior security.*

1. *Lighting.*

- a. All off-street parking provided for, and entrances to, a sexually oriented business shall be illuminated from dusk to closing hours of operation with a lighting system which provides an average maintained horizontal illumination of one foot candle of light on the parking surface and walkways.
- b. The required provision for exterior lighting shall be depicted in the sketch/diagram of the configuration of the premises on file with the City pursuant to the provisions of this chapter.

2. *Recorded Surveillance.*

- a. The operator shall provide a security system that visually records and monitors all off-street parking areas provided for, and entrances to, the sexually oriented business during all times that the business is open or occupied for business. The surveillance equipment utilized shall provide continuous recording for at least a twenty-four hour period, with all recordings maintained for a minimum of

seventy-two hours.

- b. Immediately upon request, the surveillance recordings for all or any portion of the previous seventy-two-hour period shall be made available to any representative of the City Police Department. Such recordings shall be utilized only for purposes of investigating an alleged violation of a local, state or federal law, or for the enforcement thereof.
- c. The exterior surveillance capacity shall be depicted in the sketch/diagram of the configuration of the premises on file with the City pursuant to the provisions of this chapter.
- d. Signs shall be posted in the parking area, near the entrance to the premises, and at a conspicuous location inside the premises in such a manner as to notify the public that the exterior of the premises is subject to recorded surveillance in cooperation with the City Police Department.

xxv. *Prohibitions regarding minors and sexually oriented businesses.*

- 1. It shall be unlawful and a person commits a misdemeanor if he/she operates or causes to be operated a sexually oriented business, regardless of whether or not a permit has been issued for said business under this chapter, and knowingly, or with reasonable cause to know, permits, suffers, or allows:
 - a. Admittance of a person under eighteen (18) years of age to the business premises;
 - b. A person under eighteen (18) years of age to remain at the business premises;
 - c. A person under eighteen (18) years of age to purchase goods or services at the business premises; or
 - d. A person who is under eighteen (18) years of age to work at the business premises as an employee;
 - e. The entrance to any sexually oriented business shall be designed in manner that obscures the view of the interior of the premises from minors outside the premises so as to prohibit minors from viewing or seeing any material, conduct or activities which depict, describe or display specified sexual activities or specified anatomical areas.

xxvi. *Display regulations.* No display or exhibit depicting or describing specified sexual activities or specified anatomical areas shall be

placed in, on or at the site of the subject premises in such a manner as to be visible from the exterior of the premises.

xxvii. *Exemptions.*

1. It is a defense to prosecution for any violation of this chapter that a person appearing in a state of nudity did so in a modeling class operated:
 - a. By a college, junior college, or university supported entirely or partly by taxation; or
 - b. By a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or
 - c. In a structure:
 - i. Which has no sign visible from the exterior of the structure and no other advertising that indicates a nude person is available for viewing, and
 - ii. Where, in order to participate in a class, a student must enroll at least three days in advance of the class, and
 - iii. Where no more than one nude model is on the premises at any one time.
2. It is a defense to prosecution for a violation of this chapter that an employee of a sexually oriented business, regardless of whether or not it is permitted under this chapter, exposed any specified anatomical area during the employee's bona fide use of a restroom, or during the employee's bona fide use of a dressing room which is accessible only to employees.

xxviii. *Suspension or revocation of permit.*

1. After an investigation, notice and hearing, the City Manager or his designee shall suspend or revoke an existing permit, or impose such conditions upon the retention of the permit as shall be found to be necessary to assure the preservation of the public health and safety, if the evidence presented established that one of the following conditions exist:
 - a. The building, structure, equipment, location or manner of operation of such business does not comply with the requirements of or fails to meet the standards of the health, zoning, fire and safety laws of the state and ordinances of the City applicable to such business operations.

- b. The permittee, his or her employee, agent, partner, director, officer, stockholder or manager has knowingly made any false, misleading or fraudulent statement of material fact in the application for sexually oriented business permit, or in any report or record required to be filed with the City pertaining to the permit for the sexually oriented business, or has violated any rule or regulation duly adopted by the City relating to sexually oriented businesses, including those set out in this chapter.
 - c. A court of competent jurisdiction has found that the permittee, his or her employee, agent, partner, director, manager, or stockholder has knowingly engaged in or allowed or permitted to be committed any unlawful act of sexual intercourse, sodomy, oral copulation, masturbation, or distribution of obscenity, on or in the subject premises.
 - d. A court of competent jurisdiction has found that the permittee, his or her employee, agent, partner, director, manager, or stockholder has knowingly engaged in or permitted or allowed to occur unlawful solicitations for sexual intercourse, sodomy, oral copulation, masturbation or distribution of obscenity, on or in the subject premises.
 - e. A court of competent jurisdiction has found that the permittee, his or her employee, agent, partner, director, manager, or stockholder has knowingly engaged in or permitted or allowed, in or on the premises, the unlawful possession, use or sale of a controlled substance.
 - f. More than thirty (30) days have elapsed since a tax, fee, fine, any form of regulatory assessment or judgment for monetary damages, irrespective of any other form of relief set out in the judgement, which is to be paid to the City has been imposed against a sexually oriented business, and said sum remains owing.
2. In the event that a permit for a sexually oriented business is revoked pursuant to any applicable law, the premises shall be closed and shall not be used as a sexually oriented business of any classification for a period of one year commencing on the date of revocation. Further, the operators of the sexually oriented business so closed shall be disqualified from operating any other sexually oriented business established thereafter within the City for a period

of one year commencing on the date that the permit was revoked.

3. In the event that a permit for a sexually oriented business is suspended pursuant to any applicable law, the operators of the subject sexually oriented business shall be disqualified from operating the subject sexually oriented business as well as any other sexually oriented business established thereafter within the City during the entire period of such suspension.

xxix. *Immunity from prosecution.* The City and its designee, the chief of police's office and all other departments and agencies, and all other City officers, agents and employees, charged with enforcement of state and local laws and codes shall be immune from prosecution, civil or criminal for reasonable, good-faith trespass upon a sexually oriented business while acting within the scope of authority conferred by this chapter.

xxx. *Modification, suspension and/or revocation of validly issued permit and/or license.* A violation of this chapter by the holder of any City permit and/or City license validly issued pursuant to this or any other chapter shall constitute grounds for modification, suspension and/or revocation of said permit and/or license pursuant to the provisions set forth in this Chapter.

VII. *Interpretation:* It shall be the duty of the duly appointed City Official to make interpretations of this Code as he or she deems appropriate. However, when the City Official notifies a business owner of a violation of this Ordinance, the Official shall also advise the business owner of their right to appeal said violation of this Ordinance to the Planning and Zoning Commission and sequentially to the City Commission. No other parties have a right to appeal. Said appeal must be submitted to the Office of the City Clerk within fifteen (15) days of receipt of the notification by the City Official of a violation. The appeal shall be in the form prescribed by the City. If an appeal is not filed in a timely manner or if the appeal is denied, the City Official may proceed within prescribed operating procedures (up to and including issuance of a court summons) to assure compliance with this Ordinance.

(Ord. No. 567, § 2, 1-23-07)

ARTICLE XVI. INDUSTRIAL PLANNED UNIT DEVELOPMENT DISTRICT (IPUD)

Sec. 11-16-1. Purpose.

Sec. 11-16-2. Permissive Uses and Limitations.

Sec. 11-16-3. Special Use Permit.

Sec. 11-16-4. Uses Permitted Without IPUD Permit.

Sec. 11-16-1. Purpose.

The purpose of this district is to provide for industrial uses in a planned development. Commercial uses are limited in size and in scope to those uses that serve the industrial businesses, their employees and visitors. Residential uses are not allowed under this designation, except to allow for caretaker living quarters for an on-site custodian or watchperson. The ideal development under this IPUD will be friendly to the environment by use of modern planning, architectural and engineering techniques meant to reduce air, water, ground and scenic contamination. The use of pedestrian friendly development is also encouraged and will be a standard used by the Planning and Zoning Commission and the City Commission in reviewing proposed projects. It is also the intent and purpose of this designation that through the use of a special use permit all adjacent property owners and citizens will participate in the planning process through public meetings. Further it is the expressed intent that development takes place in an orderly manner that includes the existing or potential uses of surrounding properties and all property under the proponent's control. In order to provide maximum flexibility in design and quality of development the City Commission may agree to proposed modifications in the requirements of the City's Zoning and Subdivision Regulations.

(Ord. No. 573, 8-28-07)

Sec. 11-16-2. Permissive Uses and Limitations.

STANDARDS FOR INDUSTRIAL PLANNED UNIT DEVELOPMENT (IPUD) ZONE.

- A. *Permit.* The City Commission may grant (upon recommendation from the Planning and Zoning Commission) an Industrial Planned Unit Development District (IPUD) permit for such land in the IPUD zone that it finds meets the requirements of this ordinance. The City Commission may impose such additional conditions and requirements upon an IPUD as it finds are reasonable and necessary to carry out the purposes and requirements of this ordinance.
- B. *General Requirements.* The general requirements for the Industrial Planned Unit Development District are as follows:
 1. *Application.* An application for an IPUD permit (Special Use Permit—SUP) may be filed by the owner of the property or his/her authorized agent. Such application requests shall be filed with the Zoning Administrator. No application request shall be accepted for filing and processing unless it conforms to the requirements of the Comprehensive Planning and Zoning Code, and the public hearing noticing procedures set forth in said title for the Special Use Permits.
 2. *Contents of Applications.* The content of the IPUD permit application shall be accompanied by the prescribed number of copies of a project plan and such other detailed elevations, plans and other information as may be required to adequately evaluate the proposed development. For an industrial subdivision project requiring an IPUD permit, a plat map application shall not be complete until an application is also filed and determined complete for an IPUD permit consistent with the requirements of this ordinance and the Comprehensive Planning and Zoning Code.

The following information is required for submittal for an application under the SUP procedures. The information is to be supplied in a booklet form (and in digital form) that may later be used by the City as an addendum to City regulations related to land use and building permit issuance. The project plans shall include the following information:

- a. A map showing division of the land for the sale of the individual property, if any;
- b. Existing contours at two (2) foot intervals if the existing ground slope is less than 10 (10) percent and not less than five (5) foot intervals for existing ground slopes greater than or equal to ten (10) percent. Contour intervals shall not be spread more than one hundred fifty (150) feet apart and existing contours shall be represented by dashed lines or by screened lines;
- c. Location of all living trees having a trunk diameter of four (4) inches or more measured at four and one-half (4½) feet above the root crown, and other major natural features shall be shown;
- d. Proposed automobile and bicycle access and pedestrian way locations and dimensions;
- e. Proposed off-street parking, including the location and number of stalls, dimensions and circulation system;
- f. Proposed loading areas, including the location, dimensions and number of berths;
- g. Lot dimensions and all recorded easements;
- h. Areas proposed to be dedicated or reserved for parks, parkways, playgrounds, school sites, golf courses, public or quasi-public buildings and other uses;
- i. Areas proposed for allowable commercial uses, or other uses proposed to be established within the project;
 - i. Allowable commercial uses include, but are not limited to business support services, convenience stores, and eating and drinking establishments.
 - ii. A commercial establishment shall not exceed three thousand (3,000) square foot of gross floor area.
- j. Proposed location and elevations of buildings on land including, dimensions, the size of the structure, height, setbacks, materials and yard areas;
- k. Proposed location including dimensions, and site plan of RV and boat storage areas;
- l. All proposed signs and their locations, size and height;
- m. Proposed landscaping walls, fencing, screening, trash collections areas, and useable open space areas;
- n. Location and size of existing and all proposed utility lines and drainage;
- o. A schedule for the development if phasing is proposed;
- p. Tabulation of total number of acres in the proposed project and the percent

thereof designated for various uses; and the orientation, total square footage and gross floor area of each building in the development;

- q. Constructions materials and colors;
 - r. Such additional information as may be required by the Zoning Administrator to clarify, amplify, correct, or otherwise supplement the information required for the application, and to comply with the provisions of the Comprehensive Planning and Zoning Code. The Zoning Administrator may waive or modify the IPUD permit application requirements, listed above, if such items are found not be to applicable to the proposed development, said waiver will be approved, denied or modified by the Planning and Zoning Commission and the City Commission as the project flows through the review process;
 - s. If the applicant disagrees with the application requirements enumerated herein and as determined by the Zoning Administrator, he/she may appeal the Administrator's decision to the Planning and Zoning Commission within sixteen (16) days of the Administrator's decision. The cost of the appeal shall be established by City Commission Resolution.
3. *Development Standards.* Development standards, including but not limited to building height, minimum lot size and setbacks for the industrial zones, shall be consistent with the standards and requirements set forth in the Comprehensive Planning and Zoning Code, unless modified by the City Commission.
- a. IPUD District Setback Regulations. The following regulations shall apply to the IPUD District unless modified by the City Commission. (Setbacks for structures and uses not listed below shall be consistent with the applicable setback requirements of the Comprehensive Planning and Zoning Code unless modified.)
 - b. Setbacks for Industrial Development Projects.
 - i. Front setback: overall average of twenty-five (25) feet. The front setbacks of industrial buildings shall be varied to provide visual variety and to facilitate pedestrian access.
 - ii. Side and back setbacks: combined distances shall total at least half of the maximum height allowed.
 - c. Setbacks for Commercial Development Projects.
 - i. Front setback: overall average of twenty (20) feet. The front setbacks of commercial buildings shall be varied to provide visual variety and to facilitate pedestrian access.
 - ii. Side and back setbacks: combined distances, shall total at least half of the maximum height allowed.
4. *Height Requirements.* The following regulations shall apply to the IPUD District unless modified by the City Commission:
- a. The maximum height for industrial structures shall be forty-five (45) feet.

- b. The maximum height for commercial structures shall be thirty-five (35) feet.
 - c. The maximum height of accessory structures shall be twenty (20) feet.
- 5. *Minimum Lot Area.* Shall be as specified by the IPUD permit.
- 6. *Streets and Access Standards.* Street layout shall be designed for preservation of natural features and to follow topography to the greatest extent possible; and to encourage the orientation of buildings in such a manner as to permit the use of solar energy systems.
- 7. *Parking Requirements.* Parking shall be provided consistent with the provisions of the Comprehensive Planning and Zoning Code.
- 8. *Utilities.* All utilities shall be located underground and shall be approved by the City. Refuse collection facilities shall be constructed and maintained in accordance with all municipal health regulations, shall be properly screened, and shall be designed to bar animals from access to refuse. Refuse shall be removed from collection sites at least once a week.
- 9. *Airport Interface.* To provide airspace protection and land use compatibility with airport operations at the Truth or Consequences Municipal Airport:
 - a. Consistency with Airport Impact Overlay District requirements shall be required of all IPUD projects within proximity of the Airport.
 - b. Development on airport property must be aviation related. Aeronautical uses have precedence over non-aeronautical uses.
 - c. Development on land within a Runway Protection Zone, as identified on the Airport Layout Plan map, must be consistent with FAA regulations.
 - d. Avigation easements shall be required for property within the Airport Impact Overlay District.
- 10. *Findings.* An IPUD permit may only be granted if all the following findings can be made based on factual evidence and the testimony presented at the public hearing:
 - a. Finding that the planned development is consistent with the intent and provisions of any applicable Master Plan, Zoning Code and/or Specific Plan;
 - b. Finding that the planned development is compatible with the character of surrounding development;
 - c. Finding that the planned development would not be obnoxious or harmful, or impair the utility of the neighboring property or uses;

- d. Finding that the planned development would not be detrimental to the public interest, health, safety, convenience or welfare;
- e. Finding that the planned development does not interfere with airport operations and the land use is consistent with Airport Impact Overlay District requirements if applicable; and
- f. Finding that the planned development has met or exceeded the requirements and recommendations of the "Purpose" of this zone designation.

(Ord. No. 573, 8-28-07)

Sec. 11-16-3. Special Use Permit.

The requirements of the Comprehensive Planning and Zoning Code for granting a Special Use Permit shall be followed.

(Ord. No. 573, 8-28-07)

Sec. 11-16-4. Uses Permitted Without IPUD Permit.

Those uses allowed in the T-1 Zone, with the exception of Residential Structures, Television and Radio Towers and all other Free Standing Towers, are permitted if the property owner does not wish to proceed with the application for an IPUD permit.

(Ord. No. 573, 8-28-07)

ARTICLE XVII. OVERLAY DISTRICTS

Sec. 11-17-1. Airport overlay districts.

Sec. 11-17-1. Airport overlay districts.

- A. *PURPOSE.* The intent of this Overlay District is to provide supplemental development requirements and restrictions on land in the airport environs, in order to protect the public safety and welfare of people and land uses on the ground and the safety of the flying public. This zone lies atop the general, or base, zone: development must be consistent with both the General Zoning District and this Overlay Zone District.

Developers are encouraged to meet with staff early for a clear understanding of the special processing requirements within this Overlay Zone.

- B. *DEFINITIONS.* As used in this ordinance, unless the context otherwise requires:
 - 1. *AIRPORT.* The Truth or Consequences Municipal Airport.
 - 2. *AIRPORT ELEVATION.* The highest point of an airport's existing or proposed usable landing area measured in feet from sea level as shown on the FAA approved ALP. For the Truth or Consequences Municipal Airport, the airport elevation is 4,910 feet.

3. *AIRPORT LAYOUT PLAN (ALP)*. The plan of existing and planned airport conditions as prepared by the City and approved by the FAA.
4. *AVIGATION EASEMENT*. Avigation easement is an easement or right of overflight in the airspace above or in the vicinity of a particular property. It also includes the right to create such noise or other effects as may result from the lawful operation of aircraft in such airspace and the right to remove any obstructions to such overflight.
5. *FEDERAL AVIATION ADMINISTRATION (FAA)*. The National Aviation Authority of the United States.
6. *FEDERAL AVIATION REGULATIONS (FAR)*. The rules prescribed by the FAA governing all aviation activities in the United States and codified in the Code of Federal Regulations. The rules are designed to promote safe aviation and for protecting the general public from unnecessary risk. FAR Part 77 is the subsection that addresses the safe, efficient use, and preservation of the navigable airspace.
7. *NON-CONFORMING USE*. Any pre-existing structure, object of natural growth, or use of land which is inconsistent with the provisions of this ordinance, its predecessors, or an amendment thereto.
8. *OBSTRUCTION*. Any structure, growth, or other object, including a mobile object, which exceeds a limiting height set forth in this ordinance.
9. *PERSON*. An individual, firm, partnership, corporation, company, association, joint stock association, limited liability corporation, or governmental entity; includes a trustee, a receiver, an assignee, or a similar representative of any of them.
10. *PROJECT SPONSOR*. The person who is proposing a permanent or temporary structure or tree in any of the zones contained in this ordinance.
11. *RUNWAYS*.
 - a. *LARGER THAN UTILITY RUNWAY*. A runway that is constructed for and intended to be used by propeller driven aircraft of greater than 12,500 pounds maximum gross weight and jet powered aircraft.
 - b. *NON-PRECISION INSTRUMENT RUNWAY*. A runway having an existing instrument approach procedure utilizing air navigation facilities with only horizontal guidance, or area type navigation equipment, for which a non-precision instrument approach procedure has been approved or planned.
 - c. *PRECISION INSTRUMENT RUNWAY*. A runway having an existing instrument approach procedure utilizing all Instrument Landing System (ILS) or a Precision Approach Radar (PAR). It also means a runway for which a precision approach system is planned and is so indicated on an approved airport layout plan or

any other planning document.

- d. *RUNWAY*. A defined area on an airport prepared for landing and takeoff of aircraft along its length. The runway ends are as indicated on the FAA approved ALP.
 - e. *SMALL* or *UTILITY RUNWAY*. A runway that is constructed for and intended to be used by propeller driven aircraft of 12,500 pounds maximum gross weight or less.
 - f. *VISUAL RUNWAY*. A runway intended solely for the operation of aircraft using visual approach procedures.
12. *RUNWAY PROTECTION ZONE (RPZ)*. A defined area on an airport to enhance the protection of people and property on the ground.
13. *STRUCTURE*. An object, including a mobile or temporary object, constructed or installed by man, including but without limitation, buildings, towers, cranes, smokestacks, earth formation, and overhead transmission lines.
14. *TREE*. Any object of natural growth.
15. *SURFACES*.
- a. *APPROACH SURFACE*. A surface longitudinally centered on the extended runway centerline, extending outward and upward from the end of the primary surface and at the same slope as set forth in Table 2 of this ordinance. In plan the perimeter of the approach surface coincides with the perimeter of the approach zone.
 - b. *CONICAL SURFACE*. A surface extending outward and upward from the periphery of the horizontal surface at a slope of 20 to 1 for a horizontal distance of 4,000 feet.
 - c. *HORIZONTAL SURFACE*. A horizontal plane 150 feet above the established airport elevation.
 - d. *INNER END* and *OUTER END*. The inner end of a surface is the end closest to the runway, the outer end of a surface is the end furthest from the runway.
 - e. *PRIMARY SURFACE*. A surface longitudinally centered on a runway. When the runway has a specially prepared hard surface, the primary surface extends 200 feet beyond each end of that runway; when the runway has no specially prepared hard surface, or planned hard surface, the primary surface ends at each end of that runway. The width of the primary surface is set forth in Table 2 of this ordinance. The elevation of any point on the primary surface is the same as the elevation of the nearest point on the runway centerline.
 - f. *TRANSITIONAL SURFACES*. These surfaces extend outward at 90 degree angles to the runway centerline and the runway centerline extended at a slope of seven (7) feet horizontally for

each foot vertically from the sides of the primary and approach surfaces to where they intersect the horizontal and conical surfaces. Transitional surfaces for those portions of the precision approach surfaces, which project through and beyond the limits of the conical surface, extend a distance of 5,000 feet measured horizontally from the edge of the approach surface and at 90 degree angles to the extended runway centerline.

- C. **DEVELOPMENT STANDARDS.** The Airport Impact Overlay District is divided into six (6) Airport Overlay Impact Sub-Districts (Sub-Districts) as shown in Table 1. The Sub-Districts are based on areas described in FAR Part 77 and FAA Advisory Circulars (AC). Tables 2 and 3 provide dimensional standards for the Sub-Districts. The Sub-Districts are specific to the Airport and are based on the runway configurations as shown on the FAA approved ALP. In addition to development standards for each of the six Sub-Districts, development must also comply with the requirements applicable to the entire overlay, as described below and to the underlying zoning.

Differing development criteria are applied to each Sub-District. Prior to proposed development and/or to the issuance of a building permit, the project shall be reviewed according to the development standards identified in Table 4 and this section, to ensure compatibility with airport operations and to protect the health and safety of people and property on the ground. As Sub-Districts may overlap, the more restrictive Sub-Districts govern.

Table 5 provides the FAR Part 77 Classification and RPZ number for the runways at the Truth or Consequences Municipal Airport.

Table 1: Airport Overlay Impact Districts

Airport Overlay Impact Sub-District	Description	Dimensions		Elevation	Slope (feet horizontal to feet vertical)
1. Primary Surface	An area longitudinally centered on a runway. The runway and close proximity are in this surface.	Length: Paved—the Runway length plus 200 feet each end	Width: Per Table 2	Same as runway	None
		Length: Unpaved—the Runway length	Width: Per Table 2	Same as runway	None
2. Approach Surface	An area that begins at the end of the Primary Surface and extends	Length: Per table 2	Width: Inner and Outer widths per Table 2	Starts at Primary Surface elevation and gains elevation	Per Table 2

	outward and upward. This surface approximates the aircraft flight path during landings and take-offs.			based on the slope.	
3. Transitional Surface	An area that begins at the edge of the Primary Surface and extends outward and upward until it intersects the Horizontal Surface.	A minimum of 1,050 feet horizontally. The maximum is based on the lowest Primary Surface elevation to the Horizontal Surface elevation.		Starts at Primary Surface elevation and gains elevation based on the slope.	7:1
4. Horizontal Surface	An area above the airport environment where flight operations take place. The Horizontal Surface does not include the Primary, Approach, or Transitional Surfaces.	Connected arcs off of the ends of the Primary Surfaces per Table 2.		150 feet above the airport elevation	None
5. Conical Surface	An area extending outward and upward from the periphery of the Horizontal Surface.	Extends 4,000 feet horizontally from Horizontal Surface.		Starts at Horizontal Surface elevation and gains elevation based on the slope.	20:1
6. Runway Protection Zone(RPZ)	An area off the end of each runway to enhance the protection	Dimensions: Per Table 3, trapezoidal in shape		Ground elevation	None

of people and property on the ground.			
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Table 2: FAR Part 77 Classifications and Dimensions.

Part 77 Classifications	FAR Part 77 Category	Width of Primary Surface and Width of Approach Surface at inner end (feet) (Figure 1, dimension A)	Radius of Horizontal Surface (feet)	Approach Surface Width at End (feet) (Figure 1, dimension C)	Approach Surface Length (feet) (Figure 1, dimension B or D)	Approach Surface Slope (x feet horizontally to y feet vertically)
Visual, Utility Runway	Visual-A	250	5,000	1,250	5,000	20:1
Visual, Larger than Utility Runway	Visual-B	500	5,000	1,500	5,000	20:1
Non-Precision Instrument, Utility Runway	NPI-A	500	5,000	2,000	5,000	20:1
Non-Precision Instrument, Larger than Utility Runway, Visibility Minimums greater than ¾ mile	NPI-C	500	10,000	5,500	10,000	34:1
Non Precision Instrument, Larger than Utility Runway, Visibility Minimums	NPI-D	1,000	10,000	4,000	10,000	34:1

as low as 3/4 mile						
Precision Instrument Runway	PIR	1,000	10,000	16,000	50,000	50:1 for 10,000', then 40:1 for 40,000'

Source: FAR Part 77

Figure 1 shows the various Part 77 surfaces used in Table 2.

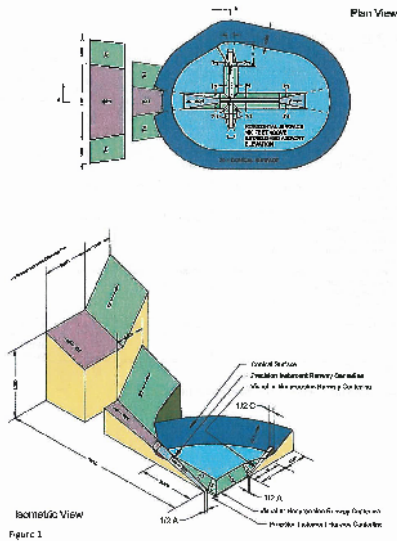


Table 3: Runway Protection Zone Classifications and Dimensions

RPZ Number	Length (feet) Starts 200 feet beyond the physical end of the runway	Inner Width (feet)	Outer Width (feet)
1	1,000	250	450
2	1,000	500	700
3	1,700	500	1,010
4	1,700	1,000	1,510
5	2,500	1,000	1,750

Source: FAA AC 150/5300-13A

Table 4: Developmental Standards

Airport Impact Overlay Sub-District	Height Limit	Residential Development and Density	Non-Residential Development and Density
1. Primary Surface Note (1)	Note (1)	Note (1)	Note (1)

2. Approach Surface	The lower of 45-foot maximum, underlying zoning, or a height under the Approach Surface slope height.	No residential development when the Approach Surface elevation is less than 100 feet.	No non-residential development when the Approach Surface elevation is less than 50 feet.
		R-I Single-Family, Low Density Residential standard is allowed when the Approach Surface elevation is more than 100 feet.	Underlying zone standard is allowed when the Approach Surface elevation is more than 50 feet.
3. Transitional Surface	The lower of 45-foot maximum, the underlying zoning, or a height under the Transitional Surface slope height.	No residential development when the Transitional Surface elevation is less than 100 feet.	No non-residential development when the Transitional Surface elevation is less than 50 feet.
		R-I Single-Family, Low Density Residential standard is allowed when the Transitional Surface elevation is more than 100 feet.	Underlying zone standard is allowed when the Transitional Surface elevation is more than 50 feet.
4. Horizontal Surface	45-foot maximum.	Per underlying zoning.	Per underlying zoning.
5. Conical Surface	45-foot maximum.	Per underlying zoning.	Per underlying zoning.
6. Runway Protection Zone Note (1)	Note (1)	Note (1)	Note (1)

Notes:

(1) Only items approved by FAA are allowed in the Primary Surface and Runway Protection Zone

Table 5: Runway FAR Part 77 Classification and RPZ number

Runway (surface)	Part 77 Classifications	RPZ Number
Runway 13-31 (asphalt paved) (Future Runway 13L-31R)	Non-Precision Instrument, Larger than Utility Runway, Visibility Minimums greater than ¾ mile	4
Runway 1-19 (unpaved)	Visual, Larger than Utility Runway	2
Runway 11-29 (unpaved)	Visual, Larger than Utility Runway	2

Runway 7-25 (unpaved)	Visual, Larger than Utility Runway	2
Runway 15-33 (unpaved)	Visual, Larger than Utility Runway	2
Future Runway 7-25 (asphalt paved)	Non-Precision Instrument, Larger than Utility Runway, Visibility Minimums greater than ¾ mile	2
Future Runway 13R-31L (asphalt paved)	Visual, Utility Runway	1

Entire Airport Impact Overlay District

1. The Municipal Airport Zoning Law (3-39-16 to 3-39-26 NMSA 1978) is hereby incorporated and made a part of this zoning regulation.
2. Avigation Easement: An avigation easement is required for the development of property within the Airport Impact Overlay Districts Primary Surface, Approach Surface, Transitional Surface, and Runway Protection Zones. Sample avigation easements are available from the City Clerk.
3. Electronic Interference: Uses that produce electronic or radio interference with the airport's navigation aids will not be permitted.
4. Lights/Glare: Lighting and building materials must not interfere with visual flight operations, including landing, or make it difficult for flyers to distinguish between airport lights and others. Artificial lighting for buildings, parking lots and landscaped areas must be clearly distinguishable from airport lighting. Reflective surfaces must not cause glare that could temporarily blind a pilot.
5. Wildlife Attractants: Uses that attract wildlife will not be permitted. Ponds, feedlots, landfills and other uses that attract birds are not compatible land uses within the Airport Impact Overlay District.
6. No structures, trees, fixed, temporary, or mobile objects shall be erected or allowed to be erected which would exceed the above height limitations.
7. Other: No use may be made of land within the Airport Impact Overlay District in such a manner as to impair visibility in the vicinity of the airport or otherwise endanger the landing, taking off, or maneuvering of aircraft.
8. As all development on airport land requires FAA review, FAA approval of City projects constitutes compliance with this ordinance, and no permits or variances are required.

Private development on airport land requires review in accordance with this ordinance as well as FAA approval.

- D. *PERMITTED USES.* Uses permitted by the underlying General District are allowed only if the use also meets the additional requirements of the Airport Impact Overlay District.

- E. *SPECIAL USES*. Special uses allowable under the General District may be allowed only if they also meet the supplemental criteria set forth in this Overlay District.
- F. *CONDITIONAL USES*. Conditional uses allowable under the General District may be allowed if they also meet the criteria set forth in this Overlay District.
- G. *NON-CONFORMING USES*. Legal uses that existed as of the date of adoption of this ordinance but do not meet the requirements of this Overlay District will be grandfathered in as non-conforming uses.

The owner of any legal non-conforming structure or natural growth is hereby required to permit the installation, operation and maintenance thereon of such markers and lights as shall be deemed necessary by the City to indicate to the operators of aircraft in the vicinity of the airport the presence of such airport hazards. Such markers and lights shall be installed, operated, and maintained at the expense of the City of Truth or Consequences.

- H. *COMPLIANCE WITH FAR PART 77*. FAR, Part 77, Section 77.9 states that any person/organization who intends to sponsor any of the following construction or alterations must notify the Administrator of the Federal Aviation Administration (FAA):

- Any construction or alteration exceeding 200 feet above ground level.
- Any construction or alteration:
 - Within 20,000 feet of a public use airport which exceeds one hundred (100) feet outward for each one (1) foot upward surface from any point on the runway of each airport;
 - Any highway, railroad or other traverse way whose prescribed adjusted height would exceed the FAR adjusted heights;
 - When requested by the FAA; or
 - Any construction or alteration located on a public use airport or heliport regardless of height or location.

Notification is accomplished through the process prescribed by the FAA.

1. When notice is required under the FAR Part 77, the project sponsor shall provide a copy of the FAA issued Airspace Number to the City Airport Manager at the time of submission to FAA. A copy of the FAA airspace determination for each notice to FAA shall be provided to the City Airport Manager upon receipt from the FAA and shall be included in any permit or variance request. The Building Inspector will assist project sponsors in determining if notice is required.
2. When notice is not required under the FAR Part 77, the project sponsor shall include the calculations or information from the FAA supporting this decision to the City Airport Manager and Building Inspector for verification.
3. The City Airport Manager will evaluate all FAA airspace determinations received from the project sponsor and shall inform the project sponsor and the Building Inspector within 15 working days of receipt, if the FAA airspace determination contains any adverse impact to the airport or airspace.

4. A FAA airspace determination that has an adverse impact will not be issued a permit. Examples of an adverse impact are any condition that changes the airspace, instrument approach procedures, limits airport development, or similar. A variance may be considered after consultation with the FAA on mitigation measures and the project sponsor agreement to the mitigation measures.
- I. *APPEALS*. The process contained in the Comprehensive Planning and Zoning Code will be used for any appeals or variances requested under this ordinance.

(Ord. No. 633, § 2, 1-8-13)

Editor's note—

Ord. No. 633, §§ 1, 2, adopted Jan. 8, 2013, repealed the former § 11-17-1, and enacted a new § 11-17-1 as set out herein. The former § 11-17-1 pertained to overlay districts and derived from Ord. No. 574, adopted Aug. 28, 2007.

**CODE COMPARATIVE TABLE
1962 CODE**

This table gives the location within this Code of those sections of the 1962 Code, as updated through January 1, 1990, which are included herein. Sections of the 1962 Code, as supplemented, not listed herein have been omitted as repealed, superseded, obsolete or not of a general and permanent nature. For the location of ordinances adopted subsequent thereto, see the table immediately following this table.

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**CODE COMPARATIVE TABLE
ORDINANCES**

This table gives the location within this Code of those ordinances adopted since the 1962 Code, as updated through January 1, 1990, which are included herein. Ordinances adopted prior to such date were incorporated into the 1962 Code, as supplemented. Ordinances adopted since January 1, 1990, and not listed herein, have been omitted as repealed, superseded or not of a general and permanent nature.

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397	10-13-92	1	5-26.1
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402	1-11-93	1	14-35
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467	6-14-99	1	2-121
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477	7-24-00	1	11-10
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479	7-24-00	1	14-45
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490	3-26-01	1	2-292
491	3-26-01	1	14-38(e)
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504	12-26-01	Added	14-52
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521	10-16-02	1 Added	14-38(f)
522	11-12-02	1 Added	11-10(4)
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540	9-27-04	1 Rpld	2-381
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544	7-25-05		11-10
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553	4-11-06	Added	9-51—9-60
554	4-11-06	Added	9-71—9-79
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STATE LAW REFERENCE TABLE

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Endnotes

1 (Popup - Footnote 1)

--(1)--

Administration of flood damage prevention ordinance, [§ 4-186](#) et seq.; Fire Department, [§ 5-71](#) et seq.; Recreation Program Board, § 9-26 et seq.; Police Department, [ch. 10](#); Utility Department, [§ 14-26](#) et seq.

2 (Popup - Footnote 2)

--(2)--

Fire Department, [§ 5-71](#) et seq.; Police Department, [ch. 10](#); Utility Department, [§ 14-26](#) et seq.

3 (Popup - Footnote 3)

--(3)--

Police Department, [ch. 10](#).

4 (Popup - Footnote 4)

--(4)--

Buildings and building regulations, [ch. 4](#).

5 (Popup - Footnote 5)

--(5)--

Recreational Program Board, § 9-26 et seq.

6 (Popup - Footnote 6)

--(6)--

Authority to create a planning commission, NMSA 1978, § 3-19-1.

7 (Popup - Footnote 7)

--(7)--

Editor's note—

Ord. No. 421, adopt. Dec. 12, 1994, repealed former [§§ 2-247](#)—2-251 relative to the library board, which derived from Code 1962, [§§ 2-6-2](#)—2-6-5, 2-6-7. Said Ord. No. 421 reenacted new provisions to read as herein set out in [§§ 2-247](#), [2-248](#). Former § 2-252 was renumbered as [§ 2-249](#).

8 (Popup - Footnote 8)

--(8)--

Utilities, [ch. 14](#).

9 (Popup - Footnote 9)

--(9)--

Editor's note—

The lodger's tax advisory board adopted by the 1962 Code, § 5-14-13 and amended by Ord. No. 383, adopted on June 24, 1991 has been included in this Code at the direction of the city and included within this chapter as Art. IV, Div. 9, [§ 2-361](#) et seq. Subsequently, Ord. No. 444, § 1, adopted March 10, 1997, amended [§ 7-211](#), however, said provisions have been redesignated as §§ [2-361](#)—2-364, at the editor's discretion.

10 (Popup - Footnote 10)

--(10)--

Editor's note—

Section 1 of Ord. No. 637, adopted May 28, 2013, repealed [div. 10](#), §§ 2-365—2-368, which pertained to Sierra County Higher Education Council, and derived from Ord. No. 578, adopted Nov. 27, 2007.

11 (Popup - Footnote 11)

--(11)--

Municipal Court, NMSA 1978, § 35-14-1 et seq.

12 (Popup - Footnote 12)

--(12)--

Editor's note—

Ord. No. 469, § 1, adopted Aug. 9, 1999, repealed §§ 2-391—2-410 in their entirety. Formerly, said sections pertained to the city's collective bargaining agreement. See the Code Comparative Table.

13 (Popup - Footnote 13)

--(13)--

Editor's note—

Sections 1—12 of Ord. No. 447, adopted June 23, 1997, added provisions to the Code, but did not specify manner of inclusion. At the discretion of the editor, therefore, said provisions have been included as §§ [2-435](#)—2-446 herein.

14 (Popup - Footnote 1)

--(1)--

Municipal authority to regulate animals, NMSA 1978, § 3-18-3.

15 (Popup - Footnote 2)

--(2)--

Health and sanitation, [ch. 6](#).

16 (Popup - Footnote 1)

--(1)--

Building Inspector, [§ 2-186](#) et seq.; fire prevention and protection, [ch. 5](#); motels and hotels, [§ 7-231](#) et seq.; solid waste management, [ch. 11](#); streets and sidewalks, [ch. 12](#); utilities, [ch. 14](#).

Powers relative to public buildings, NMSA 1978, § 3-18-4; building construction and restrictions, NMSA 1978, § 3-18-6.

17 (Popup - Footnote 2)

--(2)--

Administration, [ch. 2](#).

18 (Popup - Footnote 3)

--(3)--

Editor's note—

Section 1 of Ord. No. 639, adopted Sept. 24, 2013, repealed former art. IV, §§ [4-226](#)—4-237, which pertained to dangerous buildings, and derived from the 1962 Code, §§ 6-6-1—6-6-12. Subsequently, Ord. No. 640, § 1, adopted Sept. 24, 2013, added new provisions as herein set out.

Health and sanitation, [ch. 6](#).

19 (Popup - Footnote 4)

--(4)--

Editor's note—

Ord. No. 568, §§ 1—15, adopted Feb. 27, 2007, repealed the former Art. V., [§ 4-301](#), and enacted a new Art. V as set out herein. The former Art. V pertained to similar subject matter and derived from Ord. No. 517, adopted March 25, 2002.

20 (Popup - Footnote 5)

--(5)--

Editor's note—

Ord. No. 571, §§ 1—12, adopted May 8, 2007, added provisions that were not specifically amendatory. At the editor's discretion, said provisions were included as Art. VII, §§ [4-451](#)—4-462.

Development impact fee, [§ 4-401](#) et seq.

21 (Popup - Footnote 1)

--(1)--

Buildings and building regulations, [ch. 4](#); weeds declared a fire hazard, § 6-47.

Municipal authority to adopt regulations for fire prevention, NMSA 1978, § 3-18-11; fire prevention offenses generally, NMSA 1978, § 30-17-1 et seq.

22 (Popup - Footnote 2)

--(2)--

Buildings and building regulations, [ch. 4](#).

Authority to establish fire zones, NMSA 1978, § 3-18-6B.

23 (Popup - Footnote 3)

--(3)--

Officers and employees, § 2-46 et seq.

Municipal authority to establish a fire department, NMSA 1978, § 3-18-11B(3).

24 (Popup - Footnote 4)

--(4)--

Municipal authority to regulate and prohibit the use of fireworks, firecrackers, etc., NMSA 1978, § 3-18-11A(7).

25 (Popup - Footnote 1)

--(1)--

Care and maintenance of animals, [§ 3-5\(c\)](#); rabies, [§ 3-51](#) et seq.; dangerous buildings, [§ 4-226](#) et seq.; offenses relating to public order and safety, [§ 8-31](#); solid waste management, [ch. 11](#); industrial wastes, [§ 14-111](#) et seq.

Municipal authority to adopt any regulation necessary for the promotion of health and the suppression of disease, NMSA 1978, § 3-43-1; Public Health Act, NMSA 1978, § 24-1-1 et seq.

26 (Popup - Footnote 2)

--(2)--

Editor's note—

Section 1 of Ord. No. 645, adopted Nov. 12, 2013, renumbered former art. II, §§ 6-26—6-28 as art. I, §§ [6-1](#)—6-3.

Municipal authority regarding trees and shrubs, NMSA 1978, § 3-18-27.

27 (Popup - Footnote 3)

--(3)--

Editor's note—

Section 1 of Ord. No. 645, adopted Nov. 12, 2013, renumbered former art. IV, §§ [6-66](#)—6-70 as art. II, §§ [6-21](#)—6-25.

28 (Popup - Footnote 4)

--(4)--

Editor's note—

Section 1 of Ord. No. 644, adopted Nov. 12, 2013, repealed former art. III, §§ 6-46—6-50, which pertained to weeds, and derived from the 1962 Code, § 9-11-3; Ord. No. 378, adopted March 11, 1991; and Ord. No. 423, § 1, adopted May 8, 1995.

Subsequently, section 1 of Ord. No. 645, adopted Nov. 12, 2013, renumbered former art. VI, §§ 6-92—6-95 as art. III, §§ [6-31](#)—6-34.

29 (Popup - Footnote 5)

--(5)--

Editor's note—

See editor's note to art. II.

30 (Popup - Footnote 6)

--(6)--

Editor's note—

Section 1 of Ord. No. 644, adopted Nov. 12, 2013, repealed former art. V, §§ 6-86—6-91, which pertained to junked automobiles, and derived from Ord. No. 377, adopted March 11, 1991.

Subsequently, section 1 of Ord. No. 646, adopted Nov. 12, 2013, enacted new provisions as set out herein.

31 (Popup - Footnote 1)

--(1)--

Municipal authority to license and regulate businesses, NMSA 1978, § 3-38-1.

32 (Popup - Footnote 2)

--(2)--

Municipal Gross Receipts Tax Act, NMSA 1978, § 7-19-1 et seq.

33 (Popup - Footnote 3)

--(3)--

Editor's note—

Ord. No. 442, §§ 1—17, adopted Aug. 12, 1996, did not specifically amend the Code and has been included herein as superceding the provisions of former §§ [7-196](#)—7-207 relative to the lodgers' tax, which derived from Code 1962, §§

5-14-1—5-14-11, § 5-14-13; Ord. No. 375, 3-11-91; Ord. No. 383, 6-24-91; Ord. No. 407, 4-12-93.

Lodger's Tax Act, NMSA 1978, §§ 3-38-13—3-38-24.

34 (Popup - Footnote 4)

--(4)--

Auctions, NMSA 1978, § 67-13-1.

35 (Popup - Footnote 5)

--(5)--

Prohibition on municipal taxing power, NMSA 1978, § 3-18-2.

36 (Popup - Footnote 6)

--(6)--

Municipal authority to regulate secondhand dealers, NMSA 1978, § 3-18-24.

37 (Popup - Footnote 7)

--(7)--

Traffic, [ch. 13](#).

38 (Popup - Footnote 1)

--(1)--

Criminal offenses, NMSA 1978, § 30-1-1 et seq.

39 (Popup - Footnote 2)

--(2)--

Crimes against children and dependents, NMSA 1978, § 30-6-1 et seq.

40 (Popup - Footnote 3)

--(3)--

Retail sales or storage of fireworks; regulated activities, [§ 5-102\(c\)](#).

41 (Popup - Footnote 1)

--(1)--

Overnight camping on City-owned lands and parks prohibited, [§ 8-87](#).

42 (Popup - Footnote 2)

--(2)--

Editor's note—

Ord. No. 468, § 1, adopted June 14, 1999, repealed §§ 9-26—9-29 in their entirety. Formerly, said sections pertained to the recreational program board. See the Code Comparative Table.

43 (Popup - Footnote 1)

--(1)--

Administration, [ch. 2](#); Chief of Police, [§ 2-166](#) et seq.; offenses and miscellaneous provisions, [ch. 8](#).

44 (Popup - Footnote 1)

--(1)--

Health and sanitation, [ch. 6](#); abandonment of a dangerous container, [§ 8-147](#).

Municipal authority to provide for collection and disposal of refuse, NMSA 1978, § 3-48-1 et seq.

45 (Popup - Footnote 2)

--(2)--

Editor's note—

Section 1 of Ord. No. 644, adopted Nov. 12, 2013, repealed former art. II, §§ 11-36—11-54, which pertained to litter, and derived from the 1962 Code, §§ 6-7-1—6-7-18; Ord. No. 481, § 1, adopted Aug. 14, 2000; Ord. No. 632, § 1, adopted Nov. 27, 2012; and Ord. No. 649, § 1, adopted Nov. 12, 2013.

46 (Popup - Footnote 1)

--(1)--

Buildings and building regulations, [ch. 4](#); taxicabs, [§ 7-346](#) et seq.; litter, § 11-36 et seq.; traffic, [ch. 13](#).

Municipal home rule, Const. art. X, § 6.

47 (Popup - Footnote 2)

--(2)--

Utilities, [ch. 14](#).

48 (Popup - Footnote 3)

--(3)--

Buildings and building regulations, [ch. 4](#).

49 (Popup - Footnote 4)

--(4)--

Editor's note—

Ord. No. 592, §§ 1—20, adopted Oct. 14, 2008, added provisions that were not specifically amendatory. At the editor's discretion, said provisions were included as §§ [12-201](#)—12-220.

50 (Popup - Footnote 1)

--(1)--

Hanging on fire trucks, etc., [§ 5-1](#); duties of drivers of automobiles concerning fire trucks, [§ 5-5](#); junked automobiles, § 6-86 et seq.; streets and sidewalks, [ch. 12](#).

Municipal home rule, Const. art. X, § 6; Motor Vehicle Code, NMSA 1978, § 66-1-1 et seq.; traffic generally, NMSA 1978, § 66-7-1 et seq.

51 (Popup - Footnote 1)

--(1)--

Public utility advisory board, [§ 2-271](#) et seq.; buildings and building regulations, [ch. 4](#); streets and sidewalks, [ch. 12](#); public works specifications, [§ 12-156](#) et seq.

Municipal home rule, Const. art. X, § 6; municipal authority to open, construct, etc., water and sewer systems, NMSA 1978, § 3-18-25.

52 (Popup - Footnote 2)

--(2)--

Municipal authority to acquire sewage disposal systems, NMSA 1978, § 3-26-1.

53 (Popup - Footnote 3)

--(3)--

Health and sanitation, [ch. 6](#).

Municipal authority to regulate and prohibit industrial nuisances, NMSA 1978, § 3-18-13.

54 (Popup - Footnote 1)

--(1)--

Administration, [ch. 2](#); animals, [ch. 3](#); buildings and building regulations, [ch. 4](#); health and sanitation, [ch. 6](#); offenses and miscellaneous provisions, [ch. 8](#); parks and recreation, [ch. 9](#); streets and sidewalks, [ch. 12](#).

55 (Popup - Footnote 1)

--(1)--

Editor's note—

Printed herein is the Comprehensive Planning and Zoning Code of the City, as adopted April 10, 2007, by Ord. No. 570. At the City's request, this ordinance has been designated as [Chapter 16](#). Section numbers have been retained per original ordinance for ease of amendment. Amendments to the zoning ordinance are indicated by

parenthetical history notes following amended provisions. The absence of a history note indicates that the provision remains unchanged from the original ordinance. Obvious misspellings and punctuation errors have been corrected without notation. Additions made for clarity are indicated by brackets.

Administration, [Ch. 2](#) et seq.; Buildings and Building regulations, [Ch. 4](#) et seq.; Subdivision Code, [Ch. 16](#) et seq.