CITY COUNCIL
AGENDA

Tuesday, February 4, 2025 at 1:00 PM
Council Chambers

Mayor
Eric Enriquez

Mayor Pro Tem
Johana Bencomo

Councilors
Cassie McClure
William Mattiace
Becki Graham
Becky Corran
Yvonne Flores

CITY OF LAS CRUCES

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CONSENT AGENDA

Minutes and Items on the Consent Agenda Are Considered Routine Items and Will Be Voted on with One Motion Unless a Councilor Requests That a Specific Item Be Removed. There Will Be No Discussion.

Page

1. OPENING CEREMONIES

1.1. Pledge of Allegiance - Councilor Graham.

1.2. Presentation of Certificates of Appreciation/Proclamations - Councilor Graham.

1.3. Jobs of the Week.

1.4. Pets of the Week.

2. CONFLICT OF INTEREST INQUIRY BY MAYOR AS REQUIRED BY LCMC SECTION 2-27 (E)(2)

3. PUBLIC PARTICIPATION

4. READ CLOSED MEETING STATEMENT

4.1. Read February 4, 2025 Closed Meeting Statement into the record.

5. ACCEPTANCE OF AGENDA

6. CITY COUNCIL MINUTES

6.1. Regular Meeting of January 6, 2025. 4 - 21

City Council - Jan 06 2025 - Minutes - Pdf

6.2. Special Meeting of January 13, 2025. 22 - 49

Special City Council Meeting - Jan 13 2025 - Minutes - Pdf

7. RESOLUTION(S) AND/OR ORDINANCE(S) FOR CONSENT AGENDA

7.1. RESOLUTION NO. 25-090: A RESOLUTION AUTHORIZING THE CITY OF LAS CRUCES (CITY) TO ACCEPT GRANT AWARDS FOR VARIOUS CITY DEPARTMENTS THROUGH AN AMENDMENT TO THE CITY'S ADOPTED FISCAL YEAR 2025 BUDGET. 50 - 99

Resolution No. 25-090 - Pdf

8. RESOLUTION(S) AND/OR ORDINANCE(S) FOR DISCUSSION

8.1. **PUBLIC HEARING REQUIRED**. RESOLUTION NO. 25-091: A RESOLUTION APPROVING THE REQUEST FOR A TRANSFER OF OWNERSHIP OF DISPENSER LIQUOR LICENSE NO. DIS-000381 WITH PACKAGE SALES ONLY TO NEW MEXICO COMPANY OPERATIONS, LLC., D/B/A NACHO SHELL LOCATED AT 2512 E. LOHMAN AVENUE, LAS CRUCES, NM. 88001. 100 - 119

Resolution No. 25-091 - Pdf

8.2. **PUBLIC HEARING REQUIRED.** RESOLUTION NO. 25-092: A RESOLUTION APPROVING THE REQUEST FOR A TRANSFER OF OWNERSHIP OF DISPENSER LIQUOR LICENSE NO. DIS-000074 WITH PACKAGE SALES ONLY TO NEW MEXICO COMPANY OPERATIONS, LLC., D/B/A UNIVERSITY SHELL LOCATED AT 1305 S. SOLANO DRIVE, LAS CRUCES, NM. 88001. 120 - 139

Resolution No. 25-092 - Pdf

8.3. **PUBLIC HEARING REQUIRED**. RESOLUTION NO. 25-093: A RESOLUTION APPROVING THE REQUEST FOR A TRANSFER OF OWNERSHIP OF DISPENSER LIQUOR LICENSE NO. DIS-000272 WITH PACKAGE SALES ONLY TO NEW MEXICO COMPANY OPERATIONS, LLC., D/B/A COUNTRY CLUB SHELL LOCATED AT 2901 N. MAIN STREET, LAS CRUCES, NM. 88005. 140 - 158

Resolution No. 25-093 - Pdf

8.4. **PUBLIC HEARING REQUIRED**. RESOLUTION NO. 25-094: A RESOLUTION APPROVING THE REQUEST FOR A TRANSFER OF OWNERSHIP OF DISPENSER LIQUOR LICENSE NO. DIS-000414 WITH PACKAGE SALES ONLY TO NEW MEXICO COMPANY OPERATIONS, LLC., D/B/A TRIVIZ SHELL LOCATED AT 3040 N. MAIN STREET, LAS CRUCES, NM. 88001. 159 - 178

Resolution No. 25-094 - Pdf

8.5. **PUBLIC HEARING REQUIRED**. RESOLUTION NO. 25-095: A RESOLUTION APPROVING THE REQUEST FOR A TRANSFER OF OWNERSHIP OF DISPENSER LIQUOR LICENSE NO. RET-000005 WITH PACKAGE SALES ONLY TO NEW MEXICO COMPANY OPERATIONS, LLC., D/B/A HOLIDAY SHELL LOCATED AT 2645 S. VALLEY DRIVE, LAS CRUCES, NM. 88001. 179 - 198

Resolution No. 25-095 - Pdf

8.6. RESOLUTION NO. 25-096: A RESOLUTION URGING THE NEW MEXICO LEGISLATURE TO CREATE AN ALCOHOL HARMS ALLEVIATION FUND TO REDUCE ALCOHOL-RELATED HARMS IN OUR COMMUNITIES. 199 - 203

Resolution No. 25-096 - Pdf

9. BOARD APPOINTMENTS

10. NOTICE OF PROPOSED ORDINANCE(S)

1) There will be no public discussion.
2) A Councilor may ask staff for clarification on the proposed ordinance(s).

10.1. COUNCIL BILL NO. 25-019; ORDINANCE NO. 3090: AN ORDINANCE REPEALING CHAPTERS 32,33,34,35,36,37,38,39, AND 40 OF THE LAS CRUCES MUNICIPAL CODE, IN ITS ENTIRETY, AND REPLACING WITH CHAPTERS 32,33,34,35,36,37, AND 38 OF THE LAS CRUCES MUNICIPAL CODE (LCMC) AND ADOPTING THE ZONING MAP AS PRESENTED. 204 - 1494

Ordinance No. 3090 - Pdf

11. CITY COUNCIL MEMBER BOARD REPORTS AND COMMENT

12. CITY MANAGER REPORT

13. ADJOURNMENT

MINUTES
City Council
Monday, January 6, 2025 @ 1:00 PM
City Council Chambers, City Hall

PRESENT: Mayor Eric Enriquez, Councilor Cassie McClure, Councilor William Mattiace, Councilor Becki Graham, Councilor Johana Bencomo, and Councilor Becky Corran

ABSENT: Councilor Yvonne Flores

1. OPENING CEREMONIES

1.1 PLEDGE OF ALLEGIANCE - MAYOR ENRIQUEZ.

1.2 PRESENTATION OF CERTIFICATES OF APPRECIATION/PROCLAMATIONS - MAYOR ENRIQUEZ.

Councilor Bencomo presented April Christensen, Zed Serna, Kasandra Gandara, Big Brothers/Big Sisters and the Boys and Girls club with a proclamation for Youth Mentoring Month.

1.3 JOBS OF THE WEEK.

None.

1.4 PETS OF THE WEEK.

Carol Nielson, Animal Services Center of the Mesilla Valley presented Pets of the Week.

2. CONFLICT OF INTEREST INQUIRY BY MAYOR AS REQUIRED BY LCMC SECTION 2-27 (E)(2)

2.1

None.

3. PUBLIC PARTICIPATION

3.1

Lynn Moorer, Member of the Public said I salute Algernon D'Ammassa and the Las Cruces Bulletin for pursuing openness in full compliance with New Mexico's Open Meetings Act regarding the city's process in selecting a new City Manager in 2024. I also salute New Mexico's Attorney General's Office in pursuing Mr. D'Ammassa's complaint, its thorough investigation, its clarity in explaining the city's violations of the Open Meetings Act and the lucidity of its directions to the city as to how to cure its violations. Through my experience as a journalist and attorney I find the city Open Meetings Act violation remarkably dishonorable given the facts of this case. You have made it appear that the previous City Manager privately greased the skids for his protege to slide into his position, using a rolling quorum to reach a private consensus to accept only internal applications for the City Manager position, a position of significant responsibility and the only one appointed by the city council. It is particularly unacceptable in light of the 2003 lawsuit ruling against the council putting all on notice that rolling quorums are illegal. The New Mexico Open Meetings Act is not a complex law. Virtually anyone elected to a public body here reads it through can understand it. It is hard to conceive that you didn't know that what you were doing was illegal especially in the wake of the 2003 lawsuit. In any event, ignorance of the law is no excuse. What you are attempting to do to cure your violations still doesn't comply with option one identified by the AG. First your resolution attempts to skate over your violations. It says the City Council appears to have engaged in a presumed rolling quorum. In reality the AG definitively found on page 4 of its letter that you did indeed initiate a rolling quorum which is unlawful. The first step in curing your violation is to admit your wrongdoing. Second the AG explains that if you are not going to start the process over the cure requires summarizing all discussions and comments made outside of a public meeting about the actions you took behind closed doors. This resolution doesn't begin to summarize all the discussions and comments by councilors. It just says the governing body wanted to consider internal candidates only because there are qualified applicants for the position in house and internal hire represents a cost saving measure and will help to prevent institutional disruption. Regardless whether these are plausible reasons this is an inadequate summary of all discussions and comments by councilors over a whole series of private conversations and during at least two closed meetings. I recommend that the city start the entire process over for identifying candidates for the City Manager position and conduct all deliberations and votes in lawful public meetings. This is option number two identified by the AG. This will go a considerable way in demonstrating openness and regaining the public's trust once you admit your wrongdoing and would be a first step in repairing the disrepute that you have brought to the city of Las Cruces.

Liz Rodriguez Johnson, Member of the Public said I am a resident of Dona Ana County. President Jimmy Carter whose life we honor this week said during his presidential farewell address in 1981, "Thoughtful criticism and close scrutiny of all government officials by the press and the public are an important part of our democratic society". I appreciate the close scrutiny the Las Cruces Bulletin paid to the process used to select with no public discussion a new City Manager. I also appreciate the thorough investigation the Attorney General's Office undertook to ferret out the city's violations and then to give clear direction as to how to cure those violations. I am here today to offer some thoughtful criticism. It is very troubling to see that the Las Cruces City Council has ignored the AG's options. Despite the AG's clear findings regarding the city's violations the city does not acknowledge that any

violations occurred. According to the AG the City of Las Cruces clearly engaged in a rolling quorum, that is a violation. Nor is the city following the AG's instructions as to what is necessary to cure the violations. You have not summarized all the discussions and comments made outside of a public meeting which is in violation of the act. You haven't even told us who the other candidates for City Manager were or why you decided to select the one you did. The way the city handled the selection process makes the public wonder. If you were actually confident with the choices outstanding, you wouldn't be working so hard to keep all the machinations and decision making under wraps. Why did you select this person and why weren't you willing to do it in public? The fact that even today the City of Las Cruces is unwilling to acknowledge the series of violations and is unwilling to come clean about what actually happened and then fully disclose the comments and discussions amongst all parties tells us very clearly that the city is not planning to actually comply with the Open Meetings Act. If the AG were to issue a ruling that impacted any of your constituents, I am sure that the city council would not advocate that they ignore it. By the same token I am sure your constituents would want and expect the city to respect and adhere to an AG ruling.

Donna Stryker, Member of the Public said on February 11, 2024, Jonah Hernandez was murdered by responding to a trespass call by a repeat offender. Armando Silva had mental illness and a history of criminal convictions, breaking and entering, assault upon a police officer, and other charges. This weekend Marty Ruiz Garcia's brother was beaten by Shane Jones, also mentally ill and a repeat offender, breaking and entering, assault on a police officer, and more. Catch and release, weak competency, hearing requirements, lack of support from our local and state legislators, lack of response from our councilors and other elected officials, and even state legislators who stood right here and ranted and raved about my Police Department and my Chief of Police. Does someone else have to die? Is that what has to happen in my city? This weekend Businesses for a Safer Las Cruces saw literally, literally hundreds of posts on our Facebook page in response in the attack on Marty's brother. She appealed to a Facebook page for help. That is very sad. That is who she reached out to in my city, is Businesses for a Safer Las Cruces Facebook page. Because of the attack on her brother in broad daylight in front of her brother's 14-year-old grandson, bleeding on the brain, still in the hospital. Shane Jones is homeless, he is mentally ill, and he has more rights than I do, and Marty's brother did. Evidently more rights than any other law-abiding citizen in the city. It is an outrage. It is frustrating. It is a feeling of helplessness and the feeling that our elected officials don't care or care more for repeat offenders and looking at 2025 as councilors I am asking you to Elevate, that is your word, Elevate Las Cruces to a new level of lawfulness. Look to Realize, again your word. A city with serious, serious issues that you have the ability to look at. You have the ability, you have the power to look at, the opportunity to be problem solvers but instead we have mayhem which exist on our streets. In fact, this weekend my grandchildren were at Savers because that is where we shop because we are not rich. My grandchildren got to see a naked man smoking meth, coke, I don't know what he was smoking because I don't understand that stuff but that is what my grandkids got to see this weekend when we were trying to get them shoes. If you do not elevate this city and you do not make some tough decisions on whom is more important to you, the voters or the criminals? You have never seen me speak to you like this before in the year that I have been coming. I am mad. I am upset and I am absolutely

aghast. Does someone have to die before some changes are made and Las Cruces decides to take back its city from criminals and elevate us out of this situation. Realize this councilors, it won't stop or slow down until you make decisions on this dais to help our city.

Jennifer Kreie, Member of the Public said I wanted to start off the new year by saying thank you for your support, for Chief Story and the Police Department, for the approved increase in budget over the past three years and I am basing this on articles from Las Cruces Sun News and the Bulletin. I want to thank you because that included maybe over the three years it wasn't clear in the article, 18 new officers and new vehicles. So, when people talk about defunding the police or not supporting Chief Story, I have yet to sit here, and I am here on a regular basis at city council and not see support for what the police are asking for including the Realtime Crime Center. All the votes aren't unanimous, but they come out in support of what Chief Story and the Police are wanting to do about crime in our city. There was approval and marathon six and half hour meeting for the ordinances on shopping carts and soliciting and it came out in support for what Chief Story was promoting as a way to address the issue, a possible means of addressing the issue. So, I do thank you for your support and I hope you hang in there.

LaVaughn Hart, Member of the Public said I am the Director of Spay and Neuter Action Program, SNAP. We want to express our sincere thank you to the City of Las Cruces for entering into a contract with us to provide free spay/neuter, rabies vaccination, and microchipping for the dogs and cats of low-income city residents. We announced the program on December 31st and have already seen a big jump in the number of city residents contacting our office. Thank you for making this available to us. The SNAP Board of Directors discussed the animal ordinance and mandatory spay/neuter at our board meeting on December 17, 2024, and the following represents our position. We support mandatory spay and neuter as a step toward reducing the number of unwanted dogs and cats. We recognize that the cost of spay/neuter surgeries can be a burden for people with pets therefore we call for ongoing support for programs that assist low-income residents with low and no cost spay/neuter services. We recognize that there is a shortage of veterinarians within Dona Ana County and that mandatory spay/neuter may increase the burden for existing veterinarians that provide these surgeries. We recognize that increasing the number of companion dogs and cats that are spayed and neutered will not fully address the issue of over population of dogs and cats. In addition to mandatory spay/neuter for companion animals funding and programs to provide spay/neuter surgeries for community animals are needed. We support efforts to educate the community on the need to have their dogs and cats spayed or neutered and the programs and resources available to assist them in having their animals fixed. We support gradual implementation of the ordinance so that the community can be made aware, and the impacts of the ordinance can be measured and monitored, and the program can be adjusted as needed to meet the needs of the community. Thank you again for your support for the animals in our community. We sincerely appreciate it.

Susan Greenwald, Member of the Public said I am the Executive Director of Las Cruces Downtown Partnership. I would like to thank you all for your continued support of DLCP and our events such as the Chile Drop that happened on the 31st. Our

Mayor was there with us to help us ring in the New Year. We had a great crowd. It was such a wonderful community experience. Through your support we are able to do that event for the community for free. It is one of the few places that you can take your family on New Years and have a really great celebration. Thank you for supporting our program in general, our events, Zombie Walk, Chile Drop, everything that we do to revitalize and to promote downtown, you guys have been a big part of that. So again, I would like to thank you.

Juan Garcia, Member of the Public said a bad day in trusting government. On 23 November a business on Telshor was vandalized. From the police report provided by the owner and “as I police officer approached Mr. Klima, he stated that he usually breaks windows when he is upset. He stated that officers usually give him a ticket and let him go. I read Mr. Klima his Miranda Warning, which he acknowledged after which to he admitted to breaking the front door glass as well. In addition, he admitted to breaking a window at 900 Telshor”. Now let this sink in. A vagrant destroys thousands of dollars of local businesses property because he had a bad day. That’s it, that is the entire justification for vandalizing small businesses, his mood. A family saved for years to build their dream business. They pour their savings, their hopes, their future into those walls then one morning they arrive to find that they are all shattered, windows broken, inventory destroyed, their dreams lying in pieces on the floor. When they seek help from their elected officials their voice shakes with hurt not hostility. Who wouldn’t tremble about watching their life’s work crumble yet somehow among our officials the victim’s pain gets labeled as anger. Their desperation as aggression. They should be glad they don’t live in Albuquerque we hear from one of our senior state senators. It is a story that echoes through our community. Tolling the voices of countless business owners who have learned the deepest wounds come not from the initial loss but from having their suffering dismissed. This criminal vandal, like hundreds wrecks havoc on our community and still walks free. We will support our council, our state legislature and we will join the Governor in addressing this and other issues. On the subject of trust for public officials. KTSM, “the New Mexico Justice Department said the City of Las Cruces violated the state’s Open Meetings Laws during its hiring”. This situation should not reflect poorly on Mr. Ikani who in my opinion genuinely seems to prioritize the community’s wellbeing. The real concern lies with the elected officials. If they knowingly broke the law, they should be held accountable. Every single one of them. Two important questions arise. Was the process fair to the other candidates for City Manager and what other actions might the council be taking behind closed doors that could be in violation of New Mexico laws? So, do we trust our elected officials?

Patty Hartman, Member of the Public said I am a resident of Las Cruces. I thoroughly agree with Lynn Moorer’s comments, so I won’t even go in beyond that in beyond saying the lack of admission of wrongdoing has bothered me for the whole time I have lived in Las Cruces. My concerns overall is the failure of Las Cruces to understand things deeply enough to see beyond themselves and their own interest. The failure to recognize the big picture and the relationships to others in that big picture which in this case is our community. Like others the AG spells out the spirit and intent of the Open Meetings Law, meaning public process which is the essence of the democratic process that speaks to our country’s values. I want to use a quote that often comes to mind, “a little bit of knowledge is dangerous, drink deep or not at all”. This speaks to

the dangers of ignorance of knowing just enough to be dangerous by believing you know more than you do and that you have nothing to learn. I beg the community including city and council to have some humility about what you do not understand deeply and your need to be interested in learning which I don't see much of here. While I respect Chief Story's sincerity in responding to the community's concerns there is a lack of understanding that is truly important and missing from the overwhelming support of both council and community for his opinions. There is no data presented and in the recent initiative there is a misuse of terms like impact on safety. What you do period and in this case in arresting people is not an indication of impact on safety. That is a loose association and an assumption that is not credible. I am going to end this by congratulating my city councilor for her bravery on the issue of the City Manager. She was brand new at that time and was the only one to vote no on the confirmation of our City Manager's hiring and especially his salary which is completely out of line with the rest of New Mexico.

Lonnie Montgomery, Member of the Public said I am a follower of Jesus Christ. I am here to speak on the Realize Las Cruces and I got the information from Jorge Aguirre and the first thing he said was the nuclear family does not exist. I wonder what an abuelito, a tio, etcetera would think about that. That is one of the reasons he says that we should not have single family neighborhoods. They promote car traffic, crime, they are boring, they are overpriced. The house I have been in for many years he says we have to have artistic. The house I worked at for 47 years as an educator, it's beautiful. It is single family housing and for many generations the Montgomery family has lived in single houses from the ranches of West Texas and the farms. We are not Europe, we live in wide open spaces, and they do take up some room but as we are going through here, we are also getting affordable housing and the affordable housing he says the single things are cookie cutter. Affordable housing is and you are going to have to drive. He says we meander throughout the neighborhood, and I don't meander, I know where I am going. And I don't think cutting down on the traffic is going to cut down on the accidents here. I think that we can cut down on the dispensaries and cut down on the speeders who hit and run, that we can cut down on that and I think we should continue. He said the friendliest people he knows is from Las Cruces but if you move into a neighborhood, you lose that friendliness. We are not friends anymore, yeah, we are friends. I have room to speak, I have a walking trail, and I talk to people walking that all the time and we do speak to each other. It isa very friendly neighborhood. I want to say that we need to continue to find single family housing. It won't take care of the CO2 and what wrong with the CO2, trees breathe that and it increased the vegetation in there and gives us more oxygen. So, I say build the affordable housing but don't tell me it's not cookie cutter.

Stewart David, Member of the Public said I am here in part to apologize for not doing my homework. As I mentioned before I am a new resident. When I attended the Work Session about the proposed animal ordinance, and I heard all the controversy and discussion regarding the spay/neuter requirements, I thought they were all new. As I now read it the proposed ordinance changes very little when it comes to spaying and neutering. Section 7-44 of the current ordinance requires that a person reclaiming a dog or cat six months of age or older either provide proof of sterilization or a letter from a veterinarian saying that sterilization would be an unnecessary risk for the animal. If not, they are required to leave a sterilization deposit and agree to have the

animal sterilized within 30 days or purchase an intact animal permit. That is not mandatory spay/neuter, and the exceptions remain in the proposed new ordinance. Also, it is my understanding, again I am new here that the spay and neutering provisions of the current ordinance are not being enforced which seems to me in the Las Cruces is not in compliance with both city and state law. Now as far as the proposed ordinance also there are a lot of misconceptions about it and the biggest one besides spay/neuter being mandatory which it is not, there are exceptions. It is also somehow that animal control officers will be enforcing the spay/neuter requirements in the field and that is simply not the case. That is just a misconception. Now at the Work Session you asked Mr. Douglas if there was a public education plan, and he hilariously responded that there was a concept of a plan. I have no doubt though that if it is passed that the new changes will quickly spread via NextDoor, Facebook, other social media platforms, as well as local media stories. But along with that I would like to point out that it would be great if the city would take a very active role. Some avenues that I would suggest would be perhaps adding inserts to utility bills providing the new provisions, maybe send email announcements to everyone who receives an electronic utility bill or who are signed up for various city alerts. It would seem like it would be pretty easy to get the word out pretty quickly and maybe we wouldn't need a real long period of time to implement it. Again, really what I wanted to do was apologize because I thought this was something new and it's on the books already. It really is pretty much the same thing with just a little more clarity and actually with a little more room for people and it is great to hear that there is money available for people that need it. That is an important piece of the puzzle. I am glad to hear that is in place. So, I ask that you put those proposed ordinance on the agenda for a first read at the next meeting.

Fred Huff, Member of the Public said I would really like to thank the city council for what they did last year in passing the grocery cart ordinance, which was previously mentioned, this afternoon. Is it a cure all? No. But has it made a big difference? It sure has in my opinion. I don't see that litter all over the city anymore and I have seen a really big change. Thank you so much for stepping up and passing that ordinance and also thank you for removing item 7.1 from the agenda today. I was real concerned about what I read in the agenda was going to meet the state law and I am not the sharpest tool in the shed and I didn't see how it was going to do it so maybe on the 13th you can. What a great opportunity this is for you. You have had almost a year, three quarters of a year to see how Mr. Ikani does as City Manager and as a private citizen I have seen us spending like a drunken sailor and just raiding the Telshor Fund and doing all these other things and it might give you a chance to take a second thought and say is this the type of City Manager we really want? I don't know it's your choice. That is one of the prerogatives that you all have. Thank you for pushing it off until the 13th and hopefully you will do it in such a way that meets the AG's desires and requirements.

Lucas Herndon, Member of the Public said I am a resident in District 2. I just wanted to report back. I had a wonderful vacation over the holidays as many of us are privileged to get to do and I went to the great foreboding terrifying city of San Francisco, California. I have heard a lot in this room and on social media and in this town of people comparing what is happening in Las Cruces as to what is happening in San Francisco. I grew up getting to visit family in the bay area. I have been going to

San Francisco for almost once a year or so for most of my life and I am not really sure what people are scared of. I had a really wonderful time walking around city parks, using public facilities, eating at really nice bakeries and restaurants, interacting with folks of all different cultural backgrounds and ethnic backgrounds, participating in their local economy. It was easy to get around. They have really nice sidewalks, public transportation. Were there folks that looked like they might have been unhoused? Yup, there sure were but just like here they are just people. They are just human beings. They are just looking for a place to stay warm at night, a place to lay their head down, a little help dealing with whatever they are dealing with in life and so I just wanted to make sure everybody knew that things are fine in San Francisco, California and things are fine here. We have problems. I am not saying that we don't have problems. I had a bicycle stolen off my front porch in the last couple of months. I didn't lock it up. I could have locked it up. I hope that whoever took that bike needs it more than I do. I am in a position where if I really need to or want to, I can get another bike. All of this to be said I am not sure what vision some folks have for Las Cruces but what I hear espoused is often exclusionary rather than inclusionary. The Las Cruces that I grew up in much like the San Francisco that I love going to visit and still do is the same thing. It is a place that people share space, and we have good food, and you have good conversations and people are just nice to each other and that hasn't changed, and I am not sure what people think is so dire here that they have to come here and complain about it every week.

George Pearson, Member of the Public said I am Vice President of VeloCruces, a local bicycle and pedestrian advocacy group. On today's consent agenda is acceptance of the Safe Streets for All Grant. I want to thank city staff for the successful grant application and council for accepting the grant and providing matching funds. The grant is to update the active transportation plan and to implement demonstration projects to improve safety for active transportation. The update to the active transportation plan is sure to focus on the safe systems approach and look at engineering solutions to safety problems. We need to leverage these Safe Streets for All Grant with other Vision Zero ideas that have been discussed. A Vision Zero Work Session for city council has been promised. Let's look at all modes of transportation as the update of the active transportation plan is being worked on. For example, speed is known as a threat to traffic safety. What about reducing the default local roads speed limit from 30 miles an hour to 25 miles an hour. Speed safety cameras have been talked about. What about requiring intelligent speed assistants in government vehicles. Doesn't it make sense to have government employees driving government vehicles not exceed the government set speed limit. I am looking forward to the next steps in implementing the Safe Streets for All Grant to help reduce the approximately 40,000 vehicle deaths nationally and help New Mexico to get out of the number one spot per capita for pedestrian fatalities. Traffic safety is everyone's responsibility but what can I do you might ask yourself? How about simply driving no faster than the speed limit and make an effort to go no faster than 20 miles an hour when you are in your own neighborhood.

Jim Hoerst, Member of the Public said it has come to my attention that there was a National Day of Prayer proclamation last year. It was voted on by email and did not pass. I would like to know what the proclamation said and who voted for and against it and I hope I can get this information without filing a Freedom of Information Request. I

am not surprised to hear that this commission has been cited by the DA for breaching the Open Meetings Act. Witnessing how you have handled the separation of church and state, I am not surprised. You guys don't care about what the Constitution says so why should you care about what state law says. If you can get away with it, you do it. Take the Constitution seriously. Take separation of church and state seriously. Don't call public religious services private meetings. That's dishonest.

Dolores Lucero, Member of the Public said all but one of you at this dais have been through plenty of closed meetings and the Open Meetings Act is basic politics 101. You learn that the day you walk into office even if you are the Attorney or City Manager. I haven't been here in months because when 2024 began I thought 2024 would have been a more productive council. A council that not only has their own projects and concerns but a council that listens and interacts even with those citizens that don't hold the same viewpoints. I myself see a councilor weekly at an event that we participate in who chooses to not even make eye contact much less offer a simple good morning in which I do each time. There is absolutely no concern to the citizens as a whole group of many ideas and thoughts that are maybe different from yours but an Attorney General review of how you acted to fill the Manager position shows your lack of your connection to the staff that should be guiding you. In a written response to the press City Attorney Brad Douglas did not indicate which option the city would choose. "We will take immediate action to remedy the deficiencies the Attorney General identified. We will take this as a learning opportunity and make improvements in the future". Learning opportunity? Are you kidding me? The Open Meetings Act needs a learning opportunity? You took office to not hide behind closed doors and make decisions. Remind yourself to listen to staff as staff can lead councilors through activities such as this. I used to have a great City Manager that said that is not the way we are going to do that, we need to rethink this. As staff can lead councilors through activities, listen to what they have to say especially wait, we need to do this in a different way to keep everyone on track with the public. Well, that didn't happen, and I am going to guess there is probably more than one violation in this council. Well, my understanding is that it was a prior manager that led you down this violation. Please hire attorneys that guide and protect you and the public from any misconceptions. With the dismissal of all other applicants that did not get their time to an interview or to the public to ask questions and the opportunity for everyone to be upfront will there be a lawsuit because they were mistreated and denied a fair application? What is it going to cost the citizens to go through that process? As councilors you are not be hangout buddies. You are to be independent thinkers looking out for all persons, not only those of your beliefs or those of your district but a city as a whole. Stop your texts, your emails amongst each other, quite hanging out, do your role and stop the rolling polls but I am thinking you won't do that.

4. ACCEPTANCE OF AGENDA

Councilor Johana Bencomo moved, seconded by Councilor Becki Graham, to accept the agenda as presented with removal of item 7.1 in its entirety and to listen to item 7.4 first.

RESULT:	**Carried**

MOVER:	Councilor Johana Bencomo
SECONDER:	Councilor Becki Graham
AYES:	Mayor Eric Enriquez, Councilor Cassie McClure, Councilor William Mattiace, Councilor Becki Graham, Councilor Johana Bencomo, and Councilor Becky Corran
ABSENT:	Councilor Yvonne Flores

5. CITY COUNCIL MINUTES

5.1 REGULAR CITY COUNCIL MEETING OF DECEMBER 2, 2024.

5.2 WORK SESSION OF DECEMBER 9, 2024.

6. RESOLUTION(S) AND/OR ORDINANCE(S) FOR CONSENT AGENDA

6.1 RESOLUTION NO. 25-073: A RESOLUTION AMENDING THE SERVICE AGREEMENT WITH CENTER FOR TRANSPORTATION AND THE ENVIRONMENT OF ATLANTA, GEORGIA, TO AMEND THE SCOPE OF WORK AND INCREASE THE CONTRACT AMOUNT, TO A TOTAL AMOUNT NOT TO EXCEED $501,247.02, PLUS APPLICABLE TAXES, SUBJECT TO APPROVED BUDGET APPROPRIATIONS (PROCUREMENT NO. 23-24-088).

6.2 RESOLUTION NO. 25-074: A RESOLUTION TO AWARD CONTRACTS FOR FOOD AND SUPPLIES FOR THE SENIOR NUTRITION PROGRAM ON AN AS-NEEDED BASIS TO BEN E. KEITH FOODS OF ALBUQUERQUE, NEW MEXICO, DAIRY FARMERS OF AMERICA, INC. DBA PRICES CREAMERIES, AND LABATT FOOD SERVICE, BOTH OF EL PASO, TEXAS, IN AN ANNUAL NOT-TO-EXCEED AMOUNT OF $1,000,000 PER VENDOR FOR A PERIOD OF FIVE (5) YEARS, SUBJECT TO APPROVED BUDGET APPROPRIATIONS (PROCUREMENT NO. 24-25-021).

6.3 RESOLUTION NO. 25-075: A RESOLUTION AUTHORIZING AN INCREASE IN THE NOT-TO-EXCEED AMOUNT OF ELECTRONIC FUEL CARD SERVICES PURCHASES FROM WEX BANK DBA WRIGHT EXPRESS FSC (WEX) OF CAROL STREAM, ILLINOIS, VIA NEW MEXICO STATE PURCHASING DIVISION (NMSPD) AGREEMENT NO. 20-00000-22-00058, TO AN AMOUNT NOT-TO-EXCEED $1,000,000, SUBJECT TO APPROVED BUDGET APPROPRIATIONS.

6.4 RESOLUTION NO. 25-076: A RESOLUTION AUTHORIZING AN INCREASE IN THE ANNUAL NOT-TO-EXCEED AMOUNT OF PRICE AGREEMENT 23-24-032 WITH GCC SUN MATERIALS OF LAS CRUCES, NEW MEXICO TO $1,500,000, PLUS APPLICABLE TAXES, SUBJECT TO APPROVED BUDGET APPROPRIATIONS.

6.5 RESOLUTION NO. 25-077: A RESOLUTION AUTHORIZING THE CITY OF LAS CRUCES (CITY) TO ACCEPT GRANT AWARDS FOR VARIOUS CITY DEPARTMENTS THROUGH AN AMENDMENT TO THE CITY'S ADOPTED FISCAL YEAR (FY) 2025 BUDGET.

7. RESOLUTION(S) AND/OR ORDINANCE(S) FOR DISCUSSION

7.1 RESOLUTION NO. 25-078: A RESOLUTION TO CURE AND RATIFY THE LAS CRUCES CITY COUNCIL'S PRIOR INVALID DECISION AND DECISION TO SEEK CANDIDATES FOR THE VACANCY OF THE POSITION OF CITY MANAGER FROM AN INTERNAL POOL OF CANDIDATES, AND TO APPOINT IKANI TAUMOEPEAU TO THE OFFICE OF CITY MANAGER, THEREBY APPROVING AND RATIFYING BOTH HIS SELECTION AND EMPLOYMENT AGREEMENT.

Removed.

7.2 PUBLIC HEARING REQUIRED. RESOLUTION NO. 25-079: A RESOLUTION APPROVING THE REQUEST FOR A TRANSFER OF LOCATION OF DISPENSER LIQUOR LICENSE NO. DIS-001021 WITH ON-PREMISES CONSUMPTION TO BIG TOASTED MON 4, LLC., D/B/A CRUCES TOTAL GOLF LOCATED AT 170 W. PICACHO AVENUE, LAS CRUCES, NM. 88005.

Public hearing began at 2:12 p.m. There was no one for or against. Public hearing ended at 2:12 p.m.

Adam Ochoa, Senior Urban Planner gave the overhead presentation.

Councilor Becky Corran moved, seconded by Councilor Becki Graham, to Approve Resolution No. 25-079.

RESULT:	**Carried**
MOVER:	Councilor Becky Corran
SECONDER:	Councilor Becki Graham
AYES:	Mayor Eric Enriquez, Councilor Cassie McClure, Councilor William Mattiace, Councilor Becki Graham, Councilor Johana Bencomo, and Councilor Becky Corran
ABSENT:	Councilor Yvonne Flores

7.3 RESOLUTION NO. 25-080: A RESOLUTION AMENDING THE FY2025-2030 CAPITAL IMPROVEMENTS PROGRAM.

Cynthia Campo, CIP Analyst gave the overhead presentation.

Steve Marcum, Member of the Public said I noticed on the changes that there was a decision to slash a significant amount of money from public transit. Why was that decision made and how is that money reallocated?

Cynthia Campo said that amendment is actually a budget to actual amendment. So, it is not slashing any funds. It is just bringing the budget to what it currently is.

Steve Marcum asked Municipal Service Center Transit $1.6 million, negative change?

Cynthia Campo said it is just a budget to actuals amendment, so it is not removing budget it is just adjusting the initial budget to match what is in the current budget, not the CIP Project budget.

George Pearson, Member of the Public asked if I could hear an explanation for the

changes in Active Transportation and the Las Cruces Lateral RTP Project?

Katherine Harrison Rogers, Parks Plan & Construction Administrator said the RTP Lateral Project we have asked for reallocation of those funds. We have yet to hear from the New Mexico Department of Transportation whether or not those are finally approved and so until we actually get that final approval, we are removing it but once we do get final approval you will see it back on the CIP.

Dolores Lucero, Member of the Public said I am waiting to hear, the Assistant City Manager and I have spoken with seven staff people out of Public Works took a year and half to get a traffic study at Telshor and Lohman. I am waiting to see when that project is going to get on to the CIP. I told Mr. Borrego when we met that once it makes it on the CIP, I will go help you go find the $2 million that it takes to build it and trust me I can do that, but I want you to consider that it is time to complete that road. It needs to be CIP before any funding can be allocated towards it and I have been waiting now ten years. But in that case, I am asking you to look at this now and when you start to do your budgeting and please look at Lohman to Roadrunner Lane, to complete the road, finish the additional lanes and complete the landscaping that was promised 20 years ago.

Lynn Moorer, Member of the Public said just following on the theme of compliance with the Open Meetings Act. This PowerPoint presentation as you can say it looks like there is at least six pages to it. You said it was brand new. This was a part of the agenda that was posted online. This should have been there too. You see you sprung it on the public. We do not have an opportunity to ask questions that are based upon really any analysis at all because you have failed to provide this. So that goes along, should go along with all the meeting materials and that is part of your compliance with adequately noticing a meeting and providing the agenda and I would say that you have failed with respect to suddenly springing all of these CIP amendments which are obviously important upon us. So that is a noncompliance with the Open Meetings Act.

Councilor Mattiace said with that said and I agree that there might be a motion to entertain for this to be tabled to a later date specifically.

Councilor Corran said I think that it does behoove us to have a conversation as to how we can communicate on how to read the CIP and what is included in it but I do read the entire agenda packet which included each of these in detail outlined within this CIP so for us admittedly it is something that we read all the time and we are accustomed to seeing what it looks like, a change from budget to actuals in terms of what the CIP offers but I don’t disagree that we could communicate more clearly about that in the summary form but these weren’t surprises to me having read the packet so I think I would just speak to the idea of either having a future time where we talk about how to understand the CIP process and/or documents but this is something that we have done many times. So, I am not supporting a motion to table.

Councilor Becky Corran moved, seconded by Councilor Becki Graham, to Approve Resolution No. 25-080.

RESULT:	**Carried**
MOVER:	Councilor Becky Corran

SECONDER:	Councilor Becki Graham
AYES:	Mayor Eric Enriquez, Councilor Cassie McClure, Councilor Becki Graham, Councilor Johana Bencomo, and Councilor Becky Corran
NAYS:	Councilor William Mattiace
ABSENT:	Councilor Yvonne Flores

7.4 <u>COUNCIL BILL NO. 25-018; ORDINANCE NO. 3089</u>: AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF THE CITY OF LAS CRUCES, NEW MEXICO TAXABLE MUNICIPAL GROSS RECEIPTS TAX (ONE-HALF PERCENT) REVENUE BONDS, SERIES 2025 IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED $21,000,000 FOR THE PURPOSE OF PAYING, DISCHARGING, AND SATISFYING THE CITY'S RISK MANAGEMENT MEASURES ENTERED INTO IN THE FULL AND FINAL RELEASE OF ALL CLAIMS AND INDEMNITY AGREEMENT IN CONNECTION WITH ESTATE OF TERESA GOMEZ, ET AL. V. CITY OF LAS CRUCES, ET AL., CIV-23-00952 AND PAYING THE COSTS OF ISSUANCE OF THE BONDS; PROVIDING FOR THE METHOD OF SALE OF THE BONDS PURSUANT TO A NEGOTIATED PUBLIC SALE WITH AN UNDERWRITER; PROVIDING FOR THE MATURITY DATES AND AMOUNTS, INTEREST RATES, PRICES, REDEMPTION FEATURES AND OTHER FINAL TERMS OF THE BONDS TO BE ESTABLISHED IN A PRICING CERTIFICATE; DELEGATING AUTHORITY TO THE CITY MANAGER AND CITY FINANCIAL SERVICES DIRECTOR TO EXECUTE AND DELIVER A PRICING CERTIFICATE AND BOND PURCHASE AGREEMENT FOR THE SALE OF THE SERIES 2025 BONDS; AND PROVIDING FOR OTHER DETAILS CONCERNING THE BONDS.

Erika Jaquez, Treasurer gave the overhead presentation.

Councilor Bencomo said first of all to the family of Teresa Gomez I want to offer my sincerest condolences and genuine apology. I will never forget her name and I will continue to say her name. According to the Mapping Police, a data collection site about the lives lost in police violence. New Mexico has one of the highest rates of police killings in the country relative to our population and in recent years a few of those killings have occurred in Las Cruces. At the July town hall with the Governor there were some statements made that felt particularly concerning, like police shootings are statistically uncommon and that the goal is not to eliminate rather reduce police killings. This is not the spirit in which we should be having these conversations. Perhaps the spirit should be how we talk about crime in general. We talk about the devastation that crime is having on community through a policy lens by trying to address things like bail reform, criminal competency, juvenile wellness and even shopping carts. We should cultivate that same spirit when we talk about police violence because not doing so is costing us more than dollars. It is costing us lives in more than one way. The ripples of this case are wide. The life of Teresa Gomez tragically ended, her children and loved ones are forever impacted, ex-officer Hernandez made a choice that will impact his life and the life of his children and loved ones also forever. The ripples are wide. I will continue to be at the table with possible solutions that work and aren't just a political fodder. I don't believe a Citizen Oversight will serve to yield better outcomes that we desire just like I don't believe a costly training facility will either. What I know will work are at least these two strategies,

reducing police interactions especially with vulnerable populations while investing in more infrastructure to support those vulnerable populations and better support our police officers experiencing PTSD, depression, burnout, and/or compassion fatigue and it is not until we cultivate this spirit and fight off any narrative that immediately says I am anti-police for speaking about the realities of police violence that will continue to get us to a more just way of policing. If a $20 million settlement doesn't shake us out of this place, I am not sure what will. I will keep this conversation alive with our City Manager, our Chief, advocates and directly impacted folks, I hope you all join me in good faith.

Lucas Herndon, Member of the Public said I am a resident of District 2. I spoke a few weeks ago about police violence in this city and in this state and I think that there is such a conflict here between the tragedy and loss of life as a result of state sanctioned violence and now this extremely policy wonk response of how we collectively as a city, all of us who are citizens, represented by you all there are having to face those consequences. The burden of further taxing citizens and issuing these bonds is so ironic given the general sets of people who come here and support the cops and say a lot of negative things online about the city which is to say the "small business community" who complained about the GRT all the time. I am just blown away at the continued ask on behalf of some of the public, a very loud vocal minority for more funding for the police when here we are having to raise GRT taxes and issue bonds to pay for a fatal mistake by the police. I just want people to think about that.

Patty Hartman, Member of the Public said this has been my main concern for the whole eight years that I have lived here and first brought it to the city council. I have been bringing this to city council since 2017, I think. This is a huge concern and even when I read the details of calling it Project 2025, which I am not sure I understand. Is this borrowing money to pay off the settlement for a Las Cruces police officer who killed this woman, and it seems obvious to me that the solution is accountability which none of you, no one in the community seems to find important. I think accountability measures that are meaningful and that are enforced and that no one is above the law would totally satisfy me, but I have never seen justice here. I have seen people speak about Citizen Oversight who have nothing to do with the issue who have never been affected by it. While I have not been able to speak about it. I have data on our local situation here that no one wants to look at. I think it is important like I said before that we need to get educated about this and really pinpoint the problems and hold people accountable. The democratic process doesn't give people unlimited power, and I am just appalled at like we are borrowing money rather than holding people accountable so that we can improve. I don't feel safe in this city with police. I have had mental health issues and have had them used wrongly against me. So, consider the people who are impacted.

Andrew Bencomo, Member of the Public said first let me say that being a police officer is a tough job. I would not want to do that job. Having worked in public safety somewhat myself I hear what Chief Story is saying and I like what he is saying whether that carries forward and changes things I hope it does but one of the things that I would like to say is that you can have a training facility, you can have training programs, you can do all kinds of things like that but unless you change the culture of

an organization it doesn't matter. You can train all day long and if the culture stays the same it makes no difference at all. So, I hope the culture changes. Two things that can help with that is a City Manager that is engaged with the Police Chief to make sure that they are being held accountable. My personal opinion, I don't think the last Police Chief was held accountable to make things change. They continued as they were. I believe Chief Story is trying to make changes and what he is saying but we will have to see what happens, but I think that cultural shift is really the big piece that really needs to happen with that. Nothing will change if you don't change the culture of an organization. Again, super tough job, I would never want to do it. You have to deal with somebody angry at you all the time. Somebody happy to see you all the time but culture is the big deal.

Dolores Lucero, Member of the Public said a life is valuable to all of us, right? We never want to lose a loved one in any circumstance but the business side of this all of you sat in some closed meeting to discuss the negotiations of this settlement and in that closed meeting I am going to guess because I have been there and done that this started out a lot higher and I am going to tell you again you probably hired outside attorneys to handle this settlement and I think you are hiring the wrong people. My life, your life, they are all valuable. Can I put a price on it? Absolutely not but I am going to tell you that whatever you are negotiating in that closed room is not working in your favor. We sat in negotiations. We never went to the highest dollar and if you did in this condition, you have put the citizens paying for it on top of the tax this interest payment that comes with borrowing $21 million. I am embarrassed for you.

Councilor Becki Graham moved, seconded by Councilor Becky Corran, to Approve Ordinance No. 3089.

RESULT:	**Carried**
MOVER:	Councilor Becki Graham
SECONDER:	Councilor Becky Corran
AYES:	Mayor Eric Enriquez, Councilor Cassie McClure, Councilor William Mattiace, Councilor Becki Graham, Councilor Johana Bencomo, and Councilor Becky Corran
ABSENT:	Councilor Yvonne Flores

8. BOARD APPOINTMENTS

8.1 JOE DEARING

Councilor Becki Graham moved, seconded by Councilor Becky Corran, to appoint Joe Dearing to the Capital Improvement Advisory Committee.

RESULT:	**Carried**
MOVER:	Councilor Becki Graham
SECONDER:	Councilor Becky Corran
AYES:	Mayor Eric Enriquez, Councilor Cassie McClure, Councilor William Mattiace, Councilor Becki Graham, Councilor Johana Bencomo, and Councilor Becky Corran
ABSENT:	Councilor Yvonne Flores

9. NOTICE OF PROPOSED ORDINANCE(S)

1) There will be no public discussion.

2) A Councilor may ask staff for clarification on the proposed ordinance(s).

9.1

None.

10. CITY COUNCIL MEMBER BOARD REPORTS AND COMMENT

10.1 COUNCILOR MCCLURE

None.

10.2 COUNCILOR MATTIACE

I think I just want to share with the City Clerk that I think I kept asking when I took this job again in January. Maybe I am not the fastest reader in town, but I was asking for the presentations and even earlier. It is very important that I get those so that I have information to be able to vote. I would appreciate that so if you could continue that in the future.

I don't know if everyone got a copy of this ACCESS, but I just want to comment on the Quality of Life and Ms. Brey what this document, booklet its fantastic. There are so many things youth can do, adults in the city of Las Cruces. You probably worked a lot of hours, your staff in putting this together, putting all the programs together so I would like to see if you can get some great attendance so that is the reason why I bring it up. Excellent job, well done, thank you.

10.3 COUNCILOR GRAHAM

I am just going to take a personal moment again, not to remind people of our humanity but I want to extend my really sincere gratitude to everyone on the city staff, folks from the public for condolences for the death of my dad last month. It is really hard to know what to say in moments like that and I understand that as someone who is often found myself without words but no matter what you say or how awkward it may feel it is very appreciated, and I also have been thinking a lot about connections in the community in the time since my dad passed. A fully cooked ham showed up on my parents door step with a card from a neighbor who we didn't even know he was friends with because he had a complex web of his own world and these are little bright points that I am getting to find out now unfortunately that he is gone but I suppose that again I am all up in my feelings that these connections are vital. I remain committed to being one of those connections in our community and just again my sincere thanks to everyone up here because you have all been tremendously helpful.

10.4 COUNCILOR CORRAN

None.

10.5 COUNCILOR BENCOMO

None.

10.6 MAYOR ENRIQUEZ

I just want to say to the Downtown Partnership and the City of Las Cruces, thank you for the Chile Drop. It was a great event. There was a lot of community that came together. There was over 5,000 people. It was a great event. Thank you to police and everyone else that partook in that.

I just want to say that we will continue to move forward on January 13th. We will have the meeting to ratify the issues that have been addressed. I will tell you personally that I own it, and I will move forward with it for the greater good of this community.

11. CITY MANAGER REPORT

11.1 JC BORREGO, ASSISTANT CITY MANAGER

Parks & Rec Department, Keep Las Cruces Beautiful Program will host a neighborhood dumpster day from 8 a.m. to noon on Saturday, January 11th. The open container locations are at the East Mesa Recreation Center at 5589 Porter Drive, Young Park at 850 South Walnut Street, and the intersection of Motel Boulevard and Westway Avenue, 674 North Motel Boulevard.

I want to give a shoutout to our Utilities Department on a job well done over the weekend. There were a couple of waterline breaks that were remedied quickly. So, thanks to Adrienne and her team for taking care of those quickly.

Public Works, we have got some road improvements happening beginning here in January. The first one is part of the East Mesa roads and drainage, the Cortez Drive improvements, that will begin on January 6th and go till November 7, 2025. The Pavement Replacement Program is kicking off January 6th as well. There are ten streets that will be impacted and then we have the Madrid Avenue extension between Evelyn Street to Triviz Drive, that will begin on January 21, 2025.

The Las Cruces Police Department is currently accepting applications for their upcoming Citizens Academy that begins February 18th. Applications can be found online and are due by January 17th. More information can be found on LCPD Facebook page.

From our Quality of Life Team, this years mitten trees was very successful with the community generously donating items to share with local organizations. This year the community donated 10 tote bag size bags of adult knit wear including gloves, hats, scarves. Four additional bags of adult coats and one medium bag of scarves and then also there was four bag size kids outwear as well.

January 1, 2025, kicks off the 90thAnniversay of Thomas Branigan Memorial Library. We are celebrating all year with a variety of events to commemorate this anniversary. We are distributing special library cards all year long.

As far as museums are concerned the Moonlight at Museums event held on December 20th drew almost 200 visitors. It was a great event and finally we do have a bit of sad news. One of our Senior Programs cooks passed away on December 26th. So, we just want to give our sincere condolences to Jennifer Regalado and her family and her young children.

12. ADJOURNMENT

12.1

Councilor Johana Bencomo moved, seconded by Councilor Becki Graham, to adjourn at 2:35 p.m.

RESULT:	**Carried**
MOVER:	Councilor Johana Bencomo
SECONDER:	Councilor Becki Graham
AYES:	Mayor Eric Enriquez, Councilor Cassie McClure, Councilor William Mattiace, Councilor Becki Graham, Councilor Johana Bencomo, and Councilor Becky Corran
ABSENT:	Councilor Yvonne Flores

Mayor

City Clerk

MINUTES
Special City Council Meeting
Monday, January 13, 2025 @ 9:00 AM
City Council Chambers, City Hall

PRESENT: Councilor Johana Bencomo, Councilor Yvonne Flores, Councilor Becki Graham, Councilor Becky Corran, Councilor Cassie McClure, Councilor William Mattiace, and Mayor Eric Enriquez

ABSENT:

1. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

2. CONFLICT OF INTEREST INQUIRY BY MAYOR AS REQUIRED BY LCMC SECTION 2-27 (E)(2)

2.1

None.

3. RESOLUTION(S) FOR DISCUSSION

3.1 RESOLUTION NO. 25-081: A RESOLUTION FOR THE DISCUSSION AND DECISION AS TO WHETHER TO LIMIT THE SELECTION FOR THE POSITION OF CITY MANAGER TO INTERNAL CANDIDATES ONLY.

Brad Douglas, City Attorney gave the overhead presentation.

Councilor McClure said at that time I had no discussions about whether or not this was going to be an internal or external search. The reason I heard about it was a press release and I had the same questions afterwards. I asked Mayor, I said hey how do we do this? I said hey, why are we going internal versus external because ultimately I think external might have been a good idea. I think our candidates internally could have been strong enough to compete even if we just put a job search on our website not on a nationwide search costing us money. I emailed the attorney at the time, Linda Samples and I said, hey who makes this decision? City Council does. I also heard reports on the different news outlets that there was consensus, and I am not sure where they got that from.

Councilor Mattiace asked I have a question before I make my deliberation if you could answer it? Have we followed the same process in the past? Internal or external?

Brad Douglas said I don't know. Honestly, I have only been at the city for one hiring process for the position of City Manager. I did reach out to Human Resources to inquire as to what that process might be if any and maybe I am saying too much, but I think that is the point of this meeting. It has come to my attention that there is no policy simply with regard to the hiring of the City Manager. So that might be something that you and your colleagues might want to pursue as you know the City Manager is this governing body's one and only employee. I do tend to think the deference should generally be given with regard to how you all want to select that person and I think that is the general thought around the state but I think the most important thing that occurs in the future is to have any discussion regarding that position should it become vacant again in an open meeting consistent with the AG's opinion.

Councilor Mattiace said with that my statement of course is that I have only attended two closed meetings. I am not a fan of closed meetings. I did not attend the 18th but I did attend the March 20th, so I was not a part. I just wanted to go on the record. I was not part of any consensus whether of internal of external or particular person for City Manager.

Councilor Graham said at that time, a great way to start the phrase, I will probably repeat for each of the discussions. The legal team that we had at that time which is not the legal team that we have now, so Brad, I know you are flying a little blind here. I was never under the impression that the legal advice regarding OMA, closed session, open session was in any way misguided. We had continuous conversations, and I just wanted to state that if the impression that I as a council member was not in communication with staff or legal that was not the case. In regard to my thoughts on internal versus external at that time and I think the slide spoke to it well there are pros and cons to each of those situations. I felt strong about internal because of the depth of candidates that we had here in the city. I felt that we had what seemed like a great problem which was multiple qualified candidates right here in the culture of the city who had extensive experience with everything that had been going on and it was a very tumultuous time for the city as well. Thinking back on that time it was a very rough time in the city and the stability and consistency of having people who were on board with that and again the cost savings and time commitment of going through a national search. That was why I felt good about staying internal.

Councilor Corran said similarly at that time I think I was coming to this in the context of understanding a long history of various approaches to how people were hired and even though I wasn't on council at the time I witnessed the city go through a number of processes that were failed, that resulted in candidates who were pretty destructive to the city. So, all of those things were in my mind. As a city councilor I think part of my job is to and I continue to think that as a part of my job is to encourage the city to give avenues for advancement for folks inside the city and I think that context is part of the internal versus external search and that was definitely part of my constant conversations with City Manager Pili who had been involved in several searches prior to this so I consider that part of my conversations with him about building a bench and so in that context that was not related to this specific decision but part of my conversations along the way for about a year we had known that City Manager Pili

may be seeking other opportunities in different places so that conversation had been happening and I did go into the meeting with all of that knowledge and the expectation of relying on staff in particular our city attorney to sort of guide us how this should go and their presence honestly at these meetings helped me feel like okay, and it followed a process that I believe mirrors many processes that I have seen happen in terms of the functional components of it. People applying, reviewing, etcetera but to go back to the idea of internal versus external as a question I have managed many people, I have been part of many, many executive searches and less executive searches in my career and I have come to see little value often in an organization that isn't in crisis or needing to go in a completely different direction of searches that bring in folks from the outside. I don't want to suggest that I am a protectionist but I have seen a number of external searches go horribly awry, more than five I would say of people who were expected to be leaders and didn't come through after an external search and I think those hopes or disappointments also considered into my decision in understanding where we were and what we were deciding on in this context. I think that is the main question that is being asked and that admittedly it is all because of historical trauma, worries about the stability of the city and my experiences in those contexts so I brought all of that to this conversation and that is where I landed in this discussion.

Councilor Flores said I was on the city council when we hired Ifo Pili and so was my colleague Mayor Pro Tem Bencomo and we did a national search during Covid, and it was extensive. It was horrible in many ways because we really couldn't see that person and I say horrible because these national searches and I don't know who the city hired to find these were utterly unqualified to be City Manager. When I started, we had City Manager Stuart Ed who proved to be for lack of a better word, I don't want to slander anybody but it's true, he just didn't measure up, so we fired him and then his Assistant City Manager was even worse. This is my eighth year on city council. I am an attorney, licensed in California and we went through a lot of turbulence with Stuart Ed and his Assistant City Manager who took the helm and I read the AG's report, and I still don't understand what we did wrong, and I am sorry I was out of town. Fortunately, I did read the AG, and I did not have the opportunity to speak with our Attorney Brad Douglas to see where we erred. I did not ask why we were having a closed session on this. I just didn't ask because we knew who the candidates were, I don't know how they were selected. I don't know that part, but I will tell you this part, every person who interviewed was overly qualified for the position and it was probably the most difficult decision that I made because all of our candidates were, remain a stellar people. It was a relief for me after going through that national search of over 200 or 300 candidates that some of them were just pitiful. One guy out of California said that he decided to retire in Las Cruces from City Manager in wherever he was in Southern California and that he and his wife were looking at brochures and that Las Cruces seemed like a nice place so that is why he applied to be our City Manager. That is one of the examples of how horrible, how difficult it was. When we came upon Ifo Pili it was like what, is he for real? And yes, he was for real and then he hired the Assistant City Managers and he hit a home run and grand slam of the hiring of Ifo Pili. I don't understand how we came to that closed session. I was not a party to that decision, and I do know that our legal team and our Human Resources people are top notch, and I say this because I have been around the block. I am a child of the sixties, and I think it was our generation, my generation, my age group that really started to

question a lot of things and so I have been that way and being an attorney necessarily I am that inquisitive and all that sort of stuff. I saw it as a relief. I felt the relief to know that our candidates, the worst part was making a decision because all of our candidates were top notch, top notch and it was difficult to say that this one, knock that one out, totally unqualified. I just want to let you know that it may have looked like we conspired somehow as city councilors, and I don't want to in any way avoid the responsibility that we have. On the other hand for this to appear to be something that was, I read the AG's report and I have not had time to call to find out exactly how we violated the Open Meetings Act and our City Clerk is very good about making announcements about, giving notice about these things and I think that whoever felt that it was inappropriate to hold this meeting should have raised it before it was held and to then further pursue the questions that were addressed by the AG. I just want to say that it is terrible what we are going through and all I have to say is that I personally, I can't speak for my colleagues because I am very careful about socializing with my colleagues, once in a blue moon something comes up and we happen to be at the same place and I make it a point not to even stand next to one of my colleagues outside of city council, outside of meetings. I am honestly appalled that the AG had to intervene on something like this and I just want to express my gratitude to our City Clerk and to our City Attorney, our personnel department, but I don't know who made the decision. I really don't know, and I had no concern whatsoever to even question it and it was a relief to know that the people that we work with, that I worked with for 7/8 years now had applied because they were so qualified and believe me after going through that search over several years ago it was horrible. I just want to express this openly, to everybody, the press, Justin Garcia does an excellent job of reporting everything, calls it as it is. For those of you who are attending the meeting this morning who care about local government and who are indeed we are in this together. So, I want to thank our City Attorney, our City Clerk, Christine Rivera and Brad Douglas and I hope to correct this in manner that is not too disruptive. I think that even though I had nothing to do with the decision that we would have in house candidates or how that was made and going through Stuart Ed and his Assistant City Manager who was whatever and then going through the search and going through all of that, that was so disruptive. It was so disruptive we couldn't do our work. I just want to emphasize that I can't speak for my colleagues, but I can speak for myself that I didn't feel that it was a conspiracy. In my experience it was not a rolling quorum or anything like that. Anyway, I am sorry we are going through this and totally in my humble opinion unnecessary and I want to thank again City Clerk, Christine Rivera and our Attorney Brad Douglas and everyone else who has been working on the resolution of this issue.

Councilor Bencomo said thank you Brad, our City Attorney, our City Clerk, the Department of Justice for their due diligence in getting us here today and thank you to my colleagues for engaging in thoughtful discussion today as we try to cure the issues presented. I was also not part of some consensus to arrive at this issue although I think as I reflect on the time period, I may have inadvertently been part of one when I gave a public interview to the Bulletin shortly after Ifo Pili had announced he would be leaving. I was asked by the Bulletin just how I felt about it. Obviously, it was heartbreaking to me as I was part of the team that hired him in 2020, and I was asked what happens now? I am pretty sure I said I think I said council has to come to a closed meeting to decide what we do and I know that because it is always been my

understanding that the Open Meetings Act has very specific exemptions for a governing body which include personnel matters, include current or pending litigation, and real estate matters. I don't like closed meetings either, but I attend them because they are part of my job. They are the most difficult part of my job I would argue and so no I am also not a fan of them. That has always been my understanding and throughout the process in February/March and even April 1st our then City Attorney was present at every single meeting but at the time I think when I look back on it I think one of the biggest mistakes I made was arriving at my ultimate decision from a very emotional place. February and March were pretty tumultuous time in the city. There was a lot of tragedy, a lot of heartbreak. Things happened around that time that ultimately changed my relationship to this job and Ifo Pili deciding to leave was one of those very heartbreaking pieces. I do want to correct a matter though, I don't think Ifo was seeking opportunities. Ifo was being sought after by a lot of cities and when that started to happen, I started having a conversation with Mr. Pili about building a bench. That was always one of his tasks when we hired him around. In 2020, we actually got a lot of push back for going external. For hiring an external City Manager and one of the tasks that we had given him was to build a bench and a bench he built. So when he notified us that he would be going back to Utah and I reverted back to 2020, when we last hired the City Manager and actually we did two external searches, two national searches because the first search did not yield the candidates we has hoped and it was honestly devastating and so we went out to a second search and the second search is how we landed on Ifo Pili. I will address some of things I remember from that search in items 3.2 and 3.3 as well because some things are just not necessarily clicking, and I feel like we are just picking and choosing here. However, at the time having a strong desire, me personally to stay internal, to hire internal because of the chaos that I felt like was happening at the time and the desire that I felt to have some sort of stability as I knew it was going to be a difficult year given tragedies that had happened. So that was my ultimate of how I arrived internally in my own self was hoping that this council would move forward in doing and we did, and Councilor Flores was right getting to the ultimate decision was one of the most difficult decisions because our staff is incredibly talented and beyond competent and ready for the job. So, I think that covered item 3.1, thoroughly at least I hope I have and that is at least that is how I arrived at that decision for myself to remain internal.

Mayor Enriquez said what I recall at that time on March 18th and prior to getting to that point as the Mayor, as the Chair of city council meetings and closed session meetings I work with HR, I work with the Legal Department, and the City Clerk's Office and the City Clerk usually comes to me to look for dates that we can find for closed session meetings when we have something that is coming up as Mayor Pro Tem said whether it is litigation, whether it is personnel, or whether it is real estate and we looked at the dates and to see what was a consensus to move forward with that. At this same time I can tell you that I was interested in internal candidates because I have been through this process before as Assistant City Manager, as a Fire Chief and dealing with interims and positions and the city becomes stagnant and there is no decisions made and it is hard to move forward and I know that an external process could have been lengthy but the key was to have a closed session meeting to get a decision and a consensus by council and on March 18th, we did that, asked in a closed session we wanted to go internal and then options to go external if we don't fill a candidate and the consensus was at the time we would go internal. Then we had

the interviews, and we made our decision and the whole time legal was present, HR was present, throughout the process. That is what I recall at the time.

Lynn Moorer, Member of the Public said trying to redo in public the decisions made behind closed doors was an option by the AG however I think that a wiser choice is to start the process from the beginning. It makes a lot more sense and has much better opportunity for the public to be able to observe and be a part of that process in terms of understanding. You will hear quite a few questions placed to you this morning that you should be able to answer. I respectfully suggest that you all take note of each question then answer each during your discussion time. This will help dispel the impression that no genuine deliberation is likely to occur today. I appreciate that you all are providing what you consider to be your recollection and your thought process at the time but we the public are also interested in actual deliberation about the decisions made. This will help dispel the impression that no general deliberation is likely to occur today. It will also dispel the impression that you are perfectly happy to keep the public shut out of your decision-making process. The New Mexico Open Meetings Act states up front that a representative government is dependent upon an informed electorate, and it is public policy of the state that all persons are entitled to the greatest possible information regarding the affairs of the government. Where are the materials that councilors reviewed that caused them to conclude that there are qualified candidates for position in house as the resolution states? To comply fully with the act the public must have the opportunity to read and study all non-confidential documents that the council uses to make its decisions. Today's agenda packet includes nothing but the four resolutions and brief explanations. At a minimum the candidates resumes should have been made available to the public to read and to study. I am also very concerned about the criterion of preventing institutional disruption. This is very troubling. Unless you found a clone every change in staffing in a healthy organization will tend to lead to some disruption. This comes with the territory. You want to have healthy organizations that find new personnel that help improve things and don't want to have coverups whether it is malfeasance, financial difficulties, or any sort of noncompliance.

Peggy Strahan, Member of the Public said it is clear from the resolutions that everything is designed to lead to the hiring of Mr. Taumoepeau as the new City Manager and payment of a disgracely high salary with an extremely generous benefits package. The council should be starting over from the beginning and choosing a new City Manager. This was a clear option provided by the Attorney General to cure the council's violations. Why isn't the council starting over? The council could do that. It would be a much more effective way to conduct decision making in an open manner while allowing an informed public to observe and participate. This is the only staff position the city council appoints, and it is a position with a great deal of responsibility. Why not carry out the selection process correctly from start to finish in a manner fully compliant with the Open Meetings Act. I just ask that you vote no for this resolution.

Patti Hartman, Member of the Public said I didn't have anything planned because this 9 o'clock meeting kind of surprised me. I don't know why it is called a special meeting or why it was moved because it was going to be on today's City Council Meeting. The biggest thing that I am disappointed in and especially Councilor Flores that you don't

see how you did anything wrong. I look at you all as serving our city and the people in it and I don't feel that is reflected in the things that you do. You seem to think that you are an independent governing body that doesn't have to consider the people who live here, and I would strongly suggest starting over from the beginning. I don't think there is anything to justify a $216,000 salary which the highest paid city manager in the state of New Mexico, it is $111,000. So I just would ask you to consider the public process is important in a democracy and I feel like you have kind of slapped us all in the face by not only the way you did it last year which I was upset but by the way you are redoing it now which is to just to boulder through and do what you were going to do anyways.

Liz Rodriguez-Johnson, Member of the Public said I just want to preface what I am going to say that I truly, truly appreciate good intentions and I have no reason to believe that there was nothing but good intentions, but good intentions cannot replace transparency which is what was missing in this process. There is one laudatory feature in the council's agenda packet for today's special reading. The council does admit wrongdoing for many, but not all of its violations of the Open Meetings Act carried out over weeks related to its decision making to put Mr. Taumoepeau into the City Manager's position and without any information to the contrary because like I said there was a lack of transparency here. It really looks like the selection was a forgone conclusion. With that in mind the city needs to start over from the beginning in choosing a new City Manager. This is the AG's option two. The public needs to be fully included from the very beginning of decision-making process. Every discussion and meeting need to be in public. Every meeting needs to have public notice and an agenda that fully explains what actions will be considered. You know especially when it comes to a selection of a position as important as the City Manager. You cannot be making that decision behind closed doors. Also, we need to know who were the other folks. I mean we know their names, we know they work in house which is fine but the public needs to know enough about them to arrive at an assessment regarding the council's judgement and validity of its decision to eliminate consideration of anyone not on the staff. The resumes at a minimum should have been part of the agenda packet. The council's failure to provide the resumes appears to be another violation of the Open Meetings Act.

Jim Wilcox, Member of the Public said I am on the Bicycle Pedestrian Advisory Committee, and an attorney came to us and presented the importance of us following the Open Meetings Act. So, this is kind of personal to me as far as membership on that committee and actually I pushed back because we are an advisory group. I contacted the organization of the state for open government, and they said no. You do not have to be subject to the Open Meetings Act. You just advise and it is the people who are elected that you advise that must be following the Open Meetings Act, but I thought well I am going to have to give up some freedom of speech. I can't talk to somebody about any subject that might come up in our meetings so I will have to keep my mouth shut and lose some of my freedom of speech, but I will follow some of that particular advisement. The thing that kind of concerns me a little bit here is that some people are saying well we wanted to expedite this, we had a bad experience. The Open Meetings Act is not part of that. We don't say well, we don't really have to talk about this stuff in front of people because we had a bad time before. It's because the public is what comes first. The public knowledge so when they go to vote they say

oh I know why those people voted. I am voting for that person, so let's look at it positively because I like their answer. That is why we have the Open Meetings Act so that the public can make decisions when they vote. So, I would suggest that those kinds of things to be considered being primary rather than having a bad break up in the past.

Kathleen Sullivan, Member of the Public said I am a little disappointed this morning that I haven't heard anybody take responsibility. However, I do think at this point there should be some kind of transparency about the compensation that you may be offering this candidate for City Manager, $216,000 per year, $18,000 a month, four weeks' vacation, 96 hours sick leave,16 hours personal leave, car allowance, and a very generous benefits related to professional development. By contrast Albuquerque with five times the population of Las Cruces, they pay their City Manager about $106,000 a year. So, I think the citizens of Las Cruces should be asking the council what kind of person is going to be equivalent to this salary. It is going to be about $250,000 when it is all said and done, his compensation package. We need to know why you think that this person is deserving of this.

Councilor Becky Corran moved, seconded by Councilor Becki Graham, to Approve Resolution No. 25-081.

RESULT:	**Carried**
MOVER:	Councilor Becky Corran
SECONDER:	Councilor Becki Graham
AYES:	Councilor Johana Bencomo, Councilor Yvonne Flores, Councilor Becki Graham, Councilor Becky Corran, and Mayor Eric Enriquez
NAYS:	Councilor Cassie McClure and Councilor William Mattiace

3.2 RESOLUTION NO. 25-082: A RESOLUTION FOR THE DISCUSSION AND DECISION AS TO WHETHER TO NARROW THE INTERNAL CANDIDATE FIELD TO THREE INTERNAL CANDIDATES, ORIGINALLY TAKING PLACE DURING A CLOSED MEETING ON OR ABOUT MARCH 18, 2024, NAMELY, IKANI TAUMOEPEAU, SONYA DELGADO, AND DAVID SEDILLO.

Brad Douglas, City Attorney gave the overhead presentation.

Councilor McClure asked I think a discussion would be helpful that HR gave us an original list of nine, right?

Brad Douglas said if that is your recollection absolutely, now would be an appropriate time to discuss that.

Councilor McClure said I know that that was the original. I am not entirely sure how they made those decisions internally because I am not part of the HR process on that. So, at the time I recollect that we had those three come about due to sort of a hefty discussion partially because more on the dais than I had any experience with working with them. So, it was a lot of how do we pair it down so that we don't spend ten hours doing interviews, right? I was fine with selecting three at that point. So, I trusted in the limited experience I had and the experience of my colleagues.

Councilor Mattiace said I agree with my colleagues that the three finalists in attending that closed meeting were very well qualified. Again, the mystery to me is if this the same process that we always followed, and I didn't get that answered but if you can't answer it maybe HR can? And that is what I am concerned with in the past. I understand we had some ugly situations under Covid but was this a different process or was it the same process that we always followed for either external or external and that is my question that I am not getting answered.

Councilor Bencomo said so in 2020, the last time council hired a City Manager, I came in when the consultants, the decision had already been made by the previous council to do a national external search. That council I remember had decided to wait till the new year started given that there had just been a recent election and they wanted the two new councilors then to be part of that final decision given that this is our only employee and I guess this is an assumption of course that I am making but I assume that every council when faced with the decision to hire their only employee gets to decide how they want to go about it. Obviously the mistake we made and I feel like this whole thing is taking responsibility for whoever said that we weren't taking responsibility, this whole thing is taking responsibility that we made a mistake and so I think every council when faced with a decision to hire a new City Manager has to decide that for themselves as to how they want to go about it and I also want to note that in the name of transparency which everyone is here for to make sure that we are very clear about misinformation. I pulled it up. There is one news source on March 19th that names all of the candidates, the top three candidates that were selected and the others that were in that pool and there were certain guidelines given by HR to city council about who had moved on through the process and who met certain qualifications and from that we all got the resumes and we all reviewed them and we all came to that closed meeting with our sort of top candidates that we then decided to move forward with. But I will say a bit of an issue I have with item 3.2 and 3.3 is that in 2020, please forgive me that is a long time ago, and so I don't remember clearly someone may have to look at the record and correct me if I am wrong but I also don't remember making the decision of narrowing down the candidate pool for either the first or the second process in a public meeting. Last year I was operating under the guise of these are the limited matter of OMA gives exemption for so that was my mistake that I was operating under the one other time I had gone through this process myself. I don't think there was one set process because I think every council decides how to do that when faced with that decision.

Councilor Mattiace said I just want to thank you for the current explanation of how it is done. I guess I am going back to the past when I was on council previously and as Mayor we had the candidates actually in an open forum in city council and they would meet the public and so that is the part of the transparency that I am concerned with and so maybe my past is influencing what I think is happening in the present so, I just like that older process.

Councilor Graham said like Councilor McClure and then confirmed by Mayor Pro Tem I also recall receiving information from about nine candidates, nine or ten maybe who had cleared the initial HR process and had been deemed meeting requirements qualified on paper, I am not sure how to term that. I also reviewed all of the resumes

in advance and came in with some opinions. I think if we are speaking specifically to how Mr. Taumoepeau and Ms. Delgado, and Mr. Sedillo became our three finalists I feel that at the time both Mr. Taumoepeau and Ms. Delgado had relevant current Assistant City Manager experience serving the council. Mr. Sedillo, as a councilor I don't know how many would agree with me up here but I think Public Works is probably who I talk to the most frequently in terms of reaching out with constituent issues so I had confidence in Mr. Sedillo's knowledge both of the city infrastructure, literally and figuratively that I felt absolutely put him in the running along with folks who had current experience in the City Manager's Office and that is how I reached my decision at the time and then agreeing in the narrowing of the candidates field to the three finalists and I hope that will suffice.

Councilor Corran said I would parallel the events that happened. We were provided the HR summary of what folks put into the city HR system which included I think their initial screening which in my mind is parallel if you have an external search that is what the search firm does and then it presents the candidates as they are in narrowing the field to three internal finalists. Again, we had a pool of qualified folks in terms of education, in terms of experience, in terms of what I was looking for particularly and I used a rubric of maybe half a dozen to ten different variables that I ranked all of the candidates on after receiving their materials. Experience and a breadth of spaces which included as Assistant City Managers or as City Managers, education both formal education and also training related to being a City Manager and my experience to the folks and relating to the public which is being responsive to the public that is a big component as Councilor Graham mentioned and what I had seen in that space as those candidates came to be. It was based on those categories for me. I used my excel spreadsheet so I used the numbers related to it which is pretty nerdy but that is how I would evaluate any pool of applicants. So for me that is what informed the narrowing of the pool and again we had what I consider to be the best type of problem, people who were very well qualified, had a long history of service within the city, a commitment to what we have consistently been adhering to in terms of our values as an institution and so going back to the prior resolution it would have been really difficult for any external candidate and I think Councilor McClure was eluding to this. It would have been very difficult for any external candidate to match those expectations and see what those values are of our institution and make that case in terms of their experience, but these candidates came in that way from my measure.

Councilor Flores asked for clarification this is a comment coming from each councilor regarding our summary of all discussions? I don't remember what I had for breakfast. Am I supposed to remember what happened? Narrowing the candidate field to three internal finalists. What do you want me to say? It was tough, it was one of the toughest decisions besides deciding to have a second child. It was a very, very difficult decision. Discussions and comments made outside of a public meeting? The comments I made then would be I don't have a problem with a public meeting on this. Let's be without a City Manager and have more chaos. I don't mean to be facetious but okay if this is what it is going to take to be open about everything, we will do it and also on a personal note if there is anybody out there in District 6, please take my place I would be very happy to relinquish it. I am way past my retirement time in many respects. Does that answer the question Attorney Douglas?

Brad Douglas said I was concerned that this might be an issue because it took New Mexico Department of Justice about nine months give or take to conduct their investigation and then generate an opinion and so in speaking with the AG's Office I did ask that question. Paraphrasing I said, this has been almost a year ago, what if certain councilors cannot recall what they discussed or their thoughts at the time and the direction that I received was that each councilor should summarize to the best of their ability, their thoughts and conversations at the time and so it sounds like you are doing that to the best of your ability and that is all we can hope for.

Councilor Flores said all I remember is that in terms of the conversations how we came upon the decision, again I think I already said this it was very, very difficult to narrow it down to these three candidates and I wish we would have had that luxury when we hired Ifo because we had to go several months and again we had two national searches. So, what I remember is that I was totally happy that we wouldn't have a City Manager who has to look at ways or whatever that app is to find out where City Hall is. It was wonderful to know that the finalists were I mean top notch, Ikani, Sonya, and David and the other candidates to. All I remember is that it was such a relief to know that we knew what we were going to get. We weren't going to get some guy out in California who is retiring and wants to retire as a City Manager in Las Cruces. That is a slap in the face, and we have the internal talent is to die for and I can't speak highly enough about these three candidates. I truly regret that there was a faux pas as far as the DOJ is concerned. In my humble opinion, or my experience there were no shenanigans. I think all of you have the right to question everything we do, that is how it should be but it doesn't feel and I don't know how my colleagues feel but it doesn't feel good to be out here and have tomatoes thrown at us.

Councilor Bencomo said again at that time I know that I remember feeling like I hadn't expected to see as many names in that list as I did. Though what a great problem to have that all of these folks are qualified, confident, and want to step up to the challenge of what is a City Manager in a city manager form of government, I might add, right? Las Cruces is a city manager/council form of government. City Managers in other cities are hired by the mayor perhaps and appointed by the entire governing body. Here the City Manager works 24/7, every day, every hour, except for his mandatory time off because the job is so demanding, so challenging, and it is literally 24/7. I just want to clarify that. There is this misconception that the person that was ultimately picked that it was his all along. That is at least for me couldn't be further from the truth. I went into reviewing these resumes with an absolute open mind about who would be right for this job. Having supervised one City Manager, one fulltime City Manager for almost four years and a couple of Interim City Managers for a little bit of a tumultuous time there during 2020, and I went in ultimately with that eye of having the experience of supervised one City Manager for several years and I remember being definitely surprised that there was a lot of agreement amongst the council and perhaps the more experienced city councilors at the time had more of a weight on these folks because we also had individual professional experience with all of these folks. I know that I was very confident and felt very good about the top three candidates that were selected in moving forward in both their experience with city management, their experience at the city, their experience with the public, their experience with the council. I will say one thing that I thought was interesting in the

applications asked, one of the questions the application asked about what is your willingness to work? One of the candidates did answer that they were not willing to work after a certain period of time, to me disqualifying them given that this job from what I know having been here five years is a 24/7 job. Again, I want to reiterate that in 2020, I do not remember having this conversation publicly about the qualifications of the finalist of either of the two processes. I am sure someone will correct me if I am wrong.

Mayor Enriquez said at that time on March 18th I know that HR, the HR Director at the time came up with the minimum requirements for all the candidates that were listed. That list was provided to Mayor and council where a discussion took place to narrow it down and we narrowed it to the three finalists that you see on the screen, Ikani Taumoepeau, Sonya Delgado, and David Sedillo. Very pleased with the process and the understanding and I too am trying to recall in the past having any kind of process publicly with the selection of any City Manager while I was working here at the city as Fire Chief or Assistant City Manager. I knew at one time we did have internal candidates that applied and were not selected and then they moved on to a national search but there was never any public meeting that took place and that is at the discretion and I believe Brad under the State Statute we as a mayor and council we have the authority and the right to select our City Manager?

Brad Douglas said you are correct. This is a home rule municipality. We have a City Charter which is as you all know. It is my position that pursuant to our charter, you all obviously are the ultimate arbiters of who your City Manager who is your only employee, your only direct report employee on how you want that process to work and who you want those candidates to be. The crux of the AG's opinion is that nothing about those actions was wrong inherently, they just should have taken place in an open meeting.

Councilor Bencomo said I do want to note just once again that through every process of getting to the final three our then City Attorney was present the entire time.

Councilor McClure said what bewildered me basically as a novice that we didn't actually have for such an important position that person and all three of them present in public because it is a unique position and Councilor Flores said we know what we are going to get but the public didn't and a lot of times I really grappled. I came home after watching the presentations and thought to myself how am I going to make that decision for the rest of the city? A lot of times I take in account what other people tell me. If I get emails, if I have discussions that is how I build those decisions. I kind of felt a little rudderless to be real about that and thought to myself what have we done in the past is one of my least favorite phrases but going forward, having that transparency for something that is such an important position left a kind of bad feeling in my mouth because I do think the public should have had the ability to hear those presentations to give us feedback and I think that is what was stripped out of this in a lot of times was feedback that I find crucial in my position.

Councilor Bencomo asked do you remember in 2020, I vaguely remember, was there some sort of Citizen Committee? Does anybody remember in 2020, I know it was

Covid and everything that we did was via Zoom but was there any sort of public? I hope to not be part of another City Manager hire while I am here, and I have three years left and I certainly hope that doesn't happen again so I hope for those of you who are here in the future that is something that gets implemented from now on. I think because it is our only employee, city council's employee to me that is a decision that and that responsibility that I will carry myself right as the person who has to supervise the success of that person so again, I don't remember what happened in 2020. I think for me what was the most different about this last time was that it was a lot shorter and that is what we are discussing here and that some of these decisions needed to be made publicly not necessarily that they were the wrong path.

Barbara Bencomo, Chief Administrative Officer said to your question regarding the process in 2020, in addition to the interviews conducted with the mayor and council there was a community panel and also a staff panel that participated in interviewing the candidates.

Councilor Bencomo asked do you remember how big the community panel was? Were those meetings public or were those meetings via Zoom?

Barbara Bencomo said I don't remember the exact number. I do remember that the mayor and council had the opportunity to nominate the community members who were to participate on the panel, and I do recall that the meetings were facilitated via Zoom and as interviews they were allowed to not be public meetings because that is one of the exceptions.

Mayor Enriquez asked how many processes were during that time frame, was there more than one process?

Barbara Bencomo said in the 2020 search there were two rounds of interviews. One that did not yield a selection and then the second that yielded a selection and as I recall that was the same case for the 2016 process as well that there were two rounds.

Lynn Moorer, Member of the Public said I like your idea Mr. Mattiace very much of having public being able to observe interviews with candidates. Many other public bodies that I am familiar with use that process, and it really does help a lot to achieve transparency. The big hole that you still have here is today in all your recollections is that you haven't provided any resumes. At least two councilors have mentioned that you reviewed resumes for these candidates. Why has this not been provided to the public? That could have easily been a part of your agenda packet. Who are the other candidates who were eliminated from the narrowed down three? You mentioned there were nine, we would like to know who those folks were. It is important for us as the public to be able to review resumes and get a sense of what we think of your judgment and your decision-making acuity in deciding who you think the best three are. You haven't come close to achieving transparency today. I understand your great desire to follow the specific directions from the Attorney General which I totally respect but you are falling far short with respect to actually being transparent and giving the public an idea of your field, the choices that you had available to you. It still

very much looks like the skids were totally greased and continue to be to totally be greased today for your final candidate, Mr. Taumoepeau. None of us get the impression that any of you are inclined to change your mind or revisit any of these issues. Rather everything that you are doing here today seems totally directed toward exactly the same decision in the end and leaving the public out. We haven't seen a single resume.

Patti Hartman, Member of the Public said I moved here in 2016, and I went through I think it was the first Neighborhood Leadership Academy and I ended up being on a Citizen Committee that was chosen to help select and I don't believe it was the City Manager but it was a Department Manager and I was kind of quickly perusing the City Municipal Code, I guess it's called and we do have a process for that. For having citizen engagement in that way. When Ms. Bencomo mentioned that there was a community panel, I never trust that because it is always chosen from within and just like this process. I know it is going to sound really crude, but it is a little bit like inbreeding. When you keep the same people and the same processes, and I feel like nobody did anything intentionally wrong. I don't feel like you were out to hide anything from us but when you keep everything within you don't have any knowledge of anything beyond that and I know that when I look at anything that I am not familiar with the first thing I want to do is learn and a lot of times I will compare what are other cities in the country are doing and I can tell you there is an immediate difference when you look at cities that are transparent. I was looking at the Farmington City website and their City Manager. Farmington is a completely different city, but I would suggest that for everyone here have some sort of frame of reference where you compare it to something else because in your only hiring within you are doing the same thing and you might do your best, but it is pretty limited.

Fred Huff, Member of the Public said it was pretty clear walking in here this morning and looking at all the printed-out resolutions that you are going to stick by the same decision that you had made last year, that was pretty much a given. What I had hoped is that you would have use this as an opportunity to look at the last one year's performance by the City Manager and ask yourself is Las Cruces really better off after this year? What I as a citizen have seen and I am just a normal citizen living on the edge of Burn Lake, I see the city spending money like drunken sailors. I watch these budgets, and they are absolutely crazy. I watch the raiding of the Telshor Fund. I see an excessive salary as somebody mentioned over twice of what the highest other city. this is the highest paid person basically in the state of New Mexico unless a new County Manager exceeds it. As Councilor Bencomo keeps mentioning about conditions in 2020, 2024 was a totally different situation so you should have handled it differently, but my big question is, is this really a distraction to keep you from working on the important issues that you need to be working on? You are going to make the same decision you did as you go down the road, but we need to be working on the issues that are plaguing our city and get the crime and lawlessness and homelessness taken care of.

Councilor Becki Graham moved, seconded by Councilor Becky Corran, to Approve Resolution No. 25-082.

RESULT:	**Carried**

MOVER:	Councilor Becki Graham
SECONDER:	Councilor Becky Corran
AYES:	Councilor Johana Bencomo, Councilor Yvonne Flores, Councilor Becki Graham, Councilor Becky Corran, Councilor Cassie McClure, and Mayor Eric Enriquez
NAYS:	Councilor William Mattiace

3.3 RESOLUTION NO. 25-083: A RESOLUTION FOR THE REVIEW AND DISCUSSION FOR CANDIDATE IKANI TAUMOEPEAU FOR THE VACANCY OF THE OFFICE OF CITY MANAGER.

Brad Douglas, City Attorney gave the overhead presentation.

Councilor McClure said if we are looking at internal candidates, I did not select Ikani as the highest rank. We did a rubric filing and based specifically on his past history of leading cities that were much less density of population wise than here. I also think the other two candidates were stronger.

Councilor Mattiace said again the voting was difficult. All three candidates were very qualified and, in the ranking, came very close to another candidate, very close to Ikani. My decision was continuity. He knew exactly what was happening in the city of Las Cruces with dealing with a City Manager that I unfortunately I didn't serve under, I had just come aboard. Ifo's retreat and what I could hear from many of the directors of the different departments I think, all the directors were very pleased with Ifo's performance, and he had decided to take another position and resign and due to continuity and following through on some of the retreat visions and planning I thought it would be the best choice unknowing that I was participating in a violation.

Councilor Graham asked to clarify this refers to the kind of day long closed session where we conducted the interviews?

Brad Douglas said that is correct. This would summarize and capsulate March 20th, closed meeting and if you could all to the best of your abilities be like I stated earlier, summarize your thoughts at the time, any actions that you may have taken that resulted in Mr. Taumoepeau being council's selected candidate.

Councilor Graham said in preparation for that session we were briefed by Human Resources. I remember this specifically because it was reiterated several times that each candidate had to be asked the same set of questions without deviations. So, the questions perhaps, I think there were six or seven questions. Each council member read one question. The interview process was frankly emotional at times. Again, regardless of whether the context, when the hire was made should be relevant or not the city was hurting, and I think that we were all feeling that. I felt that each of the interviews went incredibly well. You are going to hear over and over again I am sure that we had a very difficult decision to make because each of the candidates was exceptional. We went through the three interviews. I believe there was a brief, we had time for discussion after each and in deciding to choose Mr. Taumoepeau was my top ranked candidate as Councilor Mattiace mentioned it was close. I felt again that the preponderance of experience that he brought not just as an Assistant City Manager but as a former City Manager just gave him that little bit of an edge that made me

confident that he would be the top choice.

Councilor Corran said I echo a lot about the process that my colleagues have mentioned. We went through a series of conversations with the candidates. They did presentations. We deliberated at the end, ultimately voted in our rankings and tallied that up and accompanied by HR, all guided by our City Attorney as well in that context very similar to many searches that I have been a part of. So, I think at this moment folks really want to just say we hired the wrong person, and you want us to do something different and what I am saying is first of all I believe our deliberations were considerably more thoughtful and asking critical questions than may have happened in any other setting. I think we were all struggling with this decision as has been mentioned many times, but I think it is telling the sort of context of saying you should have hired someone else. That is always what people say after a search, they have their own perceptions of who the best person is and I acknowledge that there is often many people who can fill positions and sometimes there aren't any which I would argue is a much worse situation but I would also say that in these conversations I think that it is harmful to an institution to air out every discussion point and so I would argue that discussion was within our purview to have in a closed meeting. For me this particular sort of airing of qualifications and deliberations is not something that should be subject to public comment because we all had a discussion where HR told us this is how you check your biases, this is how you consider things, this is how you can measure your support for folks and we used that guidance in that context and I believe that often public comment especially when considering individual people is not informed by that foundation and I believe that this process that we engaged in this discussion was again completely above board in terms of our understanding and frameworks of what we use and there wasn't a consensus among us but we did vote using a closed ballot process and folks had a chance to make case for their candidates and so I get folks say we want someone else. That is not what is going to happen here today and as you can tell we are discussing this resolution but I also want to point out that folks this discussion and again this is March and I have not heard, at the time I didn't hear this feedback but I also want to point out to the salary question a few other salaries in our state that might be relevant. The Albuquerque Chief Administrative Officer makes $216,000. The El Paso City Manager makes $350,000. The Dona Ana County Manager makes $220,000 and if you wonder the City of Las Cruces has 1,600/1,700 employees including Police and Fire whose jobs are life or death and then a number of folks whose impressions on people's lives are pretty big and so the City Manager job is one deserving of the best candidate and the best pay and I will always make that argument in this context. NMSU's football coach, $600,000. So, if you want to indite us on how public money is being spent I urge you to please have the context for what you are critiquing us for because I will always advocate for us to have the best candidates and that also includes paying people better, all of our staff and so I just want to speak to, this is about the hiring of Ikani and folks have really suggested this particular topic as something that we should consider and I just want to push back on that narrative because this is an extraordinarily difficult job as was mentioned, 24 hours a day, heavy lifts, supervising a team of really great people who are responsible for a lot of things in our city and the suggestion that we would pay someone that much less is, I just want to push back against that topic as well. Again it is a ponderous decision, it's a ponderous job and we did our diligence in these conversations about narrowing down the field and I would again argue that is

not something that is helpful for any sort of public airing because I think it is harmful to the institutions that are engaging in a type of Monday morning quarterbacking in particular with the public, in particular with folks who definitely want to have input but don't have as much context as we do. So, I think that I just want to say that our deliberations, there were no wheel greasing or skid greasing. We took it very seriously and I am just going to push back on a couple of those points.

Councilor Flores said I would like to thank Councilors Graham and Corran for being very well spoken and I don't think I can add much more than what they have said. I will share with you that there is the undertone that there was some shenanigans going on and meeting in dark and all that sort of, no. In fact, I don't socialize with any of my colleagues for that reason. I don't ever want to be accused of violating the Open Meetings Act. I want to thank all of you though for keeping us on our toes and again I invite each and every one of you to consider running for city council and making this a better place because obviously you are not very happy with us right now. I don't mean to be facetious, but I am very upset by this process and offended quite frankly.

Councilor Bencomo said I will say that this particular item is the one that I have the most concerns about. The interviews that we partook in with the three final candidates to me were sacred. They were emotional, they were deep, they were serious. For there to be a demand that we discuss those publicly violates so many, really it violates privacy that those three folks are entitled to at the end of the day. I get that this is a public job, but can you imagine applying for a job where you thought where your qualifications or lack thereof would be discussed and scrutinized publicly. No one would apply. I do not believe that the DOJ, which by the way I will be speaking about in my comments at the end, and I will be asking for a meeting with them to discuss some of these concerns. There is an OMA guide by the DOJ that talks specifically about the exemptions on limited personnel matters and one of the paragraphs here says, this exemption permits a pubic body for closed meetings for the purpose of discussing certain matters concerning individual employees of the public body, specifically a public body may close a meeting to discuss the hiring, promotion, demotion, dismissal, assignment or resignation of an individual public employee or the investigation or the consideration of complaints or charges against an individual public employee. A public body may also close a meeting for matters that are closely related to those specifically listed in the exemption such as performance, appraisals, and interviews with job candidates. I get the suspicion that so much of the criticism that we have been receiving on this is perhaps this desire for there to be something juicier than there was and the reality is that this body has a responsibility of hiring one employee. That is the City Manager. That is very important which is why I ultimately respect and honor this process and I am here to engage in thoughtful discussion around the very real violation. I also want us to consider some of the impacts this would have especially on these very real three people and thank you Councilor Graham for recalling some of the process that took place because I think if anything you should know about is that. There as a very long list of questions that HR provided to us in which council then chose, narrowed down because we wanted to have a timely yet deep interview and not a day long interview for each person. I recall there being very important questions about the job. There being questions that helped us to get to know those folks better and for that I will for always be grateful. Ultimately, I felt so proud at the end of that day that these three people work for the City of Las

Cruces, and I continue to be proud and I continue to be proud of the final choice we made and of many of the choices that person has consequently made in building his team and leading this city.

Mayor Enriquez said on that time on March 20th I remember that we had three finalists that we held interviews with and they were all asked several questions where we rotated as Councilor Graham had mentioned but they were also given ten minutes to do a presentation orally and perform so that we could get to know them on a better note and that created a lot of discussion because that was like we all said three very good qualified candidates that work for the City of Las Cruces. For me my selection was Ikani Taumoepeau. He just had more time and experience and service as a City Manager, in the City Manager's Office and I felt that had always that he was a good fit for the city of Las Cruces and the organization. That was my selection at that time and nine months later I am still happy with that selection.

Lynn Moorer, Member of the Public said what is missing from all of this just to reiterate is that you haven't provided any materials for the public to see, to review, and to get a sense of. No resumes, no letters of reference or any other materials whatsoever. It's like it's the immaculate selection. In my experience with public bodies except for this one, they invanably go to considerable lengths to provide the public a good quantum of background information on candidates for key government positions and this has been brought to your attention, and you still haven't provided anything. It makes no sense. No other public body that I have experience with has ever handled it like this. Like it is all quiet and you are not providing a bit of information. Like for example I would like to know what Mr. Taumoepeau's qualifications are. I would like to know what his education is and what his experience has been and what his skills are. This has not been provided to the public at all, and we brought this to your attention now repeatedly. It is both arrogant and unlawful for any elected official to act upon their view that notwithstanding what the law requires all that really matters is that the officials are able to review and study relevant documents as much as they care to, and it does not matter as to whether the public has had adequate opportunity. You don't have that option. New Mexico Public Records Act and Open Meetings Act require that you provide these things, it's basic. Members of the public may not be shoved over to the side like they are hindrance. Public officials are elected to serve the interest of the public in an open manner. When citizens see nonchalance as we are seeing all across except for the exception of one here today, I think from elected officials about citizens are able to observe and participate fully in the democratic process from an informed perspective citizens work even harder to penetrate that dangerous undemocratic attitude and make sure that official leaves office as soon as possible.

Patti Hartman, Member of the Public said while I am not satisfied with this as any kind of a do over. I will say that the more that I hear councilors speak the clearer I understand how little the public is respected. While I was sitting here, I am going to jump to something really quick. I just found an article which I can send to you that was local from February 28, 2024 and the last line of that article from CBS 4 Local, I think says, "leaders said the next City Manager will be an internal hire coming from the existing city employee pool". That is not what I was looking for but that definitely caught my attention. So as of February 28th, it was very clear what the council

planned to do. I think they played right into the hands of our previous City Manager who was friends with our current City Manager and when you talk about experience our current City Manager was a City Manager in a city in California for one year. There is something to look at there. I don't like being characterized as oh we think there is some shenanigans, or it is really insulting perhaps to say that the public is looking for something juicier. That is extremely denigrating to us to come here as the public. No, we don't want to be in on the personal interviews. I would like to know some of the questions that you were given from HR to ask. I would like to know the format. I would like to know everything Lynn Moorer brought up. The process.

Peggy Strahan, Member of the Public said I sat here and listened. I don't mean for anybody to think we are throwing tomatoes, we are not. We just want answers, that's it and really there are a few answers that haven't been addressed. I would like to know what specific characteristics or experience that you liked about this candidate that made you think, oh yes? Not because it was an easier process, you didn't want to go through a long process of getting another candidate. I just want to know what stood out to you? Tell me as a public because these things matter. I want to know about these things and that's all. I just want to know why you think he is the best candidate? Not because he has been that way before that he has served as an assistant, not because he has just been established here. He did this and he has this idea, and this really sparked my interest and this is good for the citizens of Las Cruces. That is all I am looking for. I have no bias, and I have no opinion, but I would like to have a little bit more knowledge.

Councilor Johana Bencomo moved, seconded by Councilor Becki Graham, to Approve Resolution No. 25-083.

RESULT:	**Carried**
MOVER:	Councilor Johana Bencomo
SECONDER:	Councilor Becki Graham
AYES:	Councilor Johana Bencomo, Councilor Yvonne Flores, Councilor Becki Graham, Councilor Becky Corran, Councilor Cassie McClure, Councilor William Mattiace, and Mayor Eric Enriquez

3.4 RESOLUTION NO. 25-084: A RESOLUTION TO CURE AND RATIFY THE LAS CRUCES CITY COUNCIL'S PRIOR INVALID DECISION AND DECISION TO SEEK CANDIDATES FOR THE VACANCY OF THE POSITION OF CITY MANAGER FROM AN INTERNAL POOL OF CANDIDATES, AND TO APPOINT IKANI TAUMOEPEAU TO THE OFFICE OF CITY MANAGER, THEREBY APPROVING AND RATIFYING BOTH HIS SELECTION AND EMPLOYMENT AGREEMENT.

Brad Douglas, City Attorney gave the overhead presentation.

Councilor McClure asked do you just wish that we say that?

Brad Douglas asked what makes this item somewhat interesting is that everything included there in are items that you all have voted on today, correct? This was the AG's preference. The whole point of this final action would be to cure and ratify every invalid decision or action as identified by the Attorney General's Office. This was their preference but in taking this final vote this council will either cure and ratify all of those concerns that the AG identified as of today January 13, 2025, or it will not. I recognize

that this final action or this final item may be a bit redundant, arguably but this is the format that the AG's Office preferred in the spirit of collaboration, cooperation, and accountability. I brought this item to you, I guess in a nutshell maybe the simplest way to think about this item is that it will be the final curing and ratification of anything and everything that we identified by the AG.

Councilor McClure asked what do we say? I as a city councilor wish to cure and ratify one, two, three, four.

Mayor Enriquez said no, basically he is looking for any kind of discussion how you feel about the whole thing and how you want to move in that direction, and we will vote after the fact. If you have no comment, then there is no comment based on what we have already voted on or you can comment to any of the whole process.

Councilor McClure said let me just go ahead and say I would like to cure and ratify, and I apologize to the public. I partially to, what was I six weeks in this when this all started kicking off. I think a learning experience is a hard thing to say but that is what it was for me, and it has been full barrel the whole time. But I do very much value transparency. I do think that we should have had this in a more open way. I do think that there are other entities here that do even in Las Cruces that do when they have large positions will ask the public to have that input. Have people that work with that person intimately. I didn't know that we had a community panel last time. So, you know as much as I have said in the past, I really wish there was a binder of info that I was given. I am collecting that as I go so, I hope to do better and still appreciate you guy's faith.

Councilor Mattiace said last statement, I hope to do better as well on my previous vote. I feel that I have had nine months. I just want to share with the public comment what is the character, and what is the overall reason why I chose and my ranking with Ikani. Well, it has actually come to reality that in the eight or nine months that I have been dealing with the City Manager just as the other candidates because I also have dealings with both of them, his response has been fantastic. In other words a city councilor has a lot of problems going on in their district from a pack of dogs, sink holes, you name it, things happen and when a resident who voted or didn't vote for me, I am not loved by everyone, but if they contact me it is my job to respond and to take care of that issue but without the help of a City Manager, the City Clerk, and other staff members I can't get that done and I have been able to do I believe a good job in the months that I have served because of his 24/7 attitude towards helping. His notifications when things happen in the city of Las Cruces and during the interview he also hit on a cord that I really the reason I ran again for city council, I mean I was having a nice relaxed life, I didn't really need to do this but I am upset with the crime and the issues and the problems that we have in the city of Las Cruces and this is one of his key policies, Ikani would also like to make the city a safer city and that means as a City Manager he supports the Police Department, the Fire Department, the Public Safety Department, for that reason I felt my vote was being part of my policies that I like to see happen in the city of Las Cruces. We all want a safer city and that has to be a priority, and Ikani I believe hopefully through transparency, transparency is very important. We don't need any more secrets about what is happening in the city

of Las Cruces that will determine our actions, and I really commend Chief Story for bringing this out. For bringing out the crime stats and what is happening so that combination of having a City Manager that appreciates and supports public safety, infrastructure and works well with David. David, I just have to give you kudos and thank you very much for being very responsive in Public Works and then Ms. Delgado, I know you have helped me recently in some things that are happening, things in the city in particularly in my district. We have three great internal candidates, and it was a tough decision, but I believe I voted for the correct person.

Councilor Graham said since we do have the opportunity for council comment after this specific item, I am going to stick with the past here and I will save my comments on how I feel since my vote for bringing Mr. Taumoepeau on as City Manager for comments. I also appreciate the opportunity to have cured, ratified, strange legal terms to have dealt with this using one of the options. I am presuming that if this wasn't a viable option the AG's Office would not have supplied it and I know that there has been a lot of talk of just starting the process over but I trust in the AG's Office that this is a way of properly curing and ratifying the issues moving forward. I agree completely with Councilor McClure, this job is a constant on your feet learning process. I have learned from this process, and while I like Mayor Pro Tem Bencomo pray that I will not be involved in another City Manager hiring decision in my time left on the dais, it has certainly driven home to me the importance not just transparency but of public perception of transparency.

Councilor Corran said I would say I know we could have done it better. That is what we are saying here today. You will see that we do future things better, this week at the ASCMV meeting we will start a very public process to look at an Executive Director so I can say that we systematically have changed a number of things that we do and the types of conversations we have and we are making notes for future actions as a body and also that I still maintain that we relied heavily on HR and our attorneys to guide us through this process in the ways that we understood it to happen acknowledging that we could have done better now and understanding the context for that and committing that we will see changes. You already have seen a number of these changes in terms of our announcements of public meetings and closed meetings and how we do searches going forward will look different consistently as we can make it so I appreciate the opportunity to cure this. I appreciate the AG and the folks who advocated to the AG for bringing this up. I do regret that this is nine months after all of these things happened. I think we could have made more dynamic changes along the way at a different time but I also do want to reaffirm my commitment and I will talk about that in councilor comments of why we hired Ikani which I think again is one of the agenda items here today but I think the big picture is we could have done better, we will do better and that is what we are committing to.

Councilor Flores said I would like to thank all of you for being here and keeping your elected officials on their toes. I expected the entire population of Las Cruces be here and it is good that you are questioning all of the decisions that we made and that should continue in so far as all of voted officials or elected officials including the one who sits soon in the White House. I will continue to represent and work as an elected official in the most ethical manner possible, not possible period.

Councilor Bencomo said thank you Brad and the City Clerk for getting us to this moment today to cure these important issues. I learned really early on actually that even the appearance of a conflict or the appearance of anything is enough to deteriorate the trust of the public and I hold that very dearly and I do want to apologize to the public for acting in a way that was outside of that and so actually I don't know how to show up any other way but really authentic and it has gotten me in a lot of trouble in the last six years that I have been here. I will continue to do that, again I truly hope that in the last three years of my term that I don't have to go through another City Manager hiring process. This has really taught me a lot of things as well about OMA and I always appreciate an opportunity to learn about a pretty complex issue that I think for a long time that I felt was pretty clear, pretty clear cut to me and that is obviously not the case. I also want to apologize specifically to Ikani, David, and Sonya for having made decisions that put you in this situation nine months later and I honestly couldn't be more grateful for the three of you. For all of you, for JC, for all of you up here and everyone in the city who are and I have said this before, we come and go, there are dedicated public servants who work in this building and outside of this building every single day and to them I want to just express my sincerest gratitude and an apology to those employees as well for having caused several weeks of confusion about the functions of government and so I will leave it at that and will have additional comments to make as well in my public comment section.

Mayor Enriquez said I just want to mention that I do want to cure and ratify this process. I am in favor of that. Can we learn from it? Absolutely. Can we do better from it? Absolutely. I just want to sincerely thank you Brad and your team for working with the AG to ratify this, to cure this. I know it was two rounds, it was two separate attorneys that you had to deal with in order for that to come through and I appreciate all your hard work on it.

Lynn Moorer, Member of the Public said there is a long list of questions that you have not yet provided an answer to. I hope you are all planning to jump in and do that here in your last comments. Why haven't resumes been provided? All of you are talking about turning over a new leaf, it's all a little too little too late with respect to this process today. What was the extent of the council's research in come up with the salary and benefits package offered to Mr. Taumoepeau? Which other municipalities did the council examine as a comparison? What are the various options of terms the council considered for the employment agreement with Mr. Taumoepeau? What was the salary range that the council considered? Two hundred and sixteen thousand dollars is the same salary paid to the previous City Manager Ifo Pili who according to news reports stated that his salary in Las Cruces must match what he had been paid by Eagle Mountain, Utah for activities that included various responsibilities additional to the City Manager responsibilities. In light of this, how can this same amount, $216,000 be justified for the new candidate? We look forward to hearing your answers today to these questions as well as the other questions we have posed to you in today's meeting. Each question is directly relevant to responsible decision making in selecting and hiring a person to fill the top administrative position in the city of Las Cruces. Moreover, the monumental salary and benefits package the council is considering awarding Mr. Taumoepeau requires full vetting explanation and justification. I ask that you provide answers to all of these questions. If you don't our

concern will be substantiated that the city council isn't actually carrying out full deliberation, careful deliberation deserving of this particular job. I urge the council to vote no on this resolution and restart the selection process from the beginning.

Patti Hartman, Member of the Public said when I look at things that are going on I look with a bigger picture in mind, but I also listen between the words and tone is rather important. I appreciate my city councilor who was the first to speak, Cassie McClure who sincerely apologized to the public. Actually, everything that she has ever said to me, first of all she responds to me when I email her. That is something that I don't get from anyone else here, but her sincerity speaks volumes. Her intelligence speaks volumes about needing to do more than just follow the rules blindly. What I hear from several is the defensiveness of your positions and so while I appreciate your actual apology Councilor Bencomo, I am wondering what is going to be different. I hearing you are going to see differences right away. I agree with Ms. Moorer that this was not really a process. This was kind of a defense of what you did and why you did it and why is the public here annoying you with trying to change your minds or get something juicier. No, we are here in the name of public process, and I think we need to have some serious considerations about what public process means.

Diane Starbuck, Member of the Public said it has been clear to me that listening to this whole thing that apparently there is no standard process to hire a City Manager and that you rely on what is done in the past and since many of you weren't here in the past that you have to rely on people's memories. May I suggest writing, somebody writing, sorry if this falls to you Mr. Douglas but writing a standard operating procedure on how to hire a City Manager. I also want to say that I appreciate every single person that is up there today. I know your job is not easy. I know you take a lot of grief, but I still appreciate you representing the citizens.

Councilor Johana Bencomo moved, seconded by Councilor Becki Graham, to Approve Resolution No. 25-084.

RESULT:	**Carried**
MOVER:	Councilor Johana Bencomo
SECONDER:	Councilor Becki Graham
AYES:	Councilor Johana Bencomo, Councilor Yvonne Flores, Councilor Becki Graham, Councilor Becky Corran, Councilor Cassie McClure, Councilor William Mattiace, and Mayor Eric Enriquez

4. CITY COUNCIL COMMENTS

4.1 COUNCILOR MCCLURE

I want to thank Brad and Christine for letting me be the pain that I kind of have been. I appreciate working with everyone in the city. I haven't run across a bad egg maybe in three years I still will but who knows. I get a sense of what everyone is genuinely doing a good job and cares about the city that they work for.

I also want to say too for the record that as much as I object to the process, I haven't had problems with Ikani in the time that I have been here either. He has been very

forth coming in working with me and helping the constituents in my district and to me that is what I care about it. How do we work together? How do we move forward? How do we actually help residents in the city? So, I want to say that. I want to thank my colleagues because this is an uncomfortable process. I knew going in that this was going to be unfun today, but I think it is part of it, and I think I have spoken to each of you, and I don't know if that rolling but how fun this all is.

Lastly, I want to thank the journalists in the room because without this this would not exist. There is something very potent about the ability for journalism to hold elected officials accountable and I am glad for it so thank you.

4.2 COUNCILOR MATTIACE

I want to appreciate and thank the attorney, and I just want to comply with the Department of Justice and actually ratify and get these violations in the background and move forward. I think some good comments were made today by the public and I think we do need a standard operating procedure in selecting a City Manager and I think that needs to be a priority. I also think in hearing from Barbara Bencomo, I think it is important that we do have transparency and have panels that will review in that standard operation procedure and there needs to be public involvement in selecting a City Manager so if we could actually get that done I think that would show the public that we do want to change and that we definitely want to avoid any future violations in the future. Again, I believe Ikani has done an excellent job, and I hope he continues.

4.3 COUNCILOR GRAHAM

I follow the Pew Charitable Trusts research on government writ large pretty closely and trust in public institutions is at a historic low and I don't think that I understood that so deeply until I took office. If you show up here on a first or third Monday of the month when we have general public comment you will hear a lot of mistrust in institutions, federal government, people who are upset with the Governor of this state, with Congress, with their state legislators and representatives and I think the beauty of being on city council is the accessibility. I run into constituents at Albertsons and that is amazing. On the other hand a public body this accessible, this local, this close to you is going to catch a lot of anger, valid anger and mistrust at all levels and I am committed to trying to push against that from my space as a local elected and I will also point out I am not trying to curry sympathy but we were joking about throwing tomatoes or rotten tomatoes. When this story broke on social media it was shared around pretty roundly and I came across a comment suggesting that they bring out the gallows for us and after a quick Google search to make sure I know the difference between a gallows and a guillotine which I did, that means that we should be hanged, that we should be hanged for this breach of the public confidence and I reported that comment to the social media platform and was assured that it was perfectly fine with community standards and who knows maybe that is a joke, maybe that is somebody else who is angry. I am sure that person would probably not have the guts to come and say that to my face, if you are out there, I am ready. That is the reality of being a small part of a much larger suite of government institutions and again I take that seriously and if I can do anything to help rebuild trust in these institutions that is one of the most important things I can do in the time that I have left here.

In terms of speaking specifically regarding Ikani Taumoepeau and how I feel about the decision I made. One of the most amazing things that I have experienced, it's not just being to meet with him or being on the dais with him it is just how often I run into him at community events. All times of day, all levels of formality. I'm like oh my God there is Ikani, and you can't miss him because he is super tall, and I am like this guy is everywhere. I don't feel like this is performative. This isn't a guy trying to get the job, this is a guy who already has the job and who I think puts not just amazing expertise and efficacy into but a ton of heart, a tone of cariño as we like to say up here. So, in terms of how I feel about the decision that I have made, rock solid.

Finally for the thanks, thanks of course to all of city staff who are constantly doing the heavy lifting behind us. Specifically in this case Brad for very tireless communication back and forth with the AG, working on a situation that you were really not a part of and especially to Christine Rivera, our amazing City Clerk who again because she is accessible, because she will answer her phone, because she will respond to emails, I think that is a lot often of unfair blame. You know what it is easy to blame the person who you can actually see and your commitment and expertise and your willingness to keep putting yourself out there is truly inspirational, and I just want to acknowledge how rough this has been.

4.4 COUNCILOR CORRAN

I second Councilor Graham's last points but also her prior points, thank you for all that you have done and Brad, thank you for navigating this as you have. We rely on our attorneys to advise us, and I appreciate you doing so in this situation. I think of what has been said has already been said. I think I am going to talk about the things in part because mistrust of course assumes a lack of diligence on everyone and I want to get to those questions. Things like how did we decide on the contract? We took the prior contract as a variable. We took city salaries provided by HR as a variable. We also looked at neighboring municipalities, people within them, Albuquerque, El Paso, Santa Fe, Tucson were among the places that we examined both whether they were strong or weak mayor cities which is an important variable in the salary the city manager is paid because in some cases the mayor is the person who is making those decisions which is not the case here and managing the city. So, we looked a number of variables. I understand the public mistrust means that you assume that we didn't so those conversations did happen as well as an understanding of the national standards were for city managers and there is a lot of data and research related to what kinds of things city managers have within their contracts especially given that they are in political positions that they can be hired and fired at the whims of a body like ours. So, to that question about our diligence in our decisions those were part of our conversations and that didn't come up in our discussion earlier so those things did happen in the last of our meetings and prior I had been researching all of these things prior to that conversation. To the other question as to why we and I think this to me is why I feel particularly strong about the time lapse in the space where folks are coming to us critiquing city employees, I believe that as the public office we should get the critiques. Folks channeling their anger at us into critiquing city employees and/or our hire is really problematic and so I am here to both defend that decision as my colleagues have talked about I think in the nine months since we made this decision we have experienced things but even in the interview I will say this is the reason that I

believe that Ikani has lived that came out in the interview is that he talked about this very specific story and sharing it and it is probably inappropriate but here we are trying to be open and tell you why these things are happening. He talked about in his prior city manager job driving past a couch on someone's curb every single day on his way to city hall and I think about this when I seem there was a loose dog around city hall for a long time and thankfully our animal control officers knew the whole story and told us when I called to complain about that loose dog right down the street here. So Ikani told this story, and I am telling you this because I think if you are wondering what our thinking was and again mistrust means perhaps not understanding what is in our minds and I understand that comes from that place. Ikani talked about this couch sitting on the curb right outside of their city hall at the place where he was previously city manager and driving by every day and going to work and thinking, man I hope solid waste does something about that, I hope somebody is paying attention. Is that going to be recycled? One day, two days, the next day and after several days, I don't remember exactly how many days he realized that he was the person that should do something about it and that highlighted his management approach which was if you do something going above and beyond your job expectations I will always have your back and I think sometimes in city government we can be stayed and always thinking about something being someone else's job and I myself have been guilty of that just like when I called animal control about the loose dog. That was an extraordinarily powerful anecdote, in addition to all the other HR related things that qualifications are experiences with staff. Many and all of the interviewees told us stories that made us understand who they were and how they would be city managers and so those conversations were very powerful. It was an extraordinarily difficult decision, but we did use the resources that we had from Human Resources, from our City Attorney, our meetings, our conversations and try to make the best decisions that we possibly could in that context using a range of inputs from a whole bunch of different folks.

That said I understand that we didn't do the best that we could in public meetings and like I said you can judge us by our actions as we move forward in this context beginning with this week so as we begin a search for whatever kind of search we are going have for a new Executive Director in the ASCMV which is a parallel but separate position as a JPA. I say all of this to make transparent my thinking and usually when we talk about our own thinking and our own feeling from here it is something that we get hundreds of emails excoriating us about afterwards so I embrace those excoriations as they come but I think it is also part of what you all asking for so I understand that ask and that context. All of that said I appreciate very much as has already been said the folks that have worked to rectify this and the folks who brought it forward and continue to demand that we rethink the way that we did this and the way that we do things in the future and it has been absorbed and we feel it and we have experienced it and we are committed to working forward as that goes.

4.5 COUNCILOR FLORES

Again, I want to thank all of you for keeping local government on its feet and I hope you do the rest with the state and the federal government. I think you are all very well informed and care about democracy, care about what the government has to do for you, but you have done a lot for us to bring this to our attention and Happy New Year.

4.6 COUNCILOR BENCOMO

I wanted to speak publicly about a couple of issues that I saw with this process, and I waited till the end because I wanted to honor the process that was laid out in front of us by the DOJ. Ultimately knowing that whatever I said was going to be filtered through a lens that would paint me as defensive, that would paint me as dismissive, because whatever, I am used to it. I think I get emails pretty consistently about the way that I physically show up, what I wear, that I joke with the Mayor, that I don't say hi to you at Pilates, like those things come up quite often, this criticism outside of the scope of my job so I am pretty used to that and so I knew that coming into this that would be similar which is why I carefully thought about what to say but to wait until the end because I do want to honor the process and cure a mistake that was made. I think the concern that I have that I hope to write to the DOJ about is ultimately the process that took nine months that allowed for this to become a referendum on the current City Manager, a person who had nothing to do with a decision that was made at that time and that is what that became and that is pretty disruptive to the functions of government and I would hold that another government entity would have seen that and perhaps rethought the second recommendation that they made. Because I think them having turned around for as quickly as they did Bernalillo County by the way who had a very similar complaint around the same time and their determination, that turn around was pretty quick. Perhaps that second one could have been a recommendation that was very valid. I think nine months later feels like it placed the burden of guilt on the current City Manager when the guilt and the responsibility was to this governing body only and so I have some pretty serious issues with that that I would like to understand a little bit better. I think the other thing to me felt at odds was the lack of legal discernment between a malicious intent to keep the public out and a failure of internal checks and balances which is ultimately I think is what happened which is why I agree that we should have some sort of layout for future city councils on the best practices for hiring a new City Manager, something I actually brought up the Oversight Committee last week as well. So I think that the lack of legal discernment within their investigation to me felt really concerning and the last thing I will say is that there was some unresponsiveness that I hoped would have been different, DOJ is a big department and I know that they have a lot of things going on but I think in the process of trying to do the best we can at curing this and getting to the mission of what this determination was about I would have hoped there was a little bit more responsiveness and less conflicting guidance from the Department of Justice.

I also lastly want to thank the Bulletin for their diligence in this and bringing this forth for the folks who are committed to public transparency. I think that is a very important thing. My only other ask is to those journalists is that you do not let misinformation go rampant and that is also a responsibility that we have in this moment to make sure that the public understands what has happened and what happened here today. I do want to thank the City Manager Ikani Taumoepeau for his work, 24/7. He has sacrificed time with his family. He moved his family, he built a team, it is pretty blood, sweat, and tears type of job, and I could not be more grateful for the kind of leader that I get to work with every day and not just him, all of you my colleagues as well for engaging in this conversation thoughtfully and I thank you.

4.7 MAYOR ENRIQUEZ

As elected officials we are elected to do a job, and we did our job and we do what is

best for the city. It is not in any way to be deceitful or malicious. We wanted what is best for the city, for the organization so that we continue to grow and move forward. Adversity, difficulties, challenges, scrutiny is going to come our way and we understand that and I thank council for sticking together, being professional, as Councilor Corran said rowing together for the betterment and becoming a team and that is what we have worked on in the past year and Ikani has been a big part of that, creating that team so that we can move forward with all those challenges and difficulties. Can we learn from it? Absolutely. Can we get better? Yes, we can. We will prove that with our actions. We are here to do a job for the city of Las Cruces and make it a better place for all. So, thank you all for being here today.

5. ADJOURNMENT

5.1

Councilor Johana Bencomo moved, seconded by Councilor Becki Graham, to adjourn at 11:54 a.m.

RESULT:	**Carried**
MOVER:	Councilor Johana Bencomo
SECONDER:	Councilor Becki Graham
AYES:	Councilor Johana Bencomo, Councilor Yvonne Flores, Councilor Becki Graham, Councilor Becky Corran, Councilor Cassie McClure, Councilor William Mattiace, and Mayor Eric Enriquez

25-090

Type of Action:
☒ Resolution
☐ Ordinance
☐ TIDD Resolution

City Council Action and Executive Summary

District:	**☐ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☐ 6 ☒ N/A**		
1st Reading:		**Adopted:**	February 4, 2025
Drafter:	Diana Rincon	**Department:**	Financial Services
Program:	Budget	**Line of Business:**	Fiscal Management

Title:	**A RESOLUTION AUTHORIZING THE CITY OF LAS CRUCES (CITY) TO ACCEPT GRANT AWARDS FOR VARIOUS CITY DEPARTMENTS THROUGH AN AMENDMENT TO THE CITY'S ADOPTED FISCAL YEAR 2025 BUDGET.**

TYPE OF ACTION: **☒ Administrative** **☐ Legislative** **☐ Quasi-Judicial**

PURPOSE(S) OF ACTION:

To accept awarded grants and adjust the FY25 budget.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

The City of Las Cruces (City) relies on grant funding for many of the critical programs provided each year for the residents of Las Cruces. Grant funding awards are received throughout the fiscal year and are not budgeted during the normal fiscal year budgeting process. Funds are not budgeted until the City has received a grant award agreement due to the unpredictable nature of funding levels and timing.

Per the City's Grants Administration Program Policy, the City Manager, or his designee, may execute grant agreements with funding agencies. Upon receipt of the fully executed agreement from the funding agency, the Council may adjust the budget.

The request for City Council is to accept the budget adjustments to be used by the departments for the scope of work as defined by each grant agreement.

SUPPORT INFORMATION:

Exhibit "A" - Fund Summaries
Attachment "A" - Grant Listing
Attachment "B" - QOL - FY25 State Grants-in-Aid Fully Executed Agreement
Attachment "C" - PR - FY25 Que Linda Agreement Executed
Attachment "D" - LRU - Maintenance and Consumables LRU-25-03 Fully Executed Agreement
Attachment "E" - LRU - Blast Pads LRU-25-01 Fully Executed Agreement

PLAN(S):

None

COMMITTEE/BOARD REVIEW:

None

DOES THIS AMEND THE BUDGET?:

☒ Yes

☐ No

BUDGET / FISCAL IMPACT:

BUDGETED AMOUNT: Various **AVAILABLE AMOUNT:** Various **EXPENDITURE AMOUNT:** Various

Funding Source(s):
Various

Overall Budget Impact:
Please refer to Exhibit "A" Fund Summaries

Does this action amend the Capital Improvement Plan (CIP)?

☐ Yes

☒ No

Does this action align with Elevate Las Cruces?

☒ Yes

☐ No

OPTIONS / ALTERNATIVES:

1. Vote “Yes”; this will approve the Resolution to accept the budget adjustments as presented and amend the City’s FY2025 Budget.
2. Vote “No”; this will not approve the Resolution to adjust the FY2025 Budget as presented and return the funds to the granting agency.
3. Vote to “Amend”; this could delay the Resolution and the process of spending the grant funds within the predetermined grant schedule and require direction to staff.
4. Vote to “Table”; this will delay the Resolution and will impact the implementation of the grant agreement, the City department's ability to utilize the funds and return the grant funds to the granting agency.

RESOLUTION 25-090

A RESOLUTION AUTHORIZING THE CITY OF LAS CRUCES (CITY) TO ACCEPT GRANT AWARDS FOR VARIOUS CITY DEPARTMENTS THROUGH AN AMENDMENT TO THE CITY'S ADOPTED FISCAL YEAR 2025 BUDGET.

The City Council is informed that:

WHEREAS, the City has received notice of grant awards for various City departments; and

WHEREAS, the grants will be used as designated in the scope of work and within the specified time period as shown in the grant agreements executed by the City Manager, or his designee; and

WHEREAS, the grant agreements that are the subject of this budget adjustment will be attached to the Resolution with a Summary, as Attachment "A"; and each agreement will be attached as subsequent attachments.

NOW, THEREFORE, Be it Resolved by the Governing Body of the City of Las Cruces:

(I)

THAT the City hereby amends the FY2025 City Budget and accepts all grant awards as shown in the Fund Summary, Exhibit "A", attached hereto and made part of this Resolution, are hereby approved.

(II)

THAT the City staff is hereby authorized to do all deeds necessary in the accomplishment of the herein above.

DONE AND APPROVED this day of

APPROVED

_____

ATTEST:

_____

Moved by:

Seconded by:

AYES

NAYS

CITY OF LAS CRUCES *Exhibit "A"*

BUDGET ADJUSTMENT REQUEST

BUDGET FISCAL YEAR 2024-25

	2100 SPECIAL REVENUE REIMB GRANTS 2024-25			
	Original Budget	Amended Budget	Req. Adjustment	Adjusted Budget
RESOURCES				
Beginning Balance	$ 270,735	0	0	270,735
Revenues				
Municipal Gross Receipts Tax	0	0	0	0
Public Safety Gross Receipts Tax	0	0	0	0
Hold Harmless Replacement GRT	0	0	0	0
State-Shared Gross Receipts Tax	0	0	0	0
Environmental Gross Receipts Tax	0	0	0	0
County Environmental Gross Receipts Tax	0	0	0	0
Internet Sales Gross Receipts Tax	0	0	0	0
Gasoline Tax	0	0	0	0
Cannabis Excise Tax	0	0	0	0
Lodgers Tax	0	0	0	0
Property Taxes	0	0	0	0
Payment In Lieu of Property Tax	0	0	0	0
Franchise Fees	0	0	0	0
Payment In Lieu of Franchise Fees	0	0	0	0
Licenses, Fees & Permits	0	0	0	0
Convention Center Fee	0	0	0	0
Auto License - State Shared	0	0	0	0
Fines & Forfeitures	0	0	0	0
Charges For Services	0	0	0	0
Natural Gas Sales - Commodity	0	0	0	0
Motor Pool Maintenances Charges	0	0	0	0
Fuel Charges	0	0	0	0
Intergovernmental	0	0	0	0
Investment Income	0	0	0	0
Miscellaneous Revenues	185,500	185,500	0	185,500
Federal Grants	15,245,266	18,065,507	0	18,065,507
State Grants	7,421,065	8,184,566	195,574	8,380,140
Local Grants	0	3,856	0	3,856
Debt Service	0	0	0	0
Total Revenues	**22,851,831**	**26,439,429**	**195,574**	**26,635,003**
TOTAL RESOURCES	**$ 23,122,566**	**26,439,429**	**195,574**	**26,905,738**
Expenditures				
General Government	0	0	0	0
Legislative	0	0	0	0
Municipal Court	0	0	0	0
Chief Administrative Officer	0	0	0	0
City Manager	9,300,103	11,160,103	0	11,160,103
Legal	0	0	0	0
Las Cruces Police Department	4,248,063	4,684,570	0	4,684,570
Las Cruces Fire Department	1,415,683	1,251,217	0	1,251,217
Utilities	378,926	385,367	0	385,367
Economic Development	4,860,889	4,309,028	0	4,309,028
Internal Audit	0	0	0	0
Assistant City Manager-400	148,183	295,337	0	295,337
Human Resources	0	0	0	0
Financial Services	366,296	298,255	0	298,255
Information Technology	0	0	0	0
Fleet	0	0	0	0
Assistant City Manager-500	150,000	710,190	0	710,190
Parks & Recreation	0	615,441	175,000	790,441
Community Development	277,223	277,223	0	277,223
Quality of Life	1,479,056	2,426,441	20,574	2,447,015
Public Works	230,196	51,638	0	51,638
MVRDA	0	0	0	0
Total Expenditures	**$ 22,854,616**	**26,464,810**	**195,574**	**26,660,384**
Other Resources				
Operating Transfers In	0	0	0	0
Operating Transfers Out	0	0	0	0
Total Other Resources	**$ 0**	**0**	**0**	**0**
Accrual Adjustments	0	0	0	0
ENDING BALANCE	**$ 267,950**	**(25,381)**	**0**	**245,354**

CITY OF LAS CRUCES *Exhibit "A"*

BUDGET ADJUSTMENT REQUEST

BUDGET FISCAL YEAR 2024-25

	5010 AIRPORT 2024-25			
	Original Budget	Amended Budget	Req. Adjustment	Adjusted Budget
RESOURCES				
Beginning Balance	$ 780,075	0	0	780,075
Revenues				
Municipal Gross Receipts Tax	0	0	0	0
Public Safety Gross Receipts Tax	0	0	0	0
Hold Harmless Replacement GRT	0	0	0	0
State-Shared Gross Receipts Tax	0	0	0	0
Environmental Gross Receipts Tax	0	0	0	0
County Environmental Gross Receipts Tax	0	0	0	0
Internet Sales Gross Receipts Tax	0	0	0	0
Gasoline Tax	0	0	0	0
Cannabis Excise Tax	0	0	0	0
Lodgers Tax	0	0	0	0
Property Taxes	0	0	0	0
Payment In Lieu of Property Tax	0	0	0	0
Franchise Fees	0	0	0	0
Payment In Lieu of Franchise Fees	0	0	0	0
Licenses, Fees & Permits	0	0	0	0
Convention Center Fee	0	0	0	0
Auto License - State Shared	0	0	0	0
Fines & Forfeitures	0	0	0	0
Charges For Services	61,500	61,500	0	61,500
Natural Gas Sales - Commodity	0	0	0	0
Motor Pool Maintenances Charges	0	0	0	0
Fuel Charges	0	0	0	0
Intergovernmental	0	0	0	0
Investment Income	12,114	12,114	0	12,114
Miscellaneous Revenues	138,748	138,748	0	138,748
Federal Grants	3,049	249,529	0	249,529
State Grants	2,825,289	4,876,985	356,297	5,233,282
Local Grants	0	0	0	0
Debt Service	0	0	0	0
Total Revenues	**3,040,700**	**5,338,876**	**356,297**	**5,695,173**
TOTAL RESOURCES	**$ 3,820,775**	**5,338,876**	**356,297**	**6,475,248**
Expenditures				
General Government	0	0	0	0
Legislative	0	0	0	0
Municipal Court	0	0	0	0
Chief Administrative Officer	0	0	0	0
City Manager	0	0	0	0
Legal	0	0	0	0
Las Cruces Police Department	0	0	0	0
Las Cruces Fire Department	0	0	0	0
Utilities	0	0	0	0
Economic Development	0	0	0	0
Internal Audit	0	0	0	0
Assistant City Manager-400	4,134,031	6,553,099	356,297	6,909,396
Human Resources	0	0	0	0
Financial Services	0	0	0	0
Information Technology	0	0	0	0
Fleet	0	0	0	0
Assistant City Manager-500	0	0	0	0
Parks & Recreation	0	0	0	0
Community Development	0	0	0	0
Quality of Life	0	0	0	0
Public Works	0	0	0	0
MVRDA	0	0	0	0
Total Expenditures	**$ 4,134,031**	**6,553,099**	**356,297**	**6,909,396**
Other Resources				
Operating Transfers In	1,013,000	1,013,000	0	1,013,000
Operating Transfers Out	0	0	0	0
Total Other Resources	**$ 1,013,000**	**1,013,000**	**0**	**1,013,000**
Accrual Adjustments	0	0	0	0
ENDING BALANCE	**$ 699,744**	**(201,223)**	**0**	**578,852**

CITY OF LAS CRUCES

The following grant has been awarded to the City of Las Cruces

Today's Date: 12/23/2024
Grant Team Representative: Perla Galindo
Grant Award Amount: 20574.16
Council Budget Adjustment Date: 02/04/2025
Grant Agreement #:
Grant Effective Date: 12/04/2024
Grant Reversion Date: 06/30/2025
Funding Agency: New Mexico State Library

PROJECT INFORMATION

Grant Project Title: State Grants-in-Aid
Type of Funding: State Operating & Capital
Type of Grant: Legislative Appropriation
Grant Type: State
Match Amount: 0.00
Match Description: No Match Required-Provided
Match Percent/Ratio: 0.00
Match Source:
City Fiscal Year: FY2025
Funder Fiscal Year: FY2025
Grant Scope of Work:
The state program is intended to supplement and encourage local effort in providing local library service.

Does this grant involve Sub-Grantees or Pass Through Grants: ☐ YES ☑ NO

DEPARTMENT INFORMATION

Implementation Dept: 540- Quality of Life
User Dept: SELECT

Line of Business: 0254C- Library Support Services
Program: 0254- Library
Project Manager: Colleen Corgel
Phone: 575-541-2098
Email: ccorgel@lascruces.gov

Line of Business:
Program:
Project Manager:
Phone:
Email:

Check box if implementation and user departments are the same: ☑

ACCOUNT STRINGS:

Fund Number - Organization Number - Object Number - Amount for Revenue and Expense
(2100 for General Grants/4100 for Capital Grants)

REV: 2100-20254003-599200 ($20,574.16)
EXP:
2100-20254003-701000 $5,000
2100-20254003-701180 $5,000
2100-20254003-732300 $10,574.16

Capital Assets: ☐ YES ☑ NO

Reimbursable Grant: ◉ **Revenue Collected in Advance:** ○

Date to Accounting:
Project Number: 25093
Project Created By: JOSIE TREVINO
Set-Up Date: 1/14/25
Accounting Comments:

CITY OF LAS CRUCES

The following grant has been awarded to the City of Las Cruces

Today's Date: 01/09/2025
Grant Team Representative: Crystal Silva
Grant Award Amount: $ 175,000.00
Council Budget Adjustment Date: 02/04/2025
Grant Agreement #: D20541
Grant Effective Date: 12/18/2024
Grant Reversion Date: 06/30/2025
Funding Agency: New Mexico Department of Transportation (NMDOT)

PROJECT INFORMATION

Grant Project Title: Que Linda Beautification Program
Type of Funding: State Operating
Type of Grant: Competitive
Match Description: No Match Required-Provided
Match Amount: $ 0.00
Match Percent/Ratio: 0

City Fiscal Year: FY2025
Funder Fiscal Year: FY2025

Grant Scope of Work: (Specify if this grant involves Sub-Grantees or Pass Through Grants)

Augment existing Keep Las Cruces Beautiful efforts by contracting a litter abatement team, partnering with the Las Cruces Public School to implement a school-wide clean-up day, continuing with our educational anti-litter campaign presentations, updating and revitalizing our Adopt-A-Spot program, and starting a free weekend event at our collection center, as well as weekend tire collection events.

DEPARTMENT INFORMATION

Implementation Dept: 450- Parks & Rec
User Dept: SELECT

Line of Business: Construction Maint. & Beautification
Program: Keep Las Cruces Beautiful
Project Manager: Amelia Corrales
Phone: 575-528-4506
Email: acorrales@lascruces.gov

Line of Business:
Program:
Project Manager:
Phone:
Email:

Check box if implementation and user departments are the same: ☑

ACCOUNT STRINGS:

Fund Number - Organization Number - Object Number - Amount for Revenue and Expense
(2100 for General Grants/4100 for Capital Grants)

Revenue: 2100-20245002-599200 -25541 $175,000
Expense: 2100-20245002-601000-25541 $44,000
-701000-25541 $40,000
-711100-25541 $10,000
-721080-25541 $81,000

Revenue in Advance: 2100-2100-291000

Reimbursable Grant: ☐ **Revenue Collected in Advance:** ☑

Date to Accounting:
Project Number: 25541
Project Created By: JOSIE TREVINO
Set-Up Date: 1/14/25
Accounting Comments:

CITY OF LAS CRUCES

The following grant has been awarded to the City of Las Cruces

Today's Date: 12/30/2024
Grant Team Representative: Perla Galindo
Grant Award Amount: 20000.00
Council Budget Adjustment Date: 02/04/2025
Grant Agreement #: LRU-25-03
Grant Effective Date: 10/28/2024
Grant Reversion Date: 10/28/2026
Funding Agency: New Mexico Department of Transportation- Aviation Division (NMDOT-A)

PROJECT INFORMATION

Grant Project Title: LRU-25-03 Airfield Maintenance and Consumables
Type of Funding: Federal Passthrough to State
Type of Grant: Non-Competitive/Entitlement Recurring
Grant Type: State
Match Amount: 2200.00
Match Description: Local Cash Match
Match Percent/Ratio: 11%
Match Source:
City Fiscal Year: FY2025
Funder Fiscal Year: FY2025
Grant Scope of Work:

Airfield maintenance and consumables

Does this grant involve Sub-Grantees or Pass Through Grants: ☐ YES ☑ NO

DEPARTMENT INFORMATION

Implementation Dept: 300- City Manager's Office
User Dept: SELECT

Line of Business: Airport Development
Program: Las Cruces Airport
Project Manager: Andy Hume
Phone: 575-541-2473
Email: ahume@lascruces.gov

Line of Business:
Program:
Project Manager:
Phone:
Email:

Check box if implementation and user departments are the same: ☑

ACCOUNT STRINGS:

Fund Number - Organization Number - Object Number - Amount for Revenue and Expense
(2100 for General Grants/4100 for Capital Grants)

REV:5010-50140022-599200- 25762 $20,000
EXP:5010-50140022-732200- 25762 $20,000
Match: 5010-50140002-732200- 25762 $2,200 (already budgeted in 5010-50140002-732200)

Capital Assets: ☑ YES ☐ NO

Reimbursable Grant: ◉ **Revenue Collected in Advance:** ○

Date to Accounting:
Project Number: 25762
Project Created By:
Set-Up Date:
Accounting Comments:

CITY OF LAS CRUCES

The following grant has been awarded to the City of Las Cruces

Today's Date: 12/30/2024
Grant Team Representative: Perla Galindo
Grant Award Amount: 336297.00
Council Budget Adjustment Date: 02/04/2025
Grant Agreement #: LRU-25-01
Grant Effective Date: 10/28/2024
Grant Reversion Date: 10/28/2026
Funding Agency: New Mexico Department of Transportation-Aviation Division (NMDOT-A)

PROJECT INFORMATION

Grant Project Title: RWY 8-26 & RWY 12-30 Blast Pads- Design & Construct
Type of Funding: Federal Passthrough to State
Type of Grant: Non-Competitive/Entitlement Recurring
Grant Type: State
Match Amount: $ 37,566.00
Match Description: Local Cash Match
Match Percent/Ratio: 11%
Match Source:
City Fiscal Year: FY2025
Funder Fiscal Year: FY2025
Grant Scope of Work:

Design and construction of runway blast pads 8-26 & 12-30 at the Las Cruces International Airport

Does this grant involve Sub-Grantees or Pass Through Grants: ☐ YES ☑ NO

DEPARTMENT INFORMATION

Implementation Dept: 300- City Manager's Office
User Dept: SELECT

Line of Business: Airport Development
Program: Las Cruces Airport
Project Manager: Andy Hume
Phone: 575-541-2473
Email: ahume@lascruces.gov

Line of Business:
Program:
Project Manager:
Phone:
Email:

Check box if implementation and user departments are the same: ☑

ACCOUNT STRINGS:

Fund Number - Organization Number - Object Number - Amount for Revenue and Expense
(2100 for General Grants/4100 for Capital Grants)

REV:5010-50140022-599200- 25422 $336,297
EXP:5010-50140022-804000- 25422 $336,297
Match: 5010-50140002-804000- 25422 $37,566 (already budgeted in 5010-50140002-804000)

Capital Assets: ☑ YES ☐ NO

Reimbursable Grant: ◉ **Revenue Collected in Advance:** ○

Date to Accounting:
Project Number: 25422
Project Created By: JOSIE TREVINO
Set-Up Date: 1/14/25
Accounting Comments:

State Grants-in-Aid to Public Libraries Agreement For FY2025

This Agreement is entered into on the date of last signature, below, by and between the **New Mexico State Library**, hereinafter called **NMSL**, and **Las Cruces Public Libraries**, located in **Las Cruces, NM**, hereinafter called the **Recipient**.

WHEREAS, the State Librarian, the division director of NMSL, is required to administer grants-in-aid and encourage local library service and generally promote an effective statewide library system under NMSA 1978, Section 18-2-4;

WHEREAS, Section 18-2-4 also requires the State Librarian to make rules and regulations necessary to administer NMSL statutory provisions and the State Librarian has adopted such rules for distributing state grants-in-aid to public libraries, codified as 4.5.2 NMAC; and

WHEREAS, NMSL has determined that Recipient qualifies for a state grant-in-aid under 4.5.2 NMAC.

THEREFORE, the Parties agree to the following terms and conditions:

I. NMSL agrees to pay the Recipient a grant in an amount not to exceed **Twenty Thousand Five Hundred Seventy-Four Dollars and Sixteen Cents ($20,574.16)** to support Recipient's library collections; library staff salaries; library staff professional development; library equipment; or other operational expenditures associated with delivery of *library services* as defined in Section 4.5.2.7(B) NMAC.

II. The Recipient agrees to:

1. Use the grant only for library collections; library staff salaries; library staff professional development; library equipment; or other operational expenditures associated with delivery of *library services*, as those services are defined in 4.5.2.7(B) NMAC;
2. Continue to comply with 4.5.2 NMAC and other statutes and rules applicable to developing libraries or public libraries;
3. Engage in good communication and the exchange of information with NMSL regarding library activities and the grant's use;
4. Expend the grant according to the rules outlined in 4.5.2 NMAC, attached hereto as Attachment A;
5. Expend *all* grant funds before June 30, 2025;
6. No later than August 10, 2025, provide NMSL with a report on how the grant was expended as part of the Recipient's annual report for the fiscal year; and
7. Sign and return this Agreement to NMSL ***within 60*** days from receipt of the Agreement, which shall be calculated from the date of postmark or electronic postmark. **If Recipient does not submit this Agreement within the required time period, Recipient forfeits the grant allocation.**

III. If the parties dispute the terms of this Agreement, the Recipient and NMSL hereby agree to and consent to New Mexico state court jurisdiction to address the dispute.

IV. The Laws of New Mexico shall govern this Agreement.

V. Termination for Lack of Appropriations. The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, this Agreement shall terminate immediately upon written notice being given by NMSL to the Recipient. NMSL's decision as to whether sufficient appropriations are available shall be accepted by the Recipient and shall be final.

The Recipient by its signature below certifies that the Recipient will use the grant money only for the uses specified in this Agreement and will comply with all other applicable requirements of this Agreement.

Recipient Signature

Signed: _____ **Date:** 11/22/24

☒ My signature above verifies that I am an authorized agent who has authority to enter into a legal contract with the State of New Mexico.

Print Name and Title: _____, Authorized Agent of Recipient

APPROVED AS TO FORM:

_____ Date: 11/7/2024

City Attorney's Office

NMSL Signature

Signed: _____ Digitally signed by Eli Guinnee Date: 2024.12.04 13:07:18 -07'00' **Date:** 12/4/24

Print Name and Title: Eli Guinnee, New Mexico State Librarian, Authorized Agent of NMSL

New Mexico DEPARTMENT OF TRANSPORTATION
MOBILITY FOR EVERYONE

City of Las Cruces
Gabriela Prats
gprats@lascruces.gov
Sent via e-mail

September 30, 2024

Dear Gabriela Prats:

Congratulations! The New Mexico Department of Transportation (NMDOT) has selected your application to receive funding from an appropriation to NMDOT through the General Appropriation Act of 2024, Chapter 69, 2024, Section 11, under the Que Linda Program (Program) for Fiscal Year 2025. Please know that we were impressed by the quality of your application and the level of commitment your organization has for its community.

City of Las Cruces is awarded a grant of $175,000 to build a continuous and aggressive litter control program on the roads and highways of New Mexico. With this award, you are required to designate a 1.0 full time equivalent position to design and implement a local beautification program and meet the requirements of the Program, including:

- Participate in at least two technical assistance meetings with the Que Linda Director,
- Complete a local Program plan that encompasses the 11 strategies of the Program,
- Participate in Que Linda cohort meetings and events,
- Host a minimum of 3 events,
- Complete a minimum of 2 contracts, and
- Complete a final report by June 15, 2025.

NMDOT looks forward to working with you on implementing a successful Program. Please review the award totals, sign, and return this form by October 4, 2024, to Amy Whitfield, amy.whitfield@dot.nm.gov.

Critical Next Steps

- Engage Amy Whitfield, Que Linda Director, at (505) 309-1066 or amy.whitfield@dot.nm.gov to begin the Agreement Development Process,
- Have the governing body approve a resolution stating support for the grant, and designating signature authority for the grant, and
- Read and refer to the NMDOT Que Linda Program for processes and requirements.

Michelle Lujan Grisham
Governor

Ricky Serna
Cabinet Secretary

Commissioners

Vacant
Commissioner
District 1

Gary Tonjes
Commissioner
District 2

Hilma E. Chynoweth
Commissioner, Vice Chairman
District 3

Walter G. Adams
Commissioner, Chairman
District 4

Thomas C. Taylor
Commissioner
District 5

Charles Lundstrom
Commissioner, Secretary
District 6

Award Acceptance
I, Ikani Taumoepeau, accept the award, as detailed above on behalf of City of Las Cruces, and agree to the award terms and NMDOT Que Linda Program processes and requirements.

Ikani Taumoepeau, City Manager		10/10/24.
Print Name	Signature	Date

Sincerely,

Amy Whitfield
Cc: Ikani Taumoepeau

Contract Number: D20541
Vendor No.: 54342
Project No.: _____
Control No: _____

NEW MEXICO DEPARTMENT OF TRANSPORTATION
QUE LINDA BEAUTIFICATION PROGRAM
GRANT AGREEMENT

This Agreement is between the New Mexico Department of Transportation (Department) and City of Las Cruces (Grantee), collectively referred to as the "Parties." This Agreement is effective as of the date of the last party to sign it on the signature page below.

RECITALS

WHEREAS, the purpose of the Que Linda Beautification Program (Program) is to accomplish litter control throughout New Mexico, under the authority delegated to the Department by the "Clean Highways Act," NMSA 1978, Section 67-15-1 to -4 (Act) to conduct a permanent and continuous program to control and remove litter from the roads and highways of New Mexico to the maximum extent possible;

WHEREAS, the Department was appropriated funding through the General Appropriation Act, Laws 2024, Chapter 64, Section 11, for roadway beautification and litter control, of which a portion is being used for the purposes of carrying out the provisions of the Act; and

WHEREAS, the Act provides that the Department may enter into agreements and provide a Program for the purposes of carrying out the provisions of the Act.

AGREEMENT

Now, therefore, the Parties agree as follows:

1. Program Funding.

a. The Department hereby awards $175,000 to fund the Budget (Appendix A) with the purpose of conducting a permanent and continuous program to control and remove litter from the roads and highways of New Mexico to the maximum extent possible.
b. The Grantee is responsible for all costs that exceed Program funding.
c. All allocated funds must be spent by June 30, 2025.
d. All allocated funds are eligible to be reallocated pursant to Section 20.
e. The Grantee must repay Program funding to the Department if:
    1. The Program is cancelled or partially performed.
    2. A final audit conducted by the Department determines the following:
        i. an overpayment,
        ii. unexpended funds, or
        iii. ineligibile expenses.

2. The Department:

a. Shall distribute the funds, identified in Section 1(a), in a lump sum to the Grantee after:

1. The Department has received this Agreement fully executed with a Resolution of Sponsorship (Appendix C).

b. May perform Program monitoring that might consist of the following:

1. Conduct a review of the Grantee's performance and administration of the Program funds identified in Section 1(a).
2. Conduct a review of subcontracts for administration of the Program funds.

3. The Grantee Shall:

a. Perform and participate in the Program by accomplishing the following:

1. Participating in 2 technical assistance meetings with the Que Linda Director for the development of a local beautification program plan;
2. Creating and adopting a formal local beautification program plan;
3. Hosting a minimum of 3 events in alignment with the 11 strategies of the Que Linda Program (Appendix B); and
4. Completing a minimum of 2 contracts in alignment with the 11 strategies of the Que Linda Program (Appendix B).

b. Procure and award any contract in accordance with applicable procurement law, rules, regulations and ordinances.

c. Adopt a written resolution of Program support that includes a commitment to funding, ownership, liability and maintenance. The resolution is attached to this Agreement as Appendix C.

d. Comply with any and all state, local and federal regulations including the Americans with Disabilities Act (ADA) and laws regarding noise ordinances, air quality, surface water quality, ground water quality, threatened and endangered species, hazardous materials, historic and cultural properties, and cultural resources.

e. Meet with the Department, as needed, or provide Program status reports within 30 days of request.

f. Acknowledge that the Department reserves the right to unilaterally adjust, modify, or cancel any and all funding identified in Section 1(a) in order to ensure the expenditure of all funds.

g. Agree and acknowledge Program funds shall not be used for purposes other than those outlined and specified in Appendix A.

h. Comply with Department mandatory reporting requirements:

1. The Grantee shall submit an annual report on the progress of activities during the funding period by June 15, 2025.
2. The Grantee must participate in a minimum of 75% of the Que Linda statewide cohort meetings.

i. Agree that Program funds must be expended on or before June 30, 2025.

4. Both Parties Agree:

a. The inability to properly complete and administer the Program may result in the Grantee being

denied future Program funding.
b. The Department will not pay for any expenses incurred prior to the Parties signing the Agreement, after termination of the Agreement, or in excess of the amount of the Program funding noted in Section 1(a).

5. Term.
This Agreement becomes effective upon signature of the Parties. The effective date is the date when the last party signed the Agreement on the signature page blow. This Agreement terminates at 11:59:59 p.m. on June 30, 2025, unless terminated earlier as provided under this Agreement.

6. Termination.
The Department may terminate this Agreement for any reason, by giving the Grantee 30 days written notice. On receipt of written notice from the Department, the Grantee shall suspend all Program activities unless otherwise directed by the Department in writing. The Parties acknowledge that termination will not nullify obligations incurred prior to the date of the written notice requiring termination. Neither Party has any obligations after termination, except as stated in Section 1(e) and 15.

7. Notices.
For a notice under this Agreement to be valid, it must be in writing; be delivered by hand, registered or certified mail return receipt requested and postage prepaid, fax or e-mail; and be addressed as follows:

To the Department:

Amy Whitfield, Special Director
New Mexico Department of Transportation
P.O. Box 1149
Santa Fe, NM 87504-1149
Phone: 505-309-1066
Email: Amy.Whitfield@dot.nm.gov

To the Grantee:

Gabriela M. Prats, Grant Manager
City of Las Cruces
700 N Main St
Las cruces NM 88001-1120
Phone: 575-541-2430
Email: gprats@lascruces.gov with copy to: grants@lascruces.gov

8. Third Party Beneficiary.
It is not intended by any of the provisions of any part of this Agreement to create in the public or any member of the public a third party beneficiary or to authorize anyone not a party to the Agreement to maintain a suit(s) for wrongful death(s), bodily and/or personal injury(ies) to person(s), damage(s) to property(ies), and/or any other claim(s) whatsoever pursuant to the provisions of this Agreement.

9. New Mexico Tort Claims Act.

As between the Department and Public Entity, neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1 to -27.

10. Scope of Agreement.
This Agreement constitutes the entire understanding between the Parties with respect to the subject matter of the Agreement and supersedes all other Agreements, whether written or oral, between the parties, except that this Agreement does not supersede the Grantee's rights under any other grant Agreement.

11. Terms of this Agreement.
The terms of this Agreement are lawful; performance of all duties and obligations must conform with and not contravene any state, local, or federal statutes, regulations, rules, or ordinances.

12. Legal Compliance.
The Grantee shall comply with all applicable federal, state, and local laws, regulations and Department policies in the performance of this Agreement, including, but not limited to laws governing civil right, equal opportunity compliance, environmental issue, workplace safety, employer-employee relations and all other laws governing operations of the workplace. The Grantee shall include the requirements of this Section 12 in each contract and subcontract at all tiers.

13. Equal Opportunity Compliance.
The Parties agree to abide by all federal and state laws and rules and regulations, and executive orders, pertaining to equal employment opportunity. In accordance with all such laws and rules and regulations, and executive orders, the parties agree to assure that no person in the United States will, on the grounds of race, color, national origin, ancestry, sex, sexual preference, age or handicap, be excluded from employment with, or participation in, any program or activity performed under this Agreement. If the parties are found to not be in compliance with these requirements during the term of this Agreement, the parties agree to take appropriate steps to correct these deficiencies.

14. Appropriations and Authorizations.
The terms of this Agreement are contingent upon sufficient appropriations and authorizations being made by the governing board of the Grantee, and the Legislature of New Mexico for performance of the Agreement. If sufficient appropriations and authorizations are not made by the Grantee and the Legislature, this Agreement will terminate upon written notice being given by one Party to the other. The Department and Grantee are expressly not committed to expenditure of any funds until such time as they are budgeted, encumbered, and approved for expenditure.

15. Accountability of Receipts and Disbursements.
There shall be strict accountability for all receipts and disbursements relating to this Agreement. The Grantee shall maintain all records and documents relating to the Program for a minimum of 5 years after completion. The Grantee shall furnish the Department and State Auditor, upon demand, any and all such records relevant to this Agreement. If an audit finding determines that specific funding was inappropriate

or not related to the Program, the Grantee shall reimburse that portion to the Department within thirty (30) days of written notification. If documentation is insufficient to support an audit by customarily accepted accounting practices, the expense supported by such insufficient documentation must be reimbursed to the Department within thirty (30) days.

16. Severability.
In the event that any portion of this Agreement is determined to be void, unconstitutional or otherwise unenforceable, the remainder of this Agreement will remain in full force and effect.

17. Applicable Law.
The laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provisions. Venue is proper in a New Mexico Court of competent jurisdiction in accordance with NMSA 1978, Section 38-3-1(G).

18. Amendment.
This Agreement may be amended by an instrument in writing executed by the Parties.

19. Reallocation of Funding.
The Grantee may request reallocation of the Program Funds from any Budget (Appendix A) item to other idenitifed Budget items. The Grantee must submit a written request with the proposed Budget detailing the reallocation amount and the identified Budget item(s) and costs of which funds are being reallocated. The Grantee shall be allowed to reallocate pursuant to the written request upon receipt of approval from the Department and executed Amendment by the Parties pursuant to Section 18.

The remainder of this page is intentionally left blank.

Each party is signing this Agreement on the date stated opposite that party's signature. This Agreement is effective as of the date of the last party to sign it on the signature page below.

NEW MEXICO DEPARTMENT OF TRANSPORTATION

By: _____ Date: 12/18/24
Cabinet Secretary or Designee

Approved as to form and legal sufficiency.

By: _____ Date: 12/18/24
Office of General Counsel

CITY OF LAS CRUCES

By: _____ Date: 12/10/24.
Ikani Taumoepeau
Title: City Manager

APPROVED AS TO FORM:

By: _____ Date: 12/4/2024
City Attorney

Appendix A: Scope of Work and Project Budget

Scope of Work. The Grantee shall complete and oversee the following activities.

Activities. The Grantee shall complete and oversee the following Establish a Local Beautification program related activities in support of the Program, as situated in the grant agreement and under the oversight and in coordination with Department consultation. The Grantee is responsible for:

a. Funding the salary of the Coordinator for the NMDOT program objectives.

b. _____;

c. _____;

d. _____;

e. _____.

Project Budget

Phase 1 - Development			
Task	Federal Share	Grantee Match	Total
Execute the grant following NMDOT and City guidelines. Use these funds to reimburse the coordinator salary.	$44,000	$	$ 44,000
Phase 2 – Operation & Maintenance			
Task	Federal Share	Grantee Match	Total
	$	$	$
Total	$	$	$

Appendix A: Scope of Work and Project Budget

Scope of Work. The Grantee shall complete and oversee the following activities.

Activities. The Grantee shall complete and oversee the following Student Service Learning related activities in support of the Program, as situated in the grant agreement and under the oversight and in coordination with Department consultation. The Grantee is responsible for:

a. Student and youth groups, ages five to 18, receive a stipend to conduct a clean-up at a designated location within the city.

b. Collaborate with Las Cruces Public Schools (LCPS) to engage students in a campus cleanup and provide classroom teachers with a stipend for their involvement in this activity.

c. _____;

d. _____;

e. _____.

Project Budget

Phase 1 - Development			
Task	Federal Share	Grantee Match	Total
Contact Las Cruces Public Schools (LCPS) to organize opportunities for youth to participate in cleanup activities. Advertise and invite youth groups to participate in a cleanup effort to earn a stipend for their hard work.	$	$	$
Phase 2 – Operation & Maintenance			
Task	Federal Share	Grantee Match	Total
After cleanups are completed by LCPS students or youth groups in the city, a stipend of $150.00 will be awarded to the group. The objective is to enroll 100 groups through Las Cruces Public Schools (LCPS) and 7 groups through the City's other youth programs.	$ 16,000	$	$
Total	$	$	$

Appendix A: Scope of Work and Project Budget

Scope of Work. The Grantee shall complete and oversee the following activities.

Activities. The Grantee shall complete and oversee the following Elementary Anti-Litter Campaign related activities in support of the Program, as situated in the grant agreement and under the oversight and in coordination with Department consultation. The Grantee is responsible for:

a. Las Cruces Public Schools (LCPS) students in grades K-12 will develop an advertising campaign by collaborating with a production company to film commercials or by working with LCPS media students for filming. We will also engage external resources and hire contractors for editing services. Additionally, funds will be allocated for placing advertisements on television, radio, newspapers, social media, and other platforms.

b. Contact elementary school principals to encourage them to participate in the Anti-Litter Promise. This initiative involves having students watch an anti-litter presentation. Each student will receive an anti-litter kit that includes educational activities, a backpack, and various promotional items, all funded by this program.

c. Students will participate in a campus cleanup and earn a stipend, as outlined in the Student Service Learning program. They will also enjoy a pizza party that includes pizza and drinks for their classroom.

d. _____;

Project Budget

Phase 1 - Development			
Task	Federal Share	Grantee Match	Total
Schedule a meeting with LCPS to initiate a memorandum of understanding or contract between the City and LCPS for the Anti-Litter Promise.	$	$	$
Phase 2 – Operation & Maintenance			
Task	Federal Share	Grantee Match	Total
Purchase all supplies for the educational backpacks, including educational activities, crayons, pens, a backpack, and swag. Purchase pizza and drinks as an incentive reward once the presentation, educational activities, and cleanup have been completed.	$55,000	$	$55,000

Total	$55,000	$	$55,000

Appendix A: Scope of Work and Project Budget

Scope of Work. The Grantee shall complete and oversee the following activities.

Activities. The Grantee shall complete and oversee the following Community Trash Pick Up Events related activities in support of the Program, as situated in the grant agreement and under the oversight and in coordination with Department consultation. The Grantee is responsible for:

a. Keep Las Cruces Beautiful will work in collaboration with the Solid Waste Department to provide tire roll-off containers beginning in January. The funding for this program will cover the overtime pay for our Solid Waste drivers, as well as all costs associated with the roll-off containers, including pulling fees, taxes, and tonnage charges.

b. The funds from this grant will be used to enhance our advertising efforts to ensure that all residents are informed about this opportunity. We will record the names of residents who use the roll-off services to demonstrate the community's need, as disposing of litter or tires is both expensive and challenging.

c. _____;

d. _____;

e. _____.

Project Budget

Phase 1 - Development			
Task	Federal Share	Grantee Match	Total
Coordinate with the Solid Waste Department to establish a plan that includes specific dates, overtime costs, and roll-off costs.	$	$	$
Phase 2 – Operation & Maintenance			
Task	Federal Share	Grantee Match	Total
Begin offering litter and tire roll-offs for free use by the community. KLCB, through the NMDOT QUE LINDA grant, will cover all associated costs, including roll-ff fees and driver overtime.	$10,000	$	$10,000
Total	$10,000	$	$10,000

Appendix A: Scope of Work and Project Budget

Scope of Work. The Grantee shall complete and oversee the following activities.

Activities. The Grantee shall complete and oversee the following Establish Free Weekend Events at Collection Centers related activities in support of the Program, as situated in the grant agreement and under the oversight and in coordination with Department consultation. The Grantee is responsible for:

a. Establish a contract with the South Central Solid Waste Authority (SCSWA) to provide a free dump weekend for all residents and community members. KLCB, through the NMDOT QUE LINDA grant funding, will cover all dumping fees at the Amador Transfer Station.

b. _____;

c. _____;

d. _____;

e. _____.

Project Budget

Phase 1 - Development			
Task	Federal Share	Grantee Match	Total
Schedule a meeting to establish a contract between the City of Las Cruces and the South Central Solid Waste Authority.	$	$	$
Phase 2 – Operation & Maintenance			
Task	Federal Share	Grantee Match	Total
Free dump days at the Amador Transfer Station will be available for all residents and community members, funded through this grant.	$50,000	$	$50,000
Total	$50,000	$	$50,000

11 Strategies of Que Linda Statewide Beautification

Student Service Learning:

Leveraging local high school students provide three benefits: 1) creates a very affordable resource to help keep communities clean; 2) provides high school students with opportunities to engage in community service; 3) creates local ambassadors that spread anti-litter messaging.

Local high schools must incorporate service-learning requirements in certain courses. The requirements shall require a certain number of community service hours which can be met through participation in trash pickup and graffiti removal/prevention programs.

Litter Abatement Alternatives to Penalty Fines:

This program would serve as a resource for municipal and county court systems. For various reasons, residents are assessed penalties or court fees associated with a crime. In many instances, individuals cannot afford to pay the cost. As an alternative, the individual could be assigned to a local trash pickup and graffiti removal/prevention program.

Use of Corrections Contractors:

The New Mexico Corrections Department offers litter pickup, general landscaping and graffiti clean-up services. Cost for services range but are highly competitive. LBPs can leverage services for contract maintenance of their property.

County Inmate Litter Abatement Program:

Utilizing incarcerated individuals for trash pickup is a long-standing practice. Oftentimes county-run facilities are discouraged to establish this program because inmates are incarcerated for short periods. Nonetheless, an established program could put short-term inmates to work immediately. The County correctional facility would establish the program that utilizes inmates to perform trash pickup services. This program would provide the service to the LBP.

Elementary Anti-Litter Education Campaign:

The State of NM is rolling out a new anti-litter campaign. It can provide media to local elementary schools that incorporate anti-litter activities into their curriculum. Activities could include coloring contests, recording radio ads, writing letters to newspapers, campus clean up days, recycling programs, etc.

This program is integral to building ambassadors among the youth in the community who will have a positive influence within their families.

Business Corridor Adoption Program:

Engaging businesses in an effort to keep cities clean is longstanding. Typically businesses would adopt a corridor and become responsible for its upkeep. In this program, the business would simply provide a financial sponsorship. The sponsorship would go to the LBP who would utilize the resources for contract maintenance.

Reporting Illegal Trash Dumping Hotline:

Illegal dumping is a major issue in several communities. It's typically driven by limited options for legal dumping. When residents dump illegally, or lose trash because of an unsecured load, the trash often includes personal identifiable information. Local law enforcement agencies shall establish a hotline or online portal where this information could be anonymously obtained. Penalties for violators would need to be established in ordinance.

Secure Loads Establishment and Enforcement:

Unsecure loads is a major cause of messy roadways. Local governments must put an ordinance in place that establishes a penalty for driving with an unsecured load. In addition to this penalty, trash collection centers must impose a fee when a resident arrives with an unsecured load.

Establish Free Weekend Events at Collection Centers:

Affordability may be an issue for some residents. If trash authorities were to provide "Free Weekends" once a month, it would encourage residents to dump legally.

Neighbor Rates at Collection Centers:

Some communities and counties do not have adequate access to a collection center, therefore, an established "Neighbor Rate" at the closest facility will encourage residents to dump trash legally.

Community Trash Pick-up Events:

Some residents, for various reasons, are unable to take trash to a collection center on their own. This program would identify weekends, throughout the year, when trash authorities, together with volunteers, would pick up trash and deliver it to a collection center. Residents would need to signup for this service and provide a justification.

RESOLUTION 25-056

A RESOLUTION AUTHORIZING THE CITY OF LAS CRUCES (CITY) TO ACCEPT A GRANT AWARD IN THE AMOUNT OF $175,000 FROM THE NEW MEXICO DEPARTMENT OF TRANSPORTATION (NMDOT).

The City Council is informed that:

WHEREAS, the City has been offered a grant in the amount of $175,000 from the New Mexico Department of Transportation (NMDOT) Que Linda Program for the Keep Las Cruces Beautiful (KLCB) Program (Attachment "A") and there are no matching funds required for this grant award; and

WHEREAS, the acceptance process requires the City to pass a Resolution formally expressing its support for the grant and designating signature authority to the City Manager.

NOW, THEREFORE, Be it Resolved by the Governing Body of the City of Las Cruces:

(I)

THAT the City will accept the grant award from the New Mexico Department of Transportation (NMDOT) Que Linda Program for $175,000, with no match required.

(II)

THAT the City Manager is hereby authorized to execute all necessary contracts and amendments necessary in the accomplishment of the herein above.

(III)

THAT City staff is hereby authorized to do all deeds as necessary in the accomplishment of the herein above.

DONE AND APPROVED this 04 day of November 2024

APPROVED

Mayor

ATTEST:

City Clerk

Moved by: Becki Graham

Seconded by: Cassie McClure

AYES Yvonne Flores, Becki Graham, Cassie McClure, William Mattiace, Eric Enriquez

NAYS

25-056

Type of Action:
☒ **Resolution**
☐ **Ordinance**
☐ **TIDD Resolution**

City Council Action and Executive Summary

District:	☐ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☐ 6 ☒ N/A		
1st Reading:		**Adopted:**	November 4, 2024
Drafter:	Gaby Prats	**Department:**	Financial Services
Program:	Grants Administration	**Line of Business:**	Fiscal Management

Title: **A RESOLUTION AUTHORIZING THE CITY OF LAS CRUCES (CITY) TO ACCEPT A GRANT AWARD IN THE AMOUNT OF $175,000 FROM THE NEW MEXICO DEPARTMENT OF TRANSPORTATION (NMDOT).**

TYPE OF ACTION: ☒ **Administrative** ☐ **Legislative** ☐ **Quasi-Judicial**

PURPOSE(S) OF ACTION:

To accept the grant award and designate signature authority to the City Manager.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

The City of Las Cruces (City) Parks and Recreation Department operates the Keep Las Cruces Beautiful Program (KLCB). KLCB implements a comprehensive beautification program that includes neighborhood and community cleanups, graffiti removal, and murals.

The City applied for and has been awarded $175,000 by the New Mexico Department of Transportation (NMDOT) Que Linda Program to augment existing KLCB efforts. The program expansion includes the following:

- Contracting a litter abatement team
- Partnering with the Las Cruces Public School to implement a school-wide clean-up day
- Continuing educational anti-litter campaign presentations
- Updating and revitalizing our Adopt-A-Spot program
- Starting a free weekend event at our collection center, along with weekend tire collection events

There is no match required for this grant.

The acceptance process requires the City to pass a Resolution formally expressing its support for the grant and designating signature authority to the City Manager.

SUPPORT INFORMATION:

Attachment "A" - City of Las Cruces Award Letter NMDOT Que Linda Program

PLAN(S):

None

COMMITTEE/BOARD REVIEW:

None

DOES THIS AMEND THE BUDGET?:

☐ Yes
☒ No

Does this action amend the Capital Improvement Plan (CIP)?

☐ Yes
☒ No

Does this action align with Elevate Las Cruces?

☒ Yes
☐ No

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will approve the Resolution to accept the NMDOT grant award.
2. Vote "No"; this will disapprove the Resolution to accept the NMDOT grant and result in a loss of funds.
3. Vote to "Amend"; this will require further direction from staff.
4. Vote to "Table"; this will result in loss of funds needed to complete City projects.

ATTACHMENT "D"

A-1330
Updated:07/2023
Aviation

NEW MEXICO DEPARTMENT OF TRANSPORTATION

Aviation Grant Agreement Form

Date: Oct 2, 2024

Project Location: LRU - LAS CRUCES INTERNATIONAL AIRPORT

Sponsor: LAS CRUCES, CITY OF

Address: PO BOX 20000

City: LAS CRUCES NM Zip Code: 88004

Participation STATE ONLY

Funding Breakdown STATE/SB6

Contract No._____

Project No. LRU-25-03

Vendor No. 0000054342-2

Expiration Date_____

Purchase Order No:_____

Docusign Envelope ID: 9655212D-3BEC-4615-8645-D2E3A502D0B9

AVIATION GRANT AGREEMENT

This Agreement is between the New Mexico Department of Transportation, acting through its Aviation Division (Department), and the Sponsor. This Agreement is effective pursuant to Section 7, below.

Now Therefore, pursuant to the New Mexico Aviation Act, NMSA 1978, Section 64-1-11 et seq., and the New Mexico Municipal Airport Law, NMSA 1978 Sections 3-39-1 et seq., the parties agree as follows:

1. Purpose.
The purpose of this Agreement is to provide funding, authorized in Section 64-1-13, NMSA 1978, to the Sponsor to assist in financing an aviation project.

a. Project Description:

AIRFIELD MAINTENANCE AND CONSUMABLES

b. Site of Development.The site of development is identified on the property map, attached as Exhibit A.
c. Funding.Below is the funding for the Project. The State's contribution is the maximum amount that the Department will contribute. Attached as Exhibit B is the engineer's cost estimate.

State	Sponsor	Other	Total
$ 20,000	$ 2,200	$	$ 22,200

2. The Sponsor Shall:

a. Pay all costs, perform all labor, and supply all material, except as described in the Engineers Estimate attached as EXHIBIT B.
b. Provide a representative from its organization who shall serve as the single point of contact for the Department.
c. Establish and maintain a resolution by which the Sponsor agrees to establish an airport maintenance program and appoint an individual to be responsible for management of the program.
d. Initiate engineering, survey, and all other design activities, inspect Project construction and, coordinate all meetings.
e. Be responsible for all design and pre-construction activities.
f. Initiate and cause to be prepared all necessary documents including plans, specifications, estimates (PS&E), and reports for this Project.
g. Assure that all design and PS&E are performed under the direct supervision of a Registered New Mexico Professional Engineer.
h. Design the Project in accordance with State and Federal guidelines and/or advisory circulars, hereby incorporated into this Agreement. Construction projects will be accomplished in accordance with the Federal Aviation Administration's Standards for Specifying Construction of Airports (Advisory Circular 150/5370-10, current edition).

i. Notify the Department when the plans and specifications are sufficiently complete for review.
j. Make no changes in design or scope of work without documented approval of the Department.
k. Advertise for and contract for the construction of the Project in accordance with federal and state laws or local ordinances.
l. Require the Engineer to prepare a final detailed estimate of the work, indicating the bid items, the quantity in each item, the unit bid price and cost of the items based on low acceptable bid prices. Progress estimates shall be submitted to the Department in acceptable form so that details of quantities allowed on various items of work shall be shown on each progress payment.
m. The Sponsor shall submit to the Department one complete set of plans and specifications which incorporate all comments and recommendations received during pre-bid activities and which have been fully executed by all involved parties.
n. The Sponsor shall take all steps, including litigation if necessary, to recover State funds spent in violation of state laws and rules. The Sponsor shall return any recovered state funds to the Department. It shall furnish to the Department, upon request, all documents and records pertaining to the determination of the amount of the state's share of any settlement, litigation, negotiation, or the efforts taken to recover such funds. All settlements or other final dispositions by the Sponsor, in court or otherwise, involving the recovery of such state funds shall be approved in advance by the Department.
o. The Sponsor shall, upon reasonable notice, allow the Department the right to inspect the Project for the purposes of determining if it is being constructed in a good and workmanlike manner, and if the approved plans and specifications are being complied with satisfactorily. If an inspection discloses a failure to substantially meet such requirements and standards the Department may terminate payment or payments until a mutually satisfactory remedy is reached.

3. The Department Shall:

a. Assign a contact person for this project.
b. Provide timely reviews of all submittals of scopes, plans, specifications, investigations or other documents.
c. The Department shall not provide an extensive check of any plans submitted by the Sponsor. The Department's concurrence of the Project plans does not relieve the Sponsor or its Consultant of their responsibility for errors and omissions.

4. Both Parties Agree:

a. The allowable costs of this Project shall not include costs determined by the Department to be ineligible for consideration under the Aviation Act.
b. The expenditure of any State money is subject to approval by the Department.
c. Funds granted under the Local Governments Road Fund, NMSA 1978 Section 67-3-28.2, shall not be used to administer this Project or used to meet the local match.

5. Method of Payment - Reimbursement.

The Department shall reimburse the Sponsor in accordance with the terms of this agreement. Claims for reimbursement shall be completed on form A-1159, Request for Reimbursement. Each request for reimbursement shall contain proof of payment for valid expenditures for services rendered by a third party or items of tangible property received by the Sponsor for the implementation of the Project. The Department reserves the right to withhold reimbursement on requests that are incorrect and/or incomplete. The Final reimbursement request must be received no later than thirty (30) days after completion of the project or the expiration of this Agreement.

The Sponsor shall not be reimbursed for any costs incurred prior to the full execution of the Agreement, after the expiration of the Agreement or in excess of the maximum dollar amount of the agreement unless the maximum dollar amount is duly amended prior to incurring the service or deliverable. Any unexpended portion of funds subject to this Agreement shall revert to the State Aviation Fund.

6. Accountability of Receipts and Disbursements.

There shall be strict accountability for all receipts and disbursements. The Sponsor shall maintain all records and documents relative to the Project for a minimum of three (3) years after completion of said Project. The Sponsor shall furnish the Department or State Auditor, upon demand, all records which support the terms of this Agreement.

Docusign Envelope ID: 9655212D-3BEC-4615-8645-D2E3A502D0B9

7. Term

The Agreement becomes effective upon signatures of all parties. The Agreement's effective date is the date opposite of the NMDOT Cabinet Secretary or Designee's signature on the signature page. This agreement shall expire two (2) years from the effective date, unless terminated pursuant to Sections 8 and 17, below.

8. Termination for Cause.

The Department has the option to terminate this Agreement if the Sponsor fails to comply with any provision of this Agreement. A written notice of termination shall be given at least thirty (30) days prior to the intended date of termination and shall identify all of the Sponsor's breaches on which the termination is based.

The Department may provide the Sponsor a reasonable opportunity to correct the breach. If within ten (10) days after receipt of a written notice of termination, the Sponsor has not corrected the breach or, in the case of a breach which cannot be corrected in ten (10) days, the Sponsor has not begun and proceeded in good faith to correct the breach, the Department may declare the Sponsor in default and terminate the Agreement. The Department shall retain any and all other remedies available to it under the law.

By such termination neither party may nullify obligations already incurred for performance or failure to perform for the work rendered prior to the date of termination. However, neither party shall have any obligation to perform services or make payment for services rendered after such date of termination.

9. Disposition of Property.

a. Upon termination of this Agreement, the Sponsor shall account for any remaining property, materials or equipment belonging to the Department and dispose of them as directed by the Department.
b. Any equipment, materials or supplies procured under this Agreement shall be used solely for aviation purposes maintained according to the manufacturers guidelines and stored at the airport.

10. Representations and Certification.

The Sponsor, by signing this Agreement, represents and certifies the following:

a. Legal Authority - The Sponsor has the legal power and authority to: (1) do all things necessary in order to undertake and carry out the Project in conformity with the provisions stated in the New Mexico Aviation Act and Rules and Regulations pursuant thereto; (2) accept, receive and disburse grant funds from the State of New Mexico in aid of the Project; and (3) carry out all provisions stated in this Aviation Grant Agreement.

b. Defaults - The Sponsor is not in default on any obligation to the State of New Mexico relative to the development, operation or maintenance of any airport or aviation project.

c. Possible Disabilities - The Sponsor states, by execution of this Agreement, there are no facts or circumstance (including the existence of effective or proposed leases, use agreements, or other legal instruments affecting use of the airport or the existence of pending litigation or other legal proceedings) which in reasonable probability might make it impossible for the Sponsor to carry out and complete the Project.

d. Land - The Sponsor holds the property interest in the areas of land which are to be developed or used as part of or in connection with the Project and is identified in a current Airport Property Map. The Sponsor further certifies that the aforementioned is based on a title examination by a qualified attorney or title company who has determined that the Sponsor holds the stated property interests.

11. Assurances.

The Sponsor, by signing this Agreement, covenants and agrees to the following Assurances:

a. That it will operate the airport for the use and benefit of the public on fair and reasonable terms and without unjust discrimination.
b. That it will keep the airport open to all types, kinds and classes of aeronautical use without discrimination between such types, kinds, and classes. The Sponsor shall establish fair, equal and not unjustly discriminatory conditions to be met by all users of the airport as may be necessary for the safe and efficient operation.

c. Neither it nor any person or organization occupying space at the airport will discriminate against any person or class of persons by reason of race, color, creed, or national origin in the use of the facility and, further that any person, firm or corporation rendering service to the public on the airport will do so on a fair, equal and not unjustly discriminatory basis.

d. Operate and maintain in a safe and serviceable condition the airport and all facilities which are necessary to serve the aeronautical users and will not permit any activity which would interfere with its use for airport purposes.

e. By acquisition of land interest, acquisition of easements, airspace zoning, or other accepted means, protect the runway approaches and the airspace in the immediate vicinity of the airport from the construction, alteration, erection or growth of any structure which would interfere with the use or operation of the airport.

f. Comply with the New Mexico Aviation Act and associated provisions, NMSA 1978 Sections 64-1-1 to 64-5-4 and the New Mexico Municipal Airport Law, NMSA 1978 Sections 3-39-1 et seq.

g. That it shall not award the contract nor give bidding documents to any contractor who is subject to suspension or debarment by the U.S. Department of Transportation or the Department at the time of the bidding or award of the contract. Violation of this provision shall void this Agreement.

12. Third Party Beneficiaries.
It is not intended by any of the provisions of any part of this Agreement to create in the public or any member thereof a third party beneficiary or to authorize anyone not a party to the Agreement to maintain a suit(s) for wrongful death(s), bodily and/or personal injury(ies) to person(s), damage(s) to property(ies), and/or any other claim(s) whatsoever pursuant to the provisions of this Agreement.

13. New Mexico Tort Claims Act.
As between the Department and the Sponsor, neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1, *et seq*. This paragraph is intended only to define the liabilities between the parties and it is not intended to modify, in any way, the parties' liabilities as governed by common law or the New Mexico Tort Claims Act.

14. Scope of Agreement.
This Agreement incorporates all the agreements, covenants, and understandings between the parties concerning the subject matter. All such covenants, agreements, and understandings have been merged into this written Agreement. No prior Agreement or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

15. Terms of this Agreement.
The terms of this Agreement are lawful; performance of all duties and obligations shall conform with and do not contravene any state, local, or federal statutes, regulations, rules, or ordinances.

16. Equal Opportunity Compliance.
The parties agree to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, the parties agree to assure that no person in the United States shall, on the grounds of race, color, national origin, ancestry, sex, sexual preference, age or handicap, be excluded from employment with, or participation in, any program or activity performed under this Agreement. If the parties are found to not be in compliance with these requirements during the term of this Agreement, the parties agree to take appropriate steps to correct these deficiencies.

17. Appropriations and Authorizations of State and Federal Funds.
The terms of this Agreement are contingent upon sufficient appropriations and authorizations being made by the governing board of the Sponsor, the Legislature of New Mexico, or the Congress of the United States if federal funds are involved, for performance of the Agreement. If sufficient appropriations and authorizations are not made by the Sponsor, Legislature or the Congress of the United States if federal funds are involved, this Agreement shall terminate upon written notice being given by one party to the other. The Department and the Sponsor are expressly not committed to expenditure of any funds until such time as they are programmed, budgeted, encumbered, and approved for expenditure.

18. Severability.
In the event that any portion of this Agreement is determined to be void, unconstitutional or otherwise unenforceable, the remainder of this Agreement shall remain in full force and effect.

19. Applicable Law.
The Laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provisions. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with NMSA 1978, Section 38-3-1(G).

20. Principal Contacts and Notices.
The principal contacts for this Agreement are listed below. Except as otherwise specified, all notices shall be in writing (including notice by facsimile or E-mail) and shall be given to the principal contacts listed below.

Address:	New Mexico Department of Transportation - Aviation Division 3501 Access Rd C. Albuquerque, NM 87106
General Office:	(505) 795-1401
Fax:	(505) 244-1790
E-mail:	Aviation.Division@dot.nm.gov

Name	ANDY HUME			
Title	AIRPORT DIRECTOR			
Sponsor	LAS CRUCES, CITY OF			
Address	PO BOX 20000			
City	LAS CRUCES	NM	Zip Code	88004
Office Phone	+1 (575) 541-2473	Fax		
E-Mail	AHUME@LASCRUCES.GOV			

21. Amendment.
This Agreement shall not be altered, modified, or amended except by an instrument in writing and executed by the parties.

In witness whereof, each party is signing this Agreement on the date stated opposite of that party's signature.

NEW MEXICO DEPARTMENT OF TRANSPORTATION

By: DocuSigned by: Ricky Serna 5910E8A6255842F... Date: 10/28/24
Cabinet Secretary or Designee

Recommended by:

By: DocuSigned by: Pedro Rael C6675C3211D34C0... Date: 10/25/24
Aviation Division Director
or Designee

Approved as to form and legal sufficiency by the New Mexico Department of Transportation's Office of General Counsel

By: Signed by: John Newell Assistant General Counsel C750CEC1625D488... Date: 10/21/24
Assistant General Counsel

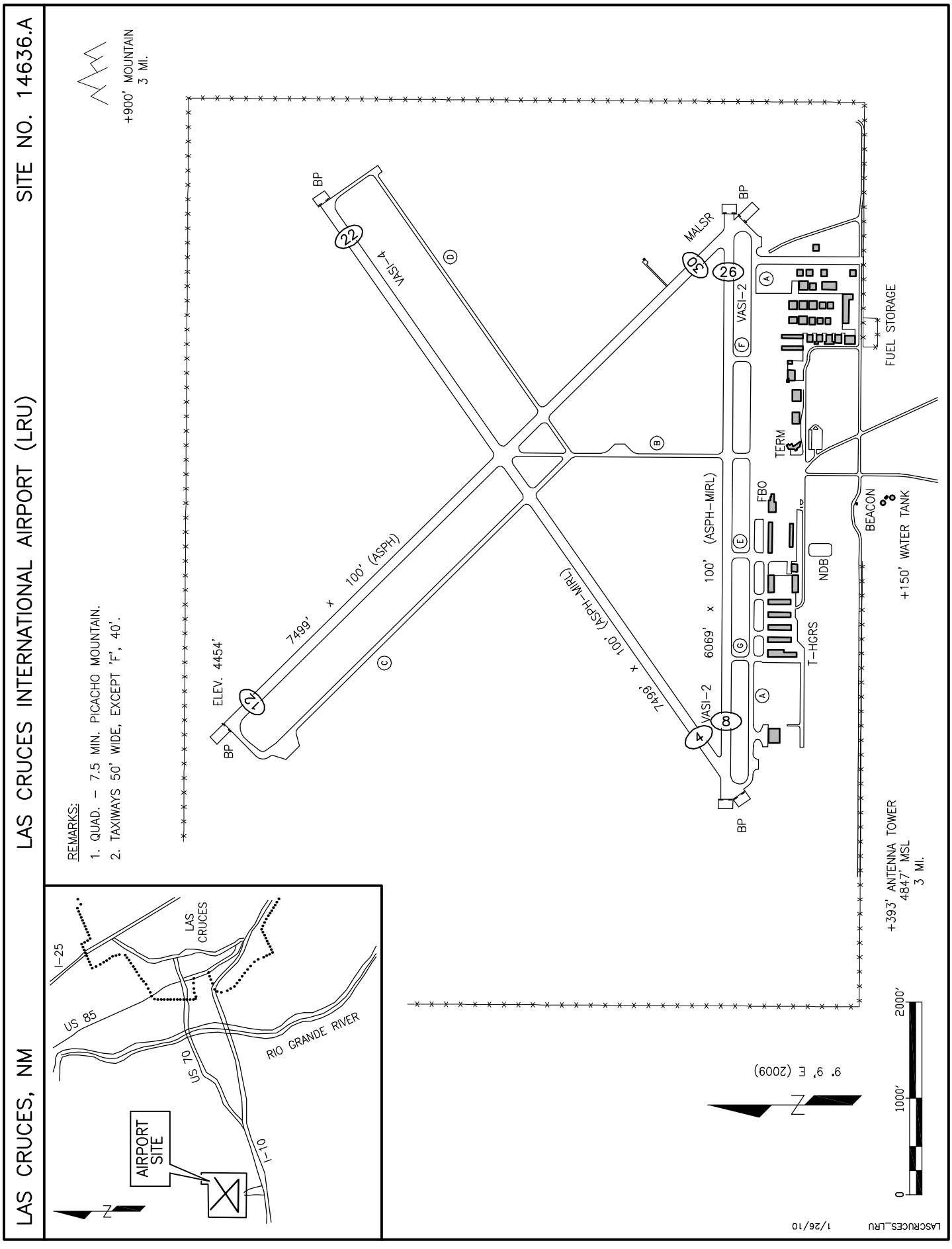
SPONSOR

Print Name: Ikani Taumoepeau

By: Signed by: Ikani Taumoepeau 84CCB30FA2524C3... Date: 10/24/24

Title: City Manager

EXHIBIT A


LAS CRUCES, NM
LAS CRUCES INTERNATIONAL AIRPORT (LRU)
SITE NO. 14636.A
+900' MOUNTAIN 3 MI.
REMARKS:
1. QUAD. – 7.5 MIN. PICACHO MOUNTAIN.
2. TAXIWAYS 50' WIDE, EXCEPT 'F', 40'.
ELEV. 4454'
7499' x 100' (ASPH)
7499' x 100' (ASPH-MIRL)
6069' x 100' (ASPH-MIRL)
VASI-4
VASI-2
MALSR
BP
FUEL STORAGE
TERM
FBO
BEACON
NDB
T-HGRS
+150' WATER TANK
+393' ANTENNA TOWER 4847' MSL 3 MI.
9° 9' E (2009)
0
1000'
2000'
LASCRUCES_LRU
1/26/10
I-25
US 85
LAS CRUCES
US 70
RIO GRANDE RIVER
I-10
AIRPORT SITE

LAS CRUCES INTERNATIONAL AIRPORT
EXHIBIT B
PLEASE OMIT CENTS

ITEM NO.	ITEM OF WORK AND DESCRIPTION	TOTAL ESTIMATED COSTS	SPONSOR'S FUNDS	STATE FUNDS REQUESTED	OTHER FUNDS (SPECIFY)
1	LRU-25-03 AIRFIELD MAINTENANCE AND CONSUMABLE ITEMS	$22,200	$2,200	$ 20,000	$ 0
	TOTALS	$ 22,200	$2,200	$ 20,000	$ 0

ATTACHMENT "E"

NEW MEXICO DEPARTMENT OF TRANSPORTATION

Aviation Grant Agreement Form

Date: Sep 23, 2024

Project Location: LRU - LAS CRUCES INTERNATIONAL AIRPORT

Sponsor: LAS CRUCES, CITY OF

Address: PO BOX 20000

City: LAS CRUCES NM Zip Code: 88004

Participation FAA

Funding Breakdown

Contract No._____

Project No. LRU-25-01

Vendor No. 0000054342-2

Expiration Date_____

Purchase Order No:_____

AVIATION GRANT AGREEMENT

This Agreement is between the New Mexico Department of Transportation, acting through its Aviation Division (Department), and the Sponsor. This Agreement is effective pursuant to Section 7, below.

Now Therefore, pursuant to the New Mexico Aviation Act, NMSA 1978, Section 64-1-11 et seq., and the New Mexico Municipal Airport Law, NMSA 1978 Sections 3-39-1 et seq., the parties agree as follows:

1. Purpose.
The purpose of this Agreement is to provide funding, authorized in Section 64-1-13, NMSA 1978, to the Sponsor to assist in financing an aviation project.

a. Project Description:

RWY 8-26 & RWY 12-30 BLAST PADS-DESIGN & CONSTRUCT

b. Site of Development.The site of development is identified on the property map, attached as Exhibit A.
c. Funding.Below is the funding for the Project. The State's contribution is the maximum amount that the Department will contribute. Attached as Exhibit B is the engineer's cost estimate.

State	Sponsor	Other	Total
$ 336,297	$ 37,566	$ 246,280	$ 620,143

2. The Sponsor Shall:

a. Pay all costs, perform all labor, and supply all material, except as described in the Engineers Estimate attached as EXHIBIT B.
b. Provide a representative from its organization who shall serve as the single point of contact for the Department.
c. Establish and maintain a resolution by which the Sponsor agrees to establish an airport maintenance program and appoint an individual to be responsible for management of the program.
d. Initiate engineering, survey, and all other design activities, inspect Project construction and, coordinate all meetings.
e. Be responsible for all design and pre-construction activities.
f. Initiate and cause to be prepared all necessary documents including plans, specifications, estimates (PS&E), and reports for this Project.
g. Assure that all design and PS&E are performed under the direct supervision of a Registered New Mexico Professional Engineer.
h. Design the Project in accordance with State and Federal guidelines and/or advisory circulars, hereby incorporated into this Agreement. Construction projects will be accomplished in accordance with the Federal Aviation Administration's Standards for Specifying Construction of Airports (Advisory Circular 150/5370-10, current edition).

i. Notify the Department when the plans and specifications are sufficiently complete for review.
j. Make no changes in design or scope of work without documented approval of the Department.
k. Advertise for and contract for the construction of the Project in accordance with federal and state laws or local ordinances.
l. Require the Engineer to prepare a final detailed estimate of the work, indicating the bid items, the quantity in each item, the unit bid price and cost of the items based on low acceptable bid prices. Progress estimates shall be submitted to the Department in acceptable form so that details of quantities allowed on various items of work shall be shown on each progress payment.
m. The Sponsor shall submit to the Department one complete set of plans and specifications which incorporate all comments and recommendations received during pre-bid activities and which have been fully executed by all involved parties.
n. The Sponsor shall take all steps, including litigation if necessary, to recover State funds spent in violation of state laws and rules. The Sponsor shall return any recovered state funds to the Department. It shall furnish to the Department, upon request, all documents and records pertaining to the determination of the amount of the state's share of any settlement, litigation, negotiation, or the efforts taken to recover such funds. All settlements or other final dispositions by the Sponsor, in court or otherwise, involving the recovery of such state funds shall be approved in advance by the Department.
o. The Sponsor shall, upon reasonable notice, allow the Department the right to inspect the Project for the purposes of determining if it is being constructed in a good and workmanlike manner, and if the approved plans and specifications are being complied with satisfactorily. If an inspection discloses a failure to substantially meet such requirements and standards the Department may terminate payment or payments until a mutually satisfactory remedy is reached.

3. The Department Shall:

a. Assign a contact person for this project.
b. Provide timely reviews of all submittals of scopes, plans, specifications, investigations or other documents.
c. The Department shall not provide an extensive check of any plans submitted by the Sponsor. The Department's concurrence of the Project plans does not relieve the Sponsor or its Consultant of their responsibility for errors and omissions.

4. Both Parties Agree:

a. The allowable costs of this Project shall not include costs determined by the Department to be ineligible for consideration under the Aviation Act.
b. The expenditure of any State money is subject to approval by the Department.
c. Funds granted under the Local Governments Road Fund, NMSA 1978 Section 67-3-28.2, shall not be used to administer this Project or used to meet the local match.

5. Method of Payment - Reimbursement.

The Department shall reimburse the Sponsor in accordance with the terms of this agreement. Claims for reimbursement shall be completed on form A-1159, Request for Reimbursement. Each request for reimbursement shall contain proof of payment for valid expenditures for services rendered by a third party or items of tangible property received by the Sponsor for the implementation of the Project. The Department reserves the right to withhold reimbursement on requests that are incorrect and/or incomplete. The Final reimbursement request must be received no later than thirty (30) days after completion of the project or the expiration of this Agreement.

The Sponsor shall not be reimbursed for any costs incurred prior to the full execution of the Agreement, after the expiration of the Agreement or in excess of the maximum dollar amount of the agreement unless the maximum dollar amount is duly amended prior to incurring the service or deliverable. Any unexpended portion of funds subject to this Agreement shall revert to the State Aviation Fund.

6. Accountability of Receipts and Disbursements.

There shall be strict accountability for all receipts and disbursements. The Sponsor shall maintain all records and documents relative to the Project for a minimum of three (3) years after completion of said Project. The Sponsor shall furnish the Department or State Auditor, upon demand, all records which support the terms of this Agreement.

Docusign Envelope ID: 35112FA6-8939-45F5-9DEF-FC50F3D294A3

7. Term
The Agreement becomes effective upon signatures of all parties. The Agreement's effective date is the date opposite of the NMDOT Cabinet Secretary or Designee's signature on the signature page. This agreement shall expire two (2) years from the effective date, unless terminated pursuant to Sections 8 and 17, below.

8. Termination for Cause.
The Department has the option to terminate this Agreement if the Sponsor fails to comply with any provision of this Agreement. A written notice of termination shall be given at least thirty (30) days prior to the intended date of termination and shall identify all of the Sponsor's breaches on which the termination is based.

The Department may provide the Sponsor a reasonable opportunity to correct the breach. If within ten (10) days after receipt of a written notice of termination, the Sponsor has not corrected the breach or, in the case of a breach which cannot be corrected in ten (10) days, the Sponsor has not begun and proceeded in good faith to correct the breach, the Department may declare the Sponsor in default and terminate the Agreement. The Department shall retain any and all other remedies available to it under the law.

By such termination neither party may nullify obligations already incurred for performance or failure to perform for the work rendered prior to the date of termination. However, neither party shall have any obligation to perform services or make payment for services rendered after such date of termination.

9. Disposition of Property.

a. Upon termination of this Agreement, the Sponsor shall account for any remaining property, materials or equipment belonging to the Department and dispose of them as directed by the Department.
b. Any equipment, materials or supplies procured under this Agreement shall be used solely for aviation purposes maintained according to the manufacturers guidelines and stored at the airport.

10. Representations and Certification.
The Sponsor, by signing this Agreement, represents and certifies the following:

a. Legal Authority - The Sponsor has the legal power and authority to: (1) do all things necessary in order to undertake and carry out the Project in conformity with the provisions stated in the New Mexico Aviation Act and Rules and Regulations pursuant thereto; (2) accept, receive and disburse grant funds from the State of New Mexico in aid of the Project; and (3) carry out all provisions stated in this Aviation Grant Agreement.

b. Defaults - The Sponsor is not in default on any obligation to the State of New Mexico relative to the development, operation or maintenance of any airport or aviation project.

c. Possible Disabilities - The Sponsor states, by execution of this Agreement, there are no facts or circumstance (including the existence of effective or proposed leases, use agreements, or other legal instruments affecting use of the airport or the existence of pending litigation or other legal proceedings) which in reasonable probability might make it impossible for the Sponsor to carry out and complete the Project.

d. Land - The Sponsor holds the property interest in the areas of land which are to be developed or used as part of or in connection with the Project and is identified in a current Airport Property Map. The Sponsor further certifies that the aforementioned is based on a title examination by a qualified attorney or title company who has determined that the Sponsor holds the stated property interests.

11. Assurances.
The Sponsor, by signing this Agreement, covenants and agrees to the following Assurances:

a. That it will operate the airport for the use and benefit of the public on fair and reasonable terms and without unjust discrimination.
b. That it will keep the airport open to all types, kinds and classes of aeronautical use without discrimination between such types, kinds, and classes. The Sponsor shall establish fair, equal and not unjustly discriminatory conditions to be met by all users of the airport as may be necessary for the safe and efficient operation.

c. Neither it nor any person or organization occupying space at the airport will discriminate against any person or class of persons by reason of race, color, creed, or national origin in the use of the facility and, further that any person, firm or corporation rendering service to the public on the airport will do so on a fair, equal and not unjustly discriminatory basis.

d. Operate and maintain in a safe and serviceable condition the airport and all facilities which are necessary to serve the aeronautical users and will not permit any activity which would interfere with its use for airport purposes.

e. By acquisition of land interest, acquisition of easements, airspace zoning, or other accepted means, protect the runway approaches and the airspace in the immediate vicinity of the airport from the construction, alteration, erection or growth of any structure which would interfere with the use or operation of the airport.

f. Comply with the New Mexico Aviation Act and associated provisions, NMSA 1978 Sections 64-1-1 to 64-5-4 and the New Mexico Municipal Airport Law, NMSA 1978 Sections 3-39-1 et seq.

g. That it shall not award the contract nor give bidding documents to any contractor who is subject to suspension or debarment by the U.S. Department of Transportation or the Department at the time of the bidding or award of the contract. Violation of this provision shall void this Agreement.

12. Third Party Beneficiaries.
It is not intended by any of the provisions of any part of this Agreement to create in the public or any member thereof a third party beneficiary or to authorize anyone not a party to the Agreement to maintain a suit(s) for wrongful death(s), bodily and/or personal injury(ies) to person(s), damage(s) to property(ies), and/or any other claim(s) whatsoever pursuant to the provisions of this Agreement.

13. New Mexico Tort Claims Act.
As between the Department and the Sponsor, neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1, *et seq*. This paragraph is intended only to define the liabilities between the parties and it is not intended to modify, in any way, the parties' liabilities as governed by common law or the New Mexico Tort Claims Act.

14. Scope of Agreement.
This Agreement incorporates all the agreements, covenants, and understandings between the parties concerning the subject matter. All such covenants, agreements, and understandings have been merged into this written Agreement. No prior Agreement or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

15. Terms of this Agreement.
The terms of this Agreement are lawful; performance of all duties and obligations shall conform with and do not contravene any state, local, or federal statutes, regulations, rules, or ordinances.

16. Equal Opportunity Compliance.
The parties agree to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, the parties agree to assure that no person in the United States shall, on the grounds of race, color, national origin, ancestry, sex, sexual preference, age or handicap, be excluded from employment with, or participation in, any program or activity performed under this Agreement. If the parties are found to not be in compliance with these requirements during the term of this Agreement, the parties agree to take appropriate steps to correct these deficiencies.

17. Appropriations and Authorizations of State and Federal Funds.
The terms of this Agreement are contingent upon sufficient appropriations and authorizations being made by the governing board of the Sponsor, the Legislature of New Mexico, or the Congress of the United States if federal funds are involved, for performance of the Agreement. If sufficient appropriations and authorizations are not made by the Sponsor, Legislature or the Congress of the United States if federal funds are involved, this Agreement shall terminate upon written notice being given by one party to the other. The Department and the Sponsor are expressly not committed to expenditure of any funds until such time as they are programmed, budgeted, encumbered, and approved for expenditure.

18. Severability.
In the event that any portion of this Agreement is determined to be void, unconstitutional or otherwise unenforceable, the remainder of this Agreement shall remain in full force and effect.

19. Applicable Law.
The Laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provisions. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with NMSA 1978, Section 38-3-1(G).

20. Principal Contacts and Notices.
The principal contacts for this Agreement are listed below. Except as otherwise specified, all notices shall be in writing (including notice by facsimile or E-mail) and shall be given to the principal contacts listed below.

Address:	New Mexico Department of Transportation - Aviation Division 3501 Access Rd C. Albuquerque, NM 87106
General Office:	(505) 795-1401
Fax:	(505) 244-1790
E-mail:	Aviation.Division@dot.nm.gov

Name	ANDY HUME			
Title	AIRPORT DIRECTOR			
Sponsor	LAS CRUCES, CITY OF			
Address	PO BOX 20000			
City	LAS CRUCES	NM	Zip Code	88004
Office Phone	+1 (575) 541-2473	Fax		
E-Mail	ahume@lascruces.gov			

21. Amendment.
This Agreement shall not be altered, modified, or amended except by an instrument in writing and executed by the parties.

In witness whereof, each party is signing this Agreement on the date stated opposite of that party's signature.

NEW MEXICO DEPARTMENT OF TRANSPORTATION

By: DocuSigned by: Ricky Serna 5910E8A6255842F... Date: 10/28/24
Cabinet Secretary or Designee

Recommended by:

By: DocuSigned by: Pedro Rael C6675C3211D34C0... Date: 10/28/24
Aviation Division Director
or Designee

Approved as to form and legal sufficiency by the New Mexico Department of Transportation's Office of General Counsel

By: Signed by: John Newell Assistant General Counsel C750CEC1625D488... Date: 10/02/24
Assistant General Counsel

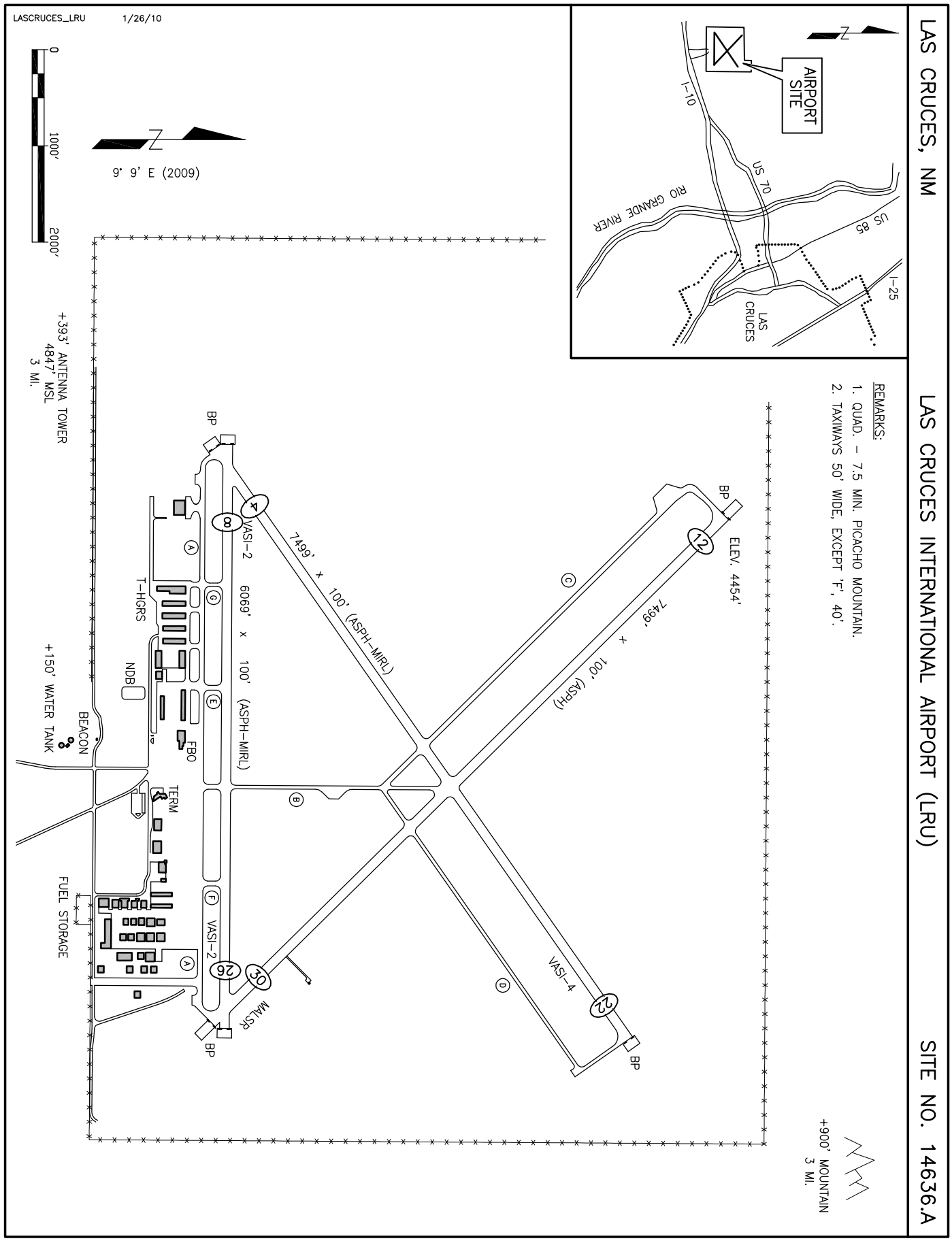
SPONSOR

Print Name: Ikani Taumoepeau

By: Signed by: Ikani Taumoepeau 84CCB30FA2524C3... Date: 10/24/24

Title: City Manager

EXHIBIT A


LAS CRUCES, NM
LAS CRUCES INTERNATIONAL AIRPORT (LRU)
SITE NO. 14636.A
LASCRUCES_LRU 1/26/10
AIRPORT SITE
I-10
US 70
RIO GRANDE RIVER
US 85
I-25
LAS CRUCES
9° 9' E (2009)
0
1000'
2000'
REMARKS:
1. QUAD. - 7.5 MIN. PICACHO MOUNTAIN.
2. TAXIWAYS 50' WIDE, EXCEPT 'F', 40'.
+393' ANTENNA TOWER
4847' MSL
3 MI.
+900' MOUNTAIN
3 MI.
ELEV. 4454'
BP
4
8
12
22
26
30
VASI-2
6069' x 100' (ASPH-MIRL)
7499' x 100' (ASPH-MIRL)
7499' x 100' (ASPH)
VASI-4
MALSR
T-HGRS
NDB
BEACON
+150' WATER TANK
FBO
TERM
FUEL STORAGE
A
B
C
D
E
F

Las Cruces International Airport

EXHIBIT B

ITEM NO.	ITEM OF WORK AND DESCRIPTION	TOTAL ESTIMATED COSTS	SPONSOR'S FUNDS	STATE FUNDS REQUESTED	OTHER FUNDS (SOURCE)
1	RWY 8-26 & RWY 12-30 BLAST PADS-DESIGN & CONSTRUCT	$620,143	$37,566	$ 336,297	$ 246,280
		$0			
		$0			
		$0			
		$0			
		$0			
		$0			
		$0			
		$0			
		$0			
		$0			
		$0			
		$0			
		$0			
		$0			
		$0			
		$0			
	TOTALS	$ 620,143	$ 37,566	$ 336,297	$ 246,280

25-091

Type of Action:
☒ **Resolution**
☐ **Ordinance**
☐ **TIDD Resolution**

City Council Action and Executive Summary

District:	☐ 1 ☐ 2 ☒ 3 ☐ 4 ☐ 5 ☐ 6 ☐ N/A		
1st Reading:		**Adopted:**	February 4, 2025
Drafter:	Adam Ochoa	**Department:**	Community Development
Program:	Community Planning	**Line of Business:**	Community Planning

Title:	**A RESOLUTION APPROVING THE REQUEST FOR A TRANSFER OF OWNERSHIP OF DISPENSER LIQUOR LICENSE NO. DIS-000381 WITH PACKAGE SALES ONLY TO NEW MEXICO COMPANY OPERATIONS, LLC., D/B/A NACHO SHELL LOCATED AT 2512 E. LOHMAN AVENUE, LAS CRUCES, NM. 88001.**

TYPE OF ACTION: ☒ **Administrative** ☐ **Legislative** ☐ **Quasi-Judicial**

PURPOSE(S) OF ACTION:

Approval of a Transfer of Ownership of Dispenser Liquor License No. DIS-000381 with Package Sales Only.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

Pursuant to New Mexico Statutes, an application for approval of a Transfer of Ownership of Dispenser Liquor License No. DIS-000381 with Package Sales Only must be accompanied by a resolution of the City Council approving and consenting to the license after a public hearing.

New Mexico Company Operations, LLC., d/b/a Nacho Shell, applied to the Alcoholic Beverage Control Division of the Regulation and Licensing Department of the State of New Mexico ("ABC"). The location for the license is at 2512 E. Lohman Avenue, Las Cruces, NM 88001. ABC granted preliminary approval on December 6, 2024.

The City Council is required to hold a public hearing within 45 days after the date of receipt of the preliminary approval letter from ABC. A public hearing to review this issue is scheduled during the regular City Council meeting on Tuesday, February 4, 2025, beginning at 1:00 p.m., in the City Council Chambers, 700 North Main Street, City Hall. Notice of this public hearing was published in the Las Cruces Sun-News on January 3, 2025, and January 19, 2025.

The Council may approve or disapprove the request for the liquor license. However, Council's disapproval must be based on substantial evidence that the license would adversely affect the health, safety, or welfare of the City of Las Cruces citizens.

The Council may also fail to either approve or disapprove the license. If Council fails to approve or disapprove the license within 30 days after the public hearing, the Director of the Alcoholic Beverage Control Division may give final approval of the license.

SUPPORT INFORMATION:

Exhibit "A" - Alcohol and Gaming's letter and application.
Attachment "A" - Notice of Intent to Approve published.
Attachment "B" - Traffic Impact Report from Traffic Engineering Section.
Attachment "C" - Fire and Safety Compliance Report from the Las Cruces Fire Department.
Attachment "D" - Liquor License Impact Report from Community Development.
Attachment "E" - Criminal Activity Report from the Las Cruces Police Department.
Attachment "F" - Business Registration Report from Community Development.

COMMITTEE/BOARD REVIEW:

None

DOES THIS AMEND THE BUDGET?:

☐ Yes
☒ No

Does this action amend the Capital Improvement Plan (CIP)?

☐ Yes
☒ No

Does this action align with Elevate Las Cruces?

☒ Yes
☐ No

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will approve of and consent to the approval of a Transfer of Ownership of Dispenser Liquor License No. DIS-000381 with Package Sales Only and the Alcohol Beverage Control Division will continue with the application process.
2. Vote "No"; this will not approve and must be based on substantial evidence that the liquor license would adversely affect the health, safety or welfare of the citizens of the City of Las Cruces.
3. Vote to "Amend"; this is not permitted by the Liquor Control Act, NMSA 1978, Section 60-6B-4.
4. Vote to "Table"; this is not permitted by the Liquor Control Act, NMSA 1978, Section 60-6B-4.

RESOLUTION 25-091

A RESOLUTION APPROVING THE REQUEST FOR A TRANSFER OF OWNERSHIP OF DISPENSER LIQUOR LICENSE NO. DIS-000381 WITH PACKAGE SALES ONLY TO NEW MEXICO COMPANY OPERATIONS, LLC., D/B/A NACHO SHELL LOCATED AT 2512 E. LOHMAN AVENUE, LAS CRUCES, NM. 88001.

The City Council is informed that:

WHEREAS, New Mexico Company Operations, LLC., d/b/a Nacho Shell, located at 2512 E. Lohman Avenue, Las Cruces, NM 88001, applied to the Alcoholic Beverage Control Division of the Regulation and Licensing Department of the State of New Mexico (“ABC") for a Transfer of Ownership of Dispenser Liquor License No. DIS-000381 with Package Sales Only; and

WHEREAS, ABC granted preliminary approval for a Transfer of Ownership of Dispenser Liquor License No. DIS-000381 with Package Sales Only by letter dated December 6, 2024; and

WHEREAS, pursuant to law, the application for a Transfer of Ownership of Dispenser Liquor License No. DIS-000381 with Package Sales Only must be accompanied by a resolution of the Las Cruces City Council approving of and consenting to license after a public hearing upon reasonable notice of such hearing; and

WHEREAS, the City Council did on this date hold a public hearing after reasonable notice setting forth the required information concerning the public hearing. The City Council has considered the liquor license, and it has been determined that the approval is not detrimental to the public health, safety, or welfare of the City of Las Cruces.

NOW, THEREFORE, Be it Resolved by the Governing Body of the City of Las Cruces:

(I)

THAT a Transfer of Ownership of Dispenser Liquor License No. DIS-000381 with Package Sales Only to New Mexico Company Operations, LLC., d/b/a Nacho Shell, located at 2512 E. Lohman Avenue, Las Cruces, NM 88001, as evidenced by ABC's letter and the application attached hereto as Exhibit “A”, is hereby approved.

(II)

THAT City staff is hereby authorized to do all deeds as necessary in the accomplishment of the herein above.

DONE AND APPROVED this day of

APPROVED

_____

ATTEST:

_____

Moved by:

Seconded by:

AYES

NAYS

Exhibit "A"

NMRLD
NEW MEXICO
REGULATION &
LICENSING DEPARTMENT

STATE OF NEW MEXICO
MICHELLE LUJAN GRISHAM, GOVERNOR
Clay Bailey, Superintendent
Phillip Sanchez, Director

December 6, 2024

Certified Mail No.: 7021 2720 0001 2205 1037

City of Las Cruces
Christine Rivera, CMC
PO Box 20000
Las Cruces, NM 88004

RECEIVED
DEC 16 2024
CITY CLERK'S OFFICE

Lic. No. /Appl. No.: **License No. DIS-000381**
Name of Applicant: New Mexico Company Operations, LLC
Doing Business As: Nacho Shell
Proposed Location: 2512 E. Lohman, Las Cruces, New Mexico 88001

The Director of the Alcoholic Beverage Control Division (ABC) has reviewed the referenced Application and granted **Preliminary Approval.** It is being forwarded to you for Local Option District approval or disapproval of the Liquor License Application.

Notice of the Public Hearing required by the Liquor Control Act **shall be given by the governing body by publishing a notice** of the date, time, and place of the hearing **twice during the 30 days prior to the hearing** in a newspaper of general circulation within the territorial limits of the governing body. **The first notice must be published at least thirty (30) days before the hearing. Both publications must occur before a hearing can be conducted.** The notice shall include:

(A) Name and address of the Applicant/Licensee;
(B) The action proposed to be taken;
(C) The location of the licensed premises.

In addition, if the Local Option District has a website, **the Notice shall also be published on the website.**

While the law states that "within forty-five **(45)** days after receipt of a Notice from the Alcoholic Beverage Control, the governing body shall hold a Public Hearing in the question of whether the department should approve the proposed issuance or transfer", we recognize the potential for conflict between the requirement for publication of 30 day notice and the 45 day hearing requirement.

With that in mind, when a local governing body receives a liquor license application from ABC, that governing body has a couple of options:

1) Hold a hearing on the license application within the statutory time frame of forty-five (45) days, as required by the Liquor Control Act, and comply with all other statutory and regulatory procedures and notify ABC of your decision within thirty (30) days of the hearing;
2) Request from ABC an extension of time, past the forty-five (45) days, designating how much additional time will be needed to conduct the hearing in compliance with all statutory and regulatory procedures. After the extension is granted and the hearing is held, notify ABC of your decision within thirty (30) days of the hearing;

ABC has no preference in the option you choose.

The governing body is required to send notice by certified mail to the Applicant of the date, time, and place of the Public Hearing. The governing body may designate a Hearing Officer to conduct the hearing. **A record shall be made** of the hearing.

THE APPLICANT IS SEEKING A TRANSFER OF OWNERSHIP OF DISPENSER LIQUOR LICENSE NO. DIS-000381 WITH PACKAGE SALES ONLY

Within thirty (30) days after the Public Hearing, the governing body shall notify ABC of their decision to approve or disapprove the issuance or transfer of the license by signing the enclosed original Page 1 of the Application. The original Page 1 of the Application must be returned together with the notices of publication. **If the Governing Body fails to either approve or disapprove the issuance or transfer of the license within thirty days after the Public Hearing, the Director may issue the license.**

If the Governing Body disapproves the issuance or transfer of the license, it shall notify ABC within thirty (30) days setting forth the reasons for the disapproval. A copy of the Minutes of the Public Hearing shall be submitted to ABC with the Notice of Disapproval (*Page 1 of the Application, noting disapproval*).

Respectfully,

Desirae Griego
Admin Law Judge | Hearing Officer
NM Regulation & Licensing Department
Alcoholic Beverage Control Division
Phone: (505) 795-4091 Fax: (505) 476-4595
Email: desirae.griego@rld.nm.gov

Enclosures:

1. Original Page 1 of the Application (*must be signed and returned w/notices of publication*)
2. Copy of Page 2 of the Application
3. Copy of Floor Plan

NMRLD
NEW MEXICO REGULATION & LICENSING DEPARTMENT

Received
APR 29 2024
Alcoholic Beverage Control

STATE OF NEW MEXICO
MICHELLE LUJAN GRISHAM, GOVERNOR
Clay Bailey, Superintendent
Phillip A. Sanchez, Director

Transfer of Dispenser Type Liquor Application | $200.00 Application Fee, non-refundable

ABC USE ONLY: Application Fee $ 200 Received on: 4.29.24 Receipt No. _____
License Fee $ _____ Received on: _____ Receipt No. _____
Application Number: _____ Local Option District: _____

License Number. 0538 DIS-000381 License Type Dispenser
Record Owner of Existing License: Brewer Oil Company
Current D/B/A Name: Nacho Shell
Current Premises Address: 2512 E Lohman, Las Cruces, NM 88001
Current LOD: 08005 Is License moving out of Local Option District? ☐Yes ■No

Check appropriate boxes:

Application is for: ■Transfer of Ownership ☐Transfer of Ownership and Location ☐Transfer of Location Only

Applicant is ☐Individual ■Limited Liability Company ☐Corporation ☐Partnership (General/Limited)

NAME OF APPLICANT: New Mexico Company Operations LLC
D/B/A Name to be used: ~~Country Club Shell~~ NACHO SHELL Business Phone No: 505-884-2040
Mailing Address: 2701 Candelaria Road NE, Albuquerque, NM 87107
Email (required) jfitzpatrick@breweroil.com
Physical location where license is to be used: 2512 E Lohman, Las Cruces, NM 88001
County: Dona Ana (Include street number / highway number / state road, city, state, and zip code)
Are alcoholic beverages currently being dispensed at the proposed location ☐Yes ☐No If Yes, License # / Type: 0538/Dispenser
Contact Person: Jason Fitzpatrick **Phone #:** 505-221-7894 **Email:** jfitzpatrick@breweroil.com

I, (print name) Jason Fitzpatrick, as (title) Resident Agent being first duly sworn upon oath deposes and says: that he/she is the applicant or is authorized by the applicant to make this application; that he/she has read the same; knows the contents therein contained are true. Applicant(s) agree(s) that if any statements or representations herein are found to be false, the Director may refuse to issue or renew the license or may cause the license to be revoked at any time.

You must sign and date this form before a Notary Public.

Signature of Applicant: _____ Date: 4/23/24

Notary Public Use Only: (State of New Mexico, County of San [illegible])
SUBSCRIBED AND SWORN TO before me this 23 day of April
By: JASON FITZPATRICK Notary Public: _____
Date my Commission Expires: Jan 24, 2028

MARIANA J ARCHULETA
Notary Public
State of New Mexico
Comm. # 2001779
My Comm. Exp. Jan 24, 2028

Local Option District Use Only: Local Governing Body of _____ City, County, Village
Public Hearing held on _____ 20_____ Please check one: ☐ Approved ☐ Disapproved
Signature of City/County Official: _____ Title: _____

Alcoholic Beverage Control Division Use Only: ☐ Approved ☐ Disapproved, _____
Signed by Director: _____ Date: _____

17:30

Premises Location, Ownership, and Description | NMSA §60-6B-10 | Page 2

1. The land and building which is proposed to be the licensed premises is: (**check one**)

☑ Owned by Applicant, copy of deed/document attached

☐ Leased by Applicant, copy of lease/document attached

☐ Other (provide details): _____

2. If the land and building are not owned by Applicant, indicate the following:

A. Owner(s): _____

B. Date and Term of Lease: _____

3. Premises location is Zoned (example C-1, see Zoning Statement): **See Attached Email (No Zoning Statement Required)**

Zoning Statement attached, ☐**Yes** ☑**No** Must be obtained from the Local Government, listing the proposed location by address, Type of Zone, state whether alcoholic beverages are allowed at proposed location, and if applicable, whether packaged sales, patio service and/or manufacturing is allowable. If there is no zoning in the proposed location, attach Statement from the local government, indicating there is no zoning.

4. **Distance* from nearest Church**: (Property line of church to closest point of licensed premises—shortest distance)

Name of Church: **Sierra Vista Community Church** Miles/feet: **3169 ft**

Address/location of Church: **514 N Telshor Blvd, Las Cruces, NM 88011**

5. **Distance* from nearest School**: (Property line of school to closest point of licensed premises—shortest distance)

Name of School: **Desert Hills Elementary School** Miles/feet: **4693 ft**

Address/location of School: **280 Roadrunner Pkwy, Las Cruces, NM 88011**

6. **Attach Detailed Floor Plan**, must include the Total Square Footage of premises; List nearest cross street; Show which direction is North; Show each level (floor) where alcoholic beverages will be sold or consumed, exterior walls, doors, and interior walls; Patio Area with type of barrier used; Highlight Bonded Areas. The floor plan should be no larger than 8½ x 11 inches and must be labeled with designated areas highlighted, which will reflect the proposed Licensed Premises.

7. Type of Operation: ☐ Hotel ☐ Lounge ☐ Package Grocery ☐ Racetrack

☐ Restaurant ☐ Craft Distiller ☐ Small Brewer ☐ Winery ☐ Wholesaler

☑ Other (specify): **Gas Station/Convenience Store**

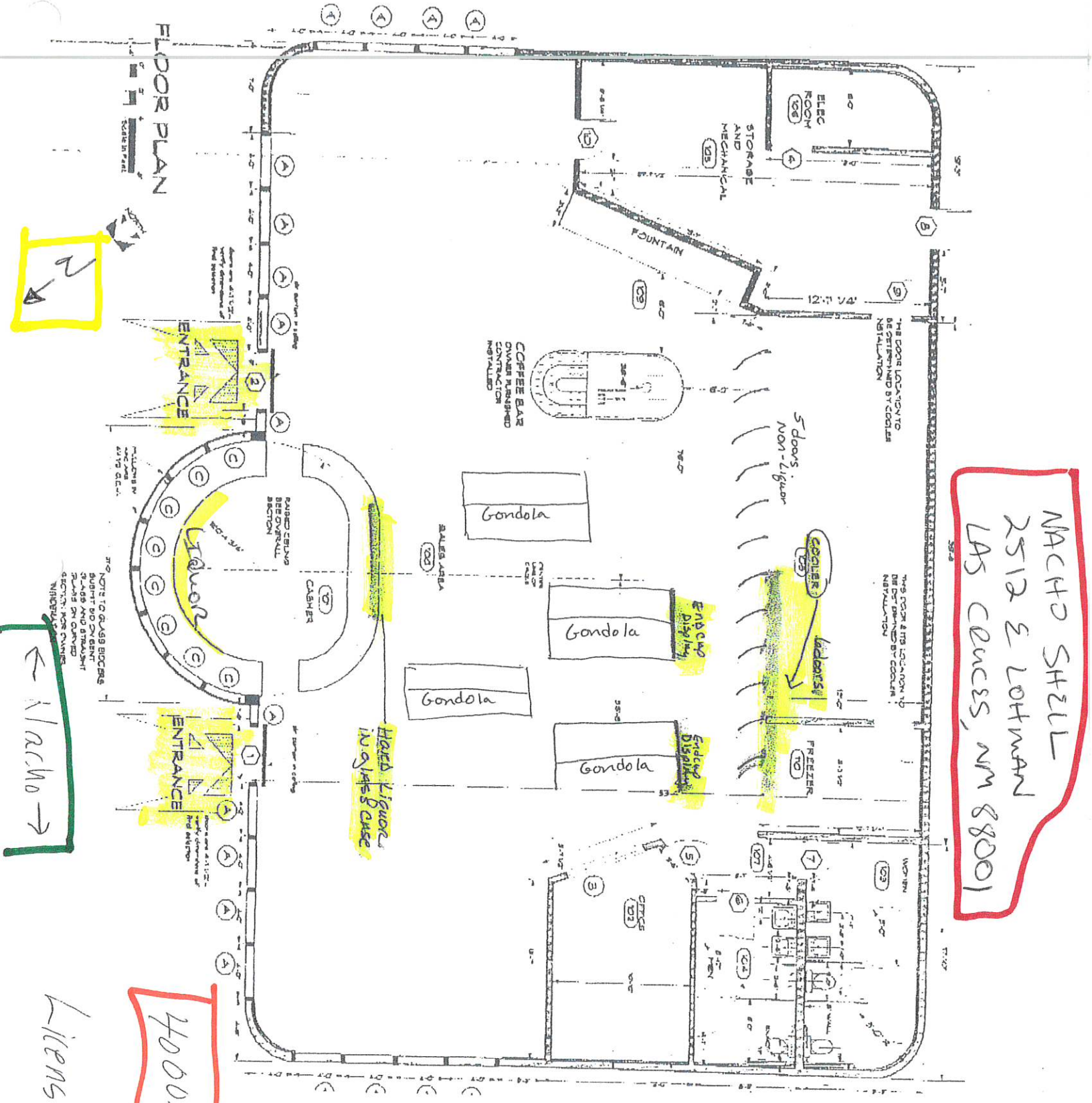
***NOTE**: If the distance is beyond 300 feet, but less than 400 feet, and the Applicant does not admit that the location is within 300 feet and requests a waiver from the LOD, a Registered Engineer or Licensed Surveyor must complete a Survey Certificate showing the exact distance.

APR 29 2024
Alcoholic Beverage Control

Feb-17-99 05:03P

1730

P.01



NACHO SHELL
2512 E LOHMAN
LAS CRUCES, NM 88001

← Nacho →

← Lohman →

4000 sq. ft.

Liquor 538

Attachment "A"

CITY OF LAS CRUCES

AD FORM

Las Cruces Sun News (LCSN)	
Classified Legal Ad	
Date to Publish: January 3, 2025, and January 19, 2025	
Account # 1361141 **P.O. # 25201199**	
City Contact & Phone #: **Adam Ochoa, Senior Urban Planner** **575-528-3204** aochoa@lascruces.gov	
Proof of Publication Required. Please initial Ad Form and email back indicating receipt.	

COPY TO PUBLISH:

NOTICE OF INTENT TO APPROVE THE FOLLOWING ITEMS:

Notice is hereby given that the Las Cruces City Council will hold a Public Hearing to discuss approval or disapproval of a Transfer of Ownership of Dispenser Liquor License No. DIS-000414 With Package Sales Only to New Mexico Company Operations, LLC. d/b/a Triviz Shell located at 3040 N. Main Street, Las Cruces, New Mexico, 88001.

Notice is hereby given that the Las Cruces City Council will hold a Public Hearing to discuss approval or disapproval of a Transfer of Ownership of Dispenser Liquor License No. DIS-000381 With Package Sales Only to New Mexico Company Operations, LLC. d/b/a Nacho Shell located at 2512 E. Lohman Avenue, Las Cruces, New Mexico, 88001.

Notice is hereby given that the Las Cruces City Council will hold a Public Hearing to discuss approval or disapproval of a Transfer of Ownership of Dispenser Liquor License No. DIS-000272 With Package Sales Only to New Mexico Company Operations, LLC. d/b/a Country Club Shell located at 2901 N. Main Street, Las Cruces, New Mexico, 88005.

Notice is hereby given that the Las Cruces City Council will hold a Public Hearing to discuss approval or disapproval of a Transfer of Ownership of Dispenser Liquor License No. DIS-000074 With Package Sales Only to New Mexico Company Operations, LLC. d/b/a University Shell located at 1305 S. Solano Drive, Las Cruces, New Mexico, 88001.

Notice is hereby given that the Las Cruces City Council will hold a Public Hearing to discuss approval or disapproval of a Transfer of Ownership of Dispenser Liquor

License No. DIS-000005 With Package Sales Only to New Mexico Company Operations, LLC. d/b/a Holiday Shell located at 2645 S. Valley Drive, Las Cruces, New Mexico, 88001.

The Public Hearings will be held as part of the regularly scheduled meeting of the City Council on Tuesday, February 4, 2025, beginning at 1:00 p.m., in the City Council Chambers, 700 North Main Street, City Hall. If passed, the Director of the Alcoholic Beverage Control Division of the State of New Mexico Regulation & Licensing Department may approve the issuance of the license.

Witness my hand and seal this the 18th day of November 2024.

Christine Rivera, MS, CMC
City Clerk

LAS CRUCES SUN NEWS - Please publish in the Legal Section on **January 3, 2025, and January 19, 2025**, and furnish Proof of Publication at your earliest convenience.

Attachment "B"

CITY OF LAS CRUCES

MEMORANDUM

To: Adam Ochoa, Senior Urban Planner

From: Gary Skelton, P.E., Engineer **Initials:** GS

Date: December 18, 2024

Subject: Traffic Investigation Report – Transfer of Dispenser Type Liquor Application
Location: 2512 E. Lohman Avenue, Las Cruces, NM 88001
Applicant: New Mexico Company Operations LLC DBA Nacho Shell

As requested, Traffic Engineering has completed a traffic investigation for New Mexico Company Operations LLC DBA Nacho Shell application for a Transfer of Dispenser Type Liquor License for the property located at 2512 E. Lohman, Las Cruces, NM 88001. The following information is submitted for review:

- According to the Mesilla Valley MPO Interactive Traffic Flow Map, the most recent traffic volume measured on Lohman Avenue near the subject location is 26,428 vehicles per day. There is no traffic volume data for Nacho Drive.

- The Mesilla Valley MPO classifies Lohman Avenue as a principal arterial and Nacho Drive as a local road near the subject property. Lohman Avenue and Nacho Drive serve primarily commercial use properties near the subject property.

- The subject location has an on-site parking available. The property has a partial access driveway on Lohman Avenue and a full access driveway on Nacho Drive. No sight distance or operational problems are currently known at the driveways.

- Near the subject property, the speed limit on Lohman Avenue is 35 MPH. Nacho Drive has no posted speed limit; therefore, the speed is assumed 30 MPH per NMSA 66-7-301. Speed limits on all other adjacent roads range from 25 to 35 mph near the subject property.

The approval of the Transfer of Dispenser Type Liquor License permit application at this location does not appear to adversely impact traffic operations along the roadway segment. Feel free to contact me at 575-541-2561 with any questions.

From:	Michael Danner
To:	Adam Ochoa; Soogyu Lee; Daniel Balderrama; Gary Skelton; Jason Smith; Bobbie Munoz; Mark Dubbin; Michael Landavazo; Elena Sanchez; Sean Mullen; Eric Urenda; Jeremy Story; Miguel Carlos; Eloy Jimenez
Cc:	Chris Faivre; Jackie Baylon; John Castillo
Subject:	RE: Transfer of ownership of dispenser liquor licenses.
Date:	Tuesday, December 17, 2024 2:10:57 PM
Attachments:	image002.png image003.png

Good Afternoon,

LCFD approves all of the transfer of ownerships. None of the listed locations have any outstanding fire code violations. Thank you.

Michael Danner, F314
Fire Investigator/LEO/Prevention Bureau/Las Cruces Fire Department
Direct: 575-528-4049 Main: 575-528-3473, mdanner@lascruces.gov
CITY OF LAS CRUCES

From: Adam Ochoa <aochoa@lascruces.gov>
Sent: Tuesday, December 17, 2024 11:00 AM
To: Soogyu Lee <sglee@lascruces.gov>; Daniel Balderrama <dbalderrama@lascruces.gov>; Gary Skelton <gskelton@lascruces.gov>; Jason Smith <jasmith@lascruces.gov>; Michael Danner <mdanner@lascruces.gov>; Bobbie Munoz <romunoz@lascruces.gov>; Mark Dubbin <mdubbin@lascruces.gov>; Michael Landavazo <mlandavazo@lascruces.gov>; Elena Sanchez <esanchez@lascruces.gov>; Sean Mullen <smullen@lascruces.gov>; Eric Urenda <eurenda@lascruces.gov>; Jeremy Story <jstory@lascruces.gov>; Miguel Carlos <mcarlos@lascruces.gov>; Eloy Jimenez <ejimenez@lascruces.gov>
Cc: Chris Faivre <cfaivre@lascruces.gov>; Jackie Baylon <jbaylon@lascruces.gov>; John Castillo <jcastillo@lascruces.gov>
Subject: Transfer of ownership of dispenser liquor licenses.

Good Morning,

New Mexico Company Operations LLC., has filed five (5) applications seeking a transfer of ownership of the following dispenser liquor licenses with package sales only:

1. DIS-000414 for New Mexico Company Operations, LLC., D.B.A. Triviz Shell located at 3040 N. Main Street.
2. DIS-000381 for New Mexico Company Operations, LLC., D.B.A. Nacho Shell located at 2512 E. Lohman Avenue.
3. DIS-000272 for New Mexico Company Operations, LLC., D.B.A. Country Club Shell located at 2901 N. Main Street.
4. DIS-000074 for New Mexico Company Operations, LLC., D.B.A. University Shell located at 1305 S. Solano Drive.
5. RET-000005 for New Mexico Company Operations, LLC., D.B.A. Holiday Shell located at 2645 S. Valley Drive.

Please see attached applications. Please provide liquor license reports to me no later than December 24, 2024. Thank you.

Adam Ochoa, CZO
Senior Urban Planner/Community Development Department
Direct: 575-528-3204 Main: 575-528-3043, aochoa@lascruces.gov
CITY OF LAS CRUCES

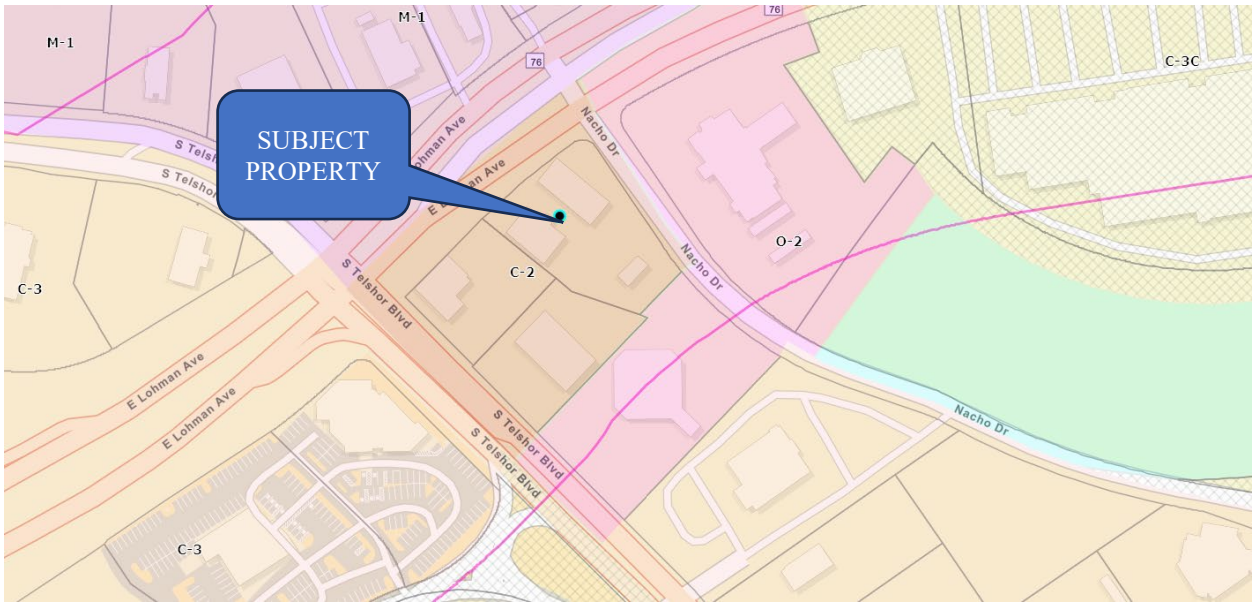
CITY OF LAS CRUCES

City of Las Cruces Community Development Department
Liquor License Impact Report
Transfer of Ownership of Dispenser Liquor License No. DIS-000381
Nacho Shell
2512 E. Lohman Avenue

The purpose of this report is to review, analyze and determine any possible impacts of a liquor license relating to land use and other planning related issues.

PROPERTY INFORMATION:

Location:	2512 E. Lohman Avenue
Applicant:	New Mexico Company Operations, LLC.
Business Name:	Nacho Shell
Zoning:	C-2 (Commercial Medium Intensity)



DISTANCE REQUIREMENTS:

Greater than 300 feet to a school:	YES
Greater than 300 feet to a church:	YES
Greater than 300 feet to a military installation:	YES

IMPACT ANALYSIS:

The applicant is requesting a transfer of ownership of dispenser liquor license no. DIS-000381 with package sales only. The subject property is located on the corner of E. Lohman Avenue and Nacho Drive in the Regional Commercial Suburban Place Type, as designated by Elevate Las Cruces, which is an area designed to accommodate land uses such as the establishment with a dispenser liquor license. The subject property is zoned C-2, which allows the establishment with a dispenser liquor license, provided all requirements as prescribed for liquor establishments by

the State of New Mexico are met. In terms of a transportation, land use, and Comprehensive Plan perspective, this seems an appropriate location and request.

From: Sean Mullen
To: Adam Ochoa
Subject: RE: Transfer of ownership of dispenser liquor licenses.
Date: Tuesday, December 24, 2024 1:12:44 PM
Attachments: image001.png

Approved.

Thank you,

Sean Mullen
Deputy Chief of Administration/Las Cruces Police Department
Direct: 575-528-4101 Main: 575-528-4200, smullen@las-cruces.org
CITY OF LAS CRUCES

From: Adam Ochoa <aochoa@lascruces.gov>
Sent: Tuesday, December 17, 2024 11:00 AM
To: Soogyu Lee <sglee@lascruces.gov>; Daniel Balderrama <dbalderrama@lascruces.gov>; Gary Skelton <gskelton@lascruces.gov>; Jason Smith <jasmith@lascruces.gov>; Michael Danner <mdanner@lascruces.gov>; Bobbie Munoz <romunoz@lascruces.gov>; Mark Dubbin <mdubbin@lascruces.gov>; Michael Landavazo <mlandavazo@lascruces.gov>; Elena Sanchez <esanchez@lascruces.gov>; Sean Mullen <smullen@lascruces.gov>; Eric Urenda <eurenda@lascruces.gov>; Jeremy Story <jstory@lascruces.gov>; Miguel Carlos <mcarlos@lascruces.gov>; Eloy Jimenez <ejimenez@lascruces.gov>
Cc: Chris Faivre <cfaivre@lascruces.gov>; Jackie Baylon <jbaylon@lascruces.gov>; John Castillo <jcastillo@lascruces.gov>
Subject: Transfer of ownership of dispenser liquor licenses.

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4. DIS-000074 for New Mexico Company Operations, LLC., D.B.A. University Shell located at 1305 S. Solano Drive.
5. RET-000005 for New Mexico Company Operations, LLC., D.B.A. Holiday Shell located at 2645 S. Valley Drive.

Please see attached applications. Please provide liquor license reports to me no later than December 24, 2024. Thank you.

Adam Ochoa, CZO
Senior Urban Planner/Community Development Department
Direct: 575-528-3204 Main: 575-528-3043, aochoa@lascruces.gov
CITY OF LAS CRUCES

From: Miguel Carlos
To: Adam Ochoa
Subject: RE: Transfer of ownership of dispenser liquor licenses.
Date: Friday, December 20, 2024 11:53:42 AM
Attachments: image002.png
image003.png

Good morning, all 5 Business license applications are in compliance.

Miguel Carlos
Permit Technician/Community Development/Permits and Inspections
Direct: 575-528-3091 Main: 575-528-3059 mcarlos@lascruces.gov
CITY OF LAS CRUCES

From: Adam Ochoa <aochoa@lascruces.gov>
Sent: Tuesday, December 17, 2024 11:00 AM
To: Soogyu Lee <sglee@lascruces.gov>; Daniel Balderrama <dbalderrama@lascruces.gov>; Gary Skelton <gskelton@lascruces.gov>; Jason Smith <jasmith@lascruces.gov>; Michael Danner <mdanner@lascruces.gov>; Bobbie Munoz <romunoz@lascruces.gov>; Mark Dubbin <mdubbin@lascruces.gov>; Michael Landavazo <mlandavazo@lascruces.gov>; Elena Sanchez <esanchez@lascruces.gov>; Sean Mullen <smullen@lascruces.gov>; Eric Urenda <eurenda@lascruces.gov>; Jeremy Story <jstory@lascruces.gov>; Miguel Carlos <mcarlos@lascruces.gov>; Eloy Jimenez <ejimenez@lascruces.gov>
Cc: Chris Faivre <cfaivre@lascruces.gov>; Jackie Baylon <jbaylon@lascruces.gov>; John Castillo <jcastillo@lascruces.gov>
Subject: Transfer of ownership of dispenser liquor licenses.

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Please see attached applications. Please provide liquor license reports to me no later than December 24, 2024. Thank you.

Adam Ochoa, CZO
Senior Urban Planner/Community Development Department
Direct: 575-528-3204 Main: 575-528-3043, aochoa@lascruces.gov
CITY OF LAS CRUCES

25-092

Type of Action:
☒ **Resolution**
☐ **Ordinance**
☐ **TIDD Resolution**

City Council Action and Executive Summary

District:	☐ 1 ☐ 2 ☒ 3 ☐ 4 ☐ 5 ☐ 6 ☐ N/A		
1st Reading:		**Adopted:**	February 4, 2025
Drafter:	Adam Ochoa	**Department:**	Community Development
Program:	Community Planning	**Line of Business:**	Community Planning

Title:	**A RESOLUTION APPROVING THE REQUEST FOR A TRANSFER OF OWNERSHIP OF DISPENSER LIQUOR LICENSE NO. DIS-000074 WITH PACKAGE SALES ONLY TO NEW MEXICO COMPANY OPERATIONS, LLC., D/B/A UNIVERSITY SHELL LOCATED AT 1305 S. SOLANO DRIVE, LAS CRUCES, NM. 88001.**

TYPE OF ACTION: ☒ **Administrative** ☐ **Legislative** ☐ **Quasi-Judicial**

PURPOSE(S) OF ACTION:

Approval of a Transfer of Ownership of Dispenser Liquor License No. DIS-000074 with Package Sales Only.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

Pursuant to New Mexico Statutes, an application for approval of a Transfer of Ownership of Dispenser Liquor License No. DIS-000074 with Package Sales Only, must be accompanied by a resolution of the City Council approving and consenting to the license after a public hearing.

New Mexico Company Operations, LLC., d/b/a University Shell, applied to the Alcoholic Beverage Control Division of the Regulation and Licensing Department of the State of New Mexico ("ABC"). The location for the license is at 1305 S. Solano Drive, Las Cruces, NM 88001. ABC granted preliminary approval on December 6, 2024.

The City Council is required to hold a public hearing within 45 days after the date of receipt of the preliminary approval letter from ABC. A public hearing to review this issue is scheduled during the regular City Council meeting on Tuesday, February 4, 2025, beginning at 1:00 p.m., in the City Council Chambers, 700 North Main Street, City Hall. Notice of this public hearing was published in the Las Cruces Sun-News on January 3, 2025 and January 19, 2025.

The Council may approve or disapprove the request for the liquor license. However, Council's disapproval must be based on substantial evidence that the license would adversely affect the health, safety, or welfare of the City of Las Cruces citizens.

The Council may also fail to either approve or disapprove the license. If Council fails to approve or disapprove the license within 30 days after the public hearing, the Director of the Alcoholic Beverage Control Division may give final approval of the license.

SUPPORT INFORMATION:

Exhibit "A" - Alcohol and Gaming's letter and application.
Attachment "A" - Notice of Intent to Approve published.
Attachment "B" - Traffic Impact Report from Traffic Engineering Section.
Attachment "C" - Fire and Safety Compliance Report from the Las Cruces Fire Department.
Attachment "D" - Liquor License Impact Report from Community Development.
Attachment "E" - Criminal Activity Report from the Las Cruces Police Department.
Attachment "F" - Business Registration Report from Community Development.

COMMITTEE/BOARD REVIEW:

None

DOES THIS AMEND THE BUDGET?:

☐ Yes
☒ No

Does this action amend the Capital Improvement Plan (CIP)?

☐ Yes
☒ No

Does this action align with Elevate Las Cruces?

☒ Yes
☐ No

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will approve of and consent to the approval of a Transfer of Ownership of Dispenser Liquor License No. DIS-000074 with Package Sales Only and the Alcohol Beverage Control will continue with the application process.
2. Vote "No"; this will not approve and must be based on substantial evidence that the liquor license would adversely affect the health, safety or welfare of the citizens of the City of Las Cruces.
3. Vote to "Amend"; this is not permitted by the Liquor Control Act, NMSA 1978, Section 60-6B-4.
4. Vote to "Table"; this is not permitted by the Liquor Control Act, NMSA 1978, Section 60-6B-4.

RESOLUTION 25-092

A RESOLUTION APPROVING THE REQUEST FOR A TRANSFER OF OWNERSHIP OF DISPENSER LIQUOR LICENSE NO. DIS-000074 WITH PACKAGE SALES ONLY TO NEW MEXICO COMPANY OPERATIONS, LLC., D/B/A UNIVERSITY SHELL LOCATED AT 1305 S. SOLANO DRIVE, LAS CRUCES, NM. 88001.

The City Council is informed that:

WHEREAS, New Mexico Company Operations, LLC., d/b/a University Shell, located at 1305 S. Solano Drive, Las Cruces, NM 88001, applied to the Alcoholic Beverage Control Division of the Regulation and Licensing Department of the State of New Mexico (“ABC") for a Transfer of Ownership of Dispenser Liquor License No. DIS-000074 with Package Sales Only; and

WHEREAS, ABC granted preliminary approval for a Transfer of Ownership of Dispenser Liquor License No. DIS-000074 with Package Sales Only by letter dated December 6, 2024; and

WHEREAS, pursuant to law, the application for a Transfer of Ownership of Dispenser Liquor License No. DIS-000074 with Package Sales Only must be accompanied by a resolution of the Las Cruces City Council approving of and consenting to license after a public hearing upon reasonable notice of such hearing; and

WHEREAS, the City Council did on this date hold a public hearing after reasonable notice setting forth the required information concerning the public hearing. The City Council has considered the liquor license, and it has been determined that the approval is not detrimental to the public health, safety, or welfare of the City of Las Cruces.

NOW, THEREFORE, Be it Resolved by the Governing Body of the City of Las Cruces:

(I)

THAT a Transfer of Ownership of Dispenser Liquor License No. DIS-000074 with Package Sales Only to New Mexico Company Operations, LLC., d/b/a University Shell, located at 1305 S. Solano Drive, Las Cruces, NM 88001, as evidenced by ABC's letter and the application attached hereto as Exhibit" A", is hereby approved.

(II)

THAT City staff is hereby authorized to do all deeds as necessary in the accomplishment of the herein above.

DONE AND APPROVED this day of

APPROVED

_____

ATTEST:

_____

Moved by:

Seconded by:

AYES

NAYS

NMRLD
NEW MEXICO
REGULATION &
LICENSING DEPARTMENT

Exhibit "A"

STATE OF NEW MEXICO
MICHELLE LUJAN GRISHAM, GOVERNOR
Clay Bailey, Superintendent
Phillip Sanchez, Director

December 6, 2024

Certified Mail No.: 7021 2720 0001 2205 1037

City of Las Cruces
Christine Rivera, CMC
PO Box 20000
Las Cruces, NM 88004

RECEIVED
DEC 16 2024
CITY CLERK'S OFFICE

Lic. No. /Appl. No.:	**License No. DIS-000074**
Name of Applicant:	New Mexico Company Operations, LLC
Doing Business As:	University Shell
Proposed Location:	1305 S. Sloano, Las Cruces, New Mexico 88001

The Director of the Alcoholic Beverage Control Division (ABC) has reviewed the referenced Application and granted **Preliminary Approval.** It is being forwarded to you for Local Option District approval or disapproval of the Liquor License Application.

Notice of the Public Hearing required by the Liquor Control Act **shall be given by the governing body by publishing a notice** of the date, time, and place of the hearing **twice during the 30 days prior to the hearing** in a newspaper of general circulation within the territorial limits of the governing body. **The first notice must be published at least thirty (30) days before the hearing. Both publications must occur before a hearing can be conducted.** The notice shall include:

(A) Name and address of the Applicant/Licensee;
(B) The action proposed to be taken;
(C) The location of the licensed premises.

In addition, if the Local Option District has a website, **the Notice shall also be published on the website.**

While the law states that "within forty-five **(45)** days after receipt of a Notice from the Alcoholic Beverage Control, the governing body shall hold a Public Hearing in the question of whether the department should approve the proposed issuance or transfer", we recognize the potential for conflict between the requirement for publication of 30 day notice and the 45 day hearing requirement.

With that in mind, when a local governing body receives a liquor license application from ABC, that governing body has a couple of options:

1) Hold a hearing on the license application within the statutory time frame of forty-five (45) days, as required by the Liquor Control Act, and comply with all other statutory and regulatory procedures and notify ABC of your decision within thirty (30) days of the hearing;
2) Request from ABC an extension of time, past the forty-five (45) days, designating how much additional time will be needed to conduct the hearing in compliance with all statutory and regulatory procedures. After the extension is granted and the hearing is held, notify ABC of your decision within thirty (30) days of the hearing;

ABC has no preference in the option you choose.

The governing body is required to send notice by certified mail to the Applicant of the date, time, and place of the Public Hearing. The governing body may designate a Hearing Officer to conduct the hearing. **A record shall be made** of the hearing.

THE APPLICANT IS SEEKING A TRANSFER OF OWNERSHIP OF DISPENSER LIQUOR LICENSE NO. DIS-000074 WITH PACKAGE SALES ONLY

Within thirty (30) days after the Public Hearing, the governing body shall notify ABC of their decision to approve or disapprove the issuance or transfer of the license by signing the enclosed original Page 1 of the Application. The original Page 1 of the Application must be returned together with the notices of publication. **If the Governing Body fails to either approve or disapprove the issuance or transfer of the license within thirty days after the Public Hearing, the Director may issue the license.**

If the Governing Body disapproves the issuance or transfer of the license, it shall notify ABC within thirty (30) days setting forth the reasons for the disapproval. A copy of the Minutes of the Public Hearing shall be submitted to ABC with the Notice of Disapproval (*Page 1 of the Application, noting disapproval*).

Respectfully,

Desirae Griego
Admin Law Judge | Hearing Officer
NM Regulation & Licensing Department
Alcoholic Beverage Control Division
Phone: (505) 795-4091 Fax: (505) 476-4595
Email: desirae.griego@rld.nm.gov

Enclosures:

1. Original Page 1 of the Application (*must be signed and returned w/notices of publication*)
2. Copy of Page 2 of the Application
3. Copy of Floor Plan

NMRLD
NEW MEXICO REGULATION & LICENSING DEPARTMENT

Received APR 29 2024 Alcoholic Beverage Control

STATE OF NEW MEXICO
MICHELLE LUJAN GRISHAM, GOVERNOR
Clay Bailey, Superintendent
Phillip A. Sanchez, Director

Transfer of Dispenser Type Liquor Application | $200.00 Application Fee, non-refundable

ABC USE ONLY: Application Fee $ 200. Received on: 4.29.24 Receipt No. _____
License Fee $ _____ Received on: _____ Receipt No. _____
Application Number: _____ Local Option District: _____

License Number. 0099 DIS-000074 License Type Dispenser
Record Owner of Existing License: Brewer Oil Company
Current D/B/A Name: University Shell
Current Premises Address: 1305 S Solano, Las Cruces, NM 88001
Current LOD: 08005 Is License moving out of Local Option District? ☐Yes ■No

Check appropriate boxes:

Application is for: ■Transfer of Ownership ☐Transfer of Ownership and Location ☐Transfer of Location Only

Applicant is ☐Individual ■Limited Liability Company ☐Corporation ☐Partnership (General/Limited)

NAME OF APPLICANT: New Mexico Company Operations LLC
D/B/A Name to be used: University Shell Business Phone No: 505-884-2040
Mailing Address: 2701 Candelaria Road NE, Albuquerque, NM 87107
Email (required) jfitzpatrick@breweroil.com
Physical location where license is to be used: 1305 S Solano, Las Cruces, NM 88001
County: Dona Ana (Include street number / highway number / state road, city, state, and zip code)
Are alcoholic beverages currently being dispensed at the proposed location ☐Yes ☐No If Yes, License # / Type: 0099/Dispenser
Contact Person: Jason Fitzpatrick **Phone #:** 505-221-7894 **Email:** jfitzpatrick@breweroil.com

I, (print name) Jason Fitzpatrick, as (title) Resident Agent being first duly sworn upon oath deposes and says: that he/she is the applicant or is authorized by the applicant to make this application; that he/she has read the same; knows the contents therein contained are true. Applicant(s) agree(s) that if any statements or representations herein are found to be false, the Director may refuse to issue or renew the license or may cause the license to be revoked at any time.

You must sign and date this form before a Notary Public.

Signature of Applicant: _____ Date: 4/23/24

Notary Public Use Only: (State of New Mexico, County of Santa Fe)
SUBSCRIBED AND SWORN TO before me this 23 day of April, 2024
By: JASON FITZPATRICK Notary Public: _____
Date my Commission Expires: Jan 24, 2028

MARIANA J ARCHULETA
Notary Public
State of New Mexico
Comm. # 2001779
My Comm. Exp. Jan 24, 2028

Local Option District Use Only: Local Governing Body of _____ City, County, Village
Public Hearing held on _____ 20_____ Please check one: ☐ Approved ☐ Disapproved
Signature of City/County Official: _____ Title: _____

Alcoholic Beverage Control Division Use Only: ☐ Approved ☐ Disapproved, _____
Signed by Director: _____ Date: _____

1750

Premises Location, Ownership, and Description | NMSA §60-6B-10 | Page 2

1. The land and building which is proposed to be the licensed premises is: **(check one)**

☑ Owned by Applicant, copy of deed/document attached

☐ Leased by Applicant, copy of lease/document attached

☐ Other (provide details): _____

2. If the land and building are not owned by Applicant, indicate the following:

A. Owner(s): _____

B. Date and Term of Lease: _____

3. Premises location is Zoned (example C-1, see Zoning Statement): **See Attached Email (No Zoning Statement Required)**

Zoning Statement attached, ☐**Yes** ☑**No** Must be obtained from the Local Government, listing the proposed location by address, Type of Zone, state whether alcoholic beverages are allowed at proposed location, and if applicable, whether packaged sales, patio service and/or manufacturing is allowable. If there is no zoning in the proposed location, attach Statement from the local government, indicating there is no zoning.

4. **Distance* from nearest Church**: (Property line of church to closest point of licensed premises—shortest distance)

Name of Church: **First Evangelical Free Church** Miles/feet: **863 ft**

Address/location of Church: **1435 Pecos St #4335, Las Cruces, NM 88001**

5. **Distance* from nearest School**: (Property line of school to closest point of licensed premises—shortest distance)

Name of School: **Valley View Elementary School** Miles/feet: **1512 ft**

Address/location of School: **915 California Ave, Las Cruces, NM 88001**

6. **Attach Detailed Floor Plan**, must include the Total Square Footage of premises; List nearest cross street; Show which direction is North; Show each level (floor) where alcoholic beverages will be sold or consumed, exterior walls, doors, and interior walls; Patio Area with type of barrier used; Highlight Bonded Areas. The floor plan should be no larger than 8½ x 11 inches and must be labeled with designated areas highlighted, which will reflect the proposed Licensed Premises.

7. Type of Operation: ☐ Hotel ☐ Lounge ☐ Package Grocery ☐ Racetrack

☐ Restaurant ☐ Craft Distiller ☐ Small Brewer ☐ Winery ☐ Wholesaler

☑ Other (specify): **Gas Station/Convenience Store**

***NOTE**: If the distance is beyond 300 feet, but less than 400 feet, and the Applicant does not admit that the location is within 300 feet and requests a waiver from the LOD, a Registered Engineer or Licensed Surveyor must complete a Survey Certificate showing the exact distance.

03/17/95

LICENSE #99

2400 SQ FT

SOLANO DRIVE

BREWER OIL COMPANY
STORE #69 UNIVERSITY SHELL
1305 S. SOLANO, LAS CRUCES NM.

W
S N
E

17.5

307 308 309 310 311 312 313 314 315

ENTRANCE

ATTACH # 1
LICENSE
99

410 409 408 407

411

COOLER 211

209 208 207 206 205

COOLER 210

204 203 202 201

212

334 333 332 331 330 329 328
335 336 337 338 339

FLOOR PLAN APPROVAL
By Brenda Mares
Date 5-19-15

322 321 320 319 318 317 316
323 324 325 326 327

← CHECKOUT AREA →

105 FRONT 104 FRONT
106 FRONT 102 TOP TOP 101
103 TOP
107 FRONT
DRINK CENT.
U S NT 1 DO 1 EC 1 RK
108
110 109
FREEZER 401

412 413

FLOOR DISPLAYS 340

407 BACK ROOM

404

STOCK ROOM

406 405 306 ICE 305 304 303 302 301

402 403

BOCMAP69

COOLER DOORS BACKSTOCK & STORE ROOMS - BEER & WINE
LIQUOR UNDER & BEHIND CHECK STAND
WARM BEER DISP 5

ICS, INC. 1995

Attachment "A"

CITY OF LAS CRUCES

AD FORM

Las Cruces Sun News (LCSN)	
Classified Legal Ad	
Date to Publish: January 3, 2025, and January 19, 2025	
Account # 1361141 **P.O. # 25201199**	
City Contact & Phone #: **Adam Ochoa, Senior Urban Planner** **575-528-3204** aochoa@lascruces.gov	
Proof of Publication Required. Please initial Ad Form and email back indicating receipt.	

COPY TO PUBLISH:

NOTICE OF INTENT TO APPROVE THE FOLLOWING ITEMS:

Notice is hereby given that the Las Cruces City Council will hold a Public Hearing to discuss approval or disapproval of a Transfer of Ownership of Dispenser Liquor License No. DIS-000414 With Package Sales Only to New Mexico Company Operations, LLC. d/b/a Triviz Shell located at 3040 N. Main Street, Las Cruces, New Mexico, 88001.

Notice is hereby given that the Las Cruces City Council will hold a Public Hearing to discuss approval or disapproval of a Transfer of Ownership of Dispenser Liquor License No. DIS-000381 With Package Sales Only to New Mexico Company Operations, LLC. d/b/a Nacho Shell located at 2512 E. Lohman Avenue, Las Cruces, New Mexico, 88001.

Notice is hereby given that the Las Cruces City Council will hold a Public Hearing to discuss approval or disapproval of a Transfer of Ownership of Dispenser Liquor License No. DIS-000272 With Package Sales Only to New Mexico Company Operations, LLC. d/b/a Country Club Shell located at 2901 N. Main Street, Las Cruces, New Mexico, 88005.

Notice is hereby given that the Las Cruces City Council will hold a Public Hearing to discuss approval or disapproval of a Transfer of Ownership of Dispenser Liquor License No. DIS-000074 With Package Sales Only to New Mexico Company Operations, LLC. d/b/a University Shell located at 1305 S. Solano Drive, Las Cruces, New Mexico, 88001.

Notice is hereby given that the Las Cruces City Council will hold a Public Hearing to discuss approval or disapproval of a Transfer of Ownership of Dispenser Liquor

License No. DIS-000005 With Package Sales Only to New Mexico Company Operations, LLC. d/b/a Holiday Shell located at 2645 S. Valley Drive, Las Cruces, New Mexico, 88001.

The Public Hearings will be held as part of the regularly scheduled meeting of the City Council on Tuesday, February 4, 2025, beginning at 1:00 p.m., in the City Council Chambers, 700 North Main Street, City Hall. If passed, the Director of the Alcoholic Beverage Control Division of the State of New Mexico Regulation & Licensing Department may approve the issuance of the license.

Witness my hand and seal this the 18th day of November 2024.

Christine Rivera, MS, CMC
City Clerk

LAS CRUCES SUN NEWS - Please publish in the Legal Section on **January 3, 2025, and January 19, 2025**, and furnish Proof of Publication at your earliest convenience.

Attachment "B"

CITY OF LAS CRUCES

MEMORANDUM

To: Adam Ochoa, Senior Urban Planner

From: Gary Skelton, P.E., Engineer **Initials:** GS

Date: December 18, 2024

Subject: Traffic Investigation Report – Transfer of Dispenser Type Liquor Application
Location: 1305 S. Solano Drive, Las Cruces, NM 88001
Applicant: New Mexico Company Operations LLC DBA University Shell

As requested, Traffic Engineering has completed a traffic investigation for New Mexico Company Operations LLC DBA University Shell application for a Transfer of Dispenser Type Liquor License for the property located at 1305 S. Solano Drive, Las Cruces, NM 88001. The following information is submitted for review:

- According to the Mesilla Valley MPO Interactive Traffic Flow Map, the most recent traffic volumes measured on S. Solano Drive and Idaho Avenue near the subject location are 11,904 vehicles per day and 4,663 vehicles per day, respectively.

- The Mesilla Valley MPO classifies S. Solano Drive as a minor arterial and Idaho Avenue as a collector near the subject property. S. Solano Drive serves primarily commercial use properties near the subject property. Idaho Avenue serves both commercial and residential properties near the subject property.

- The subject location has an on-site parking available. The property has two full access driveways on S. Solano Drive and a full access driveway on Idaho Avenue. No sight distance or operational problems are currently known at the driveways.

- Near the subject property, the speed limit on S. Solano Drive is 35 MPH, while the posted speed limit on Idaho Avenue is 25 MPH. Speed limits on all other adjacent roads range from 25 to 35 mph near the subject property.

The approval of the Transfer of Dispenser Type Liquor License permit application at this location does not appear to adversely impact traffic operations along the roadway segment. Feel free to contact me at 575-541-2561 with any questions.

From:	Michael Danner
To:	Adam Ochoa; Soogyu Lee; Daniel Balderrama; Gary Skelton; Jason Smith; Bobbie Munoz; Mark Dubbin; Michael Landavazo; Elena Sanchez; Sean Mullen; Eric Urenda; Jeremy Story; Miguel Carlos; Eloy Jimenez
Cc:	Chris Faivre; Jackie Baylon; John Castillo
Subject:	RE: Transfer of ownership of dispenser liquor licenses.
Date:	Tuesday, December 17, 2024 2:10:57 PM
Attachments:	image002.png image003.png

Good Afternoon,

LCFD approves all of the transfer of ownerships. None of the listed locations have any outstanding fire code violations. Thank you.

Michael Danner, F314
Fire Investigator/LEO/Prevention Bureau/Las Cruces Fire Department
Direct: 575-528-4049 Main: 575-528-3473, mdanner@lascruces.gov
CITY OF LAS CRUCES

From: Adam Ochoa <aochoa@lascruces.gov>
Sent: Tuesday, December 17, 2024 11:00 AM
To: Soogyu Lee <sglee@lascruces.gov>; Daniel Balderrama <dbalderrama@lascruces.gov>; Gary Skelton <gskelton@lascruces.gov>; Jason Smith <jasmith@lascruces.gov>; Michael Danner <mdanner@lascruces.gov>; Bobbie Munoz <romunoz@lascruces.gov>; Mark Dubbin <mdubbin@lascruces.gov>; Michael Landavazo <mlandavazo@lascruces.gov>; Elena Sanchez <esanchez@lascruces.gov>; Sean Mullen <smullen@lascruces.gov>; Eric Urenda <eurenda@lascruces.gov>; Jeremy Story <jstory@lascruces.gov>; Miguel Carlos <mcarlos@lascruces.gov>; Eloy Jimenez <ejimenez@lascruces.gov>
Cc: Chris Faivre <cfaivre@lascruces.gov>; Jackie Baylon <jbaylon@lascruces.gov>; John Castillo <jcastillo@lascruces.gov>
Subject: Transfer of ownership of dispenser liquor licenses.

Good Morning,

New Mexico Company Operations LLC., has filed five (5) applications seeking a transfer of ownership of the following dispenser liquor licenses with package sales only:

1. DIS-000414 for New Mexico Company Operations, LLC., D.B.A. Triviz Shell located at 3040 N. Main Street.
2. DIS-000381 for New Mexico Company Operations, LLC., D.B.A. Nacho Shell located at 2512 E. Lohman Avenue.
3. DIS-000272 for New Mexico Company Operations, LLC., D.B.A. Country Club Shell located at 2901 N. Main Street.
4. DIS-000074 for New Mexico Company Operations, LLC., D.B.A. University Shell located at 1305 S. Solano Drive.
5. RET-000005 for New Mexico Company Operations, LLC., D.B.A. Holiday Shell located at 2645 S. Valley Drive.

Please see attached applications. Please provide liquor license reports to me no later than December 24, 2024. Thank you.

Adam Ochoa, CZO
Senior Urban Planner/Community Development Department
Direct: 575-528-3204 Main: 575-528-3043, aochoa@lascruces.gov
CITY OF LAS CRUCES

CITY OF LAS CRUCES

City of Las Cruces Community Development Department
Liquor License Impact Report
Transfer of Ownership of Dispenser Liquor License No. DIS-000074
University Shell
1305 S. Solano Drive

The purpose of this report is to review, analyze and determine any possible impacts of a liquor license relating to land use and other planning related issues.

PROPERTY INFORMATION:

Location:	1305 S. Solano Drive
Applicant:	New Mexico Company Operations, LLC.
Business Name:	University Shell
Zoning:	C-2 (Commercial Medium Intensity)

DISTANCE REQUIREMENTS:

Greater than 300 feet to a school:	YES
Greater than 300 feet to a church:	YES
Greater than 300 feet to a military installation:	YES

IMPACT ANALYSIS:

The applicant is requesting a transfer of ownership of dispenser liquor license no. DIS-000074 with package sales only. The subject property is located on the corner of South Solano Drive and East Idaho Avenue in the Urban Neighborhood Urban Place Type, as designated by Elevate Las Cruces, which is an area designed to accommodate land uses such as the establishment with a

dispenser liquor license. The subject property is zoned C-2, which allows the establishment with a dispenser liquor license, provided all requirements as prescribed for liquor establishments by the State of New Mexico are met. In terms of a transportation, land use, and Comprehensive Plan perspective, this seems an appropriate location and request.

There is a question, however, concerning the required distance between liquor establishments and military installations, churches, and schools. The property in which the subject business is located is approximately 188 feet from the property line of a religious institution. According to New Mexico State Law, a local governing district may grant a waiver to allow such a business within 300 feet of a church. Thus, the local governing district may determine whether or not the location of the liquor license request is appropriate. The law does not set parameters to assist in determining applicability. Therefore, Planning Staff assumes the local government district may use traditional guidelines, such as, health, safety, and welfare to make this decision.

From: Sean Mullen
To: Adam Ochoa
Subject: RE: Transfer of ownership of dispenser liquor licenses.
Date: Tuesday, December 24, 2024 1:12:44 PM
Attachments: image001.png

Approved.

Thank you,

Sean Mullen
Deputy Chief of Administration/Las Cruces Police Department
Direct: 575-528-4101 Main: 575-528-4200, smullen@las-cruces.org
CITY OF LAS CRUCES

From: Adam Ochoa <aochoa@lascruces.gov>
Sent: Tuesday, December 17, 2024 11:00 AM
To: Soogyu Lee <sglee@lascruces.gov>; Daniel Balderrama <dbalderrama@lascruces.gov>; Gary Skelton <gskelton@lascruces.gov>; Jason Smith <jasmith@lascruces.gov>; Michael Danner <mdanner@lascruces.gov>; Bobbie Munoz <romunoz@lascruces.gov>; Mark Dubbin <mdubbin@lascruces.gov>; Michael Landavazo <mlandavazo@lascruces.gov>; Elena Sanchez <esanchez@lascruces.gov>; Sean Mullen <smullen@lascruces.gov>; Eric Urenda <eurenda@lascruces.gov>; Jeremy Story <jstory@lascruces.gov>; Miguel Carlos <mcarlos@lascruces.gov>; Eloy Jimenez <ejimenez@lascruces.gov>
Cc: Chris Faivre <cfaivre@lascruces.gov>; Jackie Baylon <jbaylon@lascruces.gov>; John Castillo <jcastillo@lascruces.gov>
Subject: Transfer of ownership of dispenser liquor licenses.

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5. RET-000005 for New Mexico Company Operations, LLC., D.B.A. Holiday Shell located at 2645 S. Valley Drive.

Please see attached applications. Please provide liquor license reports to me no later than December 24, 2024. Thank you.

Adam Ochoa, CZO
Senior Urban Planner/Community Development Department
Direct: 575-528-3204 Main: 575-528-3043, aochoa@lascruces.gov
CITY OF LAS CRUCES

From: Miguel Carlos
To: Adam Ochoa
Subject: RE: Transfer of ownership of dispenser liquor licenses.
Date: Friday, December 20, 2024 11:53:42 AM
Attachments: image002.png
image003.png

Good morning, all 5 Business license applications are in compliance.

Miguel Carlos
Permit Technician/Community Development/Permits and Inspections
Direct: 575-528-3091 Main: 575-528-3059 mcarlos@lascruces.gov
CITY OF LAS CRUCES

From: Adam Ochoa <aochoa@lascruces.gov>
Sent: Tuesday, December 17, 2024 11:00 AM
To: Soogyu Lee <sglee@lascruces.gov>; Daniel Balderrama <dbalderrama@lascruces.gov>; Gary Skelton <gskelton@lascruces.gov>; Jason Smith <jasmith@lascruces.gov>; Michael Danner <mdanner@lascruces.gov>; Bobbie Munoz <romunoz@lascruces.gov>; Mark Dubbin <mdubbin@lascruces.gov>; Michael Landavazo <mlandavazo@lascruces.gov>; Elena Sanchez <esanchez@lascruces.gov>; Sean Mullen <smullen@lascruces.gov>; Eric Urenda <eurenda@lascruces.gov>; Jeremy Story <jstory@lascruces.gov>; Miguel Carlos <mcarlos@lascruces.gov>; Eloy Jimenez <ejimenez@lascruces.gov>
Cc: Chris Faivre <cfaivre@lascruces.gov>; Jackie Baylon <jbaylon@lascruces.gov>; John Castillo <jcastillo@lascruces.gov>
Subject: Transfer of ownership of dispenser liquor licenses.

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Please see attached applications. Please provide liquor license reports to me no later than December 24, 2024. Thank you.

Adam Ochoa, CZO
Senior Urban Planner/Community Development Department
Direct: 575-528-3204 Main: 575-528-3043, aochoa@lascruces.gov
CITY OF LAS CRUCES

25-093

Type of Action:
☒ Resolution
☐ Ordinance
☐ TIDD Resolution

City Council Action and Executive Summary

District:	**☒ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☐ 6 ☐ N/A**		
1st Reading:		**Adopted:**	February 4, 2025
Drafter:	Adam Ochoa	**Department:**	Community Development
Program:	Community Planning	**Line of Business:**	Community Planning

Title: **A RESOLUTION APPROVING THE REQUEST FOR A TRANSFER OF OWNERSHIP OF DISPENSER LIQUOR LICENSE NO. DIS-000272 WITH PACKAGE SALES ONLY TO NEW MEXICO COMPANY OPERATIONS, LLC., D/B/A COUNTRY CLUB SHELL LOCATED AT 2901 N. MAIN STREET, LAS CRUCES, NM. 88005.**

TYPE OF ACTION: **☒ Administrative** **☐ Legislative** **☐ Quasi-Judicial**

PURPOSE(S) OF ACTION:

Approval of a Transfer of Ownership of Dispenser Liquor License No. DIS-000272 with Package Sales Only.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

Pursuant to New Mexico Statutes, an application for approval of a Transfer of Ownership of Dispenser Liquor License No. DIS-000272 with Package Sales Only must be accompanied by a resolution of the City Council approving and consenting to the license after a public hearing.

New Mexico Company Operations, LLC., d/b/a Country Club Shell, applied to the Alcoholic Beverage Control Division of the Regulation and Licensing Department of the State of New Mexico ("ABC"). The location for the license is at 2901 N. Main Street, Las Cruces, NM 88005. ABC granted preliminary approval on December 6, 2024.

The City Council is required to hold a public hearing within 45 days after the date of receipt of the preliminary approval letter from ABC. A public hearing to review this issue is scheduled during the regular City Council meeting on Tuesday, February 4, 2025, beginning at 1:00 p.m., in the City Council Chambers, 700 North Main Street, City Hall. Notice of this public hearing was published in the Las Cruces Sun-News on January 3, 2025, and January 19, 2025.

The Council may approve or disapprove the request for the liquor license. However, Council's disapproval must be based on substantial evidence that the license would adversely affect the health, safety, or welfare of the City of Las Cruces citizens.

The Council may also fail to either approve or disapprove the license. If Council fails to approve or disapprove the license within 30 days after the public hearing, the Director of the Alcoholic Beverage Control Division may give final approval of the license.

SUPPORT INFORMATION:

Exhibit "A" - Alcohol and Gaming's letter and application.
Attachment "A" - Notice of Intent to Approve published.
Attachment "B" - Traffic Impact Report from Traffic Engineering Section.
Attachment "C" - Fire and Safety Compliance Report from the Las Cruces Fire Department.
Attachment "D" - Liquor License Impact Report from Community Development.
Attachment "E" - Criminal Activity Report from the Las Cruces Police Department.
Attachment "F" - Business Registration Report from Community Development.

COMMITTEE/BOARD REVIEW:

None

DOES THIS AMEND THE BUDGET?:

☐ Yes
☒ No

Does this action amend the Capital Improvement Plan (CIP)?

☐ Yes
☒ No

Does this action align with Elevate Las Cruces?

☒ Yes
☐ No

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will approve of and consent to the approval of a Transfer of Ownership of Dispenser Liquor License No. DIS-000272 with Package Sales Only and the Alcohol Beverage Control Division will continue with the application process.
2. Vote "No"; this will not approve and must be based on substantial evidence that the liquor license would adversely affect the health, safety or welfare of the citizens of the City of Las Cruces.
3. Vote to "Amend"; this is not permitted by the Liquor Control Act, NMSA 1978, Section 60-6B-4.
4. Vote to "Table"; this is not permitted by the Liquor Control Act, NMSA 1978, Section 60-6B-4.

RESOLUTION 25-093

A RESOLUTION APPROVING THE REQUEST FOR A TRANSFER OF OWNERSHIP OF DISPENSER LIQUOR LICENSE NO. DIS-000272 WITH PACKAGE SALES ONLY TO NEW MEXICO COMPANY OPERATIONS, LLC., D/B/A COUNTRY CLUB SHELL LOCATED AT 2901 N. MAIN STREET, LAS CRUCES, NM. 88005.

The City Council is informed that:

WHEREAS, New Mexico Company Operations, LLC., d/b/a Country Club Shell, located at 2901 N. Main Street, Las Cruces, NM 88005, applied to the Alcoholic Beverage Control Division of the Regulation and Licensing Department of the State of New Mexico (“ABC") for a Transfer of Ownership of Dispenser Liquor License No. DIS-000272 with Package Sales Only; and

WHEREAS, ABC granted preliminary approval for a Transfer of Ownership of Dispenser Liquor License No. DIS-000272 with Package Sales Only by letter dated December 6, 2024; and

WHEREAS, pursuant to law, the application for a Transfer of Ownership of Dispenser Liquor License No. DIS-000272 with Package Sales Only must be accompanied by a resolution of the Las Cruces City Council approving of and consenting to license after a public hearing upon reasonable notice of such hearing; and

WHEREAS, the City Council did on this date hold a public hearing after reasonable notice setting forth the required information concerning the public hearing. The City Council has considered the liquor license, and it has been determined that the approval is not detrimental to the public health, safety, or welfare of the City of Las Cruces.

NOW, THEREFORE, Be it Resolved by the Governing Body of the City of Las Cruces:

(I)

THAT a Transfer of Ownership of Dispenser Liquor License No. DIS-000272 with Package Sales Only to New Mexico Company Operations, LLC., d/b/a Country Club Shell, located at 2901 N. Main Street, Las Cruces, NM 88005, as evidenced by ABC's letter and the application attached hereto as Exhibit “A”, is hereby approved.

(II)

THAT City staff is hereby authorized to do all deeds as necessary in the accomplishment of the herein above.

DONE AND APPROVED this day of

APPROVED

_____

ATTEST:

_____

Moved by:

Seconded by:

AYES

NAYS

Exhibit "A"

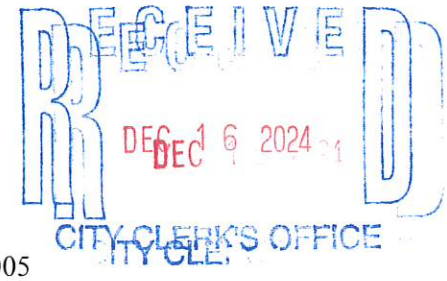
NMRLD
NEW MEXICO
REGULATION &
LICENSING DEPARTMENT

STATE OF NEW MEXICO
MICHELLE LUJAN GRISHAM, GOVERNOR
Clay Bailey, Superintendent
Phillip Sanchez, Director

December 6, 2024

Certified Mail No.: 7021 2720 0001 2205 1037

City of Las Cruces
Christine Rivera, CMC
PO Box 20000
Las Cruces, NM 88004



Lic. No. /Appl. No.:	**License No. DIS-000272**
Name of Applicant:	New Mexico Company Operations, LLC
Doing Business As:	Country Club Shell
Proposed Location:	2901 N. Main Street, Las Cruces, New Mexico 88005

The Director of the Alcoholic Beverage Control Division (ABC) has reviewed the referenced Application and granted **Preliminary Approval.** It is being forwarded to you for Local Option District approval or disapproval of the Liquor License Application.

Notice of the Public Hearing required by the Liquor Control Act **shall be given by the governing body by publishing a notice** of the date, time, and place of the hearing **twice during the 30 days prior to the hearing** in a newspaper of general circulation within the territorial limits of the governing body. **The first notice must be published at least thirty (30) days before the hearing. Both publications must occur before a hearing can be conducted.** The notice shall include:

(A) Name and address of the Applicant/Licensee;
(B) The action proposed to be taken;
(C) The location of the licensed premises.

In addition, if the Local Option District has a website, **the Notice shall also be published on the website.**

While the law states that "within forty-five **(45)** days after receipt of a Notice from the Alcoholic Beverage Control, the governing body shall hold a Public Hearing in the question of whether the department should approve the proposed issuance or transfer", we recognize the potential for conflict between the requirement for publication of 30 day notice and the 45 day hearing requirement.

With that in mind, when a local governing body receives a liquor license application from ABC, that governing body has a couple of options:

1) Hold a hearing on the license application within the statutory time frame of forty-five (45) days, as required by the Liquor Control Act, and comply with all other statutory and regulatory procedures and notify ABC of your decision within thirty (30) days of the hearing;
2) Request from ABC an extension of time, past the forty-five (45) days, designating how much additional time will be needed to conduct the hearing in compliance with all statutory and regulatory procedures. After the extension is granted and the hearing is held, notify ABC of your decision within thirty (30) days of the hearing;

ABC has no preference in the option you choose.

The governing body is required to send notice by certified mail to the Applicant of the date, time, and place of the Public Hearing. The governing body may designate a Hearing Officer to conduct the hearing. **A record shall be made** of the hearing.

THE APPLICANT IS SEEKING A TRANSFER OF OWNERSHIP OF DISPENSER LIQUOR LICENSE NO. DIS-000272 WITH PACKAGE SALES ONLY

Within thirty (30) days after the Public Hearing, the governing body shall notify ABC of their decision to approve or disapprove the issuance or transfer of the license by signing the enclosed original Page 1 of the Application. The original Page 1 of the Application must be returned together with the notices of publication. **If the Governing Body fails to either approve or disapprove the issuance or transfer of the license within thirty days after the Public Hearing, the Director may issue the license.**

If the Governing Body disapproves the issuance or transfer of the license, it shall notify ABC within thirty (30) days setting forth the reasons for the disapproval. A copy of the Minutes of the Public Hearing shall be submitted to ABC with the Notice of Disapproval (*Page 1 of the Application, noting disapproval*).

Respectfully,

Desirae Griego
Admin Law Judge | Hearing Officer
NM Regulation & Licensing Department
Alcoholic Beverage Control Division
Phone: (505) 795-4091 Fax: (505) 476-4595
Email: desirae.griego@rld.nm.gov

Enclosures:

1. Original Page 1 of the Application (*must be signed and returned w/notices of publication*)
2. Copy of Page 2 of the Application
3. Copy of Floor Plan

NMRLD
NEW MEXICO REGULATION & LICENSING DEPARTMENT

Received
APR 29 2024
Alcoholic Beverage Control

STATE OF NEW MEXICO
MICHELLE LUJAN GRISHAM, GOVERNOR
Clay Bailey, Superintendent
Phillip A. Sanchez, Director

Transfer of Dispenser Type Liquor Application | $200.00 Application Fee, non-refundable

ABC USE ONLY: Application Fee $ 200.00 Received on: 4.29.24 Receipt No. _____
License Fee $ _____ Received on: _____ Receipt No. _____
Application Number: _____ Local Option District: _____

License Number. 0378 DIS-000272 License Type Dispenser
Record Owner of Existing License: Brewer Oil Company
Current D/B/A Name: Country Club Shell
Current Premises Address: 2901 N Main St, Las Cruces, NM 88005
Current LOD: 08005 Is License moving out of Local Option District? ☐Yes ■No

Check appropriate boxes:

Application is for: ■Transfer of Ownership ☐Transfer of Ownership and Location ☐Transfer of Location Only

Applicant is ☐Individual ■Limited Liability Company ☐Corporation ☐Partnership (General/Limited)

NAME OF APPLICANT: New Mexico Company Operations LLC
D/B/A Name to be used: Country Club Shell Business Phone No: 505-884-2040
Mailing Address: 2701 Candelaria Road NE, Albuquerque, NM 87107
Email (required) jfitzpatrick@breweroil.com
Physical location where license is to be used: 2901 N Main St, Las Cruces, NM 88005
County: Dona Ana (Include street number / highway number / state road, city, state, and zip code)
Are alcoholic beverages currently being dispensed at the proposed location ☐Yes ☐No If Yes, License # / Type: 0378/Dispenser
Contact Person: Jason Fitzpatrick **Phone #:** 505-221-7894 **Email:** jfitzpatrick@breweroil.com

I, (print name) Jason Fitzpatrick, as (title) Resident Agent being first duly sworn upon oath deposes and says: that he/she is the applicant or is authorized by the applicant to make this application; that he/she has read the same; knows the contents therein contained are true. Applicant(s) agree(s) that if any statements or representations herein are found to be false, the Director may refuse to issue or renew the license or may cause the license to be revoked at any time.

You must sign and date this form before a Notary Public.

Signature of Applicant: _____ Date: 4/23/24

Notary Public Use Only: (State of New Mexico, County of Santa Fe)
SUBSCRIBED AND SWORN TO before me this 23 day of April, 2024
By: JASON FITZPATRICK Notary Public _____
Date my Commission Expires: Jan 24, 2028

MARIANA J ARCHULETA
Notary Public
State of New Mexico
Comm. # 2001779
My Comm. Exp. Jan 24, 2028

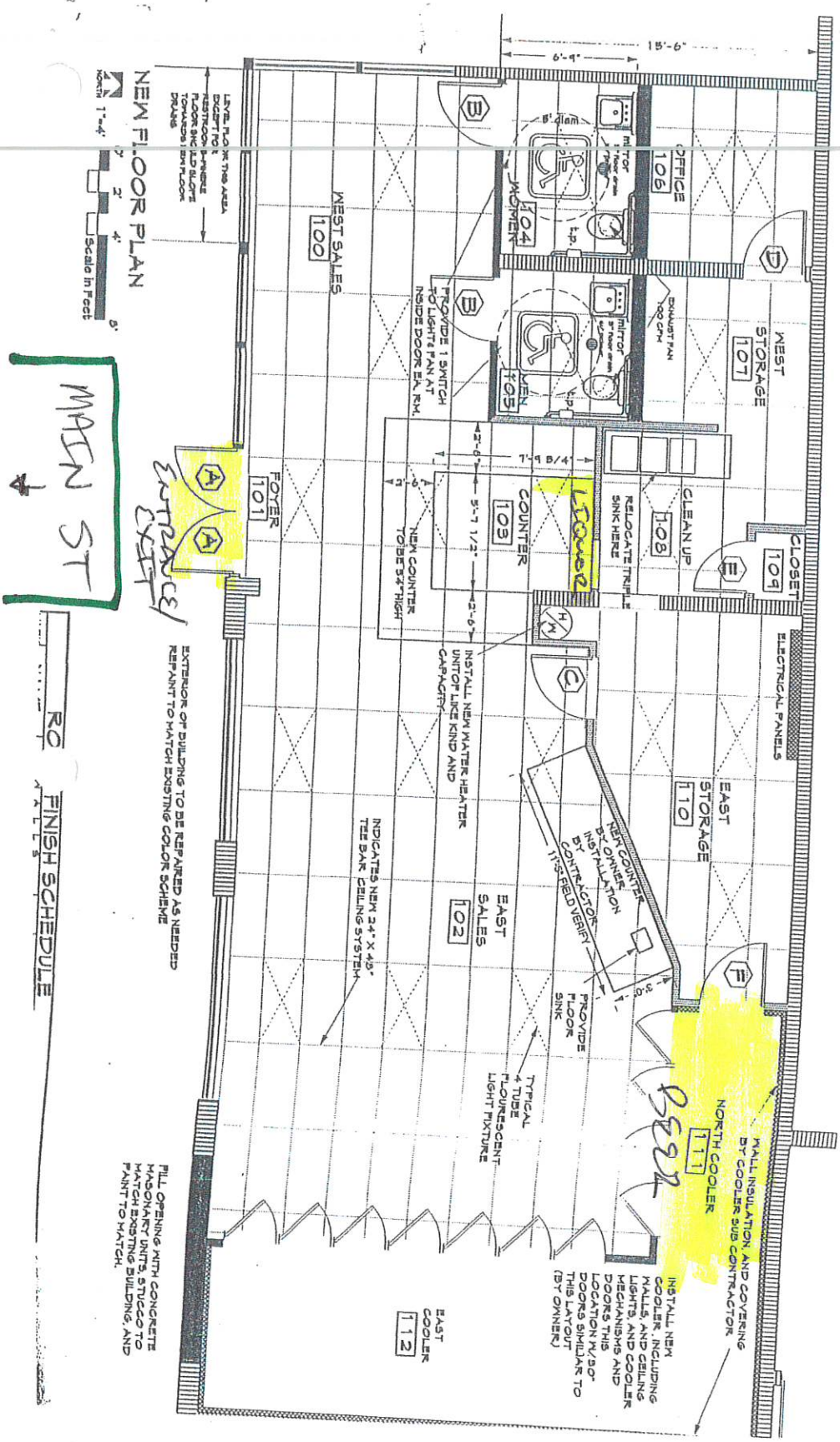
Local Option District Use Only: Local Governing Body of _____ City, County, Village
Public Hearing held on _____ 20____ Please check one: ☐ Approved ☐ Disapproved
Signature of City/County Official: _____ Title: _____

Alcoholic Beverage Control Division Use Only: ☐ Approved ☐ Disapproved, _____
Signed by Director: _____ Date: _____

1710
0378

N
W E
S

Country Club
Las Cruces, N.M.



RECEIVED
APR 4 1997
ALCOHOL AND GAMING DIVISION

COUNTRY CLUB SHELL
2901 N MAIN ST
LAS CRUCES, NM 88005
2150 SQ FT

CITY OF LAS CRUCES

AD FORM

Las **C**ruces **S**un **N**ews **(LCSN)**	
Classified **L**egal **A**d	
Date **t**o **P**ublish: January 3, 2025, and January 19, 2025	
Account # 1361141 P.O. # 25201199	
City Contact & Phone #: **Adam Ochoa, Senior Urban Planner** **575-528-3204** aochoa@lascruces.gov	
Proof of Publication Required. Please initial Ad Form and email back indicating receipt.	

COPY TO PUBLISH:

NOTICE OF INTENT TO APPROVE THE FOLLOWING ITEMS:

Notice is hereby given that the Las Cruces City Council will hold a Public Hearing to discuss approval or disapproval of a Transfer of Ownership of Dispenser Liquor License No. DIS-000414 With Package Sales Only to New Mexico Company Operations, LLC. d/b/a Triviz Shell located at 3040 N. Main Street, Las Cruces, New Mexico, 88001.

Notice is hereby given that the Las Cruces City Council will hold a Public Hearing to discuss approval or disapproval of a Transfer of Ownership of Dispenser Liquor License No. DIS-000381 With Package Sales Only to New Mexico Company Operations, LLC. d/b/a Nacho Shell located at 2512 E. Lohman Avenue, Las Cruces, New Mexico, 88001.

Notice is hereby given that the Las Cruces City Council will hold a Public Hearing to discuss approval or disapproval of a Transfer of Ownership of Dispenser Liquor License No. DIS-000272 With Package Sales Only to New Mexico Company Operations, LLC. d/b/a Country Club Shell located at 2901 N. Main Street, Las Cruces, New Mexico, 88005.

Notice is hereby given that the Las Cruces City Council will hold a Public Hearing to discuss approval or disapproval of a Transfer of Ownership of Dispenser Liquor License No. DIS-000074 With Package Sales Only to New Mexico Company Operations, LLC. d/b/a University Shell located at 1305 S. Solano Drive, Las Cruces, New Mexico, 88001.

Notice is hereby given that the Las Cruces City Council will hold a Public Hearing to discuss approval or disapproval of a Transfer of Ownership of Dispenser Liquor

License No. DIS-000005 With Package Sales Only to New Mexico Company Operations, LLC. d/b/a Holiday Shell located at 2645 S. Valley Drive, Las Cruces, New Mexico, 88001.

The Public Hearings will be held as part of the regularly scheduled meeting of the City Council on Tuesday, February 4, 2025, beginning at 1:00 p.m., in the City Council Chambers, 700 North Main Street, City Hall. If passed, the Director of the Alcoholic Beverage Control Division of the State of New Mexico Regulation & Licensing Department may approve the issuance of the license.

Witness my hand and seal this the 18th day of November 2024.

Christine Rivera, MS, CMC
City Clerk

LAS CRUCES SUN NEWS - Please publish in the Legal Section on **January 3, 2025, and January 19, 2025**, and furnish Proof of Publication at your earliest convenience.

CITY OF LAS CRUCES

MEMORANDUM

To: Adam Ochoa, Senior Urban Planner

From: Gary Skelton, P.E., Engineer **Initials:** GS

Date: December 18, 2024

Subject: Traffic Investigation Report – Transfer of Dispenser Type Liquor Application
Location: 2901 N. Main Street, Las Cruces, NM 88005
Applicant: New Mexico Company Operations LLC DBA Country Club Shell

As requested, Traffic Engineering has completed a traffic investigation for New Mexico Company Operations LLC DBA Country Club Shell application for a Transfer of Dispenser Type Liquor License for the property located at 2901 N. Main Street, Las Cruces, NM 88005. The following information is submitted for review:

- According to the Mesilla Valley MPO Interactive Traffic Flow Map, the most recent traffic volume measured on N. Main Street near the subject location is 21,876 vehicles per day. There is no traffic volume data for Temple Street.

- The Mesilla Valley MPO classifies N. Main Street as a principal arterial and Temple Street as a local road near the subject property. N. Main Street and Temple Street serve primarily commercial use properties near the subject property.

- The subject location has an on-site parking available. The property has two full access driveways on N. Main Street and a full access driveway on Temple Street. No sight distance or operational problems are currently known at the driveways.

- Near the subject property, the speed limit on N. Main Street is 35 MPH. Temple Street has no posted speed limit; therefore, the speed is assumed 30 MPH per NMSA 66-7-301. Speed limits on all other adjacent roads range from 25 to 45 mph near the subject property.

The approval of the Transfer of Dispenser Type Liquor License permit application at this location does not appear to adversely impact traffic operations along the roadway segment. Feel free to contact me at 575-541-2561 with any questions.

From:	Michael Danner
To:	Adam Ochoa; Soogyu Lee; Daniel Balderrama; Gary Skelton; Jason Smith; Bobbie Munoz; Mark Dubbin; Michael Landavazo; Elena Sanchez; Sean Mullen; Eric Urenda; Jeremy Story; Miguel Carlos; Eloy Jimenez
Cc:	Chris Faivre; Jackie Baylon; John Castillo
Subject:	RE: Transfer of ownership of dispenser liquor licenses.
Date:	Tuesday, December 17, 2024 2:10:57 PM
Attachments:	image002.png image003.png

Good Afternoon,

LCFD approves all of the transfer of ownerships. None of the listed locations have any outstanding fire code violations. Thank you.

Michael Danner, F314
Fire Investigator/LEO/Prevention Bureau/Las Cruces Fire Department
Direct: 575-528-4049 Main: 575-528-3473, mdanner@lascruces.gov
CITY OF LAS CRUCES

From: Adam Ochoa <aochoa@lascruces.gov>
Sent: Tuesday, December 17, 2024 11:00 AM
To: Soogyu Lee <sglee@lascruces.gov>; Daniel Balderrama <dbalderrama@lascruces.gov>; Gary Skelton <gskelton@lascruces.gov>; Jason Smith <jasmith@lascruces.gov>; Michael Danner <mdanner@lascruces.gov>; Bobbie Munoz <romunoz@lascruces.gov>; Mark Dubbin <mdubbin@lascruces.gov>; Michael Landavazo <mlandavazo@lascruces.gov>; Elena Sanchez <esanchez@lascruces.gov>; Sean Mullen <smullen@lascruces.gov>; Eric Urenda <eurenda@lascruces.gov>; Jeremy Story <jstory@lascruces.gov>; Miguel Carlos <mcarlos@lascruces.gov>; Eloy Jimenez <ejimenez@lascruces.gov>
Cc: Chris Faivre <cfaivre@lascruces.gov>; Jackie Baylon <jbaylon@lascruces.gov>; John Castillo <jcastillo@lascruces.gov>
Subject: Transfer of ownership of dispenser liquor licenses.

Good Morning,

New Mexico Company Operations LLC., has filed five (5) applications seeking a transfer of ownership of the following dispenser liquor licenses with package sales only:

1. DIS-000414 for New Mexico Company Operations, LLC., D.B.A. Triviz Shell located at 3040 N. Main Street.
2. DIS-000381 for New Mexico Company Operations, LLC., D.B.A. Nacho Shell located at 2512 E. Lohman Avenue.
3. DIS-000272 for New Mexico Company Operations, LLC., D.B.A. Country Club Shell located at 2901 N. Main Street.
4. DIS-000074 for New Mexico Company Operations, LLC., D.B.A. University Shell located at 1305 S. Solano Drive.
5. RET-000005 for New Mexico Company Operations, LLC., D.B.A. Holiday Shell located at 2645 S. Valley Drive.

Please see attached applications. Please provide liquor license reports to me no later than December 24, 2024. Thank you.

Adam Ochoa, CZO
Senior Urban Planner/Community Development Department
Direct: 575-528-3204 Main: 575-528-3043, aochoa@lascruces.gov
CITY OF LAS CRUCES

CITY OF LAS CRUCES

City of Las Cruces Community Development Department
Liquor License Impact Report
Transfer of Ownership of Dispenser Liquor License No. DIS-000272
Country Club Shell
2901 N. Main Street

The purpose of this report is to review, analyze and determine any possible impacts of a liquor license relating to land use and other planning related issues.

PROPERTY INFORMATION:

Location:	2901 N. Main Street
Applicant:	New Mexico Company Operations, LLC.
Business Name:	Country Club Shell
Zoning:	C-2 (Commercial Medium Intensity)

DISTANCE REQUIREMENTS:

Greater than 300 feet to a school:	YES
Greater than 300 feet to a church:	YES
Greater than 300 feet to a military installation:	YES

IMPACT ANALYSIS:

The applicant is requesting a transfer of ownership of dispenser liquor license no. DIS-000272 with package sales only. The subject property is located on North Main Street in the Regional Commercial Suburban Place Type, as designated by Elevate Las Cruces, which is an area designed to accommodate land uses such as the establishment with a dispenser liquor license. The subject property is zoned C-2, which allows the establishment with a dispenser liquor license, provided all requirements as prescribed for liquor establishments by the State of New Mexico are

met. In terms of a transportation, land use, and Comprehensive Plan perspective, this seems an appropriate location and request.

From: Sean Mullen
To: Adam Ochoa
Subject: RE: Transfer of ownership of dispenser liquor licenses.
Date: Tuesday, December 24, 2024 1:12:44 PM
Attachments: image001.png

Approved.

Thank you,

Sean Mullen
Deputy Chief of Administration/Las Cruces Police Department
Direct: 575-528-4101 Main: 575-528-4200, smullen@las-cruces.org
CITY OF LAS CRUCES

From: Adam Ochoa <aochoa@lascruces.gov>
Sent: Tuesday, December 17, 2024 11:00 AM
To: Soogyu Lee <sglee@lascruces.gov>; Daniel Balderrama <dbalderrama@lascruces.gov>; Gary Skelton <gskelton@lascruces.gov>; Jason Smith <jasmith@lascruces.gov>; Michael Danner <mdanner@lascruces.gov>; Bobbie Munoz <romunoz@lascruces.gov>; Mark Dubbin <mdubbin@lascruces.gov>; Michael Landavazo <mlandavazo@lascruces.gov>; Elena Sanchez <esanchez@lascruces.gov>; Sean Mullen <smullen@lascruces.gov>; Eric Urenda <eurenda@lascruces.gov>; Jeremy Story <jstory@lascruces.gov>; Miguel Carlos <mcarlos@lascruces.gov>; Eloy Jimenez <ejimenez@lascruces.gov>
Cc: Chris Faivre <cfaivre@lascruces.gov>; Jackie Baylon <jbaylon@lascruces.gov>; John Castillo <jcastillo@lascruces.gov>
Subject: Transfer of ownership of dispenser liquor licenses.

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Please see attached applications. Please provide liquor license reports to me no later than December 24, 2024. Thank you.

Adam Ochoa, CZO
Senior Urban Planner/Community Development Department
Direct: 575-528-3204 Main: 575-528-3043, aochoa@lascruces.gov
CITY OF LAS CRUCES

From: Miguel Carlos
To: Adam Ochoa
Subject: RE: Transfer of ownership of dispenser liquor licenses.
Date: Friday, December 20, 2024 11:53:42 AM
Attachments: image002.png
image003.png

Good morning, all 5 Business license applications are in compliance.

Miguel Carlos
Permit Technician/Community Development/Permits and Inspections
Direct: 575-528-3091 Main: 575-528-3059 mcarlos@lascruces.gov
CITY OF LAS CRUCES

From: Adam Ochoa <aochoa@lascruces.gov>
Sent: Tuesday, December 17, 2024 11:00 AM
To: Soogyu Lee <sglee@lascruces.gov>; Daniel Balderrama <dbalderrama@lascruces.gov>; Gary Skelton <gskelton@lascruces.gov>; Jason Smith <jasmith@lascruces.gov>; Michael Danner <mdanner@lascruces.gov>; Bobbie Munoz <romunoz@lascruces.gov>; Mark Dubbin <mdubbin@lascruces.gov>; Michael Landavazo <mlandavazo@lascruces.gov>; Elena Sanchez <esanchez@lascruces.gov>; Sean Mullen <smullen@lascruces.gov>; Eric Urenda <eurenda@lascruces.gov>; Jeremy Story <jstory@lascruces.gov>; Miguel Carlos <mcarlos@lascruces.gov>; Eloy Jimenez <ejimenez@lascruces.gov>
Cc: Chris Faivre <cfaivre@lascruces.gov>; Jackie Baylon <jbaylon@lascruces.gov>; John Castillo <jcastillo@lascruces.gov>
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Adam Ochoa, CZO
Senior Urban Planner/Community Development Department
Direct: 575-528-3204 Main: 575-528-3043, aochoa@lascruces.gov
CITY OF LAS CRUCES

25-094

Type of Action:
☒ **Resolution**
☐ **Ordinance**
☐ **TIDD Resolution**

City Council Action and Executive Summary

District:	☒ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☐ 6 ☐ N/A		
1st Reading:		**Adopted:**	February 4, 2025
Drafter:	Adam Ochoa	**Department:**	Community Development
Program:	Community Planning	**Line of Business:**	Community Planning

Title:	**A RESOLUTION APPROVING THE REQUEST FOR A TRANSFER OF OWNERSHIP OF DISPENSER LIQUOR LICENSE NO. DIS-000414 WITH PACKAGE SALES ONLY TO NEW MEXICO COMPANY OPERATIONS, LLC., D/B/A TRIVIZ SHELL LOCATED AT 3040 N. MAIN STREET, LAS CRUCES, NM. 88001.**

TYPE OF ACTION: ☒ **Administrative** ☐ **Legislative** ☐ **Quasi-Judicial**

PURPOSE(S) OF ACTION:

Approval of a Transfer of Ownership of Dispenser Liquor License No. DIS-000414 with Package Sales Only.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

Pursuant to New Mexico Statutes, an application for approval of a Transfer of Ownership of Dispenser Liquor License No. DIS-000414 with Package Sales Only must be accompanied by a resolution of the City Council approving and consenting to the license after a public hearing.

New Mexico Company Operations, LLC., d/b/a Triviz Shell, applied to the Alcoholic Beverage Control Division of the Regulation and Licensing Department of the State of New Mexico ("ABC"). The location for the license is at 3040 N. Main Street, Las Cruces, NM 88005. ABC granted preliminary approval on December 6, 2024.

The City Council is required to hold a public hearing within 45 days after the date of receipt of the preliminary approval letter from ABC. A public hearing to review this issue is scheduled during the regular City Council meeting on Tuesday, February 4, 2025, beginning at 1:00 p.m., in the City Council Chambers, 700 North Main Street, City Hall. Notice of this public hearing was published in the Las Cruces Sun-News on January 3, 2025, and January 19, 2025.

The Council may approve or disapprove the request for the liquor license. However, Council's disapproval must be based on substantial evidence that the license would adversely affect the health, safety, or welfare of the City of Las Cruces citizens.

The Council may also fail to either approve or disapprove the license. If Council fails to approve or disapprove the license within 30 days after the public hearing, the Director of the Alcoholic Beverage Control Division may give final approval of the license.

SUPPORT INFORMATION:

Exhibit "A" - Alcohol and Gaming's letter and application.

Attachment "A" - Notice of Intent to Approve published.
Attachment "B" - Traffic Impact Report from Traffic Engineering Section.
Attachment "C" - Fire and Safety Compliance Report from the Las Cruces Fire Department.
Attachment "D" - Liquor License Impact Report from Community Development.
Attachment "E" - Criminal Activity Report from the Las Cruces Police Department.
Attachment "F" - Business Registration Report from Community Development.

COMMITTEE/BOARD REVIEW:

None

DOES THIS AMEND THE BUDGET?:

☐ Yes
☒ No

Does this action amend the Capital Improvement Plan (CIP)?

☐ Yes
☒ No

Does this action align with Elevate Las Cruces?

☒ Yes
☐ No

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will approve of and consent to the approval of a Transfer of Ownership of Dispenser Liquor License No. DIS-000414 with Package Sales Only and the Alcohol Beverage Control Division will continue with the application process.
2. Vote "No"; this will not approve and must be based on substantial evidence that the liquor license would adversely affect the health, safety or welfare of the citizens of the City of Las Cruces.
3. Vote to "Amend"; this is not permitted by the Liquor Control Act, NMSA 1978, Section 60-6B-4.
4. Vote to "Table"; this is not permitted by the Liquor Control Act, NMSA 1978, Section 60-6B-4.

RESOLUTION 25-094

A RESOLUTION APPROVING THE REQUEST FOR A TRANSFER OF OWNERSHIP OF DISPENSER LIQUOR LICENSE NO. DIS-000414 WITH PACKAGE SALES ONLY TO NEW MEXICO COMPANY OPERATIONS, LLC., D/B/A TRIVIZ SHELL LOCATED AT 3040 N. MAIN STREET, LAS CRUCES, NM. 88001.

The City Council is informed that:

WHEREAS, New Mexico Company Operations, LLC., d/b/a Triviz Shell, located at 3040 N. Main Street, Las Cruces, NM 88001, applied to the Alcoholic Beverage Control Division of the Regulation and Licensing Department of the State of New Mexico (“ABC") for a Transfer of Ownership of Dispenser Liquor License No. DIS-000414 with Package Sales Only; and

WHEREAS, ABC granted preliminary approval for a Transfer of Ownership of Dispenser Liquor License No. DIS-000414 with Package Sales Only by letter dated December 6, 2024; and

WHEREAS, pursuant to law, the application for a Transfer of Ownership of Dispenser Liquor License No. DIS-000414 with Package Sales Only must be accompanied by a resolution of the Las Cruces City Council approving of and consenting to license after a public hearing upon reasonable notice of such hearing; and

WHEREAS, the City Council did on this date hold a public hearing after reasonable notice setting forth the required information concerning the public hearing. The City Council has considered the liquor license, and it has been determined that the approval is not detrimental to the public health, safety, or welfare of the City of Las Cruces.

NOW, THEREFORE, Be it Resolved by the Governing Body of the City of Las Cruces:

(I)

THAT a Transfer of Ownership of Dispenser Liquor License No. DIS-000414 with Package Sales Only to New Mexico Company Operations, LLC., d/b/a Triviz Shell, located at 3040 N. Main Street, Las Cruces, NM 88001, as evidenced by ABC's letter and the application attached hereto as Exhibit “A”, is hereby approved.

(II)

THAT City staff is hereby authorized to do all deeds as necessary in the accomplishment of the herein above.

DONE AND APPROVED this day of

APPROVED

_____

ATTEST:

_____

Moved by:

Seconded by:

AYES

NAYS

Exhibit "A"

NMRLD
NEW MEXICO
REGULATION &
LICENSING DEPARTMENT

STATE OF NEW MEXICO
MICHELLE LUJAN GRISHAM, GOVERNOR
Clay Bailey, Superintendent
Phillip Sanchez, Director

December 6, 2024

Certified Mail No.: 7021 2720 0001 2205 1037

City of Las Cruces
Christine Rivera, CMC
PO Box 20000
Las Cruces, NM 88004

RECEIVED
DEC 16 2024
CITY CLERK'S OFFICE

Lic. No. /Appl. No.: **License No. DIS-000414**
Name of Applicant: New Mexico Company Operations, LLC
Doing Business As: Triviz Shell
Proposed Location: 3040 N. Main Street, Las Cruces, New Mexico 88001

The Director of the Alcoholic Beverage Control Division (ABC) has reviewed the referenced Application and granted **Preliminary Approval.** It is being forwarded to you for Local Option District approval or disapproval of the Liquor License Application.

Notice of the Public Hearing required by the Liquor Control Act **shall be given by the governing body by publishing a notice** of the date, time, and place of the hearing **twice during the 30 days prior to the hearing** in a newspaper of general circulation within the territorial limits of the governing body. **The first notice must be published at least thirty (30) days before the hearing. Both publications must occur before a hearing can be conducted.** The notice shall include:

(A) Name and address of the Applicant/Licensee;
(B) The action proposed to be taken;
(C) The location of the licensed premises.

In addition, if the Local Option District has a website, **the Notice shall also be published on the website.**

While the law states that "within forty-five **(45)** days after receipt of a Notice from the Alcoholic Beverage Control, the governing body shall hold a Public Hearing in the question of whether the department should approve the proposed issuance or transfer", we recognize the potential for conflict between the requirement for publication of 30 day notice and the 45 day hearing requirement.

With that in mind, when a local governing body receives a liquor license application from ABC, that governing body has a couple of options:

1) Hold a hearing on the license application within the statutory time frame of forty-five (45) days, as required by the Liquor Control Act, and comply with all other statutory and regulatory procedures and notify ABC of your decision within thirty (30) days of the hearing;
2) Request from ABC an extension of time, past the forty-five (45) days, designating how much additional time will be needed to conduct the hearing in compliance with all statutory and regulatory procedures. After the extension is granted and the hearing is held, notify ABC of your decision within thirty (30) days of the hearing;

ABC has no preference in the option you choose.

The governing body is required to send notice by certified mail to the Applicant of the date, time, and place of the Public Hearing. The governing body may designate a Hearing Officer to conduct the hearing. **A record shall be made** of the hearing.

THE APPLICANT IS SEEKING A TRANSFER OF OWNERSHIP OF DISPENSER LIQUOR LICENSE NO. DIS-000414 WITH PACKAGE SALES ONLY

Within thirty (30) days after the Public Hearing, the governing body shall notify ABC of their decision to approve or disapprove the issuance or transfer of the license by signing the enclosed original Page 1 of the Application. The original Page 1 of the Application must be returned together with the notices of publication. **If the Governing Body fails to either approve or disapprove the issuance or transfer of the license within thirty days after the Public Hearing, the Director may issue the license.**

If the Governing Body disapproves the issuance or transfer of the license, it shall notify ABC within thirty (30) days setting forth the reasons for the disapproval. A copy of the Minutes of the Public Hearing shall be submitted to ABC with the Notice of Disapproval (*Page 1 of the Application, noting disapproval*).

Respectfully,

Desirae Griego
Admin Law Judge | Hearing Officer
NM Regulation & Licensing Department
Alcoholic Beverage Control Division
Phone: (505) 795-4091 Fax: (505) 476-4595
Email: desirae.griego@rld.nm.gov

Enclosures:

1. Original Page 1 of the Application (*must be signed and returned w/notices of publication*)
2. Copy of Page 2 of the Application
3. Copy of Floor Plan

NMRLD
NEW MEXICO REGULATION & LICENSING DEPARTMENT

Received
APR 29 2024
Alcoholic Beverage Control

STATE OF NEW MEXICO
MICHELLE LUJAN GRISHAM, GOVERNOR
Clay Bailey, Superintendent
Phillip A. Sanchez, Director

Transfer of Dispenser Type Liquor Application | $200.00 Application Fee, non-refundable

ABC USE ONLY: Application Fee $ 200. Received on: 4.29.24 Receipt No. _____
License Fee $ _____ Received on: _____ Receipt No. _____
Application Number: _____ Local Option District: _____

License Number. 0580 AIS-000414 License Type Dispenser
Record Owner of Existing License: Brewer Oil Company
Current D/B/A Name: Triviz
Current Premises Address: 3040 N Main St, Las Cruces, NM 88001
Current LOD: 08005 Is License moving out of Local Option District? ☐Yes ■No

Check appropriate boxes:

Application is for: ■Transfer of Ownership ☐Transfer of Ownership and Location ☐Transfer of Location Only

Applicant is ☐Individual ■Limited Liability Company ☐Corporation ☐Partnership (General/Limited)

NAME OF APPLICANT: New Mexico Company Operations LLC
D/B/A Name to be used: Triviz Shell Business Phone No: 505-884-2040
Mailing Address: 2701 Candelaria Road NE, Albuquerque, NM 87107
Email (required) jfitzpatrick@breweroil.com
Physical location where license is to be used: 3040 N Main St, Las Cruces, NM 88001
County: Dona Ana (Include street number / highway number / state road, city, state, and zip code)
Are alcoholic beverages currently being dispensed at the proposed location ☐Yes ☐No If Yes, License # / Type: 0580/Dispenser
Contact Person: Jason Fitzpatrick **Phone #:** 505-221-7894 **Email:** jfitzpatrick@breweroil.com

I, (print name) Jason Fitzpatrick, as (title) Resident Agent being first duly sworn upon oath deposes and says: that he/she is the applicant or is authorized by the applicant to make this application; that he/she has read the same; knows the contents therein contained are true. Applicant(s) agree(s) that if any statements or representations herein are found to be false, the Director may refuse to issue or renew the license or may cause the license to be revoked at any time.

You must sign and date this form before a Notary Public.

Signature of Applicant: _____ Date 4/23/24

Notary Public Use Only: (State of New Mexico, County of Santa Fe)
SUBSCRIBED AND SWORN TO before me this 23 day of April, 2024
By: JASON FITZPATRICK Notary Public _____
Date my Commission Expires: Jan 24, 2028

MARIANA J ARCHULETA
Notary Public
State of New Mexico
Comm. # 2001779
My Comm. Exp. Jan 24, 2028

Local Option District Use Only: Local Governing Body of _____ City, County, Village
Public Hearing held on _____ 20____ Please check one: ☐ Approved ☐ Disapproved
Signature of City/County Official: _____ Title: _____

Alcoholic Beverage Control Division Use Only: ☐ Approved ☐ Disapproved, _____
Signed by Director: _____ Date: _____

Premises Location, Ownership, and Description | NMSA §60-6B-10 | Page 2

1. The land and building which is proposed to be the licensed premises is: **(check one)**

☑ Owned by Applicant, copy of deed/document attached

☐ Leased by Applicant, copy of lease/document attached

☐ Other (provide details): _____

2. If the land and building are not owned by Applicant, indicate the following:

A. Owner(s): _____

B. Date and Term of Lease: _____

3. Premises location is Zoned (example C-1, see Zoning Statement): **See Attached Email (No Zoning Statement Required)**

Zoning Statement attached, ☐**Yes** ☑**No** Must be obtained from the Local Government, listing the proposed location by address, Type of Zone, state whether alcoholic beverages are allowed at proposed location, and if applicable, whether packaged sales, patio service and/or manufacturing is allowable. If there is no zoning in the proposed location, attach Statement from the local government, indicating there is no zoning.

4. **Distance* from nearest Church**: (Property line of church to closest point of licensed premises—shortest distance)

Name of Church: **Grace Covenant Church** Miles/feet: **488 ft**

Address/location of Church: **3111 N Main St, Las Cruces, NM 88001**

5. **Distance* from nearest School**: (Property line of school to closest point of licensed premises—shortest distance)

Name of School: **Loma Heights Elementary School** Miles/feet: **3794 ft**

Address/location of School: **1600 E Madrid Ave, Las Cruces, NM 88001**

6. **Attach Detailed Floor Plan**, must include the Total Square Footage of premises; List nearest cross street; Show which direction is North; Show each level (floor) where alcoholic beverages will be sold or consumed, exterior walls, doors, and interior walls; Patio Area with type of barrier used; Highlight Bonded Areas. The floor plan should be no larger than 8½ x 11 inches and must be labeled with designated areas highlighted, which will reflect the proposed Licensed Premises.

7. Type of Operation: ☐ Hotel ☐ Lounge ☐ Package Grocery ☐ Racetrack

☐ Restaurant ☐ Craft Distiller ☐ Small Brewer ☐ Winery ☐ Wholesaler

☑ Other (specify): **Gas Station/Convenience Store**

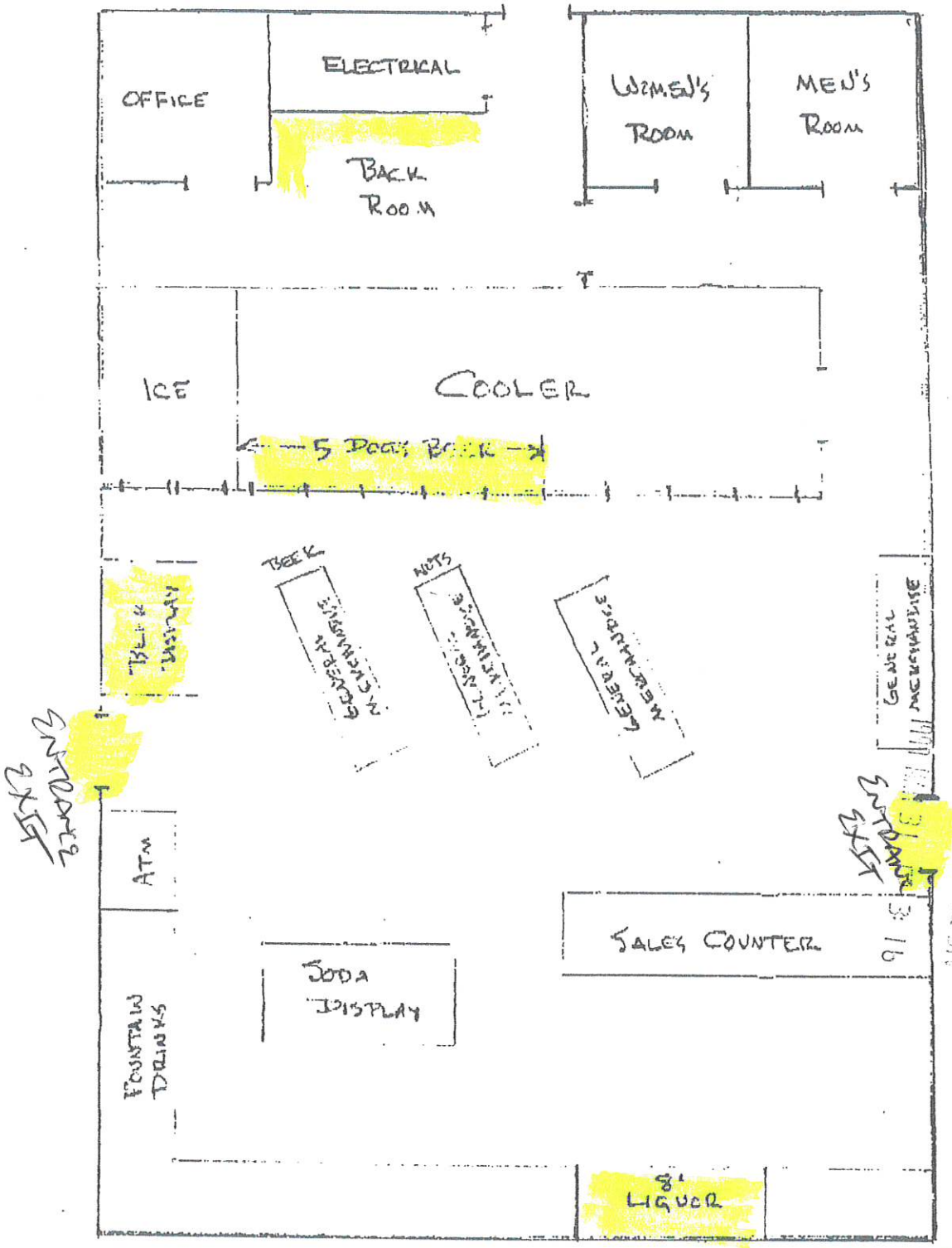
***NOTE**: If the distance is beyond 300 feet, but less than 400 feet, and the Applicant does not admit that the location is within 300 feet and requests a waiver from the LOD, a Registered Engineer or Licensed Surveyor must complete a Survey Certificate showing the exact distance.

Mar-25-99 07:26P

1740

P.02

#67 ± 2450 SQ. FT.



TRIPLE SHELL
3040 N MAIN ST
LAS CRUCES, NM 88001

N MAIN ST

License # 580

Attachment "A"

CITY OF LAS CRUCES

AD FORM

Las Cruces Sun News (LCSN)	
Classified Legal Ad	
Date to Publish: January 3, 2025, and January 19, 2025	
Account # 1361141 **P.O. # 25201199**	
City Contact & Phone #: **Adam Ochoa, Senior Urban Planner** **575-528-3204** aochoa@lascruces.gov	
Proof of Publication Required. Please initial Ad Form and email back indicating receipt.	

COPY TO PUBLISH:

NOTICE OF INTENT TO APPROVE THE FOLLOWING ITEMS:

Notice is hereby given that the Las Cruces City Council will hold a Public Hearing to discuss approval or disapproval of a Transfer of Ownership of Dispenser Liquor License No. DIS-000414 With Package Sales Only to New Mexico Company Operations, LLC. d/b/a Triviz Shell located at 3040 N. Main Street, Las Cruces, New Mexico, 88001.

Notice is hereby given that the Las Cruces City Council will hold a Public Hearing to discuss approval or disapproval of a Transfer of Ownership of Dispenser Liquor License No. DIS-000381 With Package Sales Only to New Mexico Company Operations, LLC. d/b/a Nacho Shell located at 2512 E. Lohman Avenue, Las Cruces, New Mexico, 88001.

Notice is hereby given that the Las Cruces City Council will hold a Public Hearing to discuss approval or disapproval of a Transfer of Ownership of Dispenser Liquor License No. DIS-000272 With Package Sales Only to New Mexico Company Operations, LLC. d/b/a Country Club Shell located at 2901 N. Main Street, Las Cruces, New Mexico, 88005.

Notice is hereby given that the Las Cruces City Council will hold a Public Hearing to discuss approval or disapproval of a Transfer of Ownership of Dispenser Liquor License No. DIS-000074 With Package Sales Only to New Mexico Company Operations, LLC. d/b/a University Shell located at 1305 S. Solano Drive, Las Cruces, New Mexico, 88001.

Notice is hereby given that the Las Cruces City Council will hold a Public Hearing to discuss approval or disapproval of a Transfer of Ownership of Dispenser Liquor

License No. DIS-000005 With Package Sales Only to New Mexico Company Operations, LLC. d/b/a Holiday Shell located at 2645 S. Valley Drive, Las Cruces, New Mexico, 88001.

The Public Hearings will be held as part of the regularly scheduled meeting of the City Council on Tuesday, February 4, 2025, beginning at 1:00 p.m., in the City Council Chambers, 700 North Main Street, City Hall. If passed, the Director of the Alcoholic Beverage Control Division of the State of New Mexico Regulation & Licensing Department may approve the issuance of the license.

Witness my hand and seal this the 18th day of November 2024.

Christine Rivera, MS, CMC
City Clerk

LAS CRUCES SUN NEWS - Please publish in the Legal Section on **January 3, 2025, and January 19, 2025**, and furnish Proof of Publication at your earliest convenience.

CITY OF LAS CRUCES

MEMORANDUM

To: Adam Ochoa, Senior Urban Planner

From: Gary Skelton, P.E., Engineer **Initials:** GS

Date: December 18, 2024

Subject: Traffic Investigation Report – Transfer of Dispenser Type Liquor Application
Location: 3040 N. Main Street, Las Cruces, NM 88001
Applicant: New Mexico Company Operations LLC DBA Triviz Shell

As requested, Traffic Engineering has completed a traffic investigation for New Mexico Company Operations LLC DBA Triviz Shell application for a Transfer of Dispenser Type Liquor License for the property located at 3040 N. Main Street, Las Cruces, NM 88001. The following information is submitted for review:

- According to the Mesilla Valley MPO Interactive Traffic Flow Map, the most recent traffic volumes measured on N. Main Street and N. Triviz Drive near the subject location are 23,899 vehicles per day and 11,201 vehicles per day, respectively.

- The Mesilla Valley MPO classifies N. Main Street as a principal arterial and N. Triviz Drive as a minor arterial near the subject property. N. Main Street and N. Triviz Drive serve primarily commercial use properties near the subject property.

- The subject location has an on-site parking available. The property has a partial access driveway on N. Main Street and 2 full access driveways on N. Triviz Drive. No sight distance or operational problems are currently known at the driveways.

- Near the subject property, the speed limits on both N. Main Street and N. Triviz Drive are 35 MPH. Speed limits on all other adjacent roads range from 25 to 35 mph near the subject property.

The approval of the Transfer of Dispenser Type Liquor License permit application at this location does not appear to adversely impact traffic operations along the roadway segment. Feel free to contact me at 575-541-2561 with any questions.

From:	Michael Danner
To:	Adam Ochoa; Soogyu Lee; Daniel Balderrama; Gary Skelton; Jason Smith; Bobbie Munoz; Mark Dubbin; Michael Landavazo; Elena Sanchez; Sean Mullen; Eric Urenda; Jeremy Story; Miguel Carlos; Eloy Jimenez
Cc:	Chris Faivre; Jackie Baylon; John Castillo
Subject:	RE: Transfer of ownership of dispenser liquor licenses.
Date:	Tuesday, December 17, 2024 2:10:57 PM
Attachments:	image002.png image003.png

Good Afternoon,

LCFD approves all of the transfer of ownerships. None of the listed locations have any outstanding fire code violations. Thank you.

Michael Danner, F314
Fire Investigator/LEO/Prevention Bureau/Las Cruces Fire Department
Direct: 575-528-4049 Main: 575-528-3473, mdanner@lascruces.gov
CITY OF LAS CRUCES

From: Adam Ochoa <aochoa@lascruces.gov>
Sent: Tuesday, December 17, 2024 11:00 AM
To: Soogyu Lee <sglee@lascruces.gov>; Daniel Balderrama <dbalderrama@lascruces.gov>; Gary Skelton <gskelton@lascruces.gov>; Jason Smith <jasmith@lascruces.gov>; Michael Danner <mdanner@lascruces.gov>; Bobbie Munoz <romunoz@lascruces.gov>; Mark Dubbin <mdubbin@lascruces.gov>; Michael Landavazo <mlandavazo@lascruces.gov>; Elena Sanchez <esanchez@lascruces.gov>; Sean Mullen <smullen@lascruces.gov>; Eric Urenda <eurenda@lascruces.gov>; Jeremy Story <jstory@lascruces.gov>; Miguel Carlos <mcarlos@lascruces.gov>; Eloy Jimenez <ejimenez@lascruces.gov>
Cc: Chris Faivre <cfaivre@lascruces.gov>; Jackie Baylon <jbaylon@lascruces.gov>; John Castillo <jcastillo@lascruces.gov>
Subject: Transfer of ownership of dispenser liquor licenses.

Good Morning,

New Mexico Company Operations LLC., has filed five (5) applications seeking a transfer of ownership of the following dispenser liquor licenses with package sales only:

1. DIS-000414 for New Mexico Company Operations, LLC., D.B.A. Triviz Shell located at 3040 N. Main Street.
2. DIS-000381 for New Mexico Company Operations, LLC., D.B.A. Nacho Shell located at 2512 E. Lohman Avenue.
3. DIS-000272 for New Mexico Company Operations, LLC., D.B.A. Country Club Shell located at 2901 N. Main Street.
4. DIS-000074 for New Mexico Company Operations, LLC., D.B.A. University Shell located at 1305 S. Solano Drive.
5. RET-000005 for New Mexico Company Operations, LLC., D.B.A. Holiday Shell located at 2645 S. Valley Drive.

Please see attached applications. Please provide liquor license reports to me no later than December 24, 2024. Thank you.

Adam Ochoa, CZO
Senior Urban Planner/Community Development Department
Direct: 575-528-3204 Main: 575-528-3043, aochoa@lascruces.gov
CITY OF LAS CRUCES

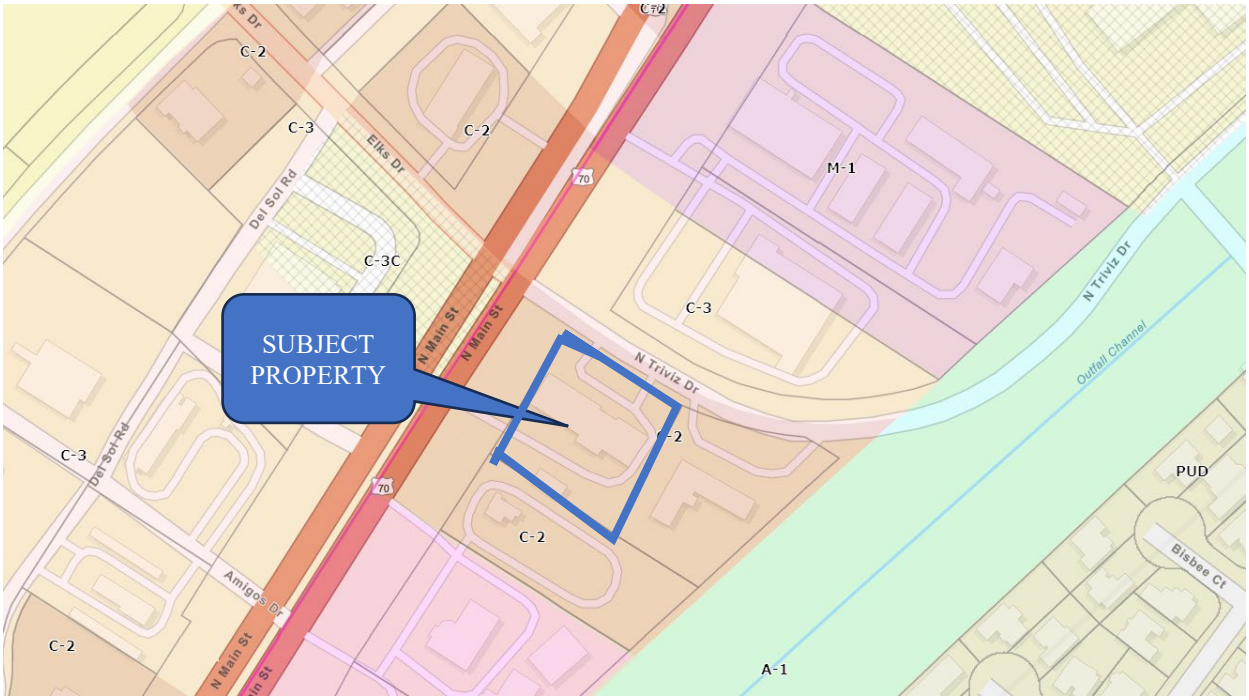
CITY OF LAS CRUCES

City of Las Cruces Community Development Department
Liquor License Impact Report
Transfer of Ownership of Dispenser Liquor License No. DIS-000414
Triviz Shell
3040 N. Main Street

The purpose of this report is to review, analyze and determine any possible impacts of a liquor license relating to land use and other planning related issues.

PROPERTY INFORMATION:

Location:	3040 N. Main Street
Applicant:	New Mexico Company Operations, LLC.
Business Name:	Triviz Shell
Zoning:	C-2 (Commercial Medium Intensity)



DISTANCE REQUIREMENTS:

Greater than 300 feet to a school:	YES
Greater than 300 feet to a church:	YES
Greater than 300 feet to a military installation:	YES

IMPACT ANALYSIS:

The applicant is requesting a transfer of ownership of dispenser liquor license no. DIS-000414 with package sales only. The subject property is located on the corner of Main Street and Triviz Drive in the Regional Commercial Suburban Place Type, as designated by Elevate Las Cruces, which is an area designed to accommodate land uses such as the establishment with a dispenser liquor license. The subject property is zoned C-2, which allows the establishment with a dispenser

liquor license, provided all requirements as prescribed for liquor establishments by the State of New Mexico are met. In terms of a transportation, land use, and Comprehensive Plan perspective, this seems an appropriate location and request.

From: Sean Mullen
To: Adam Ochoa
Subject: RE: Transfer of ownership of dispenser liquor licenses.
Date: Tuesday, December 24, 2024 1:12:44 PM
Attachments: image001.png

Approved.

Thank you,

Sean Mullen
Deputy Chief of Administration/Las Cruces Police Department
Direct: 575-528-4101 Main: 575-528-4200, smullen@las-cruces.org
CITY OF LAS CRUCES

From: Adam Ochoa <aochoa@lascruces.gov>
Sent: Tuesday, December 17, 2024 11:00 AM
To: Soogyu Lee <sglee@lascruces.gov>; Daniel Balderrama <dbalderrama@lascruces.gov>; Gary Skelton <gskelton@lascruces.gov>; Jason Smith <jasmith@lascruces.gov>; Michael Danner <mdanner@lascruces.gov>; Bobbie Munoz <romunoz@lascruces.gov>; Mark Dubbin <mdubbin@lascruces.gov>; Michael Landavazo <mlandavazo@lascruces.gov>; Elena Sanchez <esanchez@lascruces.gov>; Sean Mullen <smullen@lascruces.gov>; Eric Urenda <eurenda@lascruces.gov>; Jeremy Story <jstory@lascruces.gov>; Miguel Carlos <mcarlos@lascruces.gov>; Eloy Jimenez <ejimenez@lascruces.gov>
Cc: Chris Faivre <cfaivre@lascruces.gov>; Jackie Baylon <jbaylon@lascruces.gov>; John Castillo <jcastillo@lascruces.gov>
Subject: Transfer of ownership of dispenser liquor licenses.

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4. DIS-000074 for New Mexico Company Operations, LLC., D.B.A. University Shell located at 1305 S. Solano Drive.
5. RET-000005 for New Mexico Company Operations, LLC., D.B.A. Holiday Shell located at 2645 S. Valley Drive.

Please see attached applications. Please provide liquor license reports to me no later than December 24, 2024. Thank you.

Adam Ochoa, CZO
Senior Urban Planner/Community Development Department
Direct: 575-528-3204 Main: 575-528-3043, aochoa@lascruces.gov
CITY OF LAS CRUCES

From: Miguel Carlos
To: Adam Ochoa
Subject: RE: Transfer of ownership of dispenser liquor licenses.
Date: Friday, December 20, 2024 11:53:42 AM
Attachments: image002.png
image003.png

Good morning, all 5 Business license applications are in compliance.

Miguel Carlos
Permit Technician/Community Development/Permits and Inspections
Direct: 575-528-3091 Main: 575-528-3059 mcarlos@lascruces.gov
CITY OF LAS CRUCES

From: Adam Ochoa <aochoa@lascruces.gov>
Sent: Tuesday, December 17, 2024 11:00 AM
To: Soogyu Lee <sglee@lascruces.gov>; Daniel Balderrama <dbalderrama@lascruces.gov>; Gary Skelton <gskelton@lascruces.gov>; Jason Smith <jasmith@lascruces.gov>; Michael Danner <mdanner@lascruces.gov>; Bobbie Munoz <romunoz@lascruces.gov>; Mark Dubbin <mdubbin@lascruces.gov>; Michael Landavazo <mlandavazo@lascruces.gov>; Elena Sanchez <esanchez@lascruces.gov>; Sean Mullen <smullen@lascruces.gov>; Eric Urenda <eurenda@lascruces.gov>; Jeremy Story <jstory@lascruces.gov>; Miguel Carlos <mcarlos@lascruces.gov>; Eloy Jimenez <ejimenez@lascruces.gov>
Cc: Chris Faivre <cfaivre@lascruces.gov>; Jackie Baylon <jbaylon@lascruces.gov>; John Castillo <jcastillo@lascruces.gov>
Subject: Transfer of ownership of dispenser liquor licenses.

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Please see attached applications. Please provide liquor license reports to me no later than December 24, 2024. Thank you.

Adam Ochoa, CZO
Senior Urban Planner/Community Development Department
Direct: 575-528-3204 Main: 575-528-3043, aochoa@lascruces.gov
CITY OF LAS CRUCES

25-095

Type of Action:
☒ **Resolution**
☐ **Ordinance**
☐ **TIDD Resolution**

City Council Action and Executive Summary

District:	☐ 1 ☒ 2 ☐ 3 ☐ 4 ☐ 5 ☐ 6 ☐ N/A		
1st Reading:		**Adopted:**	February 4, 2025
Drafter:	Adam Ochoa	**Department:**	Community Development
Program:	Community Planning	**Line of Business:**	Community Planning

Title: **A RESOLUTION APPROVING THE REQUEST FOR A TRANSFER OF OWNERSHIP OF DISPENSER LIQUOR LICENSE NO. RET-000005 WITH PACKAGE SALES ONLY TO NEW MEXICO COMPANY OPERATIONS, LLC., D/B/A HOLIDAY SHELL LOCATED AT 2645 S. VALLEY DRIVE, LAS CRUCES, NM. 88001.**

TYPE OF ACTION: ☒ **Administrative** ☐ **Legislative** ☐ **Quasi-Judicial**

PURPOSE(S) OF ACTION:

Approval of a Transfer of Ownership of Dispenser Liquor License No. RET-000005 with Package Sales Only.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

Pursuant to New Mexico Statutes, an application for approval of a Transfer of Ownership of Dispenser Liquor License No. RET-000005 with Package Sales Only must be accompanied by a resolution of the City Council approving and consenting to the license after a public hearing.

New Mexico Company Operations, LLC., d/b/a Holiday Shell, applied to the Alcoholic Beverage Control Division of the Regulation and Licensing Department of the State of New Mexico ("ABC"). The location for the license is at 2645 S. Valley Drive, Las Cruces, NM 88001. ABC granted preliminary approval on December 6, 2024.

The City Council is required to hold a public hearing within 45 days after the date of receipt of the preliminary approval letter from ABC. A public hearing to review this issue is scheduled during the regular City Council meeting on Tuesday, February 4, 2025, beginning at 1:00 p.m., in the City Council Chambers, 700 North Main Street, City Hall. Notice of this public hearing was published in the Las Cruces Sun-News on January 3, 2025, and January 19, 2025.

The Council may approve or disapprove the request for the liquor license. However, Council's disapproval must be based on substantial evidence that the license would adversely affect the health, safety, or welfare of the City of Las Cruces citizens.

The Council may also fail to either approve or disapprove the license. If Council fails to approve or disapprove the license within 30 days after the public hearing, the Director of the Alcoholic Beverage Control Division may give final approval of the license.

SUPPORT INFORMATION:

Exhibit "A" - Alcohol and Gaming's letter and application.
Attachment "A" - Notice of Intent to Approve published.
Attachment "B" - Traffic Impact Report from Traffic Engineering Section.
Attachment "C" - Fire and Safety Compliance Report from the Las Cruces Fire Department.
Attachment "D" - Liquor License Impact Report from Community Development.
Attachment "E" - Criminal Activity Report from the Las Cruces Police Department.
Attachment "F" - Business Registration Report from Community Development.

PLAN(S):
None

COMMITTEE/BOARD REVIEW:
None

DOES THIS AMEND THE BUDGET?:
☐ Yes
☒ No

Does this action amend the Capital Improvement Plan (CIP)?
☐ Yes
☒ No

Does this action align with Elevate Las Cruces?
☒ Yes
☐ No

OPTIONS / ALTERNATIVES:
1. Vote "Yes"; this will approve of and consent to the approval of a Transfer of Ownership of Dispenser Liquor License No. RET-000005 with Package Sales Only and the Alcohol Beverage Control Division will continue with the application process.
2. Vote "No"; this will not approve and must be based on substantial evidence that the liquor license would adversely affect the health, safety or welfare of the citizens of the City of Las Cruces.
3. Vote to "Amend"; this is not permitted by the Liquor Control Act, NMSA 1978, Section 60-6B-4.
4. Vote to "Table"; this is not permitted by the Liquor Control Act, NMSA 1978, Section 60-6B-4.

RESOLUTION 25-095

A RESOLUTION APPROVING THE REQUEST FOR A TRANSFER OF OWNERSHIP OF DISPENSER LIQUOR LICENSE NO. RET-000005 WITH PACKAGE SALES ONLY TO NEW MEXICO COMPANY OPERATIONS, LLC., D/B/A HOLIDAY SHELL LOCATED AT 2645 S. VALLEY DRIVE, LAS CRUCES, NM. 88001.

The City Council is informed that:

WHEREAS, New Mexico Company Operations, LLC., d/b/a Holiday Shell, located at 2645 S. Valley Drive, Las Cruces, NM 88001, applied to the Alcoholic Beverage Control Division of the Regulation and Licensing Department of the State of New Mexico (“ABC") for a Transfer of Ownership of Dispenser Liquor License No. RET-000005 with Package Sales Only; and

WHEREAS, ABC granted preliminary approval for a Transfer of Ownership of Dispenser Liquor License No. RET-000005 with Package Sales Only by letter dated December 6, 2024; and

WHEREAS, pursuant to law, the application for a Transfer of Ownership of Dispenser Liquor License No. RET-000005 with Package Sales Only must be accompanied by a resolution of the Las Cruces City Council approving of and consenting to license after a public hearing upon reasonable notice of such hearing; and

WHEREAS, the City Council did on this date hold a public hearing after reasonable notice setting forth the required information concerning the public hearing. The City Council has considered the liquor license, and it has been determined that the approval is not detrimental to the public health, safety, or welfare of the City of Las Cruces.

NOW, THEREFORE, Be it Resolved by the Governing Body of the City of Las Cruces:

(I)

THAT a Transfer of Ownership of Dispenser Liquor License No. RET-000005 with Package Sales Only to New Mexico Company Operations, LLC., d/b/a Holiday Shell, located at 2645 S. Valley Drive, Las Cruces, NM 88001, as evidenced by ABC's letter and the application attached hereto as Exhibit “A”, is hereby approved.

(II)

THAT City staff is hereby authorized to do all deeds as necessary in the accomplishment of the herein above.

DONE AND APPROVED this day of

APPROVED

_____

ATTEST:

_____

Moved by:

Seconded by:

AYES

NAYS

NMRLD
NEW MEXICO
REGULATION &
LICENSING DEPARTMENT

STATE OF NEW MEXICO
MICHELLE LUJAN GRISHAM, GOVERNOR
Clay Bailey, Superintendent
Phillip Sanchez, Director

December 6, 2024

Certified Mail No.: 7021 2720 0001 2205 1037

City of Las Cruces
Christine Rivera, CMC
PO Box 20000
Las Cruces, NM 88004

RECEIVED
DEC 16 2024
CITY CLERK'S OFFICE

Lic. No. /Appl. No.:	**License No. RET-000005**
Name of Applicant:	New Mexico Company Operations, LLC
Doing Business As:	Holiday Shell
Proposed Location:	2645 S. Valley Drive, Las Cruces, New Mexico 88001

The Director of the Alcoholic Beverage Control Division (ABC) has reviewed the referenced Application and granted **Preliminary Approval.** It is being forwarded to you for Local Option District approval or disapproval of the Liquor License Application.

Notice of the Public Hearing required by the Liquor Control Act **shall be given by the governing body by publishing a notice** of the date, time, and place of the hearing **twice during the 30 days prior to the hearing** in a newspaper of general circulation within the territorial limits of the governing body. **The first notice must be published at least thirty (30) days before the hearing. Both publications must occur before a hearing can be conducted.** The notice shall include:

(A) Name and address of the Applicant/Licensee;
(B) The action proposed to be taken;
(C) The location of the licensed premises.

In addition, if the Local Option District has a website, **the Notice shall also be published on the website.**

While the law states that "within forty-five **(45)** days after receipt of a Notice from the Alcoholic Beverage Control, the governing body shall hold a Public Hearing in the question of whether the department should approve the proposed issuance or transfer", we recognize the potential for conflict between the requirement for publication of 30 day notice and the 45 day hearing requirement.

With that in mind, when a local governing body receives a liquor license application from ABC, that governing body has a couple of options:

1) Hold a hearing on the license application within the statutory time frame of forty-five (45) days, as required by the Liquor Control Act, and comply with all other statutory and regulatory procedures and notify ABC of your decision within thirty (30) days of the hearing;
2) Request from ABC an extension of time, past the forty-five (45) days, designating how much additional time will be needed to conduct the hearing in compliance with all statutory and regulatory procedures. After the extension is granted and the hearing is held, notify ABC of your decision within thirty (30) days of the hearing;

ABC has no preference in the option you choose.

The governing body is required to send notice by certified mail to the Applicant of the date, time, and place of the Public Hearing. The governing body may designate a Hearing Officer to conduct the hearing. **A record shall be made** of the hearing.

THE APPLICANT IS SEEKING A TRANSFER OF OWNERSHIP OF DISPENSER LIQUOR LICENSE NO. RES-000005 WITH PACKAGE SALES ONLY

Within thirty (30) days after the Public Hearing, the governing body shall notify ABC of their decision to approve or disapprove the issuance or transfer of the license by signing the enclosed original Page 1 of the Application. The original Page 1 of the Application must be returned together with the notices of publication. **If the Governing Body fails to either approve or disapprove the issuance or transfer of the license within thirty days after the Public Hearing, the Director may issue the license.**

If the Governing Body disapproves the issuance or transfer of the license, it shall notify ABC within thirty (30) days setting forth the reasons for the disapproval. A copy of the Minutes of the Public Hearing shall be submitted to ABC with the Notice of Disapproval (*Page 1 of the Application, noting disapproval*).

Respectfully,

Desirae Griego
Admin Law Judge | Hearing Officer
NM Regulation & Licensing Department
Alcoholic Beverage Control Division
Phone: (505) 795-4091 Fax: (505) 476-4595
Email: desirae.griego@rld.nm.gov

Enclosures:

1. Original Page 1 of the Application (*must be signed and returned w/notices of publication*)
2. Copy of Page 2 of the Application
3. Copy of Floor Plan

NMRLD
NEW MEXICO REGULATION & LICENSING DEPARTMENT

Received
APR 29 2024
Alcoholic Beverage Control

STATE OF NEW MEXICO
MICHELLE LUJAN GRISHAM, GOVERNOR
Clay Bailey, Superintendent
Phillip A. Sanchez, Director

Transfer of Dispenser Type Liquor Application | $200.00 Application Fee, non-refundable

ABC USE ONLY: Application Fee $ 200. Received on: 4.29.24 Receipt No. _____
License Fee $ _____ Received on: _____ Receipt No. _____
Application Number: _____ Local Option District: _____

License Number. 4004 RET-000005 License Type Retailer
Record Owner of Existing License: Brewer Oil Company
Current D/B/A Name: Holiday Chevron
Current Premises Address: 2645 S Valley Drive, Las Cruces, NM 88001
Current LOD: 08005 Is License moving out of Local Option District? ☐Yes ■No

Check appropriate boxes:

Application is for: ■Transfer of Ownership ☐Transfer of Ownership and Location ☐Transfer of Location Only

Applicant is ☐Individual ■Limited Liability Company ☐Corporation ☐Partnership (General/Limited)

NAME OF APPLICANT: New Mexico Company Operations LLC
D/B/A Name to be used: Holiday Shell Business Phone No: 505-884-2040
Mailing Address: 2701 Candelaria Road NE, Albuquerque, NM 87107
Email (required) jfitzpatrick@breweroil.com
Physical location where license is to be used: 2645 S Valley Drive, Las Cruces, NM 88001
County: Dona Ana (Include street number / highway number / state road, city, state, and zip code)
Are alcoholic beverages currently being dispensed at the proposed location ☐Yes ☐No If Yes, License # / Type: 4004/Retailer
Contact Person: Jason Fitzpatrick **Phone #:** 505-221-7894 **Email:** jfitzpatrick@breweroil.com

I, (print name) Jason Fitzpatrick, as (title) Resident Agent being first duly sworn upon oath deposes and says: that he/she is the applicant or is authorized by the applicant to make this application; that he/she has read the same; knows the contents therein contained are true. Applicant(s) agree(s) that if any statements or representations herein are found to be false, the Director may refuse to issue or renew the license or may cause the license to be revoked at any time.

You must sign and date this form before a Notary Public.

Signature of Applicant: _____ Date: 4/23/24

MARIANA J ARCHULETA
Notary Public
State of New Mexico
Comm. # 2001779
My Comm. Exp. Jan 24, 2028

Notary Public Use Only: (State of New Mexico, County of Santa Fe
SUBSCRIBED AND SWORN TO before me this 23 day of April, 2024
By: JASON FITZPATRICK Notary Public: _____
Date my Commission Expires: Jan 24, 2028

Local Option District Use Only: Local Governing Body of _____ City. County, Village
Public Hearing held on _____ 20____ Please check one: ☐ Approved ☐ Disapproved
Signature of City/County Official: _____ Title: _____

Alcoholic Beverage Control Division Use Only: ☐ Approved ☐ Disapproved, _____
Signed by Director: _____ Date: _____

178

Premises Location, Ownership, and Description | NMSA §60-6B-10 | Page 2

1. The land and building which is proposed to be the licensed premises is: (check one)

☑ Owned by Applicant, copy of deed/document attached

☐ Leased by Applicant, copy of lease/document attached

☐ Other (provide details): _____

2. If the land and building are not owned by Applicant, indicate the following:

A. Owner(s): _____

B. Date and Term of Lease: _____

3. Premises location is Zoned (example C-1, see Zoning Statement): **See Attached Email (No Zoning Statement Required)**

Zoning Statement attached, ☐Yes ☑No Must be obtained from the Local Government, listing the proposed location by address, Type of Zone, state whether alcoholic beverages are allowed at proposed location, and if applicable, whether packaged sales, patio service and/or manufacturing is allowable. If there is no zoning in the proposed location, attach Statement from the local government, indicating there is no zoning.

4. **Distance* from nearest Church**: (Property line of church to closest point of licensed premises—shortest distance)

Name of Church: **First Christian Church** Miles/feet: **2989 ft**

Address/location of Church: **1809 El Paseo Rd, Las Cruces, NM 88001**

5. **Distance* from nearest School**: (Property line of school to closest point of licensed premises—shortest distance)

Name of School: **Mesilla Park Elementary** Miles/feet: **5003 ft**

Address/location of School: **955 W Union Ave, Las Cruces, NM 88005**

6. **Attach Detailed Floor Plan**, must include the Total Square Footage of premises; List nearest cross street; Show which direction is North; Show each level (floor) where alcoholic beverages will be sold or consumed, exterior walls, doors, and interior walls; Patio Area with type of barrier used; Highlight Bonded Areas. The floor plan should be no larger than 8½ x 11 inches and must be labeled with designated areas highlighted, which will reflect the proposed Licensed Premises.

7. Type of Operation: ☐ Hotel ☐ Lounge ☐ Package Grocery ☐ Racetrack

☐ Restaurant ☐Craft Distiller ☐ Small Brewer ☐ Winery ☐ Wholesaler

☑ Other (specify): **Gas Station/Convenience Store**

***NOTE**: If the distance is beyond 300 feet, but less than 400 feet, and the Applicant does not admit that the location is within 300 feet and requests a waiver from the LOD, a Registered Engineer or Licensed Surveyor must complete a Survey Certificate showing the exact distance.

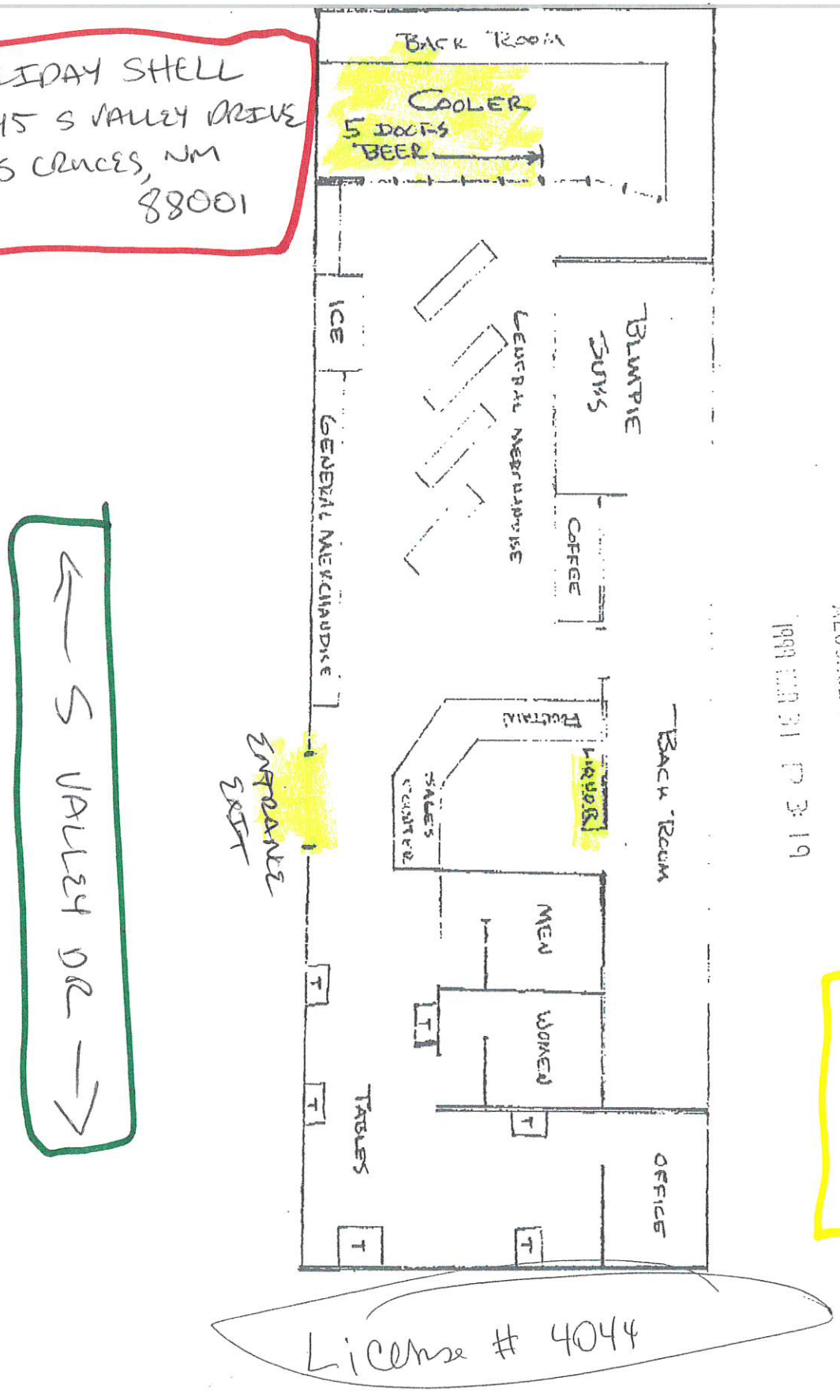
Received
APR 29 2024
Alcoholic Beverage Control

Mar-25-99 07:26P

1700

P.04

HOLIDAY SHELL
2645 S VALLEY DRIVE
LAS CRUCES, NM
88001



License # 4044

Attachment "A"

CITY OF LAS CRUCES

AD FORM

Las Cruces Sun News (LCSN)	
Classified Legal Ad	
Date to Publish: January 3, 2025, and January 19, 2025	
Account # 1361141 **P.O. # 25201199**	
City Contact & Phone #: **Adam Ochoa, Senior Urban Planner** **575-528-3204** aochoa@lascruces.gov	
Proof of Publication Required. Please initial Ad Form and email back indicating receipt.	

COPY TO PUBLISH:

NOTICE OF INTENT TO APPROVE THE FOLLOWING ITEMS:

Notice is hereby given that the Las Cruces City Council will hold a Public Hearing to discuss approval or disapproval of a Transfer of Ownership of Dispenser Liquor License No. DIS-000414 With Package Sales Only to New Mexico Company Operations, LLC. d/b/a Triviz Shell located at 3040 N. Main Street, Las Cruces, New Mexico, 88001.

Notice is hereby given that the Las Cruces City Council will hold a Public Hearing to discuss approval or disapproval of a Transfer of Ownership of Dispenser Liquor License No. DIS-000381 With Package Sales Only to New Mexico Company Operations, LLC. d/b/a Nacho Shell located at 2512 E. Lohman Avenue, Las Cruces, New Mexico, 88001.

Notice is hereby given that the Las Cruces City Council will hold a Public Hearing to discuss approval or disapproval of a Transfer of Ownership of Dispenser Liquor License No. DIS-000272 With Package Sales Only to New Mexico Company Operations, LLC. d/b/a Country Club Shell located at 2901 N. Main Street, Las Cruces, New Mexico, 88005.

Notice is hereby given that the Las Cruces City Council will hold a Public Hearing to discuss approval or disapproval of a Transfer of Ownership of Dispenser Liquor License No. DIS-000074 With Package Sales Only to New Mexico Company Operations, LLC. d/b/a University Shell located at 1305 S. Solano Drive, Las Cruces, New Mexico, 88001.

Notice is hereby given that the Las Cruces City Council will hold a Public Hearing to discuss approval or disapproval of a Transfer of Ownership of Dispenser Liquor

License No. DIS-000005 With Package Sales Only to New Mexico Company Operations, LLC. d/b/a Holiday Shell located at 2645 S. Valley Drive, Las Cruces, New Mexico, 88001.

The Public Hearings will be held as part of the regularly scheduled meeting of the City Council on Tuesday, February 4, 2025, beginning at 1:00 p.m., in the City Council Chambers, 700 North Main Street, City Hall. If passed, the Director of the Alcoholic Beverage Control Division of the State of New Mexico Regulation & Licensing Department may approve the issuance of the license.

Witness my hand and seal this the 18th day of November 2024.

Christine Rivera, MS, CMC
City Clerk

LAS CRUCES SUN NEWS - Please publish in the Legal Section on **January 3, 2025, and January 19, 2025**, and furnish Proof of Publication at your earliest convenience.

CITY OF LAS CRUCES

MEMORANDUM

To: Adam Ochoa, Senior Urban Planner

From: Gary Skelton, P.E., Engineer **Initials:** GS

Date: December 18, 2024

Subject: Traffic Investigation Report – Transfer of Dispenser Type Liquor Application
Location: 2645 S. Valley Drive, Las Cruces, NM 88001
Applicant: New Mexico Company Operations LLC DBA Holiday Shell

As requested, Traffic Engineering has completed a traffic investigation for New Mexico Company Operations LLC DBA Holiday Shell application for a Transfer of Dispenser Type Liquor License for the property located at 2645 S. Valley Drive, Las Cruces, NM 88001. The following information is submitted for review:

- According to the Mesilla Valley MPO Interactive Traffic Flow Map, the most recent traffic volumes measured on S. Valley Drive and University Avenue near the subject location are 7,842 vehicles per day and 17,241 vehicles per day, respectively.

- The Mesilla Valley MPO classifies both S. Valley Drive and University Avenue as principal arterials near the subject property. Both roads serve primarily commercial use properties near the subject property.

- The subject location has an on-site parking available. The property has two full access driveways on S. Valley Drive. No sight distance or operational problems are currently known at the driveways.

- Near the subject property, the speed limit on S. Valley Drive is 40 MPH, while the posted speed limit on University Avenue is 35 MPH. Speed limits on all other adjacent roads range from 25 to 35 mph near the subject property.

The approval of the Transfer of Dispenser Type Liquor License permit application at this location does not appear to adversely impact traffic operations along the roadway segment. Feel free to contact me at 575-541-2561 with any questions.

From:	Michael Danner
To:	Adam Ochoa; Soogyu Lee; Daniel Balderrama; Gary Skelton; Jason Smith; Bobbie Munoz; Mark Dubbin; Michael Landavazo; Elena Sanchez; Sean Mullen; Eric Urenda; Jeremy Story; Miguel Carlos; Eloy Jimenez
Cc:	Chris Faivre; Jackie Baylon; John Castillo
Subject:	RE: Transfer of ownership of dispenser liquor licenses.
Date:	Tuesday, December 17, 2024 2:10:57 PM
Attachments:	image002.png image003.png

Good Afternoon,

LCFD approves all of the transfer of ownerships. None of the listed locations have any outstanding fire code violations. Thank you.

Michael Danner, F314
Fire Investigator/LEO/Prevention Bureau/Las Cruces Fire Department
Direct: 575-528-4049 Main: 575-528-3473, mdanner@lascruces.gov
CITY OF LAS CRUCES

From: Adam Ochoa <aochoa@lascruces.gov>
Sent: Tuesday, December 17, 2024 11:00 AM
To: Soogyu Lee <sglee@lascruces.gov>; Daniel Balderrama <dbalderrama@lascruces.gov>; Gary Skelton <gskelton@lascruces.gov>; Jason Smith <jasmith@lascruces.gov>; Michael Danner <mdanner@lascruces.gov>; Bobbie Munoz <romunoz@lascruces.gov>; Mark Dubbin <mdubbin@lascruces.gov>; Michael Landavazo <mlandavazo@lascruces.gov>; Elena Sanchez <esanchez@lascruces.gov>; Sean Mullen <smullen@lascruces.gov>; Eric Urenda <eurenda@lascruces.gov>; Jeremy Story <jstory@lascruces.gov>; Miguel Carlos <mcarlos@lascruces.gov>; Eloy Jimenez <ejimenez@lascruces.gov>
Cc: Chris Faivre <cfaivre@lascruces.gov>; Jackie Baylon <jbaylon@lascruces.gov>; John Castillo <jcastillo@lascruces.gov>
Subject: Transfer of ownership of dispenser liquor licenses.

Good Morning,

New Mexico Company Operations LLC., has filed five (5) applications seeking a transfer of ownership of the following dispenser liquor licenses with package sales only:

1. DIS-000414 for New Mexico Company Operations, LLC., D.B.A. Triviz Shell located at 3040 N. Main Street.
2. DIS-000381 for New Mexico Company Operations, LLC., D.B.A. Nacho Shell located at 2512 E. Lohman Avenue.
3. DIS-000272 for New Mexico Company Operations, LLC., D.B.A. Country Club Shell located at 2901 N. Main Street.
4. DIS-000074 for New Mexico Company Operations, LLC., D.B.A. University Shell located at 1305 S. Solano Drive.
5. RET-000005 for New Mexico Company Operations, LLC., D.B.A. Holiday Shell located at 2645 S. Valley Drive.

Please see attached applications. Please provide liquor license reports to me no later than December 24, 2024. Thank you.

Adam Ochoa, CZO
Senior Urban Planner/Community Development Department
Direct: 575-528-3204 Main: 575-528-3043, aochoa@lascruces.gov
CITY OF LAS CRUCES

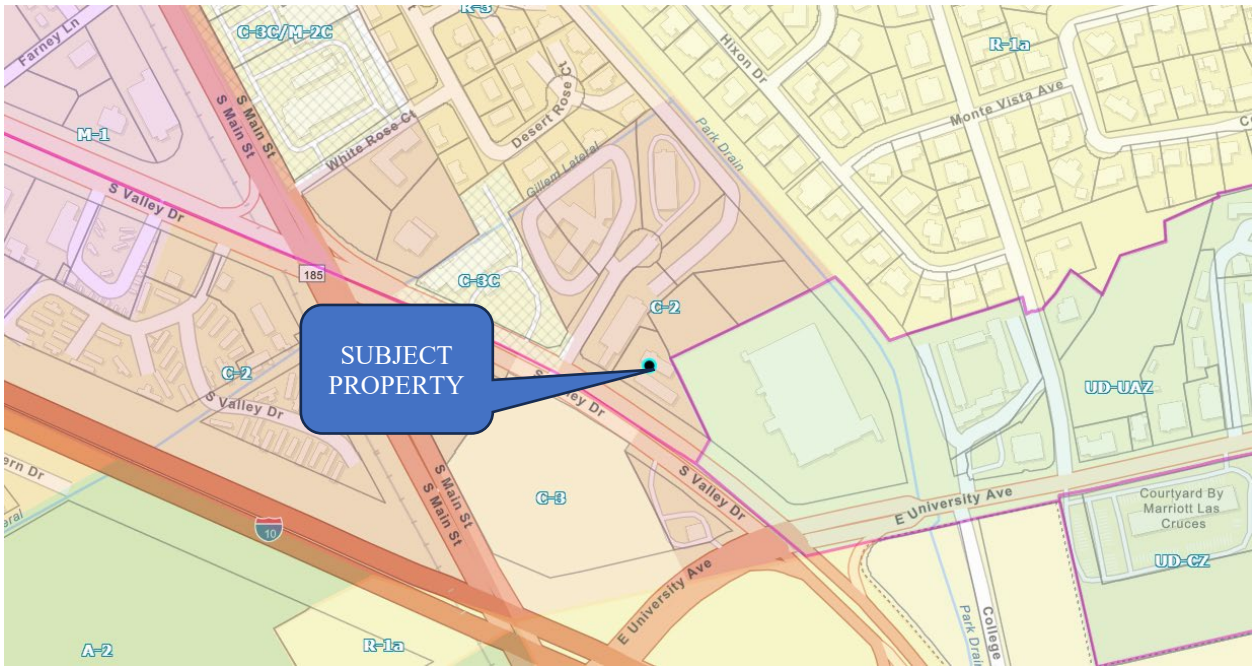
CITY OF LAS CRUCES

City of Las Cruces Community Development Department
Liquor License Impact Report
Transfer of Ownership of Dispenser Liquor License No. RET-000005
Holiday Shell
2645 S. Valley Drive

The purpose of this report is to review, analyze and determine any possible impacts of a liquor license relating to land use and other planning related issues.

PROPERTY INFORMATION:

Location:	2645 S. Valley Drive
Applicant:	New Mexico Company Operations, LLC.
Business Name:	Holiday Shell
Zoning:	C-2 (Commercial Medium Intensity)



DISTANCE REQUIREMENTS:

Greater than 300 feet to a school:	YES
Greater than 300 feet to a church:	YES
Greater than 300 feet to a military installation:	YES

IMPACT ANALYSIS:

The applicant is requesting a transfer of ownership of dispenser liquor license no. RET-000005 with package sales only. The subject property is located on South Valley Drive in the Regional Commercial Suburban Place Type, as designated by Elevate Las Cruces, which is an area designed to accommodate land uses such as the establishment with a dispenser liquor license. The subject property is zoned C-2, which allows the establishment with a dispenser liquor license, provided all requirements as prescribed for liquor establishments by the State of New Mexico are

met. In terms of a transportation, land use, and Comprehensive Plan perspective, this seems an appropriate location and request.

From: Sean Mullen
To: Adam Ochoa
Subject: RE: Transfer of ownership of dispenser liquor licenses.
Date: Tuesday, December 24, 2024 1:12:44 PM
Attachments: image001.png

Approved.

Thank you,

Sean Mullen
Deputy Chief of Administration/Las Cruces Police Department
Direct: 575-528-4101 Main: 575-528-4200, smullen@las-cruces.org
CITY OF LAS CRUCES

From: Adam Ochoa <aochoa@lascruces.gov>
Sent: Tuesday, December 17, 2024 11:00 AM
To: Soogyu Lee <sglee@lascruces.gov>; Daniel Balderrama <dbalderrama@lascruces.gov>; Gary Skelton <gskelton@lascruces.gov>; Jason Smith <jasmith@lascruces.gov>; Michael Danner <mdanner@lascruces.gov>; Bobbie Munoz <romunoz@lascruces.gov>; Mark Dubbin <mdubbin@lascruces.gov>; Michael Landavazo <mlandavazo@lascruces.gov>; Elena Sanchez <esanchez@lascruces.gov>; Sean Mullen <smullen@lascruces.gov>; Eric Urenda <eurenda@lascruces.gov>; Jeremy Story <jstory@lascruces.gov>; Miguel Carlos <mcarlos@lascruces.gov>; Eloy Jimenez <ejimenez@lascruces.gov>
Cc: Chris Faivre <cfaivre@lascruces.gov>; Jackie Baylon <jbaylon@lascruces.gov>; John Castillo <jcastillo@lascruces.gov>
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Adam Ochoa, CZO
Senior Urban Planner/Community Development Department
Direct: 575-528-3204 Main: 575-528-3043, aochoa@lascruces.gov
CITY OF LAS CRUCES

From: Miguel Carlos
To: Adam Ochoa
Subject: RE: Transfer of ownership of dispenser liquor licenses.
Date: Friday, December 20, 2024 11:53:42 AM
Attachments: image002.png
image003.png

Good morning, all 5 Business license applications are in compliance.

Miguel Carlos
Permit Technician/Community Development/Permits and Inspections
Direct: 575-528-3091 Main: 575-528-3059 mcarlos@lascruces.gov
CITY OF LAS CRUCES

From: Adam Ochoa <aochoa@lascruces.gov>
Sent: Tuesday, December 17, 2024 11:00 AM
To: Soogyu Lee <sglee@lascruces.gov>; Daniel Balderrama <dbalderrama@lascruces.gov>; Gary Skelton <gskelton@lascruces.gov>; Jason Smith <jasmith@lascruces.gov>; Michael Danner <mdanner@lascruces.gov>; Bobbie Munoz <romunoz@lascruces.gov>; Mark Dubbin <mdubbin@lascruces.gov>; Michael Landavazo <mlandavazo@lascruces.gov>; Elena Sanchez <esanchez@lascruces.gov>; Sean Mullen <smullen@lascruces.gov>; Eric Urenda <eurenda@lascruces.gov>; Jeremy Story <jstory@lascruces.gov>; Miguel Carlos <mcarlos@lascruces.gov>; Eloy Jimenez <ejimenez@lascruces.gov>
Cc: Chris Faivre <cfaivre@lascruces.gov>; Jackie Baylon <jbaylon@lascruces.gov>; John Castillo <jcastillo@lascruces.gov>
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Please see attached applications. Please provide liquor license reports to me no later than December 24, 2024. Thank you.

Adam Ochoa, CZO
Senior Urban Planner/Community Development Department
Direct: 575-528-3204 Main: 575-528-3043, aochoa@lascruces.gov
CITY OF LAS CRUCES

25-096

Type of Action:
☒ Resolution
☐ Ordinance
☐ TIDD Resolution

City Council Action and Executive Summary

District:	**☐ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☐ 6 ☒ N/A**		
1st Reading:		**Adopted:**	February 4, 2025
Drafter:	Sergio Ruiz	**Department:**	City Manager's Office
Program:	Council and Community Support	**Line of Business:**	Council & Community Support

Title:	**A RESOLUTION URGING THE NEW MEXICO LEGISLATURE TO CREATE AN ALCOHOL HARMS ALLEVIATION FUND TO REDUCE ALCOHOL-RELATED HARMS IN OUR COMMUNITIES.**

TYPE OF ACTION: **☒ Administrative** **☐ Legislative** **☐ Quasi-Judicial**

PURPOSE(S) OF ACTION:

To urge the New Mexico State Legislature to create an alcohol harms alleviation fund.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

Alcohol use disorder (AUD) is a medical condition characterized by an impaired ability to stop or control alcohol use despite adverse social, occupational, or health consequences. Its effects impact whole families and communities and kills New Mexicans at nearly three times more than the national average.

One in five deaths of working age New Mexicans is attributable to alcohol and in 2023, 18.6% of Dona Ana County high school students reported current alcohol use. In 2023, 18.0% of Dona Ana County high school students reported they took their first drink prior to the age of 13 and excessive alcohol use cost New Mexico $2.2 billion in 2010; adjusting for inflation alone, this could be $3.1 billion (based on inflation rate of 40%) equivalent to more than $1,000 per New Mexican per year.

The alcohol industry continues to profit off underage drinking and should contribute to the prevention of AUD among young people in NN. The prevention and awareness of the consequences of excessive alcohol consumption is necessary to encourage individuals and families to understand the impacts of alcohol misuse - this is costly and the creation of an “Alcohol Harms Alleviation Fund” supported by an alcohol tax will support prevention efforts.

Recovery from AUD is possible and a tax on alcohol would be used to support the many evidence-based treatments as one size does not fit all and a treatment approach that may work for one person may not work for another. There were 124 alcohol related deaths in Dona Ana County in 2022. The creation of an “Alcohol Harms Alleviation Fund” at the state level will be administered by the NM Department of Finance and Administration, appropriated by the NM State Legislature to the Human Services Department, department of health, Early Childhood Education and public education department and higher education department for alcohol harms prevention, harm reduction, treatment and recovery services to individuals throughout New Mexico, including on lands of Indian nations, tribes and pueblos, and to individuals harmed by a person in need of those services.

The City of Las Cruces has a vested interest in the health and well-being of its citizenry and supports the establishment of a fund to alleviate the impact of AUD in our community.

PLAN(S):

None

COMMITTEE/BOARD REVIEW:

None

DOES THIS AMEND THE BUDGET?:

☐ Yes

☒ No

Does this action amend the Capital Improvement Plan (CIP)?

☐ Yes

☒ No

Does this action align with Elevate Las Cruces?

☐ Yes

☒ No

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will approve the Resolution to urge the Legislature to create an alcohol harms alleviation fund to reduce alcohol-related harms in our community.
2. Vote "No"; this will not approve the Resolution urging the Legislature to create an alcohol harms alleviation fund to reduce alcohol-related harms in our community.
3. Vote to "Amend"; this could amend the Resolution based on direction from Council to staff.
4. Vote to "Table"; this could delay the adoption of the Resolution in support of an alcohol harms alleviation fund.

RESOLUTION 25-096

A RESOLUTION URGING THE NEW MEXICO LEGISLATURE TO CREATE AN ALCOHOL HARMS ALLEVIATION FUND TO REDUCE ALCOHOL-RELATED HARMS IN OUR COMMUNITIES.

The City Council is informed that:

WHEREAS, alcohol use disorder (AUD) is a medical condition characterized by an impaired ability to stop or control alcohol use despite adverse social, occupational, or health consequences; and

WHEREAS, AUD and its effects impact whole families and communities; and

WHEREAS, alcohol kills New Mexicans at nearly three times more than the national average; and

WHEREAS, one in five deaths of working age New Mexicans is attributable to alcohol; and

WHEREAS, in 2023, 8.6% of Dona Ana County high school students reported current alcohol use; and

WHEREAS, in 2023, 18.0% of Dona Ana County high school students reported they took their first drink prior to the age of 13; and

WHEREAS, excessive alcohol use cost New Mexico $2.2 billion in 2010, adjusting for inflation alone, this could be $3.1 billion (based on inflation rate of 40%) equivalent to more than $1,000 per New Mexican per year; and

WHEREAS, the alcohol industry continues to profit off underage drinking and should contribute to the prevention of AUD among young people in New Mexico; and

WHEREAS, prevention and awareness of the consequences of excessive alcohol consumption is necessary to encourage individuals and families to understand the impacts of alcohol misuse - this is costly and the creation of an “Alcohol Harms Alleviation Fund” supported by an alcohol tax will support prevention efforts; and

WHEREAS, recovery from AUD is possible and a tax on alcohol would be used to support the many evidence-based treatments as one size does not fit all and a treatment approach that may work for one person may not work for another; and

WHEREAS, there were 124 alcohol related deaths in Dona Ana County in 2022; and

WHEREAS, the creation of an “Alcohol Harms Alleviation Fund” at the state level will be administered by the NM Department of Finance and Administration, appropriated by the NM State Legislature to the Human Services Department, department of health, Early Childhood Education and public education department and higher education department for alcohol harms prevention, harm reduction, treatment and recovery services to individuals throughout New Mexico, including on lands of Indian nations, tribes and pueblos, and to individuals harmed by a person in need of those services; and

WHEREAS, The City of Las Cruces has a vested interest in the health and well-being of its citizenry and supports the establishment of a fund to alleviate the impact of AUD in our community.

NOW, THEREFORE, Be it Resolved by the Governing Body of the City of Las Cruces:

(I)

THAT the City Council affirms its support to urge the New Mexico State Legislature to create an alcohol harms alleviation fund to reduce alcohol-related harms in our communities; and

(II)

THAT this Resolution will be forwarded to Governor Michelle Lujan Grisham, the leadership of the New Mexico Senate and House, and the Senators and Representatives in the New Mexico Legislature representing the City of Las Cruces; and

(III)

THAT City staff is hereby authorized to do all deeds as necessary in the accomplishment of the herein above.

DONE AND APPROVED this day of

APPROVED

_____

ATTEST:

_____

Moved by:

Seconded by:

AYES

NAYS

3090; Council Bill 25-019

City Council Action and Executive Summary

Type of Action:
☐ **Resolution**
☒ **Ordinance**
☐ **TIDD Resolution**

District:	☒ 1 ☒ 2 ☒ 3 ☒ 4 ☒ 5 ☒ 6 ☐ N/A		
1st Reading:	February 4, 2025	**Adopted:**	February 18, 2025
Drafter:	Sara Gonzales	**Department:**	Economic Development
Program:	Land Management and Real Estate Services	**Line of Business:**	Land Management and Real Estate Services

Title:	**AN ORDINANCE REPEALING CHAPTERS 32,33,34,35,36,37,38,39, AND 40 OF THE LAS CRUCES MUNICIPAL CODE, IN ITS ENTIRETY, AND REPLACING WITH CHAPTERS 32,33,34,35,36,37, AND 38 OF THE LAS CRUCES MUNICIPAL CODE (LCMC) AND ADOPTING THE ZONING MAP AS PRESENTED.**

TYPE OF ACTION: ☐ **Administrative** ☒ **Legislative** ☐ **Quasi-Judicial**

PURPOSE(S) OF ACTION:

To amend the Municipal Code.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

Per Section 38-13 A.6 of the 2001 Zoning Code, as amended, the City Council is required to take final action on code amendments after considering the recommendations of the Planning and Zoning Commission.

Over the past 20 years, the City of Las Cruces Development Codes have been modified multiple times by various departments. These modifications are typically initiated when circumstances change, such as updates to building codes, the adoption of new plans or policies, or the identification of discrepancies in the existing code.

To resolve conflicts arising from past code modifications and to align with best practices in the development community, a comprehensive review and update of the entire land-use code was undertaken. The updated code integrates input from all city-adopted plans and policies, as outlined in the Realize Las Cruces document. Key updates include revised private street cross-sections, the adoption of multi-modal transportation standards, increased flexibility in land uses and site design, and expanded housing opportunities.
Chapters 1-5 of Realize Las Cruces have been reformatted to align with the City's municipal code and will be incorporated into Chapters 34-38.

The proposed updates aim to encourage growth and redevelopment, particularly within the City's designated Metropolitan Redevelopment Areas (MRAs). These areas, highlighted in the Future Development Map of the Elevate Las Cruces Comprehensive Plan, feature multiple mixed-use corridors that promote redevelopment in underserved and underdeveloped locations. Key changes include increased land use flexibility, the elimination of parking standards, and site design enhancements.

Additionally, the updated code facilitates the development of walkable communities anchored by neighborhood centers and town centers at key intersections. These centers will allow for higher residential densities and permit retail and service uses that were previously restricted in low-intensity residential districts.

On November 19, 2024, the Planning and Zoning Commission (P&Z) reviewed and approved the development code and zoning map updates, with minor amendments, by a vote of 6-0-0 (one Commissioner absent). The proposed amendments addressed land use permissions, road cross-sections, park dedication and improvements, and dark sky protections.

Subsequently, on December 9, 2024, the City Council reviewed the current stage of Realize Las Cruces and the recommendations from the P&Z. After receiving public input, the Council provided direction on additional amendments to be incorporated into the final version of the code modifications before adoption. The following modifications have been addressed:

- Section 36-5 A.2.j. Zoning Map Amendment (one step process)
  Verification that the Future Development Map (FDM) is consistent with the proposed Zoning Map Amendment. If the FDM is not consistent with the proposed Zoning Map Amendment, then documentation showing the FDM changes with justification shall be provided.
- Section 36-5 A.3.d. Removed
- Section 38-5 K.1.a. Park Land Dedication
  Dedication of park land shall occur through the filing of a Final Plat that has been approved by the City. Completion of construction of park improvements to the satisfaction of the City shall be a precondition of the filing of a Final Plat unless (a) a Performance Security acceptable to the City has been submitted or (b) the Director of the Parks & Recreation Department agrees to waive this precondition. When not dedicating with a Final Plat, a separate instrument addressing the items in K.1.a) ii) below is required.
- Section 38-2 N.1.b.ii. Existing Development Bicycle Parking
  If an existing structure or use is expanded or enlarged (in terms of the number of dwelling units, floor area, number of employees, or seating capacity), any required bicycle parking for the entire structure or use shall be provided in accordance with the requirements of this section.
- Section 34-5 (59) Community Development Director Definition
  This term also includes the Director's designee(s) or Consultant.
- Section 36-3 Figure 36-3-2. (80)
  Updated payday loans, checking cashing, or bail bonds to require an SUP in NH-2 and NH-3 zoning districts.
- Section 38-2 Figure 38-2-1 (Travel Lane): AMEND "For roadways with low travel speeds, a travel lane may also be used as a shared lane to allow bicyclists to share the lane with vehicles." TO "For roadways with low travel speeds, the roadway design should include elements which provide for a safe and comfortable roadway for cyclists sharing the road." Removed "sharrow markings and appropriate signage shall be installed for shared lanes."
- Section 38-2 A. Replaced the word "should" with shall so the sentence reads: "In all transportation decisions, safety shall be prioritized to ensure the well-being and protection of every individual traveling within the city regardless of mode of travel.
- Section 38-2 G.3.d.vii. added that the Public Works Director may require an applicant to conduct a TIA if there is a reasonable expectation that the project may adversely affect pedestrian and/or cyclist safety within the study area.

SUPPORT INFORMATION:

Exhibit "A" - LCMC Chapters 32-38
Attachment "A" - LCMC Chapter 32-40 - redline
Exhibit "B" - Zoning Map

PLAN(S):

City Council Strategic Plan, 2021-2025 Consolidated Plan, Elevate Las Cruces

COMMITTEE/BOARD REVIEW:

P&Z

DOES THIS AMEND THE BUDGET?:

☐ Yes

☒ No

Does this action amend the Capital Improvement Plan (CIP)?

☐ Yes

☒ No

Does this action align with Elevate Las Cruces?

☒ Yes

☐ No

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will approve the Ordinance to repeal the current LCMC Chapters 32-40 and will replace it with the updated LCMC Chapters 32-38 and Zoning Map as presented.
2. Vote "No"; this will not approve the Ordinance, and no amendments would be reflecting for the LCMC Chapters 32-40.
3. Vote to "Amend"; this would allow City Council to modify the proposed ordinance.
4. Vote to "Table"; this would postpone the decision to repeal and replace the Ordinance and would allow City Council to provide further staff direction.

REFERENCE INFORMATION:

P&Z Work Session Minutes October 29, 2024
P&Z Recommendation Minutes November 19, 2024
City Council Work Session Minutes December 9, 2024

ORDINANCE 3090; COUNCIL BILL 25-019

AN ORDINANCE REPEALING CHAPTERS 32,33,34,35,36,37,38,39, AND 40 OF THE LAS CRUCES MUNICIPAL CODE, IN ITS ENTIRETY, AND REPLACING WITH CHAPTERS 32,33,34,35,36,37, AND 38 OF THE LAS CRUCES MUNICIPAL CODE (LCMC) AND ADOPTING THE ZONING MAP AS PRESENTED.

The City Council is informed that:

WHEREAS, the City adopted Elevate Las Cruces Comprehensive Plan in February of 2020 with the intention of updating the development code with the goal and policies outlined in the document; and

WHEREAS, the updates to the development code will provide flexibility with regards to street cross-sections, implementation of multi-model transportation, flexibility in land uses, site design, and housing opportunities; and

WHEREAS, the updates to the development code will provide opportunities and encourage the growth within the adopted Metropolitan Redevelopment Areas (MRA) by providing flexibility with site design, elimination of parking standards, and an increase in permitted land uses; and

WHEREAS, the updates to the development code will allow the ability to construct walkable communities with large scale retailers' that provide goods and services within walking distances at key intersections known as Neighborhood Centers and Town Centers; and

WHEREAS, the Planning and Zoning Commission, after conducting a public hearing on November 19, 2024, recommended to approve the development code with amendments by a vote of 6-0-0 (one Commissioner absent).

NOW, THEREFORE, Be it Ordained by the Governing Body of the City of Las Cruces:

(I)

THAT Chapters 32-38 of the Las Cruces Municipal Code, as shown in Exhibit "A" and the Zoning Map as shown in Exhibit "B" attached hereto and made part of this Ordinance, are hereby amended and approved.

(II)

THAT City staff is hereby authorized to do all deeds as necessary in the accomplishment of the herein above.

DONE AND APPROVED this day of

APPROVED

_____

ATTEST:

_____

Moved by:

Seconded by:

AYES

NAYS

Chapter 32 EXCAVATIONS AND CURB CUTS[1]

ARTICLE I. IN GENERAL

Secs. 32-1—32-25. Reserved.

ARTICLE II. EXCAVATIONS

Sec. 32-26. Permission required.

It shall be unlawful to make any excavation in or deposit any earth or other material on any public way without permission in writing from the public works director.

(Code 1988, § 27-31; Ord. No. 1929, §§ I, II, 8-5-02)

Sec. 32-27. Protection of public.

All persons making excavations within the city shall mark the excavations in such a manner as to ensure the safety of vehicular and pedestrian traffic, and such warnings shall be clearly visible both day and night.

(Code 1988, § 27-32)

Sec. 32-28. Refilling.

Immediately upon the completion of any improvement for which an excavation has been made, the excavation shall be refilled and any excess dirt or other matter shall be removed.

(Code 1988, § 27-33)

Sec. 32-29. Restoration of public way.

Upon the refilling of an excavation, the excavator shall restore the public way to its prior condition.

(Code 1988, § 27-34)

Secs. 32-30—32-55. Reserved.

ARTICLE III. CURB CUTS

DIVISION 1. GENERALLY

Sec. 32-56. Specifications generally

All construction of crossings under this article shall be done in a manner and with such materials as are prescribed by the specifications of the public works department existing at the time such construction is accomplished at the expense of the owner of the abutting property.

(Code 1988, § 27-51; Ord. No. 1929, §§ I, II, 8-5-02)

Sec. 32-57. Light traffic commercial areas.

In all light traffic commercial areas, which shall include all office buildings or other commercial buildings not more than two stories in height, the width of curb cuts shall be a minimum of 12 feet and a maximum of 25 feet. No curb cuts shall be closer than five feet from side property lines. All other requirements shall be the same as in residential areas.

(Code 1988, § 27-52)

Sec. 32-58. Heavy traffic commercial areas.

(a) In all heavy traffic commercial areas, which include but are not limited to all drive-in type establishments, no curb cuts shall be closer than five feet from side property lines. The width of curb cuts shall be a minimum of 20 feet and a maximum of 35 feet, provided that the public works department may approve a curb cut over 35 feet in width when justified after a complete study of the following factors:

    (1) Traffic volume.

    (2) Pedestrian volume.

    (3) One-way streets.

    (4) Type of business making the request.

(b) All other requirements shall be the same as in residential areas.

(Code 1988, § 27-53; Ord. No. 1929, §§ I, II, 8-5-02)

Sec. 32-59. Residential areas.

In all residential areas, which shall include all dwelling units, single-family, apartments or otherwise, the following shall apply:

(1) The minimum width of curb cuts shall be 12 feet and the maximum width shall be 22 feet.

(2) A minimum of 22 feet of the standing curb must remain between any two curb cuts on the same lot or single parcel of land. If more than one lot or parcel of land is being put to a single land use, this requirement shall apply to that land use.

(3) The minimum setback for the building from the property line in an apartment parking area shall be 30 feet. Curb cuts and ramps for the handicapped shall be provided in new construction.

(4) No double or circle drives shall be installed or maintained unless the property shall have a minimum of 60 feet of frontage on the street affected thereby.

(5) Corner property curb cuts shall be no closer to the intersecting street than ten feet from the property line of the intersecting street, but the driveway shall not encroach on the corner curb return of intersections. No driveway shall be allowed on the one-way turning roadways of channelized intersections. Where traffic volumes are heavy or where the intersection is signalized, the corner clearance shall be at least twice the stated minimum value on the stopping side of the intersection.

(Code 1988, § 27-54)

Sec. 32-60. Minimum parking lot dimensions.

For the purpose of this article, minimum parking lot dimensions shall be as follows:

Parking angle (degrees)	Stall width (feet)	Stall depth (feet)	Width of aisle (feet)
30	9	17.3	11
45	9	18.8	13
60	9	21	18
90	9	19	27

(Code 1988, § 27-55; Ord. No. 1929, §§ I, II, 8-5-02)

Sec. 32-61. Appeals.

If any applicant is aggrieved by the refusal of the city public works department to grant any permit under this article or if any owner or occupant shall be aggrieved by receipt of the notice of proposed revocation of a permit, the applicant, owner, or occupant may, within ten days after denial of the application or receipt of notice, appeal the decision of the city public works department to the city council by filing written notice thereof with the city clerk within the stated time.

(Code 1988, § 27-56; Ord. No. 1929, §§ I, II, 8-5-02)

Sec. 32-62. Abandoned and nonconforming curb cuts.

(a) This article shall not be retroactive as to any curb cuts or crossings in existence and in actual use as of October 7, 1974, except as provided in this section.

(b) If any vehicular or other sidewalk crossing is clearly abandoned as a crossing or no longer used for its intended purpose, any permit granted for the use of the crossing as such shall be subject to revocation by the city public works department only after 30 days' written notice of such proposed revocation has been

given to the owner of the property to which the crossing is appurtenant. The owner's name and address will be ascertained from the county tax rolls. Notice will also be effected by giving a copy of the written notice to the occupant of the premises, if any, and if such occupant is other than the owner. It shall be sufficient notice under this section to make delivery of the notices by certified mail with return receipt requested. If the name and address of the owner cannot be reasonably ascertained from the current county tax rolls and the premises are unoccupied, it shall be sufficient notice under this section to publish the notice in English in a newspaper of general circulation in the city once a week for four consecutive weeks.

(c) All curb cuts on designated thoroughfares as shown on the city thoroughfare plan, which are determined by the city public works department to constitute a traffic hazard and which become nonconforming as of October 7, 1974, shall be subject to revocation as provided in subsection (b) of this section.

(Code 1988, § 27-57; Ord. No. 1929, §§ I, II, 8-5-02)

Sec. 32-63. Conformance requirements.

If the city public works department has revoked any permit for curb cut or use of a sidewalk crossing under section 35-62, such crossing shall be removed by and at the expense of the owner of the property to which the curb cut or crossing is appurtenant. Furthermore, the curb and sidewalk shall be properly restored after the city public works department has given written notice to the persons and in the manner specified in section 35-62, directing such removal and proper restoration of the curb and sidewalk. The time allowed for removal and restoration by the owner or occupant shall be 30 days after notice in the cases provided for in section 35-62(b) and two years after notice in the cases provided for in subsection 35-62(c), provided that, upon resolution duly passed by the city council that a traffic hazard exists at a nonconforming curb cut which causes immediate and imminent danger to life, safety or property, conformance may be required within a lesser period of time set by the city council, but in no event less than 30 days. Each day's delay of the owner in complying with such notice after the expiration of the time specified shall constitute a separate violation of this article. If conformance is not attained within the time allotted, the city may make the necessary removal and restoration at the cost of the owner, and the cost thereof shall constitute a lien on the property affected.

(Code 1988, § 27-58; Ord. No. 1929, §§ I, II, 8-5-02)

Secs. 32-64—32-90. Reserved.

DIVISION 2. PERMIT

Sec. 32-91. Required.

The owner of any land desiring to construct a crossing of any sidewalk or public right-of-way for use by trucks, tractors, trailers, buses, automobiles or any other vehicles so as to enter any private or other alley or way on such premises or so as to give access to any entrance or exit to any such premises shall first obtain a permit from the city public works department.

(Code 1988, § 27-71; Ord. No. 1929, §§ I, II, 8-5-02)

Sec. 32-92. Application.

Application for a permit required by this division shall be made on forms provided by the public works department and shall be accompanied by a plan showing accurately the extent and character of the crossing proposed to be constructed.

(Code 1988, § 27-72; Ord. No. 1929, §§ I, II, 8-5-02)

Sec. 32-93. Consideration, approval.

After examination and consideration of the application for a permit required by this division and the plan and examination of the premises if deemed necessary, the public works department is authorized and directed to approve a permit for the construction and use of the right-of-way or crossing over the sidewalk, if the use of the right-of-way or crossing will not unreasonably interfere with the proper and safe use of the sidewalk or right-of-way to be crossed or the proper and safe use of the street or other public way to which ingress and egress is made from private premises. The public works department shall make its determination based on the standards specified in this article. No construction shall be made until such permit has been granted.

(Code 1988, § 27-73; Ord. No. 1929, §§ I, II, 8-5-02)

Secs. 32-94—32-120. Reserved.

ARTICLE IV. WORK AREA TRAFFIC CONTROL[2]

Sec. 32-121. Purpose.

The purpose of this article is to:

(1) Set forth traffic control requirements to be observed by all those who perform work in a public street;

(2) Provide safe and effective work areas; and

(3) Warn, control, protect, and expedite vehicular and pedestrian traffic.

(Code 1988, § 28-26)

Sec. 32-122. Applicability.

Unless otherwise stated, the requirements specified in this article are applicable to all private contractors, utility companies, and city work crews performing work on or within public rights-of-way within the city limits.

(Code 1988, § 28-27)

[2]Cross reference(s)—Traffic, ch. 27.

Sec. 32-123. Requirements.

All traffic control performed within public right-of-way shall conform to chapter 6, entitled "Standards for Work Zone Traffic Control," as set forth in the Manual on Uniform Traffic Control Devices, published by the federal highway administration.

(Code 1988, § 28-28)

Sec. 32-124. Responsibilities.

(a) *Generally.* Construction work within public rights-of-way is performed by private contractors, utility companies and city work crews, each with distinct and separate responsibilities, as discussed in this section.

(b) *Private contractors.* Private contractors, when working in the public right-of-way, shall be required to submit a traffic control plan to the public works department, in conjunction with the request for a permit from the community development department. This traffic control plan shall conform to the "Standards for Work Zone Traffic Control," as outlined in the Manual on Uniform Traffic Control Devices. Also, the traffic control plan shall include the time and date of the construction work.

(c) *Private contractor under contract with city.* Private contractors, when working under contract with the city for construction work, shall be required to follow the specific traffic control plan outlined in the construction plans. This traffic control plan shall conform to the "Standards for Work Zone Traffic Control," as outlined in the Manual on Uniform Traffic Control Devices. The contract administrator for the city shall be responsible for ensuring that the contractor follows the prescribed traffic control plan. The public works department will provide review of the project plans prior to the letting of the bid and will be available to inspect the traffic control devices during construction, as requested by the contract administrator.

(d) *Utility companies.* Utility companies, when working in the public right-of-way, shall be required to notify the public works department of any construction work that will adversely affect traffic and that will be in place for longer than 24 hours in duration. All traffic control shall conform to the "Standards for Work Zone Traffic Control," as outlined in the Manual on Uniform Traffic Control Devices. As required, the public works department will inspect the work site for conformance with the Manual on Uniform Traffic Control Devices.

(e) *City work crews.* City work crews, when working in the public right-of-way, shall be required to conform to the "Standards for Work Zone Traffic Control," as outlined in the Manual on Uniform Traffic Control Devices. Each city department that performs work in the public right-of-way shall be required to designate an employee responsible for ensuring that proper traffic control procedures are followed within the department. If proper traffic control procedures are not being followed, the city safety officer shall place the department on notice that proper traffic control procedures are not being observed. If the problem is not corrected, appropriate disciplinary measures shall be taken.

(f) *Notification by private contractors, utility companies and city work crews.* Private contractors, utility companies, and city work crews are responsible for notification to and coordination with all agencies that the traffic control will affect, including the following:

(1) Police department.

(2) Fire and emergency services department.

(3) Utility companies, when applicable.

(4) City public services department.

(5) City public works department.

(6) City risk management section.

(7) Reserved.

(8) City public information officer.

(Code 1988, § 28-29; Ord. No. 1929, §§ I, II, 8-5-02)

Sec. 32-125. Authority.

Under this article, the contract administrator shall notify the private contractor or utility company of any deficiencies in traffic control. The private contractor or utility company will have two hours from the time of notification to correct the discrepancies. If the deficiencies are not corrected, the problem shall be turned over to the police department for enforcement, as outlined in section 35-126.

(Code 1988, § 28-30; Ord. No. 1929, §§ I, II, 8-5-02)

Sec. 32-126. Enforcement.

(a) Every violation of this article constitutes an offense. Each day a violation of this article exists constitutes a separate offense.

(b) The police department is authorized to issue citations for violations of this article and to file criminal complaints in municipal court, alleging violations of this article.

(c) The municipal court may impose a fine for each offense, not to exceed $300.00 for each day the violation is found to have occurred. Failure to comply with any such orders for compliance or other judgements of the municipal court, including failure to pay fines previously imposed, shall constitute contempt of court and may be separately punished at the discretion of the municipal court.

(Code 1988, § 28-31)

Chapter 33 DEVELOPMENT IMPACT FEE[1]

Sec. 33-1. Short title.

This chapter may be cited as the "Las Cruces Development Impact Fee Ordinance."

(Code 1988, § 25-51)

Sec. 33-2. 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:

Affordable housing means any housing development built to benefit those whose income is at or below 80 percent of the area median income; and who will pay no more than 30 percent of their gross monthly income towards such housing or as may be defined in accordance with New Mexico State Statute, § 5-8-2, NMSA, 1978, as may be amended in the future.

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

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 chapter 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

[1]Cross reference(s)—Finance, § 2-1181 et seq.; licenses, taxation and miscellaneous business regulations, ch. 16; streets and sidewalks, ch. 26; utilities, ch. 28; buildings and building regulations, ch. 30; design standards, ch. 32; drainage and flood control, ch. 34; excavations and curb cuts, ch. 35; signs, ch. 36; subdivisions, ch. 37; zoning, ch. 38.

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.

(Code 1988, § 25-52; Ord. No. 2443, § I, 5-5-08)

Cross reference(s)—Definitions generally, § 1-2.

Sec. 33-3. 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 chapter and the Development Fees Act.

(c) The city may waive impact fee requirements for affordable housing or may pay impact fees for affordable housing projects or qualifying economic development projects, except as prohibited by other city ordinances due to other obligations or cost of service methodologies. Water and wastewater development impact fees may not be waived due to bond obligations, but may be paid from other non-utility funding sources other than any cost-of-service or rate-based funding.

(1) The city shall establish those procedures related to the waiver of development impact fees for affordable housing projects in accordance with the Affordable Housing General Oversight Ordinance

and the Affordable Housing Impact Fee Waiver Ordinance established in chapter 13 of the Las Cruces Municipal Code (LCMC), 1997, as amended.

(2) The city may also establish the payment of impact fees, not waived by this chapter or other ordinances of the city, from other sources in accordance with this section of this chapter, primarily for the payment of impact fees for water and wastewater impact fees or other future development impact fees from other non-utility sources, including for affordable housing projects or for qualifying economic development projects in accordance with the city's adopted local economic development plan and ordinance.

(Code 1988, § 25-53; Ord. No. 2443, § I, 5-5-08)

Sec. 33-4. 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.

(Code 1988, § 25-54)

Sec. 33-5. 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 33-4; 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 33-2.

(Code 1988, § 25-55)

Sec. 33-6. 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 council is responsible for supervising the implementation of the capital improvements plan in a timely manner.

(Code 1988, § 25-56)

Sec. 33-7. 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.

(Code 1988, § 25-57)

Sec. 33-8. 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 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 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.

(Code 1988, § 25-58)

Sec. 33-9. Additional fees prohibited; exception.

Except as provided in subsection 33-8(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.

(Code 1988, § 25-59)

Sec. 33-10. 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 chapter.

(Code 1988, § 25-60)

Sec. 33-11. 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 33-17.

(Code 1988, § 25-61)

Sec. 33-12. 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.

(Code 1988, § 25-62)

Sec. 33-13. 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.

(Code 1988, § 25-63)

Sec. 33-14. Effect on governmental entities.

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

(Code 1988, § 25-64)

Sec. 33-15. 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:

(1) Land for parks and recreational areas, open space, trails and related areas and facilities or payments in lieu of that dedication; and

(2) Rights-of-way or easements or construction or dedication of on-site water distribution, wastewater collection or drainage facilities, or streets, sidewalks or curbs.

(Code 1988, § 25-65)

Sec. 33-16. 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 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 and service area identified as provided in subsection (a) of this section.

(Code 1988, § 25-66)

Sec. 33-17. 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 33-11 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 33-11(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 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.

(Code 1988, § 25-67)

Sec. 33-18. City compliance required.

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

(Code 1988, § 25-68)

Sec. 33-19. 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.

(Code 1988, § 25-69)

Sec. 33-20. Capital improvements plans.

Under this chapter, after the city council approves the land use assumptions, 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 33-6.

(Code 1988, § 25-70)

Sec. 33-21. Advisory committee comments.

(a) The capital improvements advisory committee 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 capital improvements committee 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.

(Code 1988, § 25-71)

Sec. 33-22. 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 chapter, 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 chapter.

(Code 1988, § 25-72)

Sec. 33-23. 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 33-19 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.

(Code 1988, § 25-73)

Sec. 33-24. Periodic update of land use assumptions and capital improvements plan.

(a) Under this chapter, 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 chapter.

(Code 1988, § 25-74)

Sec. 33-25. Approval of amendments.

(a) Under this chapter, 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 chapter.

(Code 1988, § 25-75)

Sec. 33-26. Determination that no update of land use assumptions, capital improvements plan or development impact fee is needed.

(a) When an update under section 33-24 is required, if the city council 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 capital improvements advisory committee 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 chapter.

(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 chapter.

(Code 1988, § 25-76)

Sec. 33-27. 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 council 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.

(Code 1988, § 25-77)

Sec. 33-28. Records of hearings.

A record shall be made of any public hearing required by this chapter. 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.

(Code 1988, § 25-78)

Sec. 33-29. Effect of prior fees.

An impact or development fee that is in place on the effective date of the ordinance from which this chapter derives shall be replaced by a fee imposed under this chapter by July 1, 1995. If the city has an impact fee that has not been replaced under this chapter by July 1, 1995 it shall be liable to any party who, after July 1, 1995, pays an impact fee that exceeds the maximum permitted under this chapter by more than ten percent for an amount equal to two times the difference between the maximum impact fee allowed and the actual impact fee imposed, plus reasonable attorneys' fees and court costs.

(Code 1988, § 25-79)

Sec. 33-30. 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.

(Code 1988, § 25-80)

Sec. 33-31. Authorization to approve a parks capital improvements plan.

(a) The city shall approve a parks capital improvements plan by resolution on or before July 1, 1995.

(b) The city may modify the plan by resolution after periodic updates and compliance with this chapter.

(Code 1988, § 25-81)

Sec. 33-32. Authorization to impose park development impact fees.

(a) The city shall impose park development impact fees by resolution on or before July 1, 1995. For the initial period, which shall not exceed five years, the fees shall be paid solely by residential development.

(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.

(Code 1988, § 25-82)

Sec. 33-33. Authorization to approve wastewater system capital improvements plan.

(a) The city shall approve a wastewater system capital improvements plan on or before July 1, 1995.

(b) The city may modify the plan by resolution after periodic updates in compliance with this chapter.

(Code 1988, § 25-83)

Sec. 33-34. Authorization to impose wastewater system development impact fees.

(a) The city shall impose wastewater system impact fees by resolution on or before July 1, 1995. 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.

(Code 1988, § 25-84)

Sec. 33-35. Authorization to approve water system capital improvements plan.

(a) The city shall approve a water system capital improvements plan on or before July 1, 1995.

(b) The city may modify the plan by resolution after periodic updates in compliance with this chapter.

(Code 1988, § 25-85)

Sec. 33-36. Authorization to impose water system development impact fees.

(a) The city shall impose water system development impact fees by resolution on or before July 1, 1995. 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.

(Code 1988, § 25-86)

Sec. 33-37. 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 chapter. The city may thereafter modify the plan by resolution after periodic updates in compliance with this chapter.

(b) The city may impose by resolution any other development impact fee authorized by and in compliance with this chapter. 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.

(Code 1988, § 25-87)

Chapter 34. Development Code General Provisions

Sec. 34-1. Establishment

A. Title

This Development Code of the City of Las Cruces, New Mexico, shall be known as, and may be cited as, the "Development Code," "Code," or "these regulations."

B. Purpose

The purpose of this Development Code is to unify the City's land development regulations into a single document and to reduce repetition and conflict among various ordinances. Additionally, this Code is intended to implement the Comprehensive Plan, Active Transportation Plan, neighborhood blueprints, and all other City-adopted plans and policies.

C. Authority and Jurisdiction

1. This Code is created and adopted in accordance with NMSA 3-17, 3-19, 3-20, 3-21, and 3-21A, as amended, and shall be applicable to all property within the corporate limits of the City, except for state and federal land.
2. State property, Doña Ana County property, the Las Cruces Public School District School Board property, New Mexico State University (Board of Regents), federal property, and property owned or controlled by any other governmental entity being utilized for public purposes shall be exempt from these regulations only when specific exemption is provided elsewhere by state or federal statute or court order. Such exemption shall not apply to local, state, or federal property that is not being used for public purposes. Governmental and private entities shall comply with the requirements of Section 3-19-11 NMSA.
3. This Code identifies certain administrative roles (e.g., Community Development Director) as approval authorities. The definition of each role indicates whether a designee of that person may be delegated authority. See **Sec. 34-5. Definitions**.

D. Effective Date

The Effective Date of this Development Code shall be XXXXXX.

E. Transitional Provisions

The provisions of this section address development projects that were initiated prior to the Effective Date of this Development Code specified in **Sec. 34-1.D** above.

1. Generally
   a) For 8 months after the Effective Date, property owners/applicants shall have the option to follow codes as of the day before said effective date. This option shall be granted upon submittal of written notice, on a form approved by the Community Development Director, accompanying the submittal of an application authorized under this ordinance. If said submittal is not approved within 1 year of the effective date, the submittal shall be considered void and thereafter, any subsequent submittal shall follow the current code. No extensions will be approved after the 1-year approval deadline.
   b) Construction permits granted under the regulations in place before the Effective Date shall remain valid until their expiration. Projects with valid permits may be carried out in accordance with the regulations in effect at the time of their approval.
   c) The adoption of this Development Code shall not require any change in plans, construction, or designated use for which a permit or other official approval was granted before the Effective Date.

d) Vesting under previous regulations applies only within the zoning or subdivision processes. Subdivision vesting does not vest zoning-related applications; zoning vesting does not vest subdivision-related applications.

i) Example: Subdivision Process

An approved Master Development Plan (subdivision-related process) vests future subdivision submittals, as long as the approved Master Development Plan or Preliminary Plat does not expire.

ii) Example: Zoning Process

An approved PUD Concept Plan (zoning-related process) vests future zoning submittals, as long as the approved Concept Plan does not expire.

e) If an application expires or resubmittal is required for any other reason, the development must meet the standards in effect at the time of re-application.

f) An applicant who submitted a complete application that was ultimately approved may opt to use the more recent regulations for the remainder of the development project; however, that project is no longer eligible to use the older regulations at a later stage.

2. Completed Subdivision Applications

a) Complete applications for subdivision-related approvals (e.g., Master Development Plan, Preliminary Plat, Construction Plan, Final Plat) pending approval on the Effective Date will be reviewed wholly under the terms of the development regulations in effect immediately preceding the Effective Date.

i) Example: Master Development Plan for a Phased Development

If a complete Master Development Plan (MDP) application for a phased development project was submitted prior to the Effective Date and was ultimately approved, the entire development project may develop under the approved MDP and regulations in place at the time of the MDP submittal.

3. Completed Zoning Applications

a) Complete applications for zoning-related approvals (e.g., Planned Unit Developments, Site Plans, Special Use Permits, Zoning Variances, Building Permits) pending approval on the Effective Date may be reviewed wholly under the terms of the development regulations in effect immediately preceding the Effective Date.

i) Example: Concept Plan, Site Plan, and Building Permits for a Planned Unit Development

If a complete Concept Plan application for a Planned Unit Development (PUD) is submitted prior to the Effective Date and is ultimately approved, the City may approve a Site Plan and Building Permit that conform to the Concept Plan and comply with the regulations in place at the time of the Concept Plan submittal.

b) If a Building Permit was issued before the Effective Date (or a complete Building Permit application was submitted before the Effective Date and ultimately approved), the structure may be completed in conformance with the issued Building Permit and other applicable permits and conditions, even if such structure does not comply with provisions of this Code.

c) If the structure is not completed within the time allowed under the original Building Permit and any authorized permit extension, the structure may be constructed, completed, and occupied only if it complies with the regulations of this Code.

4. Transitions in Permitted Use Status

a) If a use is allowed by **Sec. 36-3.A. Permitted Uses**, it is considered a lawfully established and conforming use under this Code.

b) If a use existed as an allowed by-right use or an approved SUP on the Effective Date and it now requires an SUP in accordance with **Sec. 36-3.A. Permitted Uses**, it is considered to be a lawfully established and conforming SUP under this Code.

c) A lawfully established existing use that is not allowed by-right or by SUP in the district in which the use is located is considered a legally nonconforming use and is subject to all applicable regulations of **Sec. 36-5.G. Nonconformities**.

5. Violations

A violation of former regulations continues to be a violation under this Development Code and is subject to penalties and enforcement under **Sec. 34-1.H. Violations and Enforcement**, unless the use, development, construction, or other activity now complies with the provisions of this Development Code.

F. Technical Manual and Other Technical Resources

This Development Code references a Technical Manual, which is maintained separately from this Code by the Development Review Committee. The standards contained within the Technical Manual apply to all development within the City's jurisdiction. This code also references several other technical resources that apply within the City, including (but not limited to) the latest editions of thoroughfare design manuals prepared by AASHTO, NACTO, ITE, FHWA, and related entities. These are the minimum standards required. Development shall follow these minimum standards and any City guidelines adopted by resolution, as amended.

G. Fees

All fees shall be paid in accordance with the City's Fee Schedule, as adopted by the City Council. An application may be denied for failure to pay such fees.

H. Violations and Enforcement

1. Duty to Enforce. The official(s) designated by the City Manager shall enforce this Development Code.
2. The City has the right to execute the following actions to remedy violations of this Development Code or noncompliance with approved plans in accordance with NMSA 3-17-1:
   a) Withhold or revoke permits or issue a stop-work order for any land, structure, or improvement;
   b) Seek injunctive relief to stop a violation;
   c) Seek a court order to remove a violation; or
   d) Other penalties and remedies as provided by law.
3. The owner or tenant of any building, structure, premises, or part thereof, and any architect, builder, contractor, agent, or other person who commits, participates in, assists in, or maintains such violations may each be found guilty of a separate offense and be subject to penalties, remedies and enforcement actions.

I. Interpretations

The Community Development Director is the responsible official for determining interpretations and meanings. The Director's determination may be appealed in accordance with **Sec. 34-3.F.2 Appeal of a Director Decision**.

J. Conflicting Provisions

1. Conflict with State or Federal Regulations

Any provisions of U.S. or New Mexico State Law that impose a greater duty, standard, or requirement than those contained herein shall supersede the provisions of this Code.

2. Conflict within the Development Code or Other City Regulations
   a) Where the provisions of any local ordinance or regulation impose greater restrictions than those of this Development Code, generally, the provisions of such document shall prevail.

b) When two or more provisions of this Development Code are in conflict, generally, the most restrictive provision shall apply.

c) In either case, the Community Development Director shall have the authority, on a case-by-case basis, to determine which conflicting provisions of this Code and/or other local requirements shall be imposed.

3. Conflict with Private Agreements

This Development Code does not interfere with, abrogate, or annul any easement, deed restriction, covenant, or other agreement between private parties. The City's regulations supersede any private agreements, and the City will not recognize or enforce any private agreements.

K. Severability

If any chapter, section, paragraph, sentence, phrase, or part of this Code is declared unconstitutional or otherwise invalid, the remaining portions shall not be affected.

Sec. 34-2. Approval and Appeal Entities

A. City Council

1. Establishment

   The City Council is established by Part I Charter, Article II of the Las Cruces Municipal Code.

2. Authority

   Figure 34-2-1 summarizes the City Council's major roles and responsibilities within this Development Code.

B. Planning & Zoning Commission

1. Establishment

   In accordance with NMSA 3-19-1, a Planning & Zoning Commission has been created by the City Council as stated in Chapter 2, Article IV, Division 2, Subdivision VI. Planning & Zoning Commission of the Las Cruces Municipal Code.

2. Authority

   Figure 34-2-1 summarizes the Planning & Zoning Commission's major roles and responsibilities within this Development Code.

C. Development Review Committee

1. Generally

   The Development Review Committee (DRC) is a formal group of representatives employed by the City or its representatives empowered to act on behalf of their respective departments on development-related applications.

2. Composition

   a) Required Members

      i) Membership of the DRC shall consist of one representative from each of the following departments (or their successor department(s)):

         a. Public Works Department;

         b. Community Development Department;

         c. Utilities Department;

         d. Fire Department;

         e. Parks & Recreation Department; and

         f. Up to two additional City Staff appointees as designated by the City Manager, with technical and management experience in urban design, advance and long-range planning, and sustainability related to public works, subdivision, major construction, and facility projects.

      ii) Department representatives shall be the Director or the Assistant Director (or equivalent title).

3. Authority

   Figure 34-2-1 summarizes the DRC's major roles and responsibilities within this Development Code.

4. Meetings

   a) The DRC shall meet as needed to review development-related issues and applications, as summarized in **Figure 34-2-1**. The notice of DRC meetings shall appear in the public meeting schedule.

   b) The Community Development Director shall set the agenda for DRC meetings and abide by all notification requirements pursuant to approved policy and the New Mexico Open Meetings Act (OMA).

   c) Minutes will be taken during DRC meetings pursuant to approved policy and the New Mexico Open Meetings Act (OMA).

   d) When the DRC provides a recommendation to another entity, the Community Development Director shall provide the meeting minutes or compile the comments and provide a summary report for the approval authority(ies).

D. Summary of Approval Authorities

Figure 34-2-1. Summary of Major Roles and Responsibilities provides an overview of the primary approval responsibilities outlined in this Development Code.

Figure 34-2-1. Summary of Major Roles and Responsibilities

Note: Decisions within this table may be appealed in accordance with **Sec. 34-3.F. Appeals**.

Section	Application/Plan Type	City Council	Planning & Zoning Commission	Development Review Committee	Community Development Director	Public Works Director	Other
General							
Sec. 34-3.E	Flexible Development Standards				Decide		
Sec. 34-1.F	Technical Manual			Update			
Sec. 34-3.F.2.a)	Appeal of a Director Decision: Planning-Related		Decide				
Sec. 34-3.F.2.b)	Appeal of a Director Decision: Engineering-Related						Appeals heard by Arbitration Committee
Sec. 34-3.F.3	Appeal of a DRC Decision		Decide				
Sec. 34-3.F.4	Appeal of a Planning & Zoning Commission Decision	Decide					
Sec. 34-3.F.5	Appeal of a City Council Decision						Appeals heard by District Court
Sec. 35-1.F.1	Appeal of a Community Development Director Historic Preservation Decision						Appeals heard by Historic Preservation Committee
Sec. 35-1.F	Appeal of a Historic Preservation Committee Decision		Decide				
Sec. 34-3.I	Development Code Amendments	Decide*	Recommend*	Recommend			
Sec. 34-4.D	Annexation	Decide*	Recommend*	Recommend			
Historic Preservation-Related							
Sec. 35-2.D	Cultural Property Designation	Decide					Historic Preservation Committee recommendation*
Sec. 35-2.E	Historic District Designation	Decide*	Recommend*				Historic Preservation Committee recommendation*
Sec. 35-3.A.2	Certificate of Appropriateness				Decide (minor)		Historic Preservation Committee decision* (major)
Sec. 35-3.C	Demolition of Cultural Properties	Appeals					Historic Preservation Committee decision*
Sec. 35-3.D	Certificate of Economic Hardship						Historic Preservation Committee decision*
Zoning Regulations-Related							
Sec. 36-5.A	Zoning Map Amendments	Decide*	Recommend*		Recommend		

Section	Application/Plan Type	City Council	Planning & Zoning Commission	Development Review Committee	Community Development Director	Public Works Director	Other
Sec. 36-5.B	Site Plans (except with SUP)				Decide		
Sec. 36-5.C	Special Use Permit (SUP)		Decide*		Recommend		
Sec. 36-5.D	Planned Unit Development (PUD) Concept Plan	Decide*	Recommend*	Recommend			
Sec. 36-5.D	Planned Unit Development (PUD) Site Plan				Decide		
Sec. 36-5.E	Building Permits and Certificates of Occupancy						Building Official
Sec. 36-5.F	Zoning Variance		Decide*		Recommend		
Subdivision Regulations-Related							
Sec. 37-3.A.4	Master Development Plan		Decide*	Recommend			
Sec. 37-3.B	Preliminary Plat		Decide**	Recommend			
Sec. 37-2.A	Final Plat using the Alternate Summary Procedure (ASP)				Decide		
Sec. 37-3.D	Final Plat following an approved Preliminary Plat (i.e., Major Platting Process)				Decide		
Sec. 37-3.D	Final Plat without an approved Preliminary Plat (i.e., Minor Platting Process)		Decide**	Recommend			
Sec. 37-2.E.5	Right-of-Way Vacation	Decide (dual)*	Decide (dual)*		Recommend		
Sec. 37-3.C.4	Construction Plans				Decide		Affected departments and agencies to provide comments
Sec. 37-4.C	Acceptance of Public Improvements				Decide		Public Works, Utilities, and Parks & Recreation Directors must confirm completion
Sec. 37-4.D.2	Authorization of Substantial Completion				Decide		Affected departments and agencies must confirm agreement
Development Standards-Related							
Sec. 38-2.C.1.a)	Roadway Cross-Section Configuration			Decide			
Sec. 38-2.D.4.b)	Private Street Acceptance	Decide	Recommend	Recommend			City Attorney approval required
Sec. 38-2.F.10.d)	Driveway/Median Opening Permits					Decide	
Sec. 38-2.G	Traffic Impact Analysis					Decide	
Sec. 38-2.I.6.c)	Streetlights					Decide	
Sec. 38-3.D.2.b)ix)	Development Permits in Floodplain						Floodplain Administrator decision
Sec. 38-3.C.1.a)	Master Drainage Study					Decide	
Sec. 38-3.C.1.b)	Final Drainage Study					Decide	
Sec. 38-3.H.6	Operation & Maintenance Plan					Decide	
Sec. 38-5.D	Park and Trail Dedication		Decide	Recommend			
Sec. 38-6.E and **Sec. 38-7.F**	Tree Mitigation Plan and Landscape Plan				Decide		

Section	Application/Plan Type	City Council	Planning & Zoning Commission	Development Review Committee	Community Development Director	Public Works Director	Other
Sec. 38-6.D.1	Removal of Protected Trees				Decide		
Sec. 38-9.K	Outdoor Lighting Plan				Decide		
Sec. 38-10.C	Sign Permit				Decide		
Sec. 38-10.J	Common Signage Plan				Decide		
Sec. 38-11.D	Wireless Communication Facility				Decide		

*Indicates a public meeting is required.

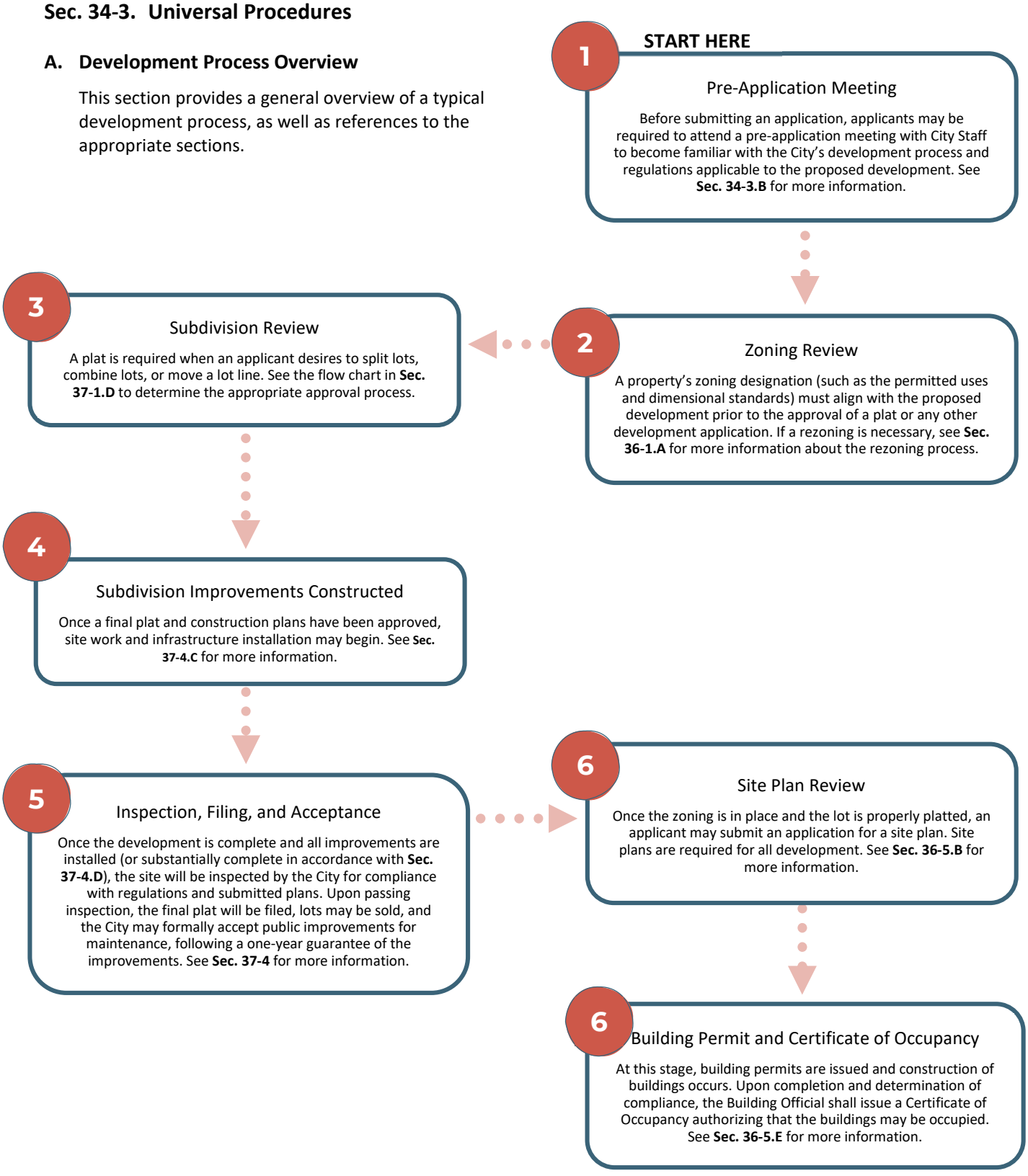
**Indicates a public meeting is required unless waived by the applicant in accordance with NMSA 3-20-7.

Note: All DRC meetings are advertised meetings open to the public to attend, during which the public is allowed to provide comments when recognized by the DRC Chairperson.

Sec. 34-3. Universal Procedures

A. Development Process Overview

This section provides a general overview of a typical development process, as well as references to the appropriate sections.



B. Pre-Application Meeting

1. Purpose

   a) The pre-application meeting is intended to allow for the exchange of non-binding information between the applicant and City Staff to ensure that the applicant is informed of pertinent City development regulations and processes.

   b) The pre-application meeting provides an opportunity for the applicant and City Staff to discuss major development considerations such as utilities, roadways/traffic, drainage concerns, Comprehensive Plan conformance, specific neighborhood characteristics, and historical information.

   c) This exchange of information is intended to promote an efficient and orderly review process.

2. Meeting

   a) Prior to the submittal of any required plan or application, the applicant must consult with Community Development Department staff to determine whether a pre-application meeting is required for the type of application or plan being proposed. The Community Development Department staff will determine the appropriate City staff to attend the meeting.

      i) Pre-application meetings are always required for a PUD or SUP application.

   b) When a pre-application meeting is not required, the applicant may choose to participate in a voluntary pre-application meeting.

   c) If multiple applications are submitted requiring meetings with the same department, the respective department representative may allow one consolidated meeting.

   d) The applicant may be represented by their land planner, surveyor, engineer, or other designated agent.

3. Sketch Plan

   Although not required (except for a PUD or SUP), the property owner is encouraged to submit a Sketch Plan of the development for the pre-application meeting so that the Community Development staff can offer guidance and feedback before the submittal of a formal application to the City. Information and questions regarding utilities, roadways, drainage, and other development standards required by this Code should be considered to improve the effectiveness of this meeting.

C. Application Processing

1. Initiation of Application

   a) Initiation by Owner or Owner's Agent

      i) Unless provided by this Development Code, any petition or application may be initiated only by the property owner, owner of an interest in the land, or by the owner's designated agent.

      ii) If the applicant is a designated agent, the application shall include a written statement from the property owner authorizing the agent to file the application on the owner's behalf.

      iii) The decision-maker (as identified by **Figure 34-2-1. Summary of Major Roles and Responsibilities**) may require the submission of documents, such as an affidavit from the owner, to provide evidence of ownership or agency.

   b) Initiation by City Manager

      The City Manager can initiate any application authorized under this Development Code.

2. Application Requirements

   a) Universal Application Contents

i) The City is hereby authorized to prepare application forms that include information requirements, checklists, architectural or engineering drawing sizes, applicant contact information, and any other information necessary to show compliance with City codes.

ii) All application forms are available from the Community Development Department and/or on the City's website.

iii) Applications 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 County Clerk's Office.

iv) Any pending litigation of any final order entered by any court of law regarding the ownership of the subject property shall be disclosed by the applicant at the time that the application is submitted.

b) Universal Application Fees

i) Every application shall be accompanied by the prescribed fees set forth in the adopted Fee Schedule.

ii) Unless waived by City Council or permitted by the Fee Schedule, the prescribed fee shall not be refundable unless it was submitted in error.

3. Modification, Addition, or Waiver of Required Submittal Materials

a) The Community Development Director may require additional or modified information or provisionally waive planning-related application requirements following the pre-application meeting.

b) The Public Works Director and the Utilities Director may require additional or modified information or provisionally waive engineering-related application requirements following the pre-application meeting.

c) Examples of possible additional requirements and/or information could include but are not limited to a neighborhood group and/or noticed area meeting, traffic impact analysis, environmental analysis, detailed drainage analysis, etc.

d) Any request for additional or waived submittal requirements shall be justified in writing by the requesting entity.

4. Complete Application

a) Every required application shall be subject to a Determination of Completeness by the Community Development Director. The application shall only be accepted for processing when it is accompanied by all documents required by and prepared in accordance with the requirements of this Development Code.

b) A Determination of Completeness of an application shall be conducted in accordance with the following procedures:

i) If the submitted application is incomplete, the applicant shall be sent notification in writing.

a. Such notice shall be served by depositing it in the U.S. Postal Service or by electronic mail transmission.

b. The notification shall specify the documents or other information needed to complete the application and shall state the date the application will expire (see **Sec. 34-3.C.6. Application Expiration**) if the documents or other information are not provided to the City.

ii) If the application is determined to be complete, the application shall be processed as prescribed by this Development Code.

c) A typographical error shall not constitute an incomplete application.

d) A Determination of Completeness shall not constitute a determination of compliance with the substantive requirements of this Development Code. It is not guaranteed that an accepted, complete application will be approved if it is determined that the application does not comply with this Development Code.

e) If the application is resubmitted after a notification of incompleteness within the time allotted in **Sec. 34-3.C.6. Application Expiration**, the application shall be processed upon receipt of the resubmittal. If the information or documents submitted are not sufficient to enable the decision-maker to apply the criteria for approval, the application may be denied on such grounds.

5. Submittal of Multiple Applications

   An applicant may submit multiple requests at once so that all requests are reviewed simultaneously (e.g., Master Development Plan and Zoning Variance applications); however, applicants should be aware that required revisions to one application may require the resubmittal of other applications.

6. Application Expiration

   An application shall automatically expire at the close of business on the 45th calendar day after the application's submittal if the applicant fails to provide documents or other information necessary to comply with the City's requirements. The applicant must restart the application process if all required materials have not been provided within 45 days.

7. Application Extension

   The Community Development Director may extend the expiration of an application only when unique circumstances are present and additional time is needed for an applicant to provide documents or information to complete an application. Any extension shall be documented in writing, and the extension shall not exceed 180 days.

8. Modification of Complete Applications

   a) Modifications Requested by the City

      If revisions are requested by the City, and the modification is received at least 10 business days prior to the scheduled decision on the application, then the application shall be decided in accordance with the original schedule.

   b) Modifications Not Requested by the City

      Unless otherwise specified, when an applicant chooses to revise a submitted application, a new application must be submitted and the process restarted.

9. Submittal of Previously Decided Applications

   After the final decision on an application, the same (or substantially similar as determined by the Community Development Director) application shall not be submitted again until six months after the decision-maker's action.

10. Administrative Review

    a) Applications shall be submitted to the Community Development Director unless otherwise stated, who will distribute the submittal to applicable City departments and agencies for review. Each department shall complete the review and provide written comments to the Community Development Director.

    b) Each required department shall prepare and submit one set of consolidated comments to the Community Development Director. The Community Development Director shall compile the comments and provide the comments to the applicant for revisions.

    c) Whenever comments received by the City departments are in conflict, the Community Development Director will determine the appropriate procedure to be followed, utilizing the Development Review Committee where appropriate, in order to resolve said conflict or disagreement.

    d) The application shall be resubmitted and reviewed until the provisions of the Code are met and the submittal is recommended or approved, as applicable.

    e) The Community Development Director may opt to defer any application to the Planning & Zoning Commission.

f) When the Community Development Director is responsible for providing a recommendation, the Community Development Director shall prepare a report including comments and the reason(s) for the recommendation.

D. Notice of Decision

Upon a final decision by the Planning & Zoning Commission or City Council, the Community Development Department shall promptly:

1. Prepare a written decision that includes an order and a statement of the factual and legal basis for the order and file the written decision with the City Clerk. Also, this document shall state the requirements for filing an appeal.
2. Make the written decision publicly available, which may include posting the document on the City's website.

E. Flexible Development Standards

1. Purpose

   a) The purpose of this section is to establish a two-tier system to allow flexibility in certain planning-related development standards (e.g., setbacks) that are part of a building permit or business registration request. The City Council grants the Community Development Director administrative discretion to allow limited departures that are generally considered insignificant from certain planning-related development standards.

   b) This section does not apply to development standards associated with signs and lighting, which require Zoning Variance. See **Sec. 36-5.F. Zoning Variances** for requirements.

2. Application Procedures

   An applicant requesting a departure from a planning-related development standard shall file a complete application, including the development statement that includes the following:

   a) Official building permit or business registration application,

   b) Submittal fee,

   c) Notarized affidavit,

   d) Copy of property's survey and legal description,

   e) Copy of site plan, if applicable, (requirements to be detailed),

   f) Description and justification of requested departures from standards,

   g) Request and justification to waive submittal requirements, and

   h) An application that meets the following conditions:

      i) The application shall be signed by all property owners of record (including all trustees of an estate or all persons that have a specific "power of attorney" for the subject property as recorded in the County Clerk's office). Persons who have an equitable interest in the subject property, but no legal title, shall not be deemed the "owners of record" of said property for purposes of this Code.

      ii) Any pending litigation or any final order entered by any court of law regarding the ownership of the subject property shall be disclosed by the applicant at the time the application is submitted.

      iii) The Community Development Director may reject any application if the ownership of the subject property is not clearly established.

3. Tier System

   a) Tier 1

      A request of up to a 25 percent departure from a planning-related development standard may be granted by the Community Development Director. Minimum lot area/width/depth departures may be granted as

necessary to prevent a taking of property as well as requests that are a result of governmental action (e.g., right-of-way acquisition).

b) Tier 2

A request for more than 25 percent and up to the following maximum departures from planning-related development standards may be granted by the Community Development Director. However, the Director is required to negotiate with the applicant to receive on behalf of the public one or more benefits (e.g., additional landscaping for reduced setbacks) deemed equivalent to the requested departure from standard.

Types of departure requests:

i) Setbacks/bufferyards/screens: 100 percent.

ii) Landscaping: 33 percent (from 15 percent to ten percent area coverage).

iii) Parking and all other requests not excluded in **Sec. 34-3.E.1.b)** above: 50 percent.

(See other parking flexibility options in **Sec. 38-2.N.4. Minimum Off-Street Vehicular Parking Requirements**.)

c) Tier 3

A request for deviations from planning-related development standards for properties located within the Metropolitan Redevelopment Area (MRA) in the Urban Zoning designations may be granted the following by the Community Development Director.

i) Setbacks/buffer yards/screens: 100 percent.

ii) Landscaping: 75 percent (from 15 percent required area coverage).

iii) Outdoor Lighting: Compliance with lighting may be extended up to one year if there are no safety concerns.

iv) Parking: Exempt in the Urban area.

4. Notice of Request

The Community Development Director shall decide the appropriate surrounding property owners to be contacted by regular mail before acting on a request. Written comments about the request shall be delivered to the community development department to be considered by the Community Development Director within 10 business days of the date the notice of the request was mailed.

5. Action on the Request

Within ten working days after mailing the notice of the request to surrounding property owners, the Community Development Director shall act on the request.

6. Notice of Decision

The surrounding property owners that were contacted about the request and the applicant will be notified in writing about the decision on the request. The Community Development Director, for any reason, may require an applicant to follow the procedures for a Zoning Variance outlined in **Sec. 36-5.F. Zoning Variances**.

7. Appeal

Any person aggrieved by a determination of the Community Development Director may appeal the decision in accordance with **Sec. 34-3.F. Appeals**.

F. Appeals

1. Application Requirements

a) Who May Appeal

Any person, department, committee, commission, board, or bureau that is affected by a final decision of an administrative official, committee, or board in the administration or enforcement of this Development Code may appeal the decision.

b) Written Statement

All appellants shall submit to the Community Development Department a detailed written statement of the grounds of their appeal, including findings. The appeal shall state all issues to be considered. Only the issues stated shall be considered during the applicable proceeding.

c) Timing for Filing Appeal

An appeal shall be filed no later than 15 calendar days after the decision (or 30 calendar days for appeals to the District Court in accordance with NMSA 39-3-1), and after all other procedures established by this Code have been exhausted.

d) Fees

Fees shall be assessed to the appellant person or persons in order to cover the costs of such appeal. Such fees shall be as prescribed in the Fee Schedule as adopted and amended.

e) Stay of Proceedings

An appeal shall stay all proceedings in furtherance of the action appealed unless the officer, official, commission, committee, or board from whom the appeal is taken certifies that by reason of facts, 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, committee, or board from whom the appeal is taken.

2. Appeal of a Director Decision

a) Planning-Related Issues

i) Planning-related issues are issues related to, but not limited to, lot configuration or dimensions, street network, right-of-way requirements, land use, density, phasing of development, suitability of location, or other issues determined by the Community Development Director to be planning-related.

ii) Appeals shall be resolved by the Planning & Zoning Commission. The Planning & Zoning Commission, by a majority vote of a quorum of the Commission, may, after all other procedures established by this section have been exhausted, reverse or affirm any order, requirement, decision, or determination of a Director.

b) Engineering-Related Issues

i) Engineering- or utility-related opinions are related to, but not limited to, design specifications for roadways, grading, drainage, utilities, or other issues determined by the Community Development Director and/or the Public Works Director to be engineering-related.

ii) Appeals of engineering-related issues shall be resolved by arbitration. The Arbitration Committee shall consist of three engineers licensed to practice in the state who are not associated with the City but are familiar with its development standards. The City shall choose one engineer, the applicant shall choose the second engineer, and the two chosen engineers shall choose the third.

iii) The Arbitration Committee shall review the engineering- or utilities-related issue under question and any pertinent information within 30 calendar days of the appeal submittal. The appellant shall be responsible for all costs associated with the Arbitration Committee.

iv) Action from the Arbitration Committee shall be in the form of approval or disapproval. Action from the arbitration committee shall be final unless appealed to the state board of registration for professional engineers and surveyors or to a court of competent jurisdiction.

3. Appeal of a DRC Decision to the Planning & Zoning Commission

   The Planning & Zoning Commission, by a majority vote of a quorum of the Commission, may, after all other procedures established by this section have been exhausted, reverse or affirm any order, requirement, decision, or determination of the Development Review Committee.

4. Appeal of a Planning & Zoning Commission Decision to the City Council

   The City Council, by a majority vote of all its members, may, after all other procedures established by this section have been exhausted, reverse or affirm any order, requirement, decision, or determination of the Planning & Zoning Commission.

5. Appeal of a City Council Decision to District Court

   The decision of the City Council may be appealed to District Court in accordance with NMSA 39-3-1.

6. Appeal of a Historic Preservation Decision

   Appeals of Historic Preservation decisions shall be in accordance with **Sec. 35-1.F. Appeals**.

G. Notice for a Public Meeting

When a public meeting before the Planning & Zoning Commission or City Council is required by these regulations, notice shall be provided as follows.

1. Notice of Public Meeting Agenda

   The agenda for the public meeting shall be made available no later than 15 calendar days prior to the public meeting.

2. Posted Sign Notice

   a) At least 15 calendar days prior to the public meeting, notice of the proposed development shall be posted in conspicuous places on the subject property by the property owner, applicant, or representative.

   b) A sign measuring four feet by four feet shall be used and secured with appropriate supporting hardware made available by the Community Development Director. When the property has multiple street frontages, one sign per frontage shall be posted. Large properties may require a greater number of signs, which shall be determined by the Community Development Director.

   c) It shall be the responsibility of the property owner, applicant, or representative to ensure continuous visible posting until a final determination is made on the proposal, regardless of the number of reviewing entities involved. In that multiple reviewing entities may be involved, the Community Development Director will inform the property owner, applicant, or representative of necessary changes needed on the sign to reflect the appropriate reviewing entities, meeting dates, and venues.

   d) In the event that notification signs were issued for a case under appeal, the property owner and/or original applicant shall ensure that all signs previously erected for notice purposes remain up until a decision on the appeal is rendered. Modification to and/or replacement of said signs shall be authorized and directed by the Community Development Director to ensure appropriate information regarding the appeal venue is displayed.

   e) Signs must be removed by the property owner, applicant, or representative within one week of the final decision.

3. Mailed Notice

   a) Certified Mailed Notice for Changes Affecting One Block or Less

      Whenever a change is proposed for an area of one block or less, notice of the public meeting shall be mailed by certified mail, return receipt requested, to the owners, as shown by the records of the County treasurer, of lots of land within the area proposed to be changed by a regulation and within 100 feet, excluding public right-of-way, of the area proposed to be changed by regulation.

b) Non-Certified Mailed Notice for Changes Affecting More than One Block

Whenever a change is proposed for an area of more than one block, notice of the public meeting shall be mailed by first class mail to the owners, as shown by the records of the County treasurer, of lots of land within the area proposed to be changed by a regulation and within 500 feet, excluding public right-of-way, of the area proposed to be changed by regulation.

c) If the notice is returned undelivered, the zoning authority shall attempt to discover the owner's most recent address and shall remit the notice by certified mail, with a return receipt requested, to that address.

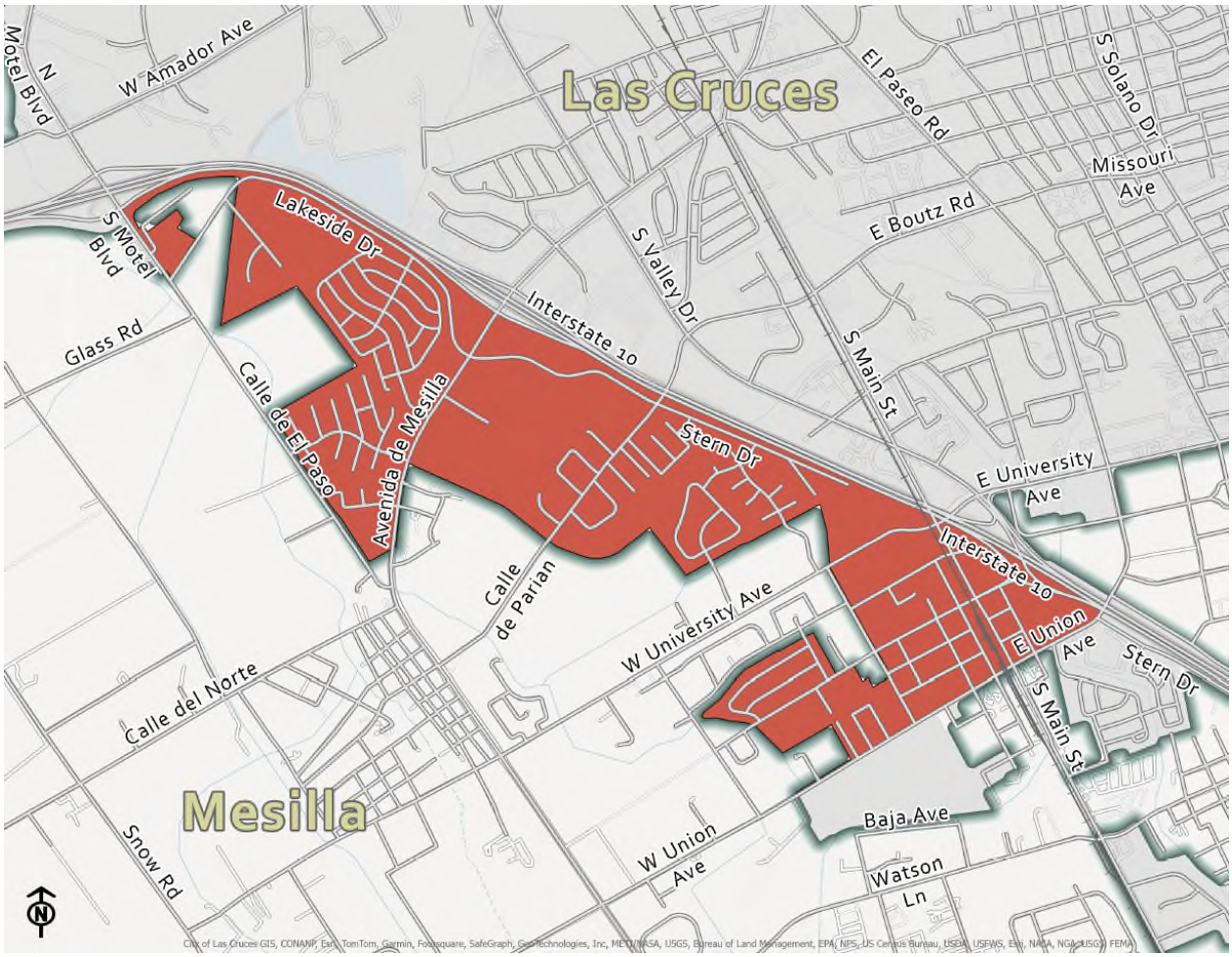
4. Published Notice

Notice of the time and place of the public meeting shall be published at least 15 calendar days prior to the public meeting in a newspaper of general circulation in the City.

5. Special Notice of Planning & Zoning Commission Cases

The Community Development Director shall provide notification, by certified mail, to the Town of Mesilla of all cases presented to the Planning & Zoning Commission for properties located in the area shown in **Figure 34-3-1. Town of Mesilla Special Notification Area Map**.

Figure 34-3-1. Town of Mesilla Special Notification Area Map



H. Early Notification and Meeting Requirements

1. Purpose

   Early notification and meeting requirements are established to provide a courtesy notice to potentially affected community members regarding a proposed development or action prior to the application's submittal.

2. Applicability

   Any application for a rezoning of more than one acre or any development that requires a Master Development Plan shall meet the requirements herein.

   a) Exception: Subdivisions that meet all requirements of the Development Code are not subject to these requirements.

3. Requirements and Notification

   a) The applicant shall facilitate a meeting with the public, providing details of the plan or project seeking approval. The applicant shall secure a meeting facility in a location within the City as close as practical to the project site.

   b) Details of the meeting location, date, and time shall be provided to the City at least 15 business days before the meeting. The City will mail notice to all property owners and registered neighborhood groups within 500 feet of the subject property at least 10 business days before the meeting.

I. Amendments to this Development Code

1. Petitions for Amendments

   a) Any person or corporation having a proprietary interest in any property may petition the City for an amendment to this Development Code's text.

   b) The Planning & Zoning Commission may, on its own motion or on request from the City Council, study and propose amendments for the City Council's consideration.

2. Planning & Zoning Commission Recommendation

   The Planning & Zoning Commission shall provide a recommendation regarding proposed Development Code amendments following a recommendation by the Development Review Committee and a public meeting held in accordance with **G. Notice for a Public Meeting**.

3. City Council Decision

   Following Planning & Zoning Commission recommendation, the City Council shall decide on the proposed Development Code amendments following a public meeting held in accordance with the City Clerk's typical time frames and processes.

4. Zoning Map Amendments

   Zoning Map amendments (i.e., "rezonings") follow a different process in accordance with NMSA 3-21-6. See **Sec. 36-5.A. Zoning Map Amendments** for more information.

Sec. 34-4. Annexation Process

A. Annexation Purpose

The purpose of an annexation is to redesignate property outside the City as being within the City limits thereafter. Annexations can be used to maintain a unified urban area and to promote orderly growth by utilizing City services.

B. Annexation Process

In accordance with NMSA 3-7-1, there are three methods of annexing territory into a municipality:

1. The arbitration method (NMSA 3-7-5 through 3-7-10);
2. The boundary commission method (NMSA 3-7-11 through 3-7-16); and
3. The petition method (NMSA 3-7-17).

C. Submittal of an Annexation Application

1. Following a pre-application meeting (see **Sec. 34-3.B. Pre-Application Meeting**) and any required early notification (see **Sec. 34-3.H. Early Notification and Meeting Requirements**), an applicant may submit the annexation application.
2. The annexation application and supplemental material shall be submitted to the Community Development Department no later than 25 calendar days prior to the day of the next regular meeting of the Planning & Zoning Commission for consideration.
3. Applications shall be subject to a Determination of Completeness as outlined in **Sec. 34-3.C.4. Complete Application**.
4. The applicant shall submit the following items and all related checklist materials for consideration of an annexation request:
   a) An Annexation Plat meeting the criteria for a Final Plat (see **Sec. 37-3.D. Final Plat**).
   b) An Annexation Plan meeting the criteria for a Master Development Plan (**Sec. 37-3.A. Master Development Plan**) identifying the purpose for which the property is intended to be used.
   c) An initial zoning request shall be submitted concurrently with the annexation application. The initial zoning of land shall occur jointly with the annexation procedures but shall occur as a separate and distinct action by the City Council.
   d) A cost-benefit analysis to compare long-term public revenues and expenditures related to the proposed development. The analysis shall be commissioned by the City at the expense of the applicant. City-commissioned fiscal impact analyses should be conducted according to a standard methodology developed and endorsed by the City in conjunction with a qualified third party. The analysis should consider factors such as the need to extend and indefinitely maintain City infrastructure (e.g., utilities, roadways, parks) and increased demand on City services (e.g., police, fire, libraries). The report shall also consider anticipated revenues generated by the development. The City may waive the requirement for a fiscal impact analysis where annexation is proposed to incorporate land already serviced by City utilities, to improve public health, or to absorb municipally owned land.

D. Review and Consideration of an Annexation Request

1. Criteria for Consideration

   Review and approval entities shall consider the following criteria when evaluating an annexation request:

   a) Whether adequate public facilities are available in the area,
   b) Potential fiscal, sustainability, and environmental impacts;
   c) Compatibility with pre-existing and proximate land uses;
   d) Availability of land within the municipal limits that can accommodate the proposed land use; and
   e) Conformity to the growth patterns and development policies promoted in the Comprehensive Plan and other long-range planning documents.

2. Board of County Commissioners Comment

   In accordance with NMSA 3-7-17.1, the City shall submit the petition to the Board of County Commissioners for review and comment.

3. Development Review Committee Recommendation

   Annexation requests shall be forwarded to the Development Review Committee for review, comment, and recommendation.

4. Planning & Zoning Commission Recommendation

   Following Development Review Committee review, the Annexation Plat, Annexation Plan, initial zoning request, and cost-benefit analysis (if applicable) shall be scheduled for a public meeting for Planning & Zoning Commission recommendation.

   a) A written report shall be provided to the Planning & Zoning Commission from the Development Review Committee.

   b) The Planning & Zoning Commission shall recommend either approval, conditional approval, postponement, or disapproval of each element of the annexation request.

   c) It is the requirement of the Planning & Zoning Commission that no annexation request shall be reviewed unless either the applicant or the applicant's representative is present at the public meeting. If neither is present at the public meeting, the request will be postponed until the next regular Planning & Zoning Commission meeting.

5. City Council Decision

   a) Following a recommendation by the Planning & Zoning Commission, the annexation request and the initial zoning request shall be forwarded to the City Council for a public meeting and final action.

   b) The annexation request and the initial zoning request will be scheduled for the next available regular City Council meeting once staff has received the minutes of the Planning & Zoning Commission public meeting and all public notice requirements are met.

   c) The City Council shall approve, amend, postpone, or disapprove each element of the annexation request.

   d) A copy of the notice of decisions that include any changes or conditions the Planning & Zoning Commission and City Council made at public meetings shall be provided to all appropriate parties in accordance with **Sec. 34-3.D. Notice of Decision**.

Sec. 34-5. Definitions

A. Usage and Interpretation

For the purpose of this Development Code (Chapters 34 through 38), the following terms used herein shall be interpreted or defined as follows:

1. Words used in the present tense include the future tense;
2. The singular includes the plural;
3. The word "person" includes a corporation as well as an individual;
4. The term "shall" is always mandatory; and
5. The term "may" is discretionary.

Words and terms not expressly defined herein are to be construed according to the normally accepted meaning of such words or terms in the practice of municipal planning and engineering.

B. Terms Defined: A-D

1. Abandoned Sign

A sign that no longer directs, promotes, or advertises a bona fide business, lessee, owner, product, or activity conducted or product or service. See **Sec. 38-10.K.2. Abandoned Signs**.

2. Absolute Photometry

A photometric measurement (usually of a solid-state luminaire) that directly measures the output of the luminaire. Reference Standard IES LM-79.

3. Accelerated Erosion

Rapid erosion caused by artificially induced alteration of the vegetation, land surface topography, or runoff patterns.

4. Accessory Structure

See **Sec. 36-3.B. Use Classifications and Use-Based Standards**.

5. Accessory Uses

A use incidental to and customarily associated with a specific principal use located on the same lot or parcel.

6. Addition

Any act or process that changes one or more of the exterior architectural features of a building or structure by increasing the size or capacity of a structure through new construction or by joining one or more existing structures.

7. Adjacent

Next to or adjoining something else.

8. Agricultural Stormwater Runoff

Any stormwater runoff from orchards, cultivated crops, pastures, range lands, and other non-point source agricultural activities, but not discharges from concentrated animal feeding operations as defined in 40 CFR Section 122.23 or discharges from concentrated aquatic animal production facilities as defined in 40 CFR Section 122.24.

9. Air Contaminant

Smoke, vapor, charred paper, dust, soot, grime, carbon, fumes, gases, odors, particulate matter, windborne matter, or any air contaminant for which there is no national ambient air quality standard, and that is or may become harmful to public health or the environment when present in the outdoor atmosphere in sufficient quantities or duration.

10. Alley

Alleys provide access to the rear yards and can enhance pedestrian safety and traffic circulation. Rear service alleys can be used for solid waste collection services and/or additional off-street parking to accommodate expanded multimodal infrastructure or reduced right-of-way requirements along adjacent Local Streets, Collectors, or Arterial roadways.

11. Alluvial Fan Flooding

Flooding on the surface of an alluvial fan or similar landform that originates at the apex and is characterized by high-velocity flows; active processes of erosion, sediment transport, and deposition; and unpredictable flow paths. Alluvial fan flooding is shown as Zone AO on a Flood Insurance Rate Map (FIRM) with a flood depth and velocity.

12. Alteration

Any change to the exterior of a building, site, object, or structure, including, but not limited to, the construction, reconstruction, or removal of any architectural or structural elements; or changes to an interior space of a publicly accessible building designated as a historic landmark.

13. Ambient Air

That portion of the atmosphere, external to buildings, to which the general public has access. Land owned or controlled by the stationary source and to which public access is precluded by a fence, physical barriers, or other effective means is exempted from the ambient air provisions.

14. Apex

The top or narrow point of the alluvial fan.

15. Appeal

A request for a review of an interpretation or decision. See **Sec. 34-3.F. Appeals**.

16. Applicant

The person or entity responsible for the submittal of an application. The applicant must be the actual owner of the subject property or a representative designated in writing by the owner.

17. Architectural Lighting/Architectural Illumination

Lighting designed to reveal architectural beauty, shape and/or form and for which lighting for any other purpose is incidental.

18. Area of Shallow Flooding

A designated AO, AH, or VO zone on the City of Las Cruces'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.

19. Area of Special Flood Hazard

An area having special flood, mudflow or flood-related erosion hazards and shown on a Flood Insurance Rate Map (FIRM) Zone A, AO, A1-A30, AE, A99, AH, AR, V1-V30, VE, or V. The SFHA is the area where the National Flood Insurance Program's (NFIP's) floodplain management regulations must be enforced and the area where the mandatory purchase of flood insurance applies.

20. Arroyo

A dry creek, streambed, or gully that temporarily or seasonally fills and flows after sufficient rain.

21. Arterial Street

See #223 Minor Arterial and #279 Principal Arterial.

22. Astronomic Time Switch

An automatic lighting control device that switches outdoor lighting relative to the time of solar day with time of year correction.

23. Attached Sign

A type of sign that is fastened to, connected to, or painted on and wholly or partially supported by a building. See **Sec. 38-10.G. Sign Types and Supplemental Standards**.

24. Awning

A hood or cover that projects from the wall of a building and is composed of rigid or nonrigid materials.

25. Backfill

Soil that is replaced in a hole or trench after excavation and placement of utilities, conduct, structures, or plant materials.

26. Backflow

The reversal of the normal flow of water (potable or non-potable) or other substances into a drinking water system that may be caused by back siphonage or back pressure in the presence of a cross-connection.

27. Backlight

For an exterior luminaire, flux radiated in the quarter sphere below horizontal and in the opposite direction of the intended orientation of the luminaire. For luminaires with symmetric distribution, backlight will be the same as front light.

28. Base Flood

The flood having a one-percent chance of being equaled or exceeded in any given year.

29. Base Flood Elevation (BFE)

The elevation shown on the Flood Insurance Rate Map (FIRM) and found in the accompanying Flood Insurance Study (FIS) for zones A, AE, AH, A1-A30, AR, V1-V30, or VE that indicates the water surface elevation resulting from the flood that has a one-percent chance of equaling or exceeding that level in any given year - also called the Base Flood.

30. Basement

Any area of the building having its flood sub-grade (below ground level) on all sides.

31. Best Management Practices (BMP)

The correct application of the current scientific principles to the evaluation, design, construction, and maintenance of engineering projects. All projects must meet the minimum standards as adopted by the City. All designs are based on health, safety, convenience, and general welfare of the public.

32. Billboard

A freestanding sign type that typically includes a concrete foundation, metal pole structure, and a flat surface upon which a display panel or a material such as vinyl, canvas, or plastic surface is placed. See **Sec. 38-10.D. Prohibited Signs**.

33. Block

Land surrounded on all sides by streets or other rights-of-way or by physical barriers such as bodies of water or public open spaces.

34. Buffer Yard

An area along the property line between various districts that have differing intensities and impacts intended to promote public health, safety, and welfare. See **Sec. 38-8.D. Required Buffer Yards**.

35. BUG

A luminaire classification system that evaluates backlight (B), uplight (U), and glare (G).

36. Build-To Line

A line established within a certain distance from the front property line, in front of which a building facade (or a percentage of a facade) must be built. Build-To Lines are typically used to place buildings closer to the street frontage, resulting in more pedestrian-oriented development.

37. Building

Any structure as defined in Chapter 30 of the Las Cruces Municipal Code.

38. Building Height

The height of a building measured from the lowest adjacent ground surface level to the highest point of the building or from the elevation of the adjacent ground, whichever is lower. Building height excludes chimneys, flagpoles, cooling towers, elevators, bulkheads, penthouses, tanks, water towers, radio towers, ornamental cupolas, domes and spires, and parapet walls not exceeding ten feet in height.

39. Building Official

The City official authorized to administer the Building Code or their designee. See Chapter 30. Buildings and Building Regulations of the Las Cruces Municipal Code.

40. Building Permit

Any duly authorized permit for construction issued by the Building Official authorizing construction or demolition, including soil disturbance. See **Sec. 36-5.E. Building Permits and Certificates of Occupancy** and LCMC, Chapter 30, Article II, Division 2, Sections 30-171 through 30-722.

41. Candela

The basic SI (Systeme International d'Unities) unit of luminous intensity. One candela is one lumen per steradian.

42. Canopy or Marquee

A permanent, roof-like shelter extending from part or all of a building or independent of a building.

43. Certificate of Appropriateness

A written record issued by the Historic Preservation Committee or City Staff on behalf of the Committee, authorizing plans for alterations, construction, removal, or demolition of a building, structure, object, or site located within a historic district or designated as a cultural property. See **Sec. 35-3. Plan Review, Certificates of Appropriateness, and Economic Hardship**.

44. Certificate of Economic Hardship

A written record of relief issued by the Historic Preservation Committee, following the denial of a Certificate of Appropriateness, that authorizes plans for additions, alterations, construction, removal, continuation of a non-compliant condition, or demolition in whole or part of a building, structure, object, or site that is located within a historic district or designated as a cultural property when the property owner is unable to either fund the required work, put the property to a reasonably beneficial use, and/or cannot obtain a reasonable economic return thereon without completion of the requested course of action. See **Sec. 35-3.D. Certificate of Economic Hardship**.

45. Certificate of Occupancy

The permit issued by the Building Official to indicate that a structure may be occupied and/or used for its approved purpose(s). See **Sec. 36-5.E. Building Permits and Certificates of Occupancy**.

46. Certified Local Government (CLG)

A unit of local government (town, city, or county) that has met the requirements of and has applied for certification to the State to become a fully participating partner in national and state historic preservation programs.

47. Change of Occupancy

Where the occupancy of a space changes from one group of occupants to another group of occupants, or changes from one division to another division in the same occupancy group (as defined in the International Building Code).

48. Channel

A natural or artificial watercourse (including arroyos, streams, swales, ditches, diversions, and manmade facilities) with a defined bed and banks that conducts continuously or periodically flowing water.

49. Character Areas

The City is divided into three types of Character Areas:

(a) Rural Character Area

(b) Suburban Character Area

(c) Urban Character Area

See **Sec. 36-2.B.2. Character Areas** for more information.

50. City

The City of Las Cruces administrative government, which encompasses all lands within the City's corporate boundary as designated by the present City limit location(s).

51. City Council

The governing body of the City of Las Cruces, New Mexico. See **Sec. 34-2.A. City Council**.

52. Clear Sight Triangle

An area of unobstructed vision at street intersections and entrances/exits, permitting a vehicle driver to see approaching vehicles to the right or left. See **Sec. 38-2.H. Clear Sight Triangle**.

53. Clearing and Grubbing

Any activity that removes the vegetative surface cover from a site. Clearing includes removing and disposing of all unwanted surface material, such as trees, brush, grass, weeds, downed trees, and other material. Grubbing includes removing and disposing of all unwanted vegetative matter from underground, such as stumps, roots, buried logs, and other debris.

54. Code Enforcement Officer

The City official(s) designated to enforce and ensure compliance with this Development Code and other ordinances adopted by the City, or their designee.

55. Codes

Any other applicable local, state, or federal codes.

56. Collector Street

Collectors provide access from local streets through neighborhoods to arterials. Collectors are used for short trips within a small geographical area rather than across the region.

57. Co-Location

To install, mount, maintain, modify, operate, or replace one or more wireless facilities on, in, or adjacent to a wireless support structure or utility pole. See **Sec. 38-11.D. Co-Location**.

58. Common Wall or Common Fence

An artificially constructed barrier or structure along a property line between two or more properties owned by two or more separate property owners. See **Sec. 38-8.C.3. Common Walls or Fences**.

59. Community Development Director

The Director of the City's Community Development Department (or successor department charged with overseeing land use and development in the City), as appointed by the City Manager. This term also includes the Director's designee(s) or Consultant.

60. Compaction

The process of making a soil denser through the application of dynamic impact to the soil mass. Specific minimum requirements are found within the current City construction specifications (standard specifications for road construction).

61. Compatibility

The positive relationship of alterations to existing buildings and designs for new construction to their environs, measured by consistent application of accepted design guidelines and standards that define the individual visual character, function and use, and architectural features of a specific geographic area.

62. Comprehensive Plan

The most recent City-adopted policy document that serves as the guide for the future physical development of the City and any actions concerning land use and development.

63. Concept Plan

A Concept Plan is a required step in the Planned Unit Development (PUD) process that is intended to assist in identifying the appropriateness of a proposed development within the context of its surroundings. The Concept Plan forms the basis for approval of the PUD. See **Sec. 36-5.D.2.d) Step 2: Concept Plan**.

64. Conduit

An underground, nonmetallic, waterproof enclosure for voltage-carrying street light circuits.

65. Construction

Any act or process that requires a building permit.

66. Construction and Demolition Activities

Any on-site activities preparatory to or related to building alteration, rehabilitation, removal or razing, or improvement on real property, including the placement and upkeep of mobile or manufactured homes or buildings. "Construction" also means construction of roadway systems including, arterials, expressways, interstates, tunnels, overpasses, bridges, interchanges, residential and commercial streets within a subdivision, and airport runway improvements.

67. Construction Plans

Construction Plans are a set of detailed drawings and studies that ensure public improvements are installed to serve a development in accordance with all applicable regulations. See **Sec. 37-3.C. Construction Plans**.

68. Contiguous Property

Parcels of property that are in contact or touching.

69. Contributing Property

A building, object, site, or structure in a historic district that enhances the district's historical and/or architectural significance through location, design, setting, materials, workmanship, and/or association and as determined by the SHPO.

70. Control Measures (CMs)

Defined procedures intended for controlling the detachment of soil, the movement of water and/or the deposition of sediment.

71. Control Plan

A written description of all reasonably available control measures (RACMs) to be implemented at a work site and/or in transit to and from a work site for any earth-moving, construction, or potential dust-generating operation. Such written description may be incorporated into building and construction plans or a separate document submitted with said plans.

72. County

Doña Ana County, New Mexico.

73. County Clerk's Office

The Doña Ana County Clerk's Office, which maintains records such as resolutions, ordinances, plats, and permits.

74. Crown

The cross slope or difference in elevation between the high point of a street (usually the centerline of the street) and the gutter line, adjacent to the pavement edge, for any given cross section. Crown is normally expressed as a percentage or inches of vertical change per foot of horizontal distance.

75. Cul-De-Sac

A minor street with only one outlet and culminated by a turnaround. See **Sec. 38-2.E.4. Cul-de-Sacs and Dead-End Streets**.

76. Cultural Landscape

A geographic area, including both cultural and natural resources and the wildlife or domestic animals therein, associated with a historic event, activity, or person, or exhibiting other cultural or aesthetic values. The four general types of cultural landscapes are: historic sites, historic-designed landscapes, historic vernacular landscapes, and ethnographic landscapes.

77. Cultural Properties Review Committee (CPRC)

The committee appointed by the Governor of the State of New Mexico and established by the Cultural Properties Act NMSA 1978, Sections 18-6A-1 et seq. (as amended) to serve as a professional policy-making and advisory board for historic preservation in New Mexico.

78. Cultural Property

Any building, structure, object, improvement, or site of particular historic or aesthetic significance to the city, the state, or the nation where cultural, political, spiritual, economic, educational, archaeological, social, or artistic history of the community, state, or nation is reflected or exemplified or which is identified with historic personages or with important events in local, state, or national history, or which embody the distinguishing characteristics of an architectural specimen, inherently valuable for representation of a period, style, or method of construction, or a notable work of construction, or a notable work of a master designer or architect whose individual genius influenced a particular period of time or aesthetic movement; also known as a cultural resource or a historic landmark. See **Sec. 35-2.D. Cultural Property Designation**.

79. Cultural Property Designation Report

A report prepared by City Staff that provides the history of a property, a map of its location, and historic and current views of the property, and includes a determination of eligibility based upon the application of the National Register Criteria for Evaluation to present for recommendation before the City Council. See **Sec. 35-2.D.2.l) Eligibility Report**.

80. Curb Cut

A depressed segment of a vertical roadway curb.

81. Curb Return

A curved segment of curb used at each end of an opening in the roadway curb.

82. DBH

See #96 Diameter at Breast Height.

83. Dedicated Easement

A public easement that is dedicated for public use and is recorded as such in the County Clerk's Office. See #108 Easement.

84. Demolition

Any act or process that requires a building permit for the purpose of removing or destroying, in whole or in part, any improvement to a site.

85. Demolition by Neglect

Any voluntary or involuntary act or process that results in a failure to maintain a building, structure, object, or site in sound condition when such act or process, over a period of time, results in the visible deterioration or removal, in whole or in part, of any man-made component on the site. See **Sec. 35-3.C.5. Demolition by Neglect and Deferred Maintenance**.

86. Design Guidelines

The written standards adopted by the City intended to provide technical advice and guidance to the Historic Preservation Committee and the Historic Preservation Specialist to evaluate applications to preserve the historical, cultural, and architectural character of an area or of a building, object, site, or structure.

87. Designated Property

A property that has been recognized as historically significant at the local, state, and/or national level by being listed in the Register of Cultural Properties, the State Register of Cultural Properties, and/or the National Register of Historic Places.

88. Designee

A City official designated full authority by the decision-maker or City Manager to conduct an act on the decision-maker's behalf.

89. Detention Basin

A detention basin or alternative structure designed for the purpose of temporary storage of stream flow or surface runoff and gradual release of stored water at controlled rates.

90. Determination of Completeness

The determination made by the Community Development Director that an application is accompanied by all required documents and has been prepared in accordance with the requirements of this Development Code. Acceptance of an application does not indicate approval or compliance with the Development Code's standards. See **Sec. 34-3.C.4. Complete Application**.

91. Development

Any human-made change in improved and unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials. Development includes, but is not limited to, such activities as the construction, reconstruction, alteration of the size, or material change in the external appearance of a structure or land; commencement of mining excavation, trenching, or grading; demolition of a structure or removal of vegetation; deposit of refuse, solid waste or fill; alteration of a floodplain, or bank of a watercourse.

92. Development Code

This Development Code (sometimes referred to as the "Code") adopted by the City Council, including any future amendments.

93. Development Project

Any development resulting from the approval of a building permit, lot split, preliminary or final plat, rezoning application, grading permit, public or private infrastructure improvement, variance requests, development review, master plans, native plant removal, relocation or revegetation, or use permit.

94. Development Review Committee

An informal group of representatives employed or retained by the City whose duties include reviewing development-related proposals and resolving conflicting comments, recommendations, or design differences between City reviewing departments and applicants. See **Sec. 34-2.C. Development Review Committee**.

95. Development Schedule

The calendar maintained by the Community Development Director identifying Official Submittal Dates and upcoming meeting schedules.

96. Diameter at Breast Height

The diameter of a tree as measured at four-and-one-half feet above grade. Abbreviated “DBH.”

97. Discretion

Reasonable discretion of the decision-maker, given the specific issue, situation, past actions on previous similar decisions, and other available information.

98. Disturbed Area

Any area in which the soil will be altered by grading, leveling, scraping, cut and fill activities, excavation, brush and timber clearing, grubbing, and unpaved soils on which vehicle operations and/or construction activities will occur.

99. Drainage Plan

A plan indicating an on-site drainage proposal, the passage of stormwaters through the development and safe discharge of runoff onto adjacent lands or into storm drainage facilities. Also, a comprehensive analysis of (i) the existing storm drainage conditions of a proposed development, and (ii) the disposal of the increased runoff which is generated by the proposed development.

100. DRC

See #94 Development Review Committee.

101. Driveway

A point of vehicular access between a street and an abutting property, and is further defined to include:

(1) The area between the face of curb and the right-of-way line for streets with curbs.

(2) The area between the edge of pavement of the outside travel lane and the right-of-way line for strip paved streets.

(3) The area between the right-of-way line and 15 feet from the right-of-way line toward the street for completely unimproved streets.

102. Driveway Apron

The drivable portion of the driveway approach extending from the property side of the curb to the sidewalk section and lying between the end slopes of the driveway approach.

103. DUA

See #107 Dwelling Units Per Acre.

104. Dust Generating Operation

Any activity or source capable of generating emissions of fugitive dust or causes off-property transport, including, but not limited to, activities associated with creating a disturbed area, construction and demolition activities, and the movement of vehicles on unpaved roadways or parking areas.

105. Dust or Dust Emissions

The finest particulates within the soil that may be transported and deposited by a blowing wind initiated by a surface disturbance that could present a health or safety hazard to the adjacent area or its occupants.

106. Dwelling

A building or part of a building, containing living, sleeping, housekeeping accommodations, and sanitary facilities for occupancy by one or more families.

107. Dwelling Units Per Acre

The total number of dwelling units divided by the total site acreage. Dwelling units per acre (DUA) is calculated using gross acreage of the proposed development, including any floodplain, rights-of-way, and other undevelopable land.

Example calculation:

45 dwelling units on a 5-acre site = 9 DUA

4 dwelling units on a 20,000-square-foot site (0.459 acres) = 8.7 DUA

C. Terms Defined: E-K

108. 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 purpose. An easement restricts but does not abridge the right of the fee owner to the use and enjoyment of their land.

109. Emergency Outdoor Lighting

Generally, lighting that is only energized by an emergency power source; or to illuminate the path of egress solely during a fire or other emergency situation; or lighting for security purposes used solely during an alarm.

110. Emission

An air contaminant, or the act of discharging an air contaminant, visible or invisible that could cause a health and safety hazard to the adjacent area and its occupants.

111. Engineering Site Review

A surficial review of a site to determine its preliminary engineering capacity based on exposed indicators that include historical site stability and past development(s). This investigation is performed under the direction of a Professional Engineer.

112. Erosion

Geological process in which earthen materials are worn away and transported by natural forces such as wind or water.

113. Erosion and Sediment Control Plan

A set of plans prepared by or under the direction of a licensed professional engineer indicating the specific measures and sequencing to be used to control sediment and erosion on a development site during and after construction.

114. Erosion Control

Measures used to reduce the amount of soil particles that are carried off of a land area and deposited in a receiving water.

115. ETZ

Extraterritorial zone.

116. Expansive Soils

Soils that contain a high concentration of clay-sized particles that, when wetted, will expand in size and lose strength, or, when dried, will shrink and form a hard cemented layer. These soils are typically restrictive to water passage or infiltration.

117. Exterior Appearance

The visual character of all outside surfaces of a structure, including the kind and texture of materials, signs, light fixtures, steps, or appurtenant elements.

118. Exterior Features

Architectural or structural elements that define the architectural style and general design patterns of the exterior of a building or structure, including the type and texture of building materials and the type, style, and general arrangement of all windows, doors, ornamental features, light fixtures, signs, fences, walls, and other elements, as well as other natural features such as vegetation, trees, and shrubbery.

119. Family

Persons related by blood or marriage, or a group of persons who need not be related by blood or marriage, living together as a single housekeeping unit.

120. Fee In Lieu

A payment of money in place of meeting all or part of the standards required by this Development Code.

121. Fee Schedule

A listing of fees for various applications, which is prepared by the City Manager's Office and approved by the City Council. The Fee Schedule may be amended periodically. The Fee Schedule is approved and maintained separately from this Development Code.

122. Fence

Any artificially constructed access barrier consisting of posts, wire, wood, steel, cable, or similar material to enclose or screen areas of land. Included within this definition are prefabricated fence panels (wood, plastic, or metal) that are typically sold at building supply stores. See **Sec. 38-8. Fencing, Screening, and Buffering**.

123. Final Plat

The official and authentic map of any given subdivision of land prepared from actual field measurement and staking of all identifiable points by a surveyor or engineer with the subdivision location referenced to a survey corner and all boundaries, corners, and curves of the land division sufficiently described so that they can be reproduced without additional references. The Final Plat shall be filed and recorded with the County Clerk's Office. A Final Plat may also be referred to as a Record Plat or Plat of Record. See **Sec. 37-3.D. Final Plat**.

124. Finding of Fact

The conclusions found to be true from an examination of the underlying evidence and testimony of a case under consideration in accordance with established review criteria.

125. Fire Department

The City's fire department or any duly authorized representative thereof.

126. Flexible Development Standard

A numerical deviation from the Development Code requirements that may be approved administratively. See **Sec. 34-3.E. Flexible Development Standard**.

127. Flood Elevation Study

An examination, evaluation, and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation, and determination of mudslide (e.g., mudflow) or other flood-related erosion hazards.

128. Flood Hazard Area

An area subject to inundation from the 1-percent probability storm.

129. Flood Insurance Rate Map (FIRM)

Official map of a community that defines both the special flood hazard areas and flood zones applicable to the community. This map is used by the National Flood Insurance Program (NFIP) for floodplain management, mitigation, and insurance purposes.

130. Flood Insurance Study (FIS)

The official report provided by the Federal Emergency Management Agency. The report compiles and presents flood risk data for specific watercourses, lakes, and other flood hazard areas within a community.

131. Flood Lamp

A specific form of lamp designed to direct its output in a specific direction (a beam) with a reflector formed from the glass envelope of the lamp itself, and with a diffusing glass envelope. Such lamps are so designated by the manufacturers and are typically used in residential outdoor area lighting.

132. Floodproofing

Any combination of structural and non-structural additions, changes, or adjustments to structures that reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

133. Floodplain Management

The operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works and floodplain management regulations.

134. Floodplain Management Regulations

Zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinance (such as a floodplain ordinance, grading ordinance and erosion control ordinance) and other applications of police power. The term describes such federal, state, or local regulations, in any combination thereof that provide standards for the purpose of flood damage prevention and reduction.

135. Floodplain or Floodprone Area

Any land area susceptible to being inundated by flooding.

136. Floodway

The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot cumulatively. Also referred to as “Regulatory Floodway”.

137. Floor 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.

138. Freeway

A divided multilane highway for through traffic with all crossroads separated in grade and with full control of access.

139. Freestanding Sign

A type of sign attached to or supported from the ground and not attached to a building. See **Sec. 38-10.G. Sign Types and Supplemental Standards**.

140. Frontage

A specified distance measured along a right-of-way property line or access easement.

141. Frontage Road

A local street parallel to and adjacent to another street, normally a highway or a freeway.

142. Full Cutoff (or Fully Shielded) Luminaire

A luminaire where zero candelas occur at or above an angle of 90 degrees and a maximum of ten percent candelas at 80 degrees above the nadir of the installed luminaire. This applies to all lateral angles around the luminaire. Such candela information shall be determined by a photometric test report from a nationally recognized independent testing agency and as certified by the manufacturer.

143. Geotechnical Soils Investigation

A geotechnical investigation includes surface exploration and subsurface exploration of a site. Subsurface exploration usually involves soil sampling and laboratory tests of the soil samples to establish their unique engineering design properties. Investigations are documented with all findings, location(s), investigation equipment listing, with field crew names, and the responsible Professional Engineer.

144. Geotechnical Soils Report

A written summary report containing all information obtained from a geotechnical soils investigation, a discussion of the findings and their evaluation(s), and a summary of specific engineering design recommendations, parameters, or designs. This document is signed and sealed by a Professional Engineer.

145. Glare

Lighting entering the eye directly from luminaires or indirectly from reflective surfaces that causes visual discomfort or reduced visibility.

146. Glazing

The transparent or translucent material (i.e., windows or doors with glass) on the exterior of a building. In calculating Glazing, the window assembly/frame are included; however, only the glass portion is included for a door. Where Glazing is required, ground floors must have a Visible Light Transmittance (VLT) of 0.6 (that is, 60% of light is transmitted) or higher to meet the requirements herein.

147. Grading

Grading includes any excavation, clearing, filling, leveling, or contouring of the ground surface by human or mechanical means. Site grading is performed to ensure a level base or obtaining a specific slope on the land.

148. Grading Plan

A plan describing the existing topography and proposed grading, including retaining walls and details, interfaces with adjacent properties, streets, alleys, and channels, referenced to mean sea level based on a city benchmark, and showing sufficient contours, spot elevations, and cross sections to allow a clear understanding by reviewers, contractors, and inspectors.

149. Ground Water

Groundwater is water that exists underground in saturated zones beneath the land surface. The upper surface of the saturated zone is the water table.

150. Hardship

A restriction on property so unreasonable that it results in an arbitrary and capricious interference with basic property rights, and the property is rendered unusable without the granting of a variance or other relief.

151. High Wind Event

A climatological occurrence in which the average wind speed exceeds a threshold in which fugitive dust will be generated from undisturbed areas, naturally covered areas, disturbed areas, and construction sites, regardless of reasonably available control measures implementation. The average wind speed for high wind events is a sustained wind speed of 25 miles per hour or greater.

152. Highest Adjacent Grade

The highest natural elevation of the ground surface next to a finished structure's walls or, if the structure has not been constructed, next to the proposed walls of the structure.

153. Historic Building

Any building or structure that is listed in the State or National Register of Historic Places; designated as a historic property under local or state designation law or survey; certified as a contributing resource within a National Register-listed or locally designated historic district; or with an opinion or certification that the property is eligible to be listed on the National or State Register of Historic Places either individually or as a contributing building to a historic district by the State Historic Preservation Officer or the Keeper of the National Register of Historic Places.

154. Historic Character

Those architectural forms, materials, elements, features, construction methods or craftsmanship, spatial arrangements, and architectural style that, when combined, result in a distinctive setting, feeling, building, or area.

155. Historic Context

Summary information about the period, local setting and/or surroundings, circumstances, associations, and events that created, influenced, or resulted in the development of a specific property or group of properties, collected to assist in the development of a full understanding and assessment of the property.

156. Historic Cultural Properties Inventory (HCPI) Form

The form provided by City Staff upon request to an applicant interested in nominating a property or properties within a potential district for inclusion in the local Register of Cultural Properties in which baseline information is compiled to determine potential nomination eligibility. See **Sec. 35-2.D.2. Procedure for the Designation of a Cultural Property**.

157. Historic District

An area in the City designated under local, state, or federal authority that contains within definable geographic boundaries one or more properties zoned with a Historic Preservation Overlay, including accessory structures, fences, and other appurtenances having historical, cultural, and archaeological significance, and which may contain an assortment of properties classified as significant, contributing, noncontributing, and intrusive.

158. Historic District Designation Report

A report prepared by City Staff that provides the history of a cluster of properties, a map of their location, and historic and current views of the properties, and a determination based upon the application of evaluation criteria for review by the Historic Preservation Committee. See **Sec. 35-2.E.2. Procedure for the Designation of a Historic District**.

159. Historic Eligible

A property that appears to meet the criteria for designation.

160. Historic Integrity

A determination of the extent that a site, structure, object, building, or area retains its defining archaeological, historic, and/or cultural attributes associated with one or more of the National Register Criteria for Evaluation.

161. Historic Interior

An architecturally or historically significant interior space that remains substantially intact in terms of original configuration; original volume; and/or original architectural ornamentation and decoration, which exhibits surviving original historical finishes or has the potential for accurate restoration of such finishes; and which is open, to be used by, or may be used by the public.

162. Historic Preservation Committee

The committee created by the City Council authorized to direct and assist in the preparation and updating of the City's historic preservation plan; to create and review design guidelines for historic districts and cultural properties; to review and render decisions upon applications relating to historic and cultural properties; and to advise City Staff in initiating and implementing relevant preservation planning programs.

163. Historic Preservation Design Guidelines

The written standards adopted by the City intended to provide technical advice and guidance to the Historic Preservation Committee and City Staff to evaluate applications to preserve the historic, cultural, and architectural character of an area or of a building, object, site, or structure.

164. Historic Preservation Fund

A federally supported assistance program managed by the National Park Service to assist State, Tribal, and local historic preservation offices with a variety of historic preservation and community projects focused on heritage preservation.

165. Historic Preservation Overlay Zone

An overlay zoning district corresponding to the Historic District Designation that protects and preserves individual structures and neighborhoods composed of architecturally and historically significant buildings; this zoning district shall be in addition to any other zoning district in place, and may be applied to buildings, structures, objects, sites, and districts.

166. Historic Preservation Program

The City's policy initiative under the direction of the City Council to encourage and uphold the Declaration of Policy and Intent in **Chapter 35. Historic Preservation**.

167. Historic Significance

"Historic Significance" means:

(1) The attributes or characteristics of a district, site, or structure that possess integrity of location, design, setting, materials, workmanship, feeling, and association;

(2) A district, site, or structure that is associated with events that have made a contribution to the broad patterns of our history;

(3) A district, site, or structure that is associated with the lives of persons significant in the past;

(4) A district, site, or structure that embodies the distinctive characteristics of a type, period, or method of construction;

(5) A district, site, or structure that represents a significant and distinguishable entity whose components may lack individual distinction; or

(6) A district, site, or structure that has yielded, or may be likely to yield, information important in prehistory or history.

168. Historic Site

The location of a significant event, a prehistoric or historic occupation or activity, or a building or structure, whether standing, ruined, or vanished, where the location itself possesses historical, cultural, and/or archeological value regardless of the value of any existing structure.

169. Historic Site Survey

A systematic gathering of information related to the architectural, historic, scenic, and/or archaeological significance of buildings, structures, and/or objects within a specified geographic area through an assessment of field and archival documentation for the purpose of identifying properties that may be designated as cultural properties or historic districts.

170. Historic Structure

Any structure that is:

(1) 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;

(2) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;

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

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

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

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

171. Historical Survey (Intensive)

A systematic, detailed examination of an area designed to gather information about historic properties sufficient to evaluate them in accordance with criteria of significance within specific historic contexts.

172. Historical Survey (Reconnaissance)

An examination of all or part of an area accomplished in sufficient detail to make generalizations about the types and distributions of historic properties that may be present.

173. Historical Rehabilitation

The act or process of making possible a compatible use for a property through repair, alterations, and additions while preserving those portions or features that convey its historical, cultural, or architectural values and characteristics.

174. Historical Restoration

The act or process of accurately depicting the form, features, and character of a property as it appeared at a particular period of time by means of the removal of features from other periods in its history and reconstruction of missing features from the restoration period.

175. Illuminated Sign

Any sign lighted internally, externally, or by lights directed towards the sign by any light source.

176. Impervious Cover

Those surfaces that do not effectively allow rainfall infiltration. (e.g., building rooftops, pavement, sidewalks, driveways, etc.).

177. Improvements

Any building, structure, work of art, parking facility, fence, gate, wall, or other object constituting a physical addition to real property, or any part of such addition, including infrastructure such as streets, curbs, gutters, sidewalks, fire hydrants, storm drainage facilities, bike paths, trails, and water, sewer, and gas systems or parts thereof.

178. Incandescent Lamp

A lamp that produces light via an electrically heated metallic filament.

179. Infill

Any vacant or underutilized tract, lot, or parcel of real property, including those parcels currently used for agricultural purposes, that falls within the infill boundary established by the Infill Policy Plan.

180. Infill Development

For the purposes of **Chapter 35. Historic Preservation**, the utilization of or the construction upon vacant or underused parcels of land within historic districts or adjacent to individual or clusters of cultural properties whereby new construction or any alterations to the site are undertaken in accordance with design guidelines to ensure compatibility with neighboring structures which regard to height, setbacks, landscaping, aesthetics, mass, and materials.

181. Infiltration

The process by which water on the ground surface enters the soil.

182. Infiltration Facility

Any structure or device designed to facilitate infiltration of retained water to the subsurface. These facilities may be above grade or below grade.

183. Initial Lumens

A lamp's light output, in lumens, at initial installation. The manufacturer usually lists initial lumens. For example, a 100-watt incandescent lamp emits approximately 1,800 lumens.

184. International Building Code (IBC)

The model building code developed by the International Code Council (ICC). This code has been adopted by the City for construction within the City, exempting one- and two-family dwellings.

185. International Residential Code (IRC)

A comprehensive, stand-alone residential code that contains minimum regulations for one- and two-family dwellings and townhouses up to three stories. It brings together all building, plumbing, mechanical, fuel gas, energy, and electrical provisions for one- and two-family residences.

186. Intersection

A point where two or more streets intersect.

187. Irrigation System

Consists of an underground system, automatic or manual, that includes a reduced principal backflow preventor, pipes, valves, and heads, and that shall be of an adequate size to properly irrigate the proposed planting.

188. ITE

Institute of Transportation Engineers.

D. Terms Defined: L-O

189. Lamp

A generic term for a source of optical radiation (i.e., "light"), often called a "bulb" or "tube." Examples include incandescent, fluorescent, high-intensity discharge (HID) lamps, and low-pressure sodium (LPS) lamps, as well as light-emitting diode (LED) modules and arrays.

190. Land Development

The performance of any building or mining operation, the making of any material change in the use or appearance of any structure or land, the installation of public artwork, the division of land into two or more parcels, and the creation or termination of access right.

191. Landowner

The legal or beneficial owner of land, including those holding the right to purchase or lease the land, or any other person holding proprietary rights in the land.

192. Landscape Lighting

Lighting designed specifically for illuminating exterior natural features.

193. Landscaping

A combination of trees, shrubs, perennials, groundcovers, and artifacts, arranged in such a manner as to effect a design that follows the principles of **Sec. 38-7. Landscaping**. For approved types of landscaping and planting, see the Approved Plant List included in the Technical Manual.

194. LCMC

Abbreviation for the Las Cruces Municipal Code.

195. Levee

A levee is a long ridge of sand, silt, and/or clay built up by a river along its banks, especially during floods. It can also be an artificial embankment built to protect adjoining land from inundation. Levees can be naturally occurring or artificially constructed. They are used to prevent rivers from flooding cities in a storm surge and to increase available land for habitation or agriculture.

196. Level of Service (LOS)

A measure used by traffic engineers to determine the effectiveness of operation of elements of transportation infrastructure ranging from LOS A (highest) to LOS F (lowest).

197. Light Pollution

Any adverse effect of artificial light including, but not limited to, glare, light trespass, skyglow, energy waste, compromised safety or security, and impacts on the nocturnal environment.

198. Light Trespass

Light that falls beyond the property it is intended to illuminate.

199. Lighting System

On a site, all exterior electric lighting and controls.

200. Lighting Zone

An overlay zoning system establishing legal limits for lighting for particular parcels, areas, or districts in a community. See **Sec. 38-9.E. Lighting Zones**.

201. Liner Building

A building specifically designed to mask a parking lot or a parking structure from a public frontage.

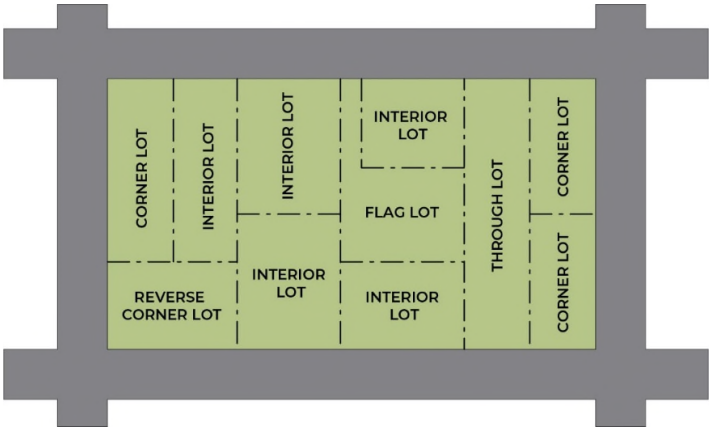
202. Local Street

Local streets provide neighborhood traffic circulation and property access. Local streets are the majority of streets in a roadway network; however, they carry the least amount of traffic.

203. 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 records of the county assessor. A legal lot is a parcel that has been divided in accordance with present or past zoning and subdivision requirements.

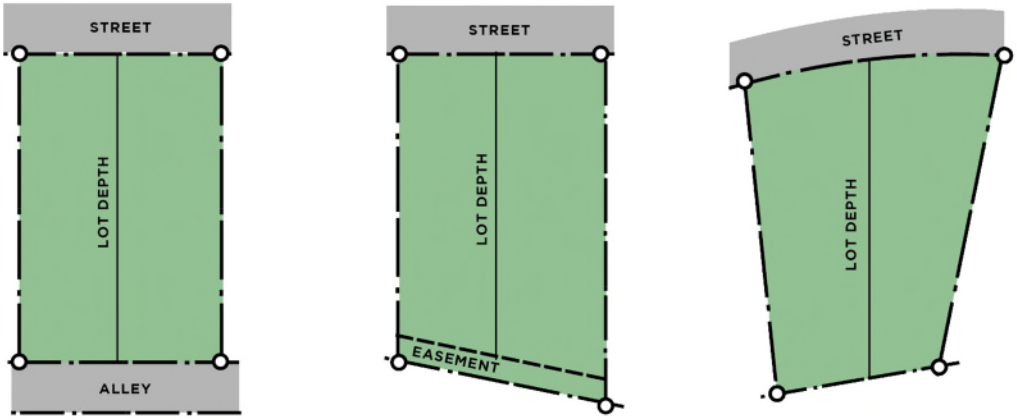
Figure 34-5-1. Lot Types



204. Lot Depth

The mean horizontal distance between the front and rear lot lines.

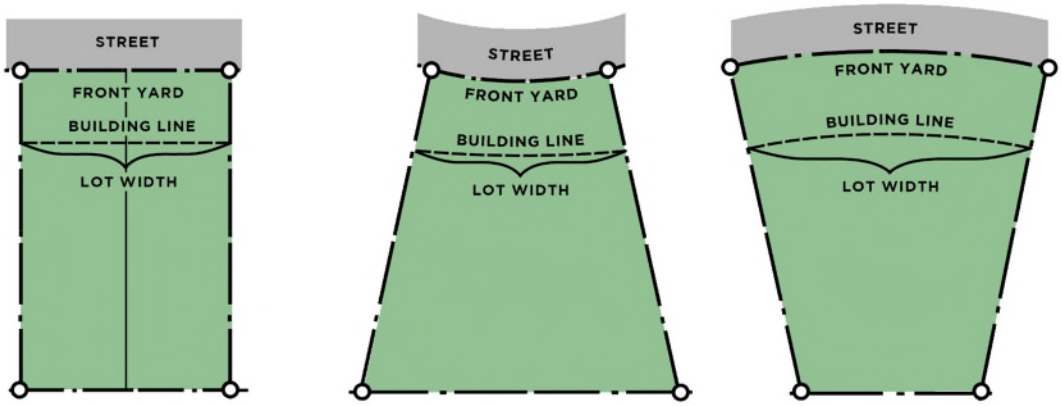
Figure 34-5-2. Lot Depth Measurement Examples



205. Lot Width

The width of a lot at the designated front property line.

Figure 34-5-3. Lot Width Measurement Examples



206. Lot, Corner

A lot abutting upon two or more streets or rights-of-way at their intersection. See **Sec. 36-4.A.4 Lot Requirements**.

207. Lot, Double Frontage

An interior lot fronting on two streets. One frontage shall be designated as the primary front yard. See **Sec. 36-4.A.4 Lot Requirements**.

208. Lot, Flag

A lot, parcel, or tract of land that includes a private accessway (the "flagpole" portion of the lot) extending to a public right-of-way to provide access to the rest of the lot (the "flag" portion of the lot). The private accessway has less frontage on a public right-of-way than the normally approved minimum lot width. See **Sec. 36-4.A.4. Lot Requirements**.

209. Lot, Interior

A lot other than a corner lot. See **Sec. 36-4.A.4 Lot Requirements**.

210. Lowest Floor

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

211. Lumen

The unit of measure used to quantify the amount of light produced by a lamp or emitted from a luminaire (as distinct from "watt", a measure of power consumption).

212. Luminaire

The complete lighting unit (fixture), consisting of a lamp, or lamps and ballast(s) (when applicable), together with the parts designed to distribute the light (reflector, lens, diffuser), to position and protect the lamps, and to connect the lamps to the power supply.

213. Luminaire Lumens

The cumulative total of initial lumens emitted by all lamps contained within a single luminaire. For luminaires with relative photometry per Illuminating Engineering Society (IES), it is calculated as the sum of the initial lamp lumens for all lamps within an individual luminaire, multiplied by the luminaire efficiency. If the efficiency is not known for a residential luminaire, assume 70 percent. For luminaires with absolute photometry per Illuminating Engineering Society (IES) LM-79, it is the total luminaire lumens. The lumen rating of a luminaire assumes the lamp or luminaire is new and has not depreciated in light output.

214. Luminance

A measure of the brightness of a surface which is emitting light. The unit of measurement most commonly used is candelas per square meter, often referred to as nits in the U.S. (one nit = one cd/m 2).

215. Main Dwelling

The primary dwelling on a property zoned for residential use.

216. Maintenance Agreement

A legally recorded document that acts as a property deed restriction and provides for long-term maintenance of stormwater management practices and drainage infrastructure.

217. Manual On Uniform Traffic Control Devices (MUTCD)

A document issued by the Federal Highway Administration (FHWA) of the United States Department of Transportation (USDOT) to specify the standards by which traffic signs, road surface markings, and signals are designed, installed, and used.

218. Manufactured Home or Manufactured Home Park

See **Sec. 36-3.B. Use Classifications and Use-Based Standards**.

219. Marquee Sign

A sign attached to, mounted on, or painted on a marquee. See #42 Canopy or Marquee.

220. Master Development Plan

The graphic depiction of a phased or other larger development and associated materials intended to allow for high-level review of a proposed development. The Master Development Plan precedes a Preliminary Plat. See **Sec. 37-3.A. Master Development Plan** for more information.

221. Mean Sea Level

For purposes of the National Flood Insurance Program, North American Vertical Datum of 1988 (NAVD 1988) or other datum, to which base flood elevations shown on the City of Las Cruces's Flood Insurance Rate Map are referenced.

222. Mechanically Stabilized Earth (MSE) Retaining Walls

A composite structure consisting of alternating layers of compacted backfill and soil reinforcement elements, fixed to a wall facing. The stability of the wall system is derived from the interaction between the backfill and soil reinforcements, involving friction and tension. The wall facing is relatively thin, with the primary function of preventing erosion of the structural backfill.

223. Minor Arterial

Minor arterials provide high levels of mobility with limited or restricted access to abutting properties. Because mobility is the primary function of arterials, access control is highly desirable. Consolidated driveways and access between parking lots/parcels shall be required to reduce frequency of decelerating/accelerating vehicles, reduce conflict points, and maintain efficient traffic, pedestrian, bicycle, and transit flow.

224. Mobile Vendor

A vehicle-mounted establishment that offers food sales (e.g., food truck restaurant), retail sales (e.g., pop-up boutique), or commercial services (e.g., mobile pet grooming) from inside the vehicle.

225. Modular Building

A standardized factory-fabricated transportable building module not having a chassis or wheels of its own, designed and constructed in accordance with all applicable local building codes and intended to be placed on a permanent foundation, meeting all local zoning codes and to be used by itself or incorporated with similar units, manufactured housing, mobile homes, or site-built buildings at a building site. A modular building can be used for residential or nonresidential uses when located in appropriate zoning districts and must meet the appropriate building standards for a traditionally-constructed building.

226. Mounting Height

The height of the photometric center of a luminaire above grade level.

227. Multi-Use Path

A multi-use trail or path at least 10 feet in width that is physically separated from motorized vehicular traffic by a parkway or open space and usable by pedestrians, bicyclists, wheelchair users, and other non-vehicular users. See **Sec. 38-2.M. Sidewalks and Multi-Use Paths**.

228. Municipal Separate Storm Sewer System (MS4)

The system of conveyances (including roads with drainage systems, municipal streets, flood control dams, retention and detention basins, grate and/or curb inlets, curbs, gutters, ditches, man-made channels, arroyos, agriculture drains, storm drains or designated flow paths) owned, operated or controlled by the city and designed or used for collecting or conveying stormwater.

229. National Historic Preservation Act (NHPA)

The National Historic Preservation Act, 54 U.S.C. 300101 et seq., was enacted "to establish a program for the preservation of additional historic properties throughout the Nation, and for other purposes."

230. National Register Criteria for Evaluation

The criteria listed in the Code of Federal Regulations, Title 36, Part 60 (36 CFR 60) used to evaluate districts, sites, buildings, structures, and objects that possess integrity of location, design, setting, materials, workmanship, feeling, and association, and:

(1) That are associated with events that have made a significant contribution to the broad patterns of American history; or

(2) That are associated with the lives of persons significant in American history; or

(3) That embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or

(4) That have yielded, or may be likely to yield, information important in prehistory or history.

231. National Register of Historic Places

The official list of the nation's places worthy of preservation; established under the National Historic Preservation Act of 1966, the register is administered by the National Park Service under the auspices of the Department of the Interior.

232. New Construction

For the purposes of determining insurance rates, structures for which the "start of construction" commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes "new construction" means structures for which the "start of construction" commenced on or after the effective date of a floodplain management regulation adopted by the City of Las Cruces and includes any subsequent improvements to such structures. (See "Start of Construction".)

233. New Mexico Historic Preservation Division (NMHPD)

A division within the Department of Cultural Affairs in the State of New Mexico authorized to identify and protect New Mexico's cultural resources, including its archaeological sites, architectural and engineering achievements, cultural landscapes, and diverse heritage.

234. No Disturbance Zone

Part of the designed foundation zone downslope of a retaining wall foundation. This zone develops the passive resistance to prevent the horizontal forces from the retained fill from moving the wall. Typically, this zone is a minimum width equivalent to the depth of the retained soil.

235. Nonconforming

See **Sec. 36-5.G. Nonconformities**.

236. Nonconforming 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 current codes. See **Sec. 38-10.L. Nonconforming Signs**.

237. Noncontributing Property

A building, object, site, or structure in a historic district that does not possess individual architectural, historical, or structural significance or integrity within the context of the historic district or cluster of cultural properties and as determined by SHPO.

238. Nonpoint Source

Any source of any discharge of a pollutant that does not originate from a single source or point.

239. Notice of Intent (NOI)

The document that must be filed with the U.S. Environmental Protection Agency as notice to the NPDES permitting authority of the operator's intent to be covered under either the industrial general permit or the construction general permit.

240. Notice of Termination (NOT)

The document that must be filed with the U.S. Environmental Protection Agency when a facility is ready to terminate its NOI.

241. NPDES

The Federal National Pollutant Discharge Elimination System. This national law is the basis for the City Stormwater Management Plan (SWMP).

242. NPDES Permit

A permit issued by U.S. Environmental Protection Agency (or by the state under authority delegated pursuant to 33 USCS Section 1342 (b)) that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

243. NRCS

Natural Resources Conservation Service (NRCS), formerly known as the Soil Conservation Service (SCS), is an agency of the United States Department of Agriculture (USDA) that provides technical assistance to agriculture and communities.

244. Nuisance

See Chapter 18 of the Las Cruces Municipal Code.

245. Official Submittal Date

The date on which the City considers an application to be completed and officially submitted in accordance with the Development Schedule.

246. Open Space

That area for active or passive recreation, natural preservation. Open space is generally undeveloped, but may include accessory uses such as picnic pavilions, restrooms, or parking areas.

247. Ordinary Repairs and Maintenance

Any work done on or replacement of any part of a building or structure for which a permit issued by the Building Official is not required. The purpose and effect of such work or replacement is generally to correct any deterioration or decay of or damage to such building or structure or any part thereof and to restore the same, as nearly as may be practicable, to its condition prior to the occurrence of such deterioration, decay, or damage.

248. Outdoor Lighting

Lighting located exterior to a structure or that illuminates areas exterior to a structure.

249. Outdoor Luminaire

Any lighting device located exterior to a structure or that illuminates areas exterior to a structure, whether permanently or temporarily installed. This includes, but is not limited to:

(1) Searchlight

(2) Spotlight

(3) Floodlight

(4) Security lighting

(5) Sign and architectural lighting

(6) Lighting for parks, parking lots, roadways

(7) Athletic facility lighting

(8) Building overhand and open canopy lighting

(9) Product display area lighting

(10) Landscape lighting

(11) Signs or billboards, whether on-premises or off-premises, including LED, plasma, and similar light sources

250. Outlot

A parcel of ground or tract of land within a platted subdivision to be used for purposes other than residential. An example of an outlot is a tract of land designated for open space or a retention pond.

251. Owner

The person or entity who owns a property, use, facility, or operation or their designated representative.

252. Owner Consent

The act or result of reaching consensus and agreement, through reason and deliberation, by the owner(s) of real estate when cultural property designation is proposed at the suggestion of another party.

253. Owner Objection (Cultural Property Designation)

The right of all owners of record to object to a proposed cultural property designation of its buildings, structures, objects, or other improvements and the parcel of land to which those improvements are firmly attached.

254. Owner Objection (Historic District Designation)

The right of an owner (or owners) of record to object to the inclusion of its real property within a proposed historic district, potentially resulting in a modification to the district's proposed boundaries.

255. Owner of Record

The person, corporation, or other legal entity identified as the property owner in the official records of the Doña Ana County Assessor's Office.

E. Terms Defined: P-S

256. Patio Home

A type of single-family residential development in which the main structure is placed directly along a side property line (i.e., the "zero-setback side"), while the other side observes the typical setback requirement. See **Sec. 36-4.B.4. Dimensional Standards for Patio Homes and Townhouses**.

257. Park, Neighborhood

Accessible, family-friendly destinations within the City that provide active and passive recreation opportunities within walking distance (1/4 mile walk-shed) of neighborhoods. Common amenities may include playground equipment, picnic areas, park benches, walking trails, open play areas, and occasionally, sports courts or athletic fields.

258. Parking Lot

An off-street, ground-level area improved for the temporary storage of motor vehicles.

259. Parkway

That area of a public street that is between the curb and sidewalk or between the sidewalk and the property line, which is used for planting and streetscaping purposes.

260. Partially Shielded Luminaire

A luminaire with an opaque top and translucent or perforated sides, designed to emit most light downward.

261. Particulate Matter

A mixture of solid particles and liquid droplets found in the air, including, but not limited to, dust, dirt, soot, and smoke.

262. Peak Hour

The highest consecutive four, 15-minute periods where traffic flow is heaviest on a particular road segment or intersection.

263. Pennant

A display made of a lightweight material that tapers to a point, having no logo or advertising message printed on it. See **Sec. 38-10.D. Prohibited Signs**.

264. Performance Security

A surety bond or other form of security made out to the City in an amount equal to the estimated full cost of the improvements, said cost being estimated by the Public Works Director, to ensure the City that the said improvements will be constructed in accordance with these regulations. See **Sec. 37-4.C. Installation and Acceptance of Public Improvements**.

265. Period of Significance

The finite span of time during which important events and activities associated with a specific cultural property or group of cultural properties occurred.

266. Person

Any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity, legal entity; or their legal representatives, agents, or assigns. This definition includes all federal, state, and local governmental entities.

267. Phasing

Clearing a parcel of land in distinct phases, with the stabilization of each phase before the clearing of the next.

268. Planned Unit Development

A development process whereby the intent is to promote design and development standard flexibility in cases where strict application of the zoning ordinance would inhibit the overall goals and objectives of the City. Also referred to as a "PUD". See **Sec. 36-5.D. Planned Unit Developments (PUDs)**.

269. Planning & Zoning Commission

The officially appointed Planning & Zoning Commission of the City. See **Sec. 34-2.B. Planning & Zoning Commission**.

270. Planning-Related Issues

Issues related to but not limited to lot configuration, street network, right-of-way requirements, land use, density, phasing of development, suitability of location, and other issues determined by the Community Development Director to be planning-related.

271. Plat

A map, chart, survey, or plan, certified by a land surveyor, that contains a description of subdivided plat or resubdivided replat land with ties to permanent survey monuments.

272. PM10

Particulate matter, both filterable and condensable, with an aerodynamic diameter less than or equal to a nominal ten micrometers.

273. Point Source

Any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leach ate collection system, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural stormwater runoff.

274. Pollutant

Dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical waste, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water. The term "pollutant" does not include tail water or runoff water from irrigation or rainwater runoff from cultivated or uncultivated range land, pasture land, and farm land.

275. Porch

A roofed patio entrance or exit area, open on at least one side.

276. Portable Sign

A freestanding sign not permanently affixed, anchored, or secured to the ground or a building, which may be rolled or moved about.

277. Preliminary Plat

The graphic expression of the proposed plan for subdividing, improving, and developing a tract shown by superimposing a scale drawing of the proposed land division on a topographic map and showing in plan view existing and proposed drainage features and facilities, street layout, and direction of curb flow, and other pertinent features with notations sufficient to substantially identify the general scope and detail of the proposed development. See **Sec. 37-3.B. Preliminary Plat**.

278. Preservation

The act or process of applying measures necessary to sustain the existing form, integrity, and materials of a cultural property, including any buildings, objects, and structures on the site.

279. Principal Arterial

Principal arterials provide high levels of mobility with limited or restricted access to abutting properties. Because mobility is the primary function of arterials, access control is highly desirable. Consolidated driveways and access between parking lots/parcels shall be required to reduce the frequency of decelerating/accelerating vehicles, reduce conflict points, and maintain efficient traffic, pedestrian, bicycle, and transit flow.

280. Professional Engineer

A person licensed by the New Mexico State Board of Licensure who is legally allowed to represent themself to the public as an engineer and is allowed to perform engineering design or construction of private and public works.

281. Progress Toward Completion

Includes any one or more of the following:

(1) An application for a Final Plat or plan for development is submitted;

(2) A good-faith attempt is made to file with the City or County an application for a permit necessary to begin or continue towards completion of the project;

(3) Costs have been incurred for developing the project, including, without limitation, costs associated with roadway, utility, and other infrastructure facilities designed to serve, in whole or in part, the project (but exclusive of land acquisition) in the aggregate amount of five percent of the most recent appraised market value of the real property on which the project is located;

(4) Fiscal security is posted with a regulatory agency to ensure the performance of an obligation required by the regulatory agency; or

(5) Utility connection fees for the project have been paid to a regulatory agency.

282. Prohibited Sign

Any sign not expressly permitted or any sign that is specifically prohibited in **Sec. 38-10.D. Prohibited Signs**.

283. Protected Tree

Any tree that is not exempted by **Sec. 38-6.C. Exempted Trees**. See **Sec. 38-6. Tree Preservation**.

284. 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's Office.

285. Public Area

Any bus bench, bus shelter, landscaped median, trail, park, or arroyo duly recognized by the City.

286. Public Works Director

The Director of the City's Public Works Department (or successor department charged with overseeing infrastructure planning, development, and maintenance in the City), as appointed by the City Manager. This term also includes the Director's designee(s).

287. PUD

See #268 Planned Unit Development.

288. Pull Box

A nonmetallic box of a size specified, installed underground at surface level, and used as a junction point for connecting conduit, and as a pull point for electrical circuits.

289. Queue

A line of waiting vehicles.

290. Reasonably Available Control Measures (RACM)

Techniques used to limit the emission and/or airborne transport of fugitive dust from its original site to accomplish satisfactory results for temporary and/or extended suppression of dust and PM10 emission(s).

291. Recharge

The replenishment of underground water reserves.

292. Reconstruction

The act or process of depicting, by means of new construction, the form, features, and detailing of a non-surviving site, landscape, building, structure, or object for the purpose of replicating its appearance at a specific period of time and in its historic location.

293. Record Drawings

A group of drawings or plans that depicts the final configuration of the installed or constructed improvements of a development, improvements that have been verified by the contractor as their installation or construction occurs during development. The Record Drawings shall reflect the Construction Plans (or working drawings) used, corrected, and/or clarified in the field.

294. Recreational Vehicle

A vehicle that is:

(1) Built on a single chassis;

(2) 400 square feet or less when measured at the largest horizontal projections;

(3) Designed to be self-propelled or permanently towable by a light-duty truck; and

(4) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

See #67 Recreational Vehicle Park in **Sec. 36-3.B. Use Classifications and Use-Based Standards**.

295. Register of Cultural Properties

The list maintained by City Staff for the City enumerating the physical addresses or locations of designated historically, architecturally, archaeologically, and culturally significant local buildings, structures, objects, and sites.

296. Registered Landscape Architect

An individual registered under the Landscape Architects Practice Act to practice landscape architecture in the state. Nothing contained in this definition shall be construed as authorizing a landscape architect to engage in the practice of architecture, engineering, or land surveying as defined by New Mexico Administrative Code, Title 16, Chapter 44, Landscape Architects.

297. Relative Photometry

Photometric measurements made of the lamp plus luminaire, and adjusted to allow for light loss due to reflection or absorption within the luminaire.

298. Release

Any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the MS4 or the waters of the United States or onto the ground in such a manner that a pollutant may be discharged into the MS4.

299. Relocation

Any repositioning of a building, structure, or object on its existing site, or the act of moving a building, structure, or object to another site.

300. Remodel

The process of altering existing structural components or architectural features and/or finishes of a resource or property; to reconfigure an existing resource or property in such a manner as to remove, cover, replace, or rearrange elements of defining character.

301. Repair

Any minor construction undertaken to remedy an existing condition that has deteriorated but otherwise is not defined as construction, alteration, demolition, remodeling, removal, or relocation.

302. Replat

A replat or resubdivision that makes changes to a previously approved Final Plat. See **Sec. 37-3.D.2. Replats**.

303. Residential

Residential dwellings as defined in the International Residential Code as adopted by the City of Las Cruces.

304. Retained Fill Depth (Grade Differential)

The fill depth retained by a retaining wall as measured by the soil surface elevation difference immediately adjacent to both sides of the wall.

305. Retaining Wall

A designed wall constructed of but not limited to brick, block, rock, concrete, MSE, or reinforced concrete to retain over 24 inches of soil or surcharge. Retaining walls must be designed to resist the sum of all specific forces with a predetermined safety factor.

306. Right-of-Way

Any land area deeded, reserved, or otherwise acquired by the city, the county, or the state for public use (e.g., roads, streets).

307. Roadway

That portion of the street available for vehicular traffic.

308. Roof

An overhead structure used for protection or shielding from the sun, rain, or other elements of weather.

309. Runoff Computation

Runoff computations for both the ten percent probability and one percent probability storm event shall be submitted with the proposed storm drainage plan. The most recent official federal (ACOE, FEMA, FIS, USDA, USGS, etc.) data and references must be used when analyzing flow that crosses any site.

310. Safety Factor

A reasonable engineering design factor increasing a force or load to cover unknown factors/forces that may impact it.

311. Sand

A granular material composed of finely divided mineral particles. Sand is defined by grain size; sand grains are smaller than gravel and coarser than silt.

312. Screening

The use of a wall, fence, thick shrubbery, or similar materials to minimize the potentially adverse impact of one land use on another. See **Sec. 38-8. Fencing, Screening, and Buffering**.

313. Seasonal Lighting

Temporary lighting installed and operated in connection with holidays or traditions.

314. Service Connection

The service connection is the terminal end of the municipal water supply system where the customer's water piping system is connected. The service connection for metered water services is attached at the customer's (downstream) side of the water meter. The service connection for the use of a fire hydrant and all other temporary or emergency water services is located at the point of entry to the municipal water supply system.

315. Setback

The minimum distance by which any building or structure must be separated from a street right-of-way or lot line.

316. Shared Use Path

Shared use paths, also commonly referred to as trails or greenways, are paths designed for and generally used by bicyclists, pedestrians, and other non-motorized users.

317. Shielded Directional Luminaire

A luminaire that includes an adjustable mounting device allowing aiming in any direction and contains a shield, louver, or baffle to reduce direct view of the lamp.

318. Sidewalk

A pedestrian walkway with permanently improved surfacing. See **Sec. 38-2.M. Sidewalks and Multi-Use Paths**.

319. Sign

Any structure or object or part thereof used to advertise, identify, display, or attract attention to an object, person, institution, organization, business, product, service, event, or location by any means, including words, letters, figures, designs, symbols, fixtures, colors, illumination or projected images.

320. Significant Cultural Property

Buildings, objects, sites, or structures of the highest and most unique historical, cultural, architectural, or archaeological importance whose demolition, destruction, or otherwise loss or adverse damage would constitute an irreplaceable loss to a community. Such properties should be identified by the State Historic Preservation Office or registry.

321. Silt

A granular material of a size between sand and clay and composed primarily of broken grains of quartz. Silt may occur as a soil or as sediment mixed in suspension with water.

322. Site

The land or water area where any facility or activity is physically located or conducted, including land used in connection with the facility or activity, such as borrow pits and storage areas, and may include land adjacent to the site when utilized by the operator.

323. Site-Built

A structure that is constructed from materials brought to the site and modified for assembly. Some materials may be assembled off-site but must be assembled on-site to make a complete structure. This does not include a manufactured home, mobile home, or recreational vehicle.

324. Site Plan

A required plan intended to promote the efficient use of land, safe vehicular and pedestrian circulation, appropriate provision of open space, parking, screening, lighting, and other developmental elements. See **Sec. 36-5.B. Site Plans**.

325. Sketch Plan

A high-level conceptual sketch used to facilitate discussion during a Pre-Application Meeting. See **Sec. 34-3.B.3. Sketch Plan**.

326. Slope

The steepness or degree of inclination of a certain area of land. It can be the steepness between two specific points in a given area, the average of the gradual change in steepness, or an erratic variation in the elevation of the ground.

327. Slope Protection

A stable surface added to a slope to provide erosion protection. Slope protection may include grouted rock, concrete facing, gabions, geotextiles, or vegetation.

328. Solid Waste

Any garbage, rubbish, refuse, or sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations, from community and institutional activities, and material from transportation-related activities.

Also, solid waste resulting from or incidental to municipal, community, commercial, institutional, or recreational activities, and includes garbage, rubbish, ashes, street cleanings, compost, yard waste, dead animals, abandoned automobiles, and other solid waste other than industrial waste.

329. Special Use Permit

A Special Use Permit (SUP) is a type of zoning designation that allows certain uses in designated locations subject to additional review and possible conditions to protect public health, safety, and welfare. Uses that require an SUP are indicated as such in **Sec. 36-3.A.1. Permitted Use Chart**. See **Sec. 36-5.C. Special Use Permits (SUPs)**.

330. Specification

An explicit set of requirements to be satisfied by a material, product, or service.

331. Spot Lamp

A specific form of lamp designed to direct its output in a specific direction (a beam) with a reflector formed from the glass envelope of the lamp itself, and with a clear or nearly clear glass envelope. Such lamps are so designated by the manufacturers, and typically used in residential outdoor area lighting.

332. Start of Construction

For other than new construction or substantial improvements under the Coastal Barrier Resources Act (PL 97-348), includes substantial improvement and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, 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 portion of a structure on a site, such as the pouring of 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 basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory structures, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not the alteration affects the external dimensions of the building.

333. State Historic Preservation Officer (SHPO)

The director of the New Mexico Historic Preservation Division, appointed by the Governor, who manages the State's Historic Preservation Plan and coordinates historic preservation activities at all levels of government in the State and with individuals, private organizations, and traditional communities.

334. State Register of Cultural Properties

The official list of historic properties worthy of designation in New Mexico; authorized in 1969 and administered by the New Mexico Historic Preservation Division, the register is periodically updated by the Cultural Properties Review Committee.

335. Stealth Tower

A tower that is camouflaged to be unrecognizable as a telecommunications facility, including architecturally screened roof-mounted antennas, building-mounted antennas painted to match the existing structures, antennas integrated into architectural elements such as church spires or window walls, and antenna structures designed to resemble light poles, flagpoles, or trees.

336. Stop Work Order

A written order issued by the Building Official to a property owner or the person performing the work to immediately cease all activity on any building, structure, object, or site.

337. Stormwater

Precipitation runoff, snow melt runoff, and surface runoff and drainage.

338. Stormwater Discharge Associated with Industrial Activity

The discharge from any conveyance that is used for collecting and conveying stormwater and which is directly related to manufacturing, processing, or raw materials storage areas at an industrial plant that is within one of the categories of facilities listed in 40 CFR Section 122.26 (b) (14), and which is not excluded from the U.S. Environmental Protection Agency's definition of the same term.

339. Stormwater Management

The use of structural or non-structural practices that are designed to reduce stormwater runoff pollutant loads, discharge volumes, and peak flow discharge rates.

340. Stormwater Pollution Prevention Plan (SWPPP)

An engineered plan to combat potential pollutant sources at a construction site by presenting appropriate measures to prevent or control the pollution of stormwater runoff. It is based on the National Pollutant Discharge Elimination System (NPDES) laws and regulations. Minimum compliance with the SWPPP plan will identify and place best management practices (BMPs) and control measures that are locally available and have been proven successful in the area.

341. Story

The same as defined in Chapter 30 of the Las Cruces Municipal Code.

342. Streamers

A display made of light, flexible material, consisting of long, narrow, wavy strips. See **Sec. 38-10.D. Prohibited Signs**.

343. Street

A public way that has been dedicated or reserved by plat, other than an alley, which affords the principal means of access to abutting property.

344. Street Light Circuits

An underground facility consisting of street light foundations, 1-½ inch connecting conduit, pull boxes, stub-outs, and junction points for electrical service.

345. Street Line

The outermost boundary or property line of a street right-of-way that is the mutual property line of abutting properties.

346. Street Trees

Trees planted along streets for beautification and benefit of the general public. See **Sec. 38-7.D.1. Parkway & Street Trees**.

347. Street, Private

A private roadway that affords the traffic circulation within a development or parcel of land and gives access to uses and structures.

348. Street, Public

A public thoroughfare for the principal means of access to abutting property.

349. Structural Integrity

An unimpaired condition relating to the functional stability of major building components in relationship to their original or altered function; a measure of the quality of construction and the ability of the structure to function as designed or intended; and the quality or state of being complete or uncompromised.

350. Structural Requirements

The safety standards that apply to those signs governed by the requirements in the building code and other companion documents.

351. Structure

Anything constructed or erected with a fixed location on the ground or attached to something having a fixed location on the ground (e.g., buildings, parking areas, walks, fences, canopies, and signs).

352. Subdivider

An owner or an owner's agent who undertakes the subdivision of land as set forth in the respective regulations.

353. Subdivision

The division of land into two or more parts by platting or by metes and bounds description into tracts or lots for any purpose.

354. Substantial Completion

The stage in the progress of construction when the improvements are sufficiently complete to issue a Building Permit (but not a Certificate of Occupancy) prior to the filing of the Final Plat. Substantial Completion may only occur when there is only minor work remaining. See **Sec. 37-4.D. Substantial Completion**.

355. Substantial Damage

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

356. Substantial Improvement

Any repair, reconstruction, or 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. (See #332 Start of Construction.) This includes structures that have incurred "substantial damage", regardless of the actual repair work performed (see #355 Substantial Damage). The term does not, however, include either:

(1) Any project for improvement of a structure to correct existing violations of federal, state, or local health, sanitary, or safety code specifications that have been identified by the Code Enforcement Officer 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."

357. SUP

See #329 Special Use Permit.

358. Survey

A systematic gathering of information related to the architectural, historic, scenic, and/or archaeological significance of buildings, structures, objects, and/or landscape features within a specified geographic area through an assessment of field and archival documentation for the purpose of identifying properties that may be designated as cultural properties or historic districts.

359. Surveyor

A person who is engaged in the practice of surveying and is qualified to so practice as attested by their legal registration as a professional surveyor in the state.

F. Terms Defined: T-Z

360. Taper Length

The measured length to transition from a travel lane into an adjacent auxiliary lane (i.e., left turn bay, deceleration lane, etc.).

361. Technical Manual

The technical manual(s) developed and maintained by the City containing detailed technical standards and requirements. See **Sec. 34-1.F. Technical Manual and Other Technical Resources**.

362. Temporary Lighting

Lighting installed and operated for periods not to exceed 60 days, completely removed and not operated again for at least 30 days.

363. Temporary Sign

A type of sign intended for a limited period of display. See **Sec. 38-10.G. Sign Types and Supplemental Standards**.

364. Total Initial Lumens

The sum of the individual initial lumens output for all the luminaires of an installation. For example, six luminaires with 10,000 initial lumens output per luminaire would equal 60,000 total initial lumens.

365. Tract

A portion of land with defined boundaries created by a deed or other legal instrument.

366. Traditional Cultural Property

A cultural property where associated cultural practices or beliefs of a living community occur that are both rooted in a community's history and important in maintaining the continuing identity of the community.

367. Trail

A way designed for and used by pedestrians and/or cyclists using nonmotorized bicycles for recreational or transportation purposes.

368. Traffic Calming Device

Any modification designed to reduce the speed of traffic on a particular street.

369. Traffic Calming Study

An appraisal of existing traffic conditions and the development of a plan for implementing one or more traffic calming devices in a residential neighborhood.

370. Traffic Control Device

A sign, signal, marking, or other device used to regulate, warn, or guide traffic placed on, over, or adjacent to a street, highway, pedestrian facility, or shared-use path by authority of a public agency having jurisdiction.

371. Traffic Count

A manual or automated count of the number of vehicles traversing a particular street in a given time period.

372. Traffic Impact Analysis

An analysis that assesses the effects of specific development activity on the existing and planned thoroughfare system of the City. Abbreviated “TIA”. See **Sec. 38-2.G. Traffic Impact Analysis**.

373. Translucent

A material allowing light to pass through but obscures or diffuses the image (not transparent or clear).

374. Uncontaminated

Not containing a harmful quantity of any pollutant.

375. Undisturbed

Land or property which is in its natural condition and has not been stripped or graded. An exception would be if the property has been revegetated and the soil and vegetative groundcover is now mature.

376. Unpaved Road

A road that is not paved with a formal hardened surfacing but instead has a running surface of either crushed gravel or native soil. Such roads are typically for low use and slow traffic. Their ability to produce dust from traffic is well known.

377. Unshielded Luminaire

A luminaire that does not meet the definition of "fully shielded" or "partially shielded."

378. Uplight

For or an exterior luminaire, flux radiated in the hemisphere at or above the horizontal plane.

379. Usable Open Space

Open space within a lot, tract, parcel, or development site, excluding areas devoted to roadways and parking.

380. Utilities Director

The Director of the City’s Utilities Department, as appointed by the City Manager. This term also includes the Director’s designee(s).

381. Utility Easement

A grant of a strip or area of land by the property owner, or general public, for the specific purpose of locating or maintaining utility systems.

382. Vacation

To void a portion of a previously filed subdivision plat application or to void the filed plat in its entirety.

383. Vehicular Sign

A sign attached to, mounted on, or otherwise affixed to any vehicle, whether motorized or drawn, that is placed, parked, or maintained at one particular location for the express purpose and intent of promotion or conveying an advertising message. This description includes but is not limited to mobile billboards and banner signage on parked vehicles. This description does not include bumper stickers, magnetic signage smaller than four square feet, painted messages, or decals.

384. Violation

The failure of a structure, site, site feature, or other element regulated by the Development Code to meet the required standards. See **Sec. 34-1.H. Violations and Enforcement**.

385. Wall

An artificially constructed barrier of solid material such as brick, block, rock, concrete (or reinforced concrete), used to enclose or screen an area.

386. Water Conservation

The preservation, control, and management of water. See the City's Water Conservation Program for more information.

387. Water in the State (or Water)

Any groundwater, percolating or otherwise, lakes, ponds, impounding reservoirs, springs, rivers, canals, streams, inside the territorial limits of the state, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or non-navigable, and including the beds and banks of all watercourses and bodies of surface water, that are wholly or partially inside or bordering the state or inside the jurisdiction of the state. This includes dry washes, gullies, arroyos, and other ephemeral streams.

388. Water Quality Standard

Provisions of the state, territorial, authorized tribal, or federal law approved by the U.S. Environmental Protection Agency that describe the desired condition of a water body, including groundwater, and the means by which that condition will be protected or achieved.

389. Water Surface Elevation

The height, in relation to the North American Vertical Datum (NAVD) of 1988 or (other datum, where specified), of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

390. Watercourse

A permanent or intermittent stream or other body of water, either natural or human-made, which gathers or carries surface water.

391. Waters of the United States

All waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters that are subject to the ebb and flow of the tide; all interstate waters, including interstate wetlands; all other waters the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce; all impoundments of waters otherwise defined as waters of the United States under this definition; all tributaries of waters identified in this definition; all wetlands adjacent to waters identified in this definition; and any waters within the federal definition of "waters of the United States," at 40 CFR Section 122.2, including the Rio Grande River, dry washes, arroyos, but not including any waste treatment systems, treatment ponds, or lagoons designed to meet the requirements of the federal Clean Water Act.

392. Well-Drained Soil

A mixture of sand and rock with only minor amounts of silt and no clay component. Well-drained soil allows water to drain at a moderate rate without water pooling.

393. Wetland

An area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetland generally includes swamps, marshes, bogs, playas, and similar areas.

394. Wind Erosion Control Plan (WECP)

A document used to list control measures to be used for the activities being undertaken to prevent fugitive dust or windblown particulate matter and mitigate the escape of these materials beyond the property lines(s) of the originating site(s).

395. Wind Speed

The average wind velocity, regardless of direction, based on a 60-minute average from the nearest weather report or PM10 monitoring station, or by a portable wind instrument located at the site.

396. Yard

The space on a lot unobstructed by buildings from the ground to the sky, including sidewalks, driveways, patios, and other ground-level surfaces.

397. Yard, Required Front

The required yard between the designated front property line and the front setback line.

398. Yard, Required Rear

The required yard between the designated rear property line and the rear setback line.

399. Yard, Required Side

The required yard between the designated side property line and the side, front, and rear setback lines.

400. Zoning District

Any zone of the City designated on the Zoning Map within which certain zoning and land use requirements are specified and are uniform. See **Sec. 36-2. Zoning Districts**.

401. Zoning Map

A map that graphically shows all zoning district boundaries and classifications within the City. The Zoning Map is maintained by the Community Development Department. May also be referred to as Zoning District Map, Official Zoning Map, or Zoning Atlas. See **Sec. 36-2.A.2. Zoning Map**.

402. Zoning Variance

A mechanism to provide relief from the requirements of **Chapter 36. Zoning Regulations** based on a hardship. See NMSA 3-21-8 and **Sec. 36-5.F. Zoning Variances**.

Chapter 35. Historic Preservation

Sec. 35-1. General Information

A. Short Title

This chapter shall be known and may be cited as "The City of Las Cruces Historic Preservation District and Landmark Ordinance" and may be referred to as "the Historic Preservation Ordinance."

B. Declaration of Policy and Intent

The City of Las Cruces ("City") declares as a matter of public policy that the protection, preservation, maintenance, care, and use of cultural properties is a public necessity conducive to the general welfare of the people and beneficial to the furtherance of the community's economic prosperity and quality of life. The purposes of this article include, but are not limited to:

1. The promotion, protection, and use of the City's historic building inventory for the education, pleasure, and welfare of residents and visitors;
2. The protection, enhancement, and perpetuation of cultural properties that represent or reflect distinctive and important aspects and eras of human habitation and activity in Las Cruces;
3. The evaluation, recognition, preservation, protection, enhancement, restoration, and promotion of architectural landmarks, cultural properties, and cultural landscapes significant to the City's, region's, state's, and nation's architectural, archaeological, cultural, social, economic, ethnic, and political history, and to develop, enhance, and protect appropriate settings for such places;
4. The enhancement and fostering of civic pride in the aesthetics and history of the built environment and in the accomplishments of earlier inhabitants in the area that became Las Cruces;
5. The integration of historic preservation planning into the City's Comprehensive Plan;
6. The stabilization and improvement of property values as a positive economic development objective that recognizes and protects the rights of owners of historic properties and owners of properties adjacent to landmarks and historic districts;
7. The strengthening of the City's economy through heritage and cultural tourism and real estate for the benefit of residents and tourists through promotion and use of historic buildings and cultural properties; and
8. The avoidance of the irreversible and irreplaceable loss through demolition or neglect of cultural properties that convey a sense of the City's heritage, cultural diversity, and history by encouraging the conservation, through sympathetic rehabilitation and reuse, of historically or architecturally significant properties.

C. Authority and Jurisdiction

This chapter is created pursuant to the authority set forth in NMSA 1978, Sections 3-22-1 et seq. (as amended), the Historic District and Landmark Act, and NMSA 1978, Sections 18-6A-1 et seq. (as amended), the Cultural Properties Protection Act.

D. Administration of the Historic Preservation Program

The Community Development Director is responsible for administering these regulations. Within this **Chapter 35. Historic Preservation**, this term may also include another historic preservation professional designated by the City Manager who meets the requirements of NMSA 4.10.10.12.

E. Alterations or Demolition without a Certificate of Appropriateness

1. It is unlawful to construct, reconstruct, structurally alter, remodel, renovate, restore, demolish, or raze any cultural property in violation of this chapter.
2. In addition to any remedies, a person, corporation, or entity, including the City, is liable to the City if the person demolishes, or causes to be demolished, or otherwise adversely affects the structural, physical, or visual integrity of a cultural property without first obtaining a permit from the Community Development Department and a Certificate of Appropriateness as required in this chapter.
3. Such violations shall be subject to the provisions of **Sec. 34-1.H. Violations and Enforcement**.

F. Appeals

1. A historic preservation decision by the Community Development Director may be appealed to the Historic Preservation Committee.
2. A historic preservation decision by the Historic Preservation Committee may be appealed to the Planning & Zoning Commission.

Sec. 35-2. Historic Preservation Committee

A. Historic Preservation Committee

The Historic Preservation Committee is established by Chapter 2 of the City's Code of Ordinances (Article IV, Division 3, Subdivision XVI).

B. Duties and Responsibilities of the Historic Preservation Committee

The Committee shall exercise, but not be exclusively limited by, the following duties and responsibilities according to its bylaws:

1. Request input from the Community Development Director regarding surveys within the city limits of the City of Las Cruces to identify properties, neighborhoods, archaeological sites, and buildings for evaluation and potential designation as cultural resources.
2. Recommend to the Mayor and City Council properties to be designated and entered in the City, State, or Federal Register of Cultural Properties.
3. Review and render decisions on Certificates of Appropriateness during open, public meetings.
4. Recommend to the Mayor and City Council the adoption of design guidelines to ensure proper restoration and rehabilitation practices for historic building inventory; to ensure architectural and aesthetic compatibility within historic districts and in proximity to cultural properties; and to guide infill development to achieve comparable aesthetics and massing with existing, neighboring buildings, objects, structures, and sites.
5. Assist in the dissemination of information to the public concerning historic preservation and seek input from groups, individuals, and organizations on these matters.
6. Consider methods for encouraging and incentivizing historic preservation efforts and provide recommendations to these ends to the Mayor and City Council.
7. Advise the Mayor and City Council on any proposed public alterations that may impact the exterior appearance of cultural properties to avoid any potential adverse effects.
8. Consider alternative options and actions when reviewing applications seeking the demolition in part or in whole of designated cultural properties.

9. Advise the Mayor and City Council on the relative merits of proposals involving the use of public funds to restore, preserve, and protect cultural properties, and to secure state, federal, and/or other grants or assistance in support of such projects, and to monitor and comment on such projects during their duration.
10. Seek any benefits that may be granted under the National Historic Preservation Act, as amended, or any other state or federal legislation, including, but not limited to, the benefits that are received from communities under the Certified Local Government (CLG) program with regard to training, grant funding, and technical assistance.
11. Prepare an annual report to be presented to the Mayor and City Council of the Committee's activities and the effects of the historic preservation program on the economic development and general welfare of the City and its residents.

C. Surveys and Inventories

1. The Community Development Director shall conduct surveys and inventories to identify neighborhoods, areas, sites, buildings, structures, and objects in the City of Las Cruces that possess historic, community, architectural, aesthetic, cultural, archaeological, or traditional importance, interest, or value related to the development of the community.
2. As part of the survey, the Community Development Director shall review and evaluate prior surveys and studies by any government entity or private organization, and recommend the compilation of appropriate research findings, including descriptions, newspapers accounts, land-use records, maps, deeds, photographs, and/or other useful sources.
3. The Committee will provide input regarding the City's efforts in identifying potential cultural properties and historic districts, and apply procedures to nominate those potential cultural properties and historic districts that are at least 50 years of age based on the following criteria:
   a) The potential cultural properties are situated in a single, identifiable neighborhood or distinct geographical area of the community; or
   b) The potential cultural properties are associated with a particular person, event, and/or era of the community's past; or
   c) The potential cultural properties are of a particular architectural style, school, or building technique; or of a particular architect, engineer, builder, designer, craftsman, or artisan; or
   d) Such other criteria as may be adopted by the Committee to assure systematic surveys and inventories of potential cultural properties and historic districts within the municipal boundaries.
4. The Community Development Director shall apply eligibility criteria to potential cultural properties and historic districts and provide recommendations to the Committee to nominate such properties as procedurally outlined in this article for inclusion in the City's Register of Cultural Properties.

D. Cultural Property Designation

1. Standards for the Designation of a Cultural Property or Cultural Properties

   Upon the successful evaluation of eligibility criteria to base a recommendation for designation, the Committee shall recommend to the City Council a justification for a property's inclusion in the City's Register of Cultural Properties contingent upon that property meeting all of the following requirements:

   a) Located within the corporate boundaries of the City; and
   b) At least 50 years old, in whole or in part, or else of exceptional significance; and
   c) Possesses integrity of design, materials, workmanship, setting, location, feeling, and association, as defined for listing in the National Register of Historic Places; and

d) Embodies such other qualities and characteristics as in the judgment of the Committee should be considered for designation as a cultural property; and

e) Possesses one or more of the following demonstrations of significance:

i) A broad cultural, political, economic, or social association with the historic development of the community, the state, or the nation; and/or

ii) Identification with a historic person or with important events in local, state, and/or national history; and/or

iii) Possesses distinguishing characteristics of an architectural type inherently valuable for the study of a period, style, method of construction, or use of indigenous materials or craftsmanship; and/or

iv) Possesses authenticity of its period of significance as evidenced by the survival of its characteristics, historic fabric, and architectural elements from that period; and/or

v) Is a notable work of a master builder, designer, or architect; and/or

vi) Possesses or may likely yield information important in prehistory or history; and/or

vii) An improvement embodying all or part of the above characteristics which is subject to encroachment of detrimental influences or potential adverse effects; and/or

viii) An improvement of historical, architectural, or cultural significance that is threatened with demolition by public or private action; and/or

ix) Possesses other qualities and characteristics that, in the judgment of the Committee should be considered for designation as a cultural property.

2. Procedure for the Designation of a Cultural Property

Any nomination application for a proposed cultural property shall be subject to the following review process:

a) Pre-Application Meeting

Prior to submitting an application for cultural property designation, an applicant shall meet with the Community Development Director to review the nomination proposal. The Director shall explain to the applicant the procedure and standards to nominate a property for designation, and include the historic context and any known architectural, cultural, or archaeological significance associated with the property. Additionally, when the applicant is not the owner of record, the Director shall encourage the applicant to contact the owner(s) of record prior to proceeding with the application process to secure the owner(s)'s consent.

b) Applicant Eligibility

Nominations for cultural property designation may be made by any property owner(s) of record; a contract purchaser of a nominated property; an individual, a group, or an association; or the Historic Preservation Committee.

c) Property Eligibility

Any building, structure, object, or site that meets the criteria outlined in **1. Standards for the Designation of a Cultural Property or Cultural Properties** is eligible for consideration to be nominated for designation.

d) Owner Consent

In every case, the owner(s) of record must provide written approval of the application. If the applicant is not the owner of record, owner consent must be received before moving forward with the cultural property designation nomination process.

e) Application

Upon the applicant's request, the Community Development Director shall provide a Historic Cultural Properties Inventory (HCPI) Form. The applicant shall complete the form, which shall include, among other information, a

legal description of the building, structure, object, or site. At the applicant's request, the Director may assist with the completion of the designation form.

f) Filing

Upon the applicant's delivery of the completed Historic Cultural Properties Inventory (HCPI) Form, the Community Development Director shall review the application within ten business days of its filing, and notify the applicant in writing of any deficiencies that must be corrected and/or clarified prior to the scheduling of a public meeting. Failure of the applicant to provide amended information within 15 business days of the notice of deficiencies will result in an automatic withdrawal of the application.

g) Notice

Within five business days of the filing of an application, whether or not deemed complete, the Community Development Director shall notify in writing the owner(s) of record of the proposed designation nomination, except in the cases when the applicant is the owner of record, or the owner of record previously provided consent in writing to the Director.

h) Schedule a Public Meeting

Upon receipt of a completed Historic Cultural Properties Inventory (HCPI) Form, the Community Development Director shall schedule a public meeting for the next regularly scheduled meeting of the Historic Preservation Committee in accordance with the Open Meetings Act (NMSA 1978, Section 10-15-1 et seq.).

i) Notice of Public Meeting

Notice of the public meeting shall be published on the City of Las Cruces webpage and in a newspaper of general circulation within the City not less than 15 calendar days in advance of the date of the meeting. The notice shall identify the applicant, property owner(s) of record, legal description of the property, and common address of the property.

j) Mailing

Not less than 15 calendar days prior to the public meeting, the Community Development Director shall mail a written notice to the owner(s) of record of the subject property and the owner(s) of record of all properties within 500 feet. Written notice shall include the date, time, and location of the scheduled public meeting and information regarding access to a digital or written copy of the completed application of the Historic Cultural Properties Inventory (HCPI) Form.

k) Public Meeting Sign

The applicant shall place one sign per frontage upon the public right-of-way adjacent to the property that is the subject of the public meeting at least 15 calendar days in advance of the date of the public meeting .

l) Eligibility Report

Prior to the public meeting on the application for a cultural property nomination, the Community Development Director shall conduct an analysis of the property proposed for designation and prepare a report containing preliminary findings on the historic, cultural, architectural and aesthetic significance of the property. The analysis shall be provided in writing to the Committee and made available to the public in advance of the public meeting.

m) Public Meeting

Applicants shall meet with the Committee and the Community Development Director at a public meeting for a formal recommendation by the Committee regarding the proposed project. The Committee shall conduct the public meeting and a record of such proceedings shall be preserved in such a manner as prescribed by the City of Las Cruces.

n) Withdrawal of Application

An applicant may, at any time during the nomination process, withdraw an application for cultural property designation by providing notice, in writing, to the Community Development Director.

o) Historic Preservation Committee Action

i) At the public meeting, the Committee shall take statements presented by the owner(s) of record of the subject property, as well as statements, either oral or written, from any interested parties concerning the eligibility and/or effect of the potential designation on the proposed cultural property.

ii) The Committee may invite and consider testimony to evaluate information provided either during the nomination process or during the public meeting. A public meeting may be postponed indefinitely or postponed to a date specific in the event that the Committee determines that additional information, unavailable at the public meeting, is warranted and necessary for the purpose of making a finding of fact or to provide time to evaluate fully new evidence presented at the public meeting.

iii) If the Committee fails to act within 45 calendar days of the final adjournment of a public meeting for the designation of a cultural property, the Committee shall be deemed to have recommended denial. Otherwise, upon approval of the cultural property designation application, the Community Development Director or the Committee shall draft a Cultural Property Designation Report for City Council action. Said report shall include a map of the subject property, current and historical photographs, history of the property, plans and drawings (if available and if applicable), and a determination on the eligibility criteria.

p) City Council Action

i) Upon considering the Committee's finding of fact regarding a nomination, the City Council shall grant or deny the Cultural Property Designation Report and application for cultural property designation with a simple majority or greater vote.

ii) Upon designation as a cultural property by the City Council, a notice of the designation will be sent by the Community Development Director to the applicant and/or owner(s) of record of the building, structure, object, or site. The applicant and/or owner(s) of record shall be responsible for providing a copy of the resolution effectuating the designation to the Doña Ana County Clerk’s Office. A copy of the recorded resolution shall be returned to the Community Development Department within 60 calendar days of City Council approval of a cultural property designation. When designated as a cultural property, the property shall be included in the City of Las Cruces Register of Cultural Properties and shall be identified on the City's Geographic Information Systems (GIS) mapping layers with the appropriate shorthand designation as a cultural property.

q) Suspension of Work

During the period beginning with the filing of an application for cultural property designation and ending with the final action of the City Council granting or denying said application, no exterior architectural feature of any building, structure, object, or site that is the subject of an application for cultural property designation may undergo alteration, construction, demolition, or removal if such alteration, construction, demolition, or removal would be subject to a building permit issued after the filing of a cultural property application. Nothing in this subsection shall operate to bar ordinary repair and maintenance or any work that is necessary to prevent or correct an imminently dangerous or hazardous condition.

r) Re-Application Following Denial or Withdrawal of an Application

In the event that an application for cultural property designation is denied by the Committee and/or City Council or the application is withdrawn by the applicant, no subsequent application for cultural property designation of the same building, structure, object, or site shall be made within 12 months of the date of the denial. If the applicant withdraws the application prior to review by the Committee, a subsequent application may be submitted at any time.

s) Amendments

Any property owner of record; a contract purchaser of a nominated property; individual or group of City residents; association with members who are City residents; or the Historic Preservation Committee may request that the designation of a cultural property be amended by the same procedures and according to the same criteria set forth herein for designation. An amended application relating to the same property may be entertained by the Committee at any time following City Council action designating any building, structure, object, or site as a cultural property. Minor, material amendments, excluding boundary amendments, may be completed administratively without a public meeting.

t) Rescinding of Designation

Any property owner of record; a contract purchaser of a nominated property; individual or group of City residents; association with members who are City residents; or the Historic Preservation Committee, on its own initiative and with prior consent of the City Council, may request that the designation of a cultural property be rescinded by the same procedures and according to the same criteria set forth herein for designation. The City Council may rescind cultural property designation of any designated property provided that the vote to rescind the designation is not less than a two-thirds vote of the councilors holding office.

E. Historic District Designation

1. Standards for Designation of Historic Districts

The Historic Preservation Committee shall not recommend, nor the City Council grant, a designation of a historic district unless each body makes findings based upon the evidence presented to it in each specific case, and that the proposed historic district meets all of the following requirements:

a) Located within the corporate boundaries of the City; and

b) Includes one or more cultural properties along with such other buildings, structures, objects, or sites which, while not of such historical significance to be designated as individual cultural properties, nevertheless contribute to the overall visual characteristics that have been identified as significant within the proposed historic district; and

c) At least 50 years old, in whole or in part, or else of exceptional significance; and

d) Possesses integrity of design, materials, workmanship, setting, location, feeling, and association, as defined for listing in the National Register of Historic Places; and

e) Establishes a sense of time and place; and

f) Includes potentially eligible cultural properties that possess one or more of the following demonstrations of significance:

i) A broad cultural, political, economic, or social association with the historic development of the community, the state, or the nation; and/or

ii) Identification with a historic person or persons or with important events in local, state, and/or national history; and/or

iii) Possess distinguishing characteristics of an architectural type inherently valuable for the study of a period, style, method of construction, or use of local materials or craftsmanship; and/or

iv) Possess authenticity of its period of significance as evidenced by the survival of its characteristics, historic fabric, and architectural elements from that period; and/or

v) Represent a notable work of a master builder, designer, or architect; and/or

vi) Possess or may likely yield information important in prehistory or history; and/or

vii) Possess architectural or land-use characteristics that are repeated throughout the area in a manner which distinguishes the proposed historic district from the rest of the City; and/or

viii) An area embodying all or part of the above characteristics that is subject to encroachment of detrimental influences and potential adverse effects; and/or

ix) An area of historical, architectural, or cultural significance that is threatened with demolition by public or private action; and/or

x) An area with other qualities and characteristics that, in the judgment of the Committee, should be considered for designation as a historic district.

2. Procedure for the Designation of a Historic District

Any nomination application for a proposed historic district shall be subject to the following review process:

a) Pre-Application Meeting

Prior to submitting an application for historic district designation, an applicant shall meet with the Community Development Director to review the nomination proposal. The Director shall explain to the applicant the procedure and standards to nominate an area for designation, and include any known architectural, cultural, or archaeological significance associated with the area. Additionally, the Director shall require the applicant to secure support for the proposed historic district nomination in the form of petition signatures of at least 20 percent of the owners of record within the boundaries of the proposed historic district.

b) Applicant Eligibility

Nominations for historic district designation may be made by any property owner(s) of record; a contract purchaser of a nominated property; an individual or group of City residents; an association with members who are City residents; or the Historic Preservation Committee.

c) Owner Consent

Consent must be attained from at least 20 percent of the owners of record within the boundaries of the proposed historic district, and this support among property owners shall be achieved in the form of gathering signatures on a petition.

d) Application

Upon the applicant's request, the Community Development Director shall provide a Historic Cultural Properties Inventory (HCPI) Form, which shall be completed and contain all of the following information:

i) A map delineating the boundaries of the area proposed for designation;

ii) A written statement setting forth the character of the area and justification for designation of the proposed area;

iii) Drawings or photographs of significant buildings, structures, sites, or objects within the boundaries of the proposed area;

iv) Descriptions of the historic condition and use, existing condition and use, and approximated or exact age of each property within the boundaries of the proposed district; and

v) Such other information as prescribed by the Historic Preservation Committee.

e) Filing

Upon the applicant's delivery of the completed Historic Cultural Properties Inventory (HCPI) Form, the Community Development Director shall review the application within 30 business days of its filing, and notify the applicant in writing of any deficiencies that must be corrected and/or clarified prior to the scheduling of a public meeting. Failure of the applicant to provide amended information within 45 business days of the notice of deficiencies will result in an automatic withdrawal of the application.

f) Notice

Within 15 business days of the filing of an application, whether or not deemed complete, the Community Development Director shall notify, in writing and delivered by certified mail with return receipt, the owners of record within the boundaries of the proposed designation nomination. Said notification shall identify the boundaries of the proposed district and provide a date, time, and location for a public, informational meeting to be convened by the Director not more than 30 business days from the date of the filing of an application.

g) Schedule a Public Meeting

Upon receipt of a completed Historic Cultural Properties Inventory (HCPI) Form, the Community Development Director shall schedule a public meeting for the next regularly scheduled meeting of the Historic Preservation Committee in accordance with the City's notification requirements for public meetings.

h) Notice of Public Meeting

Notice of the public meeting shall be published on the City of Las Cruces webpage and in a newspaper of general circulation within the City not less than 15 calendar days in advance of the date of the meeting. The notice shall identify the legal description of the proposed boundaries, the name of the subdivision(s) (if applicable), and a general description of the area bounded by the proposed historic district.

i) Mailing

Not less than 15 calendar days prior to the public meeting, the Community Development Director shall mail a written notice to the owners of record of all properties within the boundaries of the proposed historic district. Written notice shall include the date, time, and location of the scheduled public meeting and information regarding access to a digital or written copy of the completed application of the Historic District Designation Form.

j) Public Meeting Sign

The applicant shall place one sign upon the public right-of-way adjacent to the boundaries of the proposed district's area at least 15 calendar days in advance of the public meeting’s date.

k) Public Meeting

The Committee shall conduct the public meeting and a record of such proceedings shall be preserved in such a manner as prescribed by the City of Las Cruces. The meeting’s purpose shall be to provide information regarding the details and the potential land-use impacts of the proposed historic district. Owners of record shall be informed of the right to support or object to the proposed historic district. Opportunity for public comments regarding the merits and potential impacts of the proposed historic district will be provided at the public meeting.

l) Withdrawal of Application

An applicant may, at any time during the nomination process, withdraw an application for historic district designation by providing notice, in writing, to the Community Development Director.

m) Owner Objection

In the event that owners of record of the individual real properties within the proposed historic district object to the designation of the proposed historic district, those objections shall be recorded on forms provided by the Community Development Department; completed forms shall be notarized and filed with the City Clerk at any time but not later than 30 calendar days following the final adjournment of the public meeting.

n) Historic Preservation Committee Recommendation

i) At the public meeting, the Committee shall consider statements presented by the owners of record of any property within the boundaries of the proposed historic district, as well as statements, either oral or written, from any interested parties concerning the effect of the proposed designation on the affected properties.

ii) The Committee may invite and consider testimony to evaluate information provided either during the historic district nomination process or during the public meeting. A public meeting may be postponed indefinitely or postponed to a date specific in the event that the Committee determines that additional information, unavailable at the public meeting, is warranted and necessary for the purpose of making a finding of fact or to provide time to evaluate fully new evidence presented at the public meeting.

iii) The Committee shall make written findings of fact and shall assist the Community Development Director to submit same in the form of a Historic District Designation Report, together with its recommendation, to the Planning & Zoning Commission within 45 calendar days following the close of the public meeting.

iv) If the Committee fails to act within 45 calendar days of the final adjournment of a public meetingfor the designation of a historic district, the Committee shall be deemed to have recommended denial. Otherwise, upon approval of the historic district designation application, the Community Development Director shall draft a Historic District Designation Report for Planning & Zoning Commission action. Said report shall include a map of the proposed district's boundaries, current and historical photographs, histories of the properties, plans and drawings (if available and if applicable), and a determination on the eligibility criteria.

o) Planning & Zoning Commission Recommendation and City Council Action

i) The Planning & Zoning Commission shall consider recommendation and City Council shall consider action in accordance with **Sec. 36-5.A. Zoning Map Amendments**.

ii) When no owner objection is filed in accordance with this chapter, the Committee or Council shall grant or deny the nomination for historic district designation with not less than a majority vote. When an owner of record, or owners of record, properly file objections with the City Clerk in accordance with this chapter, the Committee or Council may grant the proposed designation upon the condition that demonstrable support of the designation by a simple majority of owners of record within the proposed historic district's boundaries can be presented.

iii) Upon designation as a historic district by the City Council, a notice of the designation will be sent by the Community Development Director to the owners of record of the properties within the boundaries of the designated district. The owners of record shall be responsible for providing a copy of the resolution effectuating the designation to the Doña Ana County Clerk’s Office. A copy of the recorded resolution shall be returned to the Community Development Department within 60 calendar days of City Council approval of a historic district designation. When designated as a historic district, the historic district shall be included in the City of Las Cruces Register of Cultural Properties and shall be identified on the City's Geographic Information Systems (GIS) mapping layers with the appropriate shorthand designation as a historic district.

p) Suspension of Work

i) During the period beginning with the filing of an application for historic district designation and ending with the final action of the City Council granting or denying said application, no exterior architectural feature of any building, structure, object, or site that is the subject of an application for historic district designation may undergo alteration, construction, demolition, or removal if such alteration, construction, demolition, or removal would be subject to a building permit issued after the filing of a historic district application. Nothing in this subsection shall operate to bar ordinary repair and maintenance or any work that is necessary to prevent or correct an imminently dangerous or hazardous condition.

ii) Re-application following denial or withdrawal of an application. In the event that an application for historic district designation is denied by the City Council or the application is withdrawn by the applicant, no subsequent application for historic district designation shall be made within 12 months of the date of the denial. If the applicant withdraws the application prior to review by the Historic Preservation Committee, a subsequent application may be submitted at any time.

q) Amendments

Any property owner of record; a contract purchaser of a nominated property; individual or group of City residents; association with members who are City residents; or the Historic Preservation Committee, on its

own initiative and with prior consent of the Planning & Zoning Commission, may request that the designation of a historic district be amended by the same procedures and according to the same criteria set forth herein for designation. An amended application relating to the same district may be entertained by the Committee at any time following City Council action designating a historic district. Minor, material amendments, excluding boundary amendments, may be completed administratively without a public meeting.

F. Review Standards for Cultural Properties

In making recommendations for proper and accepted treatments for the rehabilitation and restoration of cultural properties and older building inventory, the Historic Preservation Committee shall be governed by the following review standards and design principles:

1. Standards for Review of Cultural Properties

   The review of plans for changes affecting the exterior appearance of designated cultural properties shall be based upon the Secretary of the Interior's "Standards for Rehabilitation" as follows, as amended:

   a) A property shall be used for its historic purpose or be placed in a new use (i.e., adaptive reuse) that requires minimal change to the defining characteristics of the building and its site and environment.

   b) The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of exterior features and spaces that characterize a property shall be avoided.

   c) Each property shall be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or architectural elements from other buildings, shall not be undertaken.

   d) Most properties change over time; those changes that have acquired historic significance in their own right shall be retained and preserved.

   e) Distinctive features, finishes, and construction techniques or examples of craftsmanship that characterize a property shall be preserved.

   f) Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture, and other visual qualities and, where possible, materials. Replacement of missing features shall be substantiated by documentary, physical, or pictorial evidence.

   g) Chemical or physical treatments, such as sandblasting, that cause damage to historic materials shall not be used. The surface cleaning of structures, if appropriate, shall be undertaken using the gentlest means possible.

   h) Significant archeological resources affected by a project shall be protected and preserved. If such resources must be disturbed, mitigation measures shall be undertaken.

   i) New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale, and architectural features to protect the historic integrity of the property and its environment.

   j) New additions and adjacent or related new construction shall be undertaken in such a manner that if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

2. Design Principles for Cultural Properties

   a) Any new construction such as primary buildings, secondary, and accessory buildings and additions to historic buildings and structures at a cultural property or at a property within a designated historic district shall conform, subject to the restrictions of **Chapter 36. Zoning Regulations**, to the following general design principles:

i) Relationship of Building Mass and Space

The relationship between the open space between existing structures and adjoining structures shall be proportionate to and compatible with the adjacent neighborhood;

ii) Scale of Structure

The scale of any alterations, modifications, or additions, or of any new construction shall be compatible with the existing, surrounding structures;

iii) Height

The height of any proposed alteration, addition, or new construction shall be compatible with the existing structure and with neighboring structures;

iv) Directional Expression of Principal Facade

Any proposed alteration or new construction shall be compatible with the predominant horizontal or vertical expression of the historic structure and, for wholly new construction, the predominant horizontal or vertical expression along the street block;

v) Proportions of Street-Facing Facades

The relationship between the width and height of any historic structure and any proposed modification, alteration, or addition at a street-facing façade shall be compatible with one another and the relationship between the width and height of any proposed new structure shall be compatible with nearby structures;

vi) Relationship of Windows and Doors

The relationship between and among doors and windows shall be compatible with and in proportion to each other and be compatible with the historic character of such elements;

vii) Architectural Details

Architectural details and materials shall be incorporated, as necessary, to relate new construction with historic construction to preserve and enhance the inherent characteristics of the historic property and/or neighboring properties; and

viii) Roof Form

The design of any roof shall be compatible with the roof forms and materials of the historic roof of any existing improvement, building, structure, or object.

b) In addition to the foregoing, the Historic Preservation Committee will apply review standards as further set forth in any policy, preservation plan, or design guidelines adopted by the Committee; the U.S. Secretary of the Interior's Standards for Rehabilitation, as amended; and/or the National Park Service's Guidelines for Rehabilitating Historic Buildings, each as amended from time-to-time.

3. Standards for Adaptive Reuse

a) Adaptive reuse is a process that transforms a disused or ineffective structure into something that can be used for a different purpose. Sometimes, nothing changes except the item’s use. The adaptive reuse of a historic building should have minimal impact on its heritage significance and setting. Adaptive reuse recognizes the need for the historic property to meet continuing changes in the community while retaining the property’s historic character.

b) By reusing an existing building, the energy required to create these spaces, the material waste generated from the tenant improvement, and the use of new materials are lessened. The revitalization of buildings through reuse or repurposing also helps to stabilize neighborhoods and preserve the City’s historic character and architecture, reduce the environmental hazards and costs associated with new construction, and enhance economic growth with new housing and employment opportunities. Communities further benefit from the

added values of context, culture, history, and ambiance, resulting in true community redevelopment and sustainability.

c) With regard to the applications for adaptive reuse of a cultural property, the following matters shall be considered:

i) Its historical, architectural, cultural, and aesthetic significance;

ii) Its use, its intended use, and/or the use for which the cultural property was originally designed; new construction, addition, repair, or maintenance not associated with a change of use or occupancy classification do not qualify as an adaptive reuse project;

iii) All adaptive reuse projects are subject to review by the Historic Preservation Committee. The Committee will review the project for overall design, exterior materials, zoning requirements, and health and safety factors to ensure that it meets the requirements and will result in a functional and attractive addition to the local neighborhood and to the City.

iv) Adaptive reuse projects are complex and challenging. Even if all of the above steps are completed, given the nature of existing historic structures, unforeseen complexities are to be expected during construction. Because of this, regular communication with the building inspector during construction will be vital to ensure that potential delays are minimized or reduced.

4. Standards for Requests for Demolition

With regard to applications to demolish a cultural property, the following matters shall be considered:

a) Its historical, architectural, cultural, and aesthetic significance.

b) Its use, its intended use and/or the use for which the building, structure, object, or site was originally designed and the feasibility of the continuation of its designed use.

c) Its importance and the extent to which its historical or architectural value is such that its removal will be detrimental to the public interest.

d) The extent to which it is of such unusual or uncommon design, craftsmanship, texture, or material that it could not be reproduced or could be reproduced only with great difficulty.

e) The extent to which its retention would be of economic value, attract tourists, educate citizens regarding the City's heritage, or make the City a more attractive and desirable place to live.

f) The probable impact of its removal upon the ambience and integrity as a cultural resource.

g) The structural soundness and integrity of the building, structure, object or site and the economic feasibility of its restoration or rehabilitation so as to allow for its reasonable use.

h) The threat to public health and safety as a result of deterioration or disrepair of the building, structure, object, or site, excluding demolition by neglect.

i) The technological feasibility of structural rehabilitation.

5. Criteria Regarding Relocation of Cultural Properties

The following factors shall be considered with regard to an application to move to a new location or site any cultural property:

a) The impact of the loss of integrity suffered as a result of removal from the original location; and, if located within a historic district, the impact of that loss of integrity upon the district as a whole.

b) The relative value to the applicant of the proposed relocation contrasted to the value to the community as a whole in allowing it to remain at its original and/or historic site.

c) The compatibility, nature, and character of the areas adjacent to both the present site and the proposed site as they relate to the protection of historic properties and districts.

d) In the event that a proposed new location is in a historic district, the impact on the visual compatibility of adjacent buildings, structures, objects, or sites.

e) The likelihood of significant damage to the physical integrity of the building or structure itself.

G. Review of Proposed National Register of Historic Places Nominations

1. Before a property located within the municipal boundaries of the City of Las Cruces may be considered for inclusion in the National Register of Historic Places, the State Historic Preservation Officer (SHPO) or designee in the New Mexico Historic Preservation Division (NMHPD) shall notify the applicable chief local elected official and the Historic Preservation Committee according to the following procedure:

   a) The SHPO/NMHPD shall forward a copy of the completed National Register nomination to the City for all properties located in the City's jurisdiction within 30 calendar days of receipt unless the City initiated the nomination. If the City initiates its own nomination, it shall provide the completed nomination to SHPO/NMHPD within 30 days of completion.

   b) Within 60 days, the Committee shall provide opportunity for public comment by including the National Register nomination on the agenda of the next regularly scheduled public meeting.

   c) The Committee shall prepare a report regarding the eligibility of the property and whether or not, in its opinion, the property meets the criteria for listing in the National Register of Historic Places.

   d) Within 60 days of notice from the SHPO/NMHPD, the chief local elected official shall transmit the report of the Committee and the elected official's recommendation to the SHPO/NMHPD.

   e) If either or both the Committee and the Mayor agree that the property should be nominated, the nomination will be scheduled for review by the Cultural Properties Review Committee and make the report and recommendations available to the Secretary of the Interior.

2. If both the Committee and the chief elected official recommend that a property not be nominated to the National Register of Historic Places:

   a) The SHPO/NMHPD shall take no further action, unless within 30 days of the receipt of such recommendation an appeal is filed with the SHPH/NMHPD.

   b) If such an appeal is filed, the SHPO/NMHPD shall follow the procedures for making and submitting a nomination.

   c) Any report and recommendations made that the property should not be nominated shall be submitted to the Secretary of the Interior.

Sec. 35-3. Plan Review, Certificates of Appropriateness, and Economic Hardship

A. Plan Review of Cultural Properties

1. Plan review shall be completed for any new construction, addition, remodeling, rehabilitation, renovation, restoration, or proposed demolition of the exterior of any building, structure, object, or site that meets the following criteria:

   a) Visible from a public right-of-way, excluding public alleyways at the rear of a property; and

   b) Proposed for an individually designated cultural property or for any property within a designated historic district; and

   c) Requires a Building Permit as defined by the Building Code (see Chapter 30 Buildings and Building Regulations of the Las Cruces Municipal Code).

   d) Plan review submittal requirements and review standards are based on the property location within the City; the age of the property; and the contributing element of the property as assigned by survey, as amended every 10 years.

   e) Every reasonable effort shall be made to provide a compatible use for any designated cultural property. The destruction, alteration, or removal of original distinguishing elements or architectural features of a building, structure, object, or site and its environment shall be avoided.

   f) Each applicant may request one or more pre-application meetings with the Community Development Director to review proposed scopes of work and compliance with historic preservation design standards, building codes, zoning requirements, and other applicable regulations.

   g) Submittal requirements identified herein satisfy historic compliance review but shall not be construed to reflect the submittal requirements of other review authorities. Applicants should consult with appropriate City staff prior to submitting an application for building permit application review.

Figure 35-3-1. Building Permit and COA Process Summary

2. Procedure to Apply for Building Permits and Certificates of Appropriateness

   Any application for a Building Permit to undertake any work at a designated cultural property shall be subject to the following review process:

   a) Application for a Building Permit to Alter an Existing Structure

      Applicants shall provide the following information as part of a Building Permit application:

      i) A completed Building Permit application and a completed Certificate of Appropriateness application; and

      ii) A site map or aerial view of the parcel of land on which the subject building, object, structure, site, or improvement is located; and

      iii) Photographs of the current exterior condition of the subject area; and

      iv) Historic images of the subject property, if available; and

      v) Material samples and/or product specifications for any proposed new or repair materials including, but not limited to, siding materials and installation pattern; masonry color, texture, and bonding pattern; roof shingles; major architectural elements (e.g., doors, windows, columns, decorative architectural features, etc.); and

vi) Drawings and/or specifications detailing the proposed scope of work including, but not limited to, building elevations, plans, and significant architectural details; and

vii) Other reasonable information that may be requested by the Community Development Director.

Information submitted for review by the Historic Preservation Committee must be provided in a format as required by the Community Development Director but not less than one printed copy of all requested documentation; one sample of proposed materials; and one electronic or digital copy (only jpeg or gif format unless another format is approved prior to submittal; any electronic submittal must be clearly legible when printed at 11-inch by 17-inch format).

b) Fees

Fees shall be calculated and collected by the City. Applicable deposits and fees shall be set by resolution and collected according to the current fee schedule for building permits.

c) Filing

The Certificate of Appropriateness application shall be submitted to the Community Development Director. Upon receipt of all required information, the application will be determined to be complete, and the Director shall schedule a meeting before the Historic Preservation Committee to review and render a decision on the application.

d) Plan Review of Cultural Properties and Historic District Properties

i) Certificate of Appropriateness applications for all other requests shall be reviewed by the Historic Preservation Committee with a public meeting as outlined below.

ii) All proposed alterations shall be evaluated in accordance with **Sec. 35-2.F. Review Standards for Cultural Properties**.

e) Schedule a Public Meeting

Upon receipt of a completed Certificate of Appropriateness application, the Community Development Director shall schedule a public meeting for a regularly scheduled meeting of the Historic Preservation Committee in accordance with the City's notification requirements for public meetings.

f) Appropriateness Report

Prior to the public meeting on the Certificate of Appropriateness application, the Community Development Director shall conduct an analysis of the subject property and prepare a report containing preliminary findings on the historic, cultural, architectural and aesthetic significance of the property. The analysis shall be provided in writing to the Committee and made available to the public in advance of the public meeting.

g) Public Meeting

The Committee shall conduct the public meeting and a record of such proceedings shall be preserved in such a manner as prescribed by **Sec. 34-3.G. Notice for a Public Meeting**.

h) Withdrawal of Application

An applicant may, at any time during the review process, withdraw a Certificate of Appropriateness application by providing notice, in writing, to the Community Development Director.

i) Historic Preservation Committee Action

The Committee shall act upon completed Certificate of Appropriateness applications in a timely manner. The Committee may request modifications to the proposed scope of work as a condition of approval of a Certificate of Appropriateness; it may approve the application without modifications; or it may deny the application. No decision rendered by the Committee shall conflict with provisions in **Chapter 36. Zoning Regulations**.

j) Issuance of a Certificate of Appropriateness

Upon the approval of a Certificate of Appropriateness application, either administratively or by the Committee, the Community Development Director shall issue a Certificate of Appropriateness to the applicant as a component, and in conjunction with other requirements, to be issued a building permit.

k) Suspension of Work

During the period beginning with the filing of a Certificate of Appropriateness application and ending with the final action taken on the Certificate of Appropriateness, no exterior architectural feature of any building, structure, object, improvement, or site that is the subject of an application may undergo any alteration or construction, if such work would be subject to plan review and issuance of a Building Permit.

l) Final Inspection

The Building Official and/or Building Inspector(s), in consultation with the Community Development Director, shall complete, prior to issuance of a Certificate of Occupancy, an inspection of any work approved under a Certificate of Appropriateness to ensure compliance with the approvals granted by the Committee or on its behalf. Nothing in this subsection shall operate to bar repair and maintenance or any work that is necessary to prevent or correct an imminently dangerous or hazardous condition.

m) Lapse of a Certificate of Appropriateness

An approved Certificate of Appropriateness shall be valid for one year from the date of issuance to the applicant to complete the proposed scope of work. In the event the applicant is unable to complete the approved scope of work, the Community Development Director may approve up to one six-month extension to complete the scope of work. In the event the approved scope of work remains incomplete upon the expiration of 18 months since issuance, the applicant will be required to submit a new Certificate of Appropriateness application.

B. Plan Review for Municipal-Owner Cultural Properties

Plan review shall be completed for any new construction, addition, remodeling, rehabilitation, renovation, or restoration, or proposed demolition of the exterior of any building, structure, object, or site, or historic interior, of any cultural property owned by the City of Las Cruces, in accordance with the following criteria:

1. The plan review process shall adhere to the procedures as stated in **Sec. 35-3.A. Plan Review of Cultural Properties**; and
2. The proposed scope of work shall be reviewed by the Community Development Director and/or the Historic Preservation Committee in accordance with **Sec. 35-2.F. Review Standards for Cultural Properties**.

C. Demolition of Cultural Properties

1. Requests for demolition of any portion of or the entirety of any building, structure, site, or object deemed significant shall require review by the Historic Preservation Committee. Criteria used to assess significance include:
   a) More than 50 years of age;
   b) Designed and/or constructed by a particular architect or builder, either by itself or in context of a group of buildings or structures;
   c) A naturally occurring land or geological formation that has been designated as a cultural property or is located within the boundaries of a designated historic district.
2. Deconstruction and reuse of historic materials is preferred over demolition. Demolition shall be considered only when all other redevelopment options for a building, structure, object, or site have been exhausted.

3. Procedure for the demolition of designated cultural properties.

   Demolition review begins with the filing of an application for a demolition permit and applies to any demolition, alterations, or new construction that involved total or partial demolition. During review, as assessment of the historical and/or architectural importance of the building, structure, and/or feature will be determined. The Historic Preservation Committee is responsible for determining the significance of the resource and whether it qualifies for preservation or demolition.

   a) Pre-Application Meeting

      Prior to submitting a demolition request, an applicant shall meet with the Building Official, Community Development Director, and/or other City Staff to review the demolition proposal. At that time, the Community Development Director shall identify to the applicant any known historic significance classification or documentation pertaining to the property.

   b) Application

      All applications for a demolition permit shall be submitted on forms provided by the Community Development Director. No demolition permit application shall be accepted for processing unless it is complete and is accompanied by all applicable fees, deposits, and bonds. A complete demolition permit application shall contain the following:

      i) A legible, dimensioned, and accurate Plat of Survey, prepared and sealed by a New Mexico licensed surveyor within 12 months of application, indicating location of all improvement proposed for demolition;

      ii) Written affidavit of the owner(s) of record of the property acknowledging the proposed demolition when the applicant is not the owner of record;

      iii) Plans of all levels of the building or structure proposed to be demolished;

      iv) Photographs of all existing conditions including all exterior elevations, all significant architectural features (exterior and interior), and all rooms or spaces (exterior and interior) affected by the proposed demolition work;

      v) Historic images of the property and general area of proposed demolition, if any available;

      vi) A detailed report of non-code-compliant elements and structural deficiencies, prepared by a registered architect, structural engineer with expertise in the rehabilitation of contemporary and/or historic properties, or an expert in adobe construction when applicable;

      vii) A detailed list of irreparable or deteriorated building features, components, or elements;

      viii) A detailed cost estimate for the rehabilitation of the improvement, property, or site, prepared by a design professional or licensed contractor with expertise in the renovation of contemporary and/or historic properties;

      ix) A comparison of the estimated rehabilitation cost of the property proposed for demolition with market values for comparable improvements, properties, or sites within the municipal boundaries;

      x) A detailed cost estimate for the restoration of the site per City code in the event that no new construction activity commences following demolition;

      xi) A summary of potential sites, if any, to which the resource could be relocated within the historic district with an estimate of the cost of the move to each proposed location, if any, by a qualified building mover;

      xii) A proposed schedule for demolition activities;

      xiii) A completed Building Permit application and a written justification outlining the reasons demolition is sought; and

      xiv) Other reasonable information required or that may be requested by the Community Development Director.

c) Fees

Fees shall be calculated and collected by the Community Development Department. Applicable deposits and fees shall be set by resolution and collected according to the current fee schedule for building permits.

d) Filing

An application for demolition shall be filed with the Building Official and the Community Development Director. Within ten business days of the filing of an application, the Community Development Director shall review the submitted application for demolition and inform the applicant, in writing, of any deficiencies that must be corrected and/or clarified prior to the scheduling of a public meeting. Failure of the applicant to provide amended information within 30 business days of the notice of deficiencies will result in an automatic withdrawal of the application.

e) Notice

i) Upon receipt of a complete demolition application, the Community Development Director shall schedule a public meeting for any cultural property or property located within a historic district, except for those properties designated as noncontributing due to a lack of architectural, historic, or structural significance or integrity, at a regularly-scheduled meeting of the Committee no sooner than 180 days from the acceptance of a completed application. Demolition permit applications for noncontributing buildings with no architectural, historical, or structural significance or integrity shall be reviewed at a regular public meeting.

ii) The applicant may request an additional public meeting to occur within the 180-day period to receive preliminary feedback from the HPC regarding the demolition application. HPC feedback at this meeting is intended to provide general opinion and is considered nonbinding. No official action will be taken by the HPC at this meeting. Notice shall be provided as indicated in **f)** below.

f) Notice of Public Meeting

Notice of a public meeting shall be published on the City of Las Cruces webpage and in a newspaper of general circulation within the City not less than 15 calendar days in advance of the date of the meeting. The notice shall identify the applicant, property owners of record, legal description of the property where demolition work is proposed, and the common address of the property where demolition work is proposed.

g) Public Meeting Sign

The applicant shall place one sign at the public right-of-way adjacent to the property that is the subject of the public meeting at least 15 calendar days in advance of the date of the public meeting. Said sign shall include the words "Proposed for Demolition" in addition to the date, time, and place of such public meeting.

h) Mailing

Not less than 15 calendar days prior to the public meeting, the Community Development Director shall mail a written notice to the owners of record of the property proposed for demolition and to the owners of record of all properties identified herein for notification within 500 feet. Written notice shall include the date, time, and location of the scheduled public meeting and information regarding access to a digital or written copy of the demolition application.

i) Property Analysis

i) Prior to the public meeting, the Community Development Director shall visit the site to familiarize themselves with the existing condition of the property proposed for demolition.

ii) Prior to the public meeting for the purpose of reviewing a demolition application, the Community Development Director shall conduct an analysis of the submitted documents and a written summary of the site visit as part of a written report containing preliminary findings on the historical, architectural, cultural, and aesthetic significance of the subject property. The analysis shall be provided to the Committee, in writing, and made available to the public in advance of the public meeting.

j) Public Meeting

i) The public meeting for the purpose of reviewing a demolition application shall be conducted by the Historic Preservation Committee and a record of such proceedings shall be preserved in such manner as the Committee shall, by rule, prescribe from time to time.

ii) The applicant bears the burden of proof that the failure to approve the proposed demolition would leave the subject property without an economically viable use, and that the sale, rental, or rehabilitation of the property is not possible, resulting in the property being incapable of earning any reasonable economic return.

k) Withdrawal of Application

An applicant may, at any time prior to the scheduled public meeting , withdraw an application for demolition by providing notice, in writing, to the Community Development Director or the Building Official.

l) Historic Preservation Committee Action

i) The Committee shall not only consider the property, building, structure, architectural feature, or object proposed for demolition; the merit of any proposed replacement construction or improvement shall also be a standard of review for a demolition request. The Committee may solicit testimony to evaluate information provided either as part of a demolition application or at the public meeting . A public meeting may be postponed indefinitely or postponed to a date specific in the event that the Committee determines that additional information, unavailable at the public meeting, is warranted and necessary for the purpose of making a finding of fact.

ii) Additionally, the Committee may continue a public meeting during a subsequent regularly scheduled meeting of the Committee to provide time to fully evaluate new evidence presented at the public meeting. Furthermore, the Committee may continue a public meeting regarding a request for demolition for a specified period of time, not to exceed 120 calendar days, for the sole purpose of allowing the applicant and the Committee to seek alternatives to demolition when the Committee determines that all of the following conditions exist:

a. The property itself, or in relation to its environs, has significant historical, architectural, aesthetic or cultural value in its present condition;

b. Realistic alternatives for preservation of the property—including adaptive uses—are believed to be neither cost-prohibitive nor beyond the limits of local market value; and

c. The property, in its existing condition, does not present a public health or safety hazard to individuals, neighboring properties, or the greater community.

iii) When the Committee postpones a recommendation regarding a demolition request, the Committee shall retract said postponement when the Committee determines that an applicant has:

a. Made a bona fide and reasonable, but unsuccessful, effort to locate a purchaser for the property who is willing to preserve, rehabilitate, or restore the improvement, property, or site;

b. Made a bona fide and reasonable, but unsuccessful, effort to locate a purchaser for the improvement who is willing and able to relocate the improvement to another property or site;

c. Made a bona fide and reasonable, but unsuccessful, effort to develop a cost-effective program for the preservation of the improvement; and

d. Agreed to accept a demolition permit on specified conditions of the Committee.

iv) If the cultural property qualifies as significant, the demolition delay period will start in order to provide time to document the resource and to explore preservation alternatives. If all alternatives have been reviewed, the applicant, as a condition of demolition approval, will prepare and submit, prior to commencement of demolition work, the following documentation of a building, structure, object,

improvement, or site that is designated as a cultural property or identified as a contributing or significant property within a designated historic district:

a. Site plan (scale not less than one inch equals twenty feet, zero inches);

b. Floor plans of each level (scale not less than one-eighth of one inch equals one foot, zero inches);

c. Elevations of each side of the property improvement (scale not less than one-eighth of one inch equals one foot, zero inches); and

d. Photographs of each elevation and significant interior or exterior architectural features as determined by the Committee (clear, black and white images).

v) The Committee shall make written findings of fact within 45 calendar days following the close of the public meeting.

vi) The Committee may grant a demolition request for a cultural property or a property within a historic district if, upon review of all testimony, the maintenance, use, and/or alteration of the property would cause immediate and substantial hardship for the owner(s) of record because rehabilitation in a manner which preserves the architectural, historic, or structural integrity of the property either:

a. Is infeasible from a technical, mechanical, or structural perspective; or

b. Would leave the property with no reasonable economic value because it would require an unreasonable expenditure when accounting for such factors as current market value, permitted uses of the property, and/or the cost of compliance with local, state, and federal codes applicable to the property.

vii) The Committee, by a simple majority vote, shall grant or deny the application for demolition.

m) Suspension of Work

During the period beginning with the filing of an application for demolition and ending with the final action of either the Historic Preservation Committee or the City Council, granting or denying said application, no exterior architectural feature of any building, structure, object, improvement, or site that is the subject of an application for demolition may undergo alteration, construction, demolition, or removal. Nothing in this subsection shall operate to bar ordinary repair and maintenance or any work that is necessary to prevent or correct an imminently dangerous or hazardous condition.

n) Site Restoration

Upon completion of any approved demolition, a site must be restored and maintained as required by City code until construction activity resumes at the property.

o) Lapse of Demolition Approval

Any approval granted by the Committee or City Council for the demolition, in whole or in part, of any building, structure, object, improvement, or site shall be valid for a period of 12 months from the date of the issuance of a demolition approval. Failure to complete the approved work in a timely fashion will require the re-application for approval of any outstanding demolition work.

4. Standards for Demolition Request Review

The Historic Preservation Committee shall make findings related to a demolition request based upon the evidence presented to it in each specific case and shall not approve a proposed demolition unless demolition action improves or corrects one or more of the following conditions:

a) The property constitutes a hazard to the safety and welfare of the general public or occupants of the property or site as determined, in consultation with the Community Development Director, by the Building Official, Code Enforcement Officer, Chief of Police, and Fire Chief and providing the property was not subject to demolition by neglect;

b) The property is a deterrent to a major improvement program that will be of substantial benefit to the community for which the applicant has secured all necessary and required planning and zoning approvals, environmental clearances, and project funding and providing the property was not subject to demolition by neglect;

c) Retention of the property will cause undue economic hardship to the Owner of Record when a governmental action, an act of God, or other events beyond the control of the applicant created the hardship and all feasible alternatives to eliminate the financial hardship (which may include the sale of the property at fair market value or relocation of the improvement to another site) have been attempted and exhausted by the applicant; or

d) The retention of the property is not in the best interest of the majority of the community.

5. Demolition by Neglect and Deferred Maintenance

Buildings, structures, and objects designated as a Cultural Property or lying within the boundaries of a historic district shall be maintained and protected from demolition that results from neglect or undeterred deterioration of the exterior features or structural elements.

a) Duty to Maintain

Any building, structure, or object designated as a cultural property or lying within the boundaries of a historic district shall be preserved against material deterioration of exterior features and structural elements by its owner of record. Nothing in this chapter shall exempt an improvement designated as a cultural or historic property from compliance with the provisions of the City's adopted Property Maintenance Code.

b) Duty to Repair

The owner of record (private or City) for any building, structure, or object designated as a cultural property shall, upon written notice from the Code Enforcement Officer, or other representative on behalf of the City, repair any deficient element that is contributing to material deterioration, including, but not limited to, damage to or decay of:

i) Foundations, flooring, or floor supports that causes leaning, sagging, splitting, listing, or buckling of all or part of the building, structure, or object;

ii) Walls or other vertical supports that causes leaning, sagging, splitting, listing, or buckling of all or part of the building, structure, or object;

iii) Ceilings, roofs, and their support systems or other horizontal members, that causes leaning, sagging, splitting, listing, or buckling of all or part of the building, structure, or object;

iv) Fireplaces or chimneys that causes leaning, sagging, splitting, listing, or buckling of all or part of the building, structure, or object;

v) Exterior finishes, including, but not limited to, wood, brick, stone, stucco, mortar, or other material;

vi) Any design detail, significant feature, or structural element that results in any appreciable loss of architectural, historic, or structural integrity of the building, structure, or object;

vii) Any window, window frame, door, or doorway that, individually or collectively, results in any appreciable loss of architectural, historic, or structural integrity of the building, structure, or object;

viii) Any feature intended to provide a watertight condition that results in significant moisture infiltration into the building, structure, or object;

ix) Any feature or element that results in the creation of a fire hazard or other nuisance to the welfare of the general public; or

x) Any archaeological site or vacant cultural property shall be adequately secured against unauthorized entry.

c) Completed Repair

Upon notice from the Codes Enforcement department, the Historic Preservation Committee shall verify, within 45 days, that the duty to repair was completed.

6. Natural Destruction or Demolition

In the case of partial or complete destruction or demolition of a cultural property as a result of an act of God or other natural disaster, the property may be completely demolished only with Committee concurrence, provided that the Building Official, Fire Department Chief, and Chief of Police, in consultation with the Community Development Director, jointly determine the improvement is structurally unsound and poses an immediate or imminent nuisance and/or hazard to the general health, safety, and welfare of the public.

D. Certificate of Economic Hardship

In any case in which the proposed work of an applicant is not approved following either administrative or Historic Preservation Committee review and the submittal of a written findings of fact, an applicant may apply for a Certificate of Economic Hardship.

1. Procedure to Apply for a Certificate of Economic Hardship

a) Pre-Application Meeting

Prior to submitting a Certificate of Economic Hardship request, an applicant shall meet with the Community Development Director to review the basis for economic hardship relief.

b) Application

All applications for a Certificate of Economic Hardship shall be submitted on forms provided by the Community Development Director. No Certificate of Economic Hardship application shall be accepted for processing unless it is complete and is accompanied by all applicable items required.

c) Filing

The application for a Certificate of Economic Hardship shall be filed with the Community Development Director. Within ten working days of the filing of an application, the Director shall review the submitted application for a Certificate of Economic Hardship and inform the applicant, in writing, of any deficiencies that must be corrected and/or clarified prior to the scheduling of a public meeting. Failure of the applicant to provide amended information within 30 working days of the notice of deficiencies will result in an automatic withdrawal of the application.

d) Notice

Upon receipt of a complete Certificate of Economic Hardship application, the Community Development Director shall schedule a public meeting at the next regularly scheduled meeting of the Committee that is possible in accordance with the stipulated public notice procedure.

e) Notice of Public Meeting

Notice of the public meeting shall be published on the City of Las Cruces webpage and in a newspaper of general circulation within the City not less than 15 calendar days in advance of the date of the meeting. The notice shall identify the applicant, property owners of record, legal description of the property, and common address of the property.

f) Public Meeting Sign

The applicant shall place one sign at the public right-of-way adjacent to the property that is the subject of the public meeting at least 15 calendar days in advance of the date of the public meeting.

g) Mailing

Not less than 15 calendar days prior to the public meeting, the Community Development Director shall mail a written notice to the owners of record of the subject property and to the owners of record of all properties identified herein for notification within 500 feet. Written notice shall include the date, time, and location of the scheduled public meeting and information regarding access to a digital or written copy of the demolition application.

h) Public Meeting

The public meeting for the purpose of reviewing a Certificate of Economic Hardship application shall be conducted by the Historic Preservation Committee and a record of such proceedings shall be preserved in such manner as the Committee shall, by rule, prescribe from time to time.

i) Withdrawal of Application

An applicant may, at any time during the review process, withdraw a Certificate of Economic Hardship application by providing notice, in writing, to the Community Development Director.

j) Committee Action

i) At the public meeting, the Committee shall take statements presented by the owner(s) of record of the subject property as well as statements from any interested parties concerning the issuance of a Certificate of Economic Hardship. At a minimum, the applicant shall be required to submit evidence at the public meeting to support any of the Standards for a Certificate of Economic Hardship Review as identified in **Sec. 35-3.D.2** below. Evidence presented by the applicant, shall in the applicant's opinion, contribute to the economic hardship alleged to be incurred if the applicant is not granted a Certificate of Economic Hardship. Specific information and documentation that may be presented by the applicant and/or requested by the Committee may include:

a. The amount paid for the property, the date of the purchase, and the party from whom the property was purchased (including a description of the relationship, if any, between the owner and the entity from whom the property was purchased);

b. The assessed value of the land and improvements thereon according to the most recent assessments;

c. Real estate taxes for two years previous to the application for an economic hardship request;

d. Remaining balance on any mortgage, if any, and annual debt service, if any, for the two years previous to the application for an economic hardship request;

e. All appraisals obtained within the two years previous to the application for an economic hardship request by the owner of record or the applicant in connection with the purchase, financing, or ownership of the property;

f. Any listing of the property for sale or rent, price asked, and offers received, if any;

g. Any consideration by the owner of record or the applicant regarding profitable adaptive uses for the property;

h. If the property is income-producing, the annual gross income from the property for the two years previous to the application for an economic hardship request; itemized operating and maintenance expenses for the previous two years; and annual cash flow before and after debt service, if any, during the same period;

i. Form of ownership or operation of the property, whether sole proprietorship, for-profit or not-for-profit corporation, limited partnership, joint venture, or other; or

j. Any information including the income tax bracket of the owner of record or the applicant or any other principal investors in the property that is reasonably necessary for a determination as to whether or not

the property can be reasonably used or yield a reasonable return on an investment to present or future owners of the property.

ii) The Committee may invite and consider testimony to evaluate information provided either as part of a Certificate of Economic Hardship application or at the public meeting. A public meeting may be continued to a future date in the event that the Committee determines that additional information, unavailable at the public meeting, is warranted and necessary for the purpose of making a finding of fact.

iii) Furthermore, the Committee may continue a public meeting during a subsequent regularly scheduled meeting to provide time to fully evaluate new evidence presented at the public meeting.

iv) The Committee shall make written findings of fact within 45 calendar days following the close of the public meeting.

v) Upon the Committee's granting of relief due to economic hardship, the Community Development Director shall provide to the applicant a written Certificate of Economic Hardship that describes the rehabilitation relief granted and the basis of the economic relief.

k) Suspension of Work

During the period beginning with the filing of an application for a Certificate of Economic Hardship and ending with the final action of either the Historic Preservation Committee or the City Council, granting or denying said application, no exterior architectural feature of any improvement, property, or site that is the subject of an application may undergo any alteration or construction, if such work would be subject to a building permit and/or is subject to the issuance of a Certificate of Appropriateness. Nothing in this subsection shall operate to bar ordinary repair and maintenance or any work that is necessary to prevent or correct an imminently dangerous or hazardous condition.

l) Revocation of Certificate of Economic Hardship

If an applicant seeks a building permit for additional work on the same property for which a Certificate of Economic Hardship had been granted at an earlier date, the previously granted rehabilitation relief may be revoked and approvals for any additional work may include the requirement for completion of rehabilitation work previously deferred due to economic hardship.

2. Standards for a Certificate of Economic Hardship Review

The Historic Preservation Committee shall make findings related to a Certificate of Economic Hardship request based on the evidence presented to it in each specific case. The Committee shall not approve a Certificate of Economic Hardship unless it determines that the hardship was not created with the intent of circumventing this chapter and an applicant can prove one or more of the following conditions:

a) A substantial decrease in the fair market value of the property as a result of the denial of the proposed work;

b) A substantial decrease in financial return to the owners of record or other investors in the property as a result of the denial of the proposed work;

c) A substantial and significant additional cost to complete the proposed construction, alteration, relocation and/or demolition would be incurred to comply with the recommendations of the Committee for changes necessary for the issuance of a Certificate of Appropriateness;

d) The structural instability and a lack of sustainability for rehabilitation of any structure, object, or other improvement on the property;

e) A lack of economically feasible rehabilitation or adaptive use of the existing building, improvement, site, structure, or object; and/or

f) The retention of the resource will cause undue financial hardship to the owner of record or the applicant when a governmental action, an act of God, or other event beyond the owner’s control created the hardship, and all feasible alternatives to eliminate the economic hardship, which may include offering the resource for sale at its

fair market value or moving the resource to a vacant site within the historic district, have been attempted and exhausted by the owner of record and/or the applicant.

Chapter 36. Zoning Regulations

Sec. 36-1. General Provisions

A. Title

This chapter shall be known and shall be cited as the "Zoning Regulations" of the City of Las Cruces, New Mexico.

B. Purpose

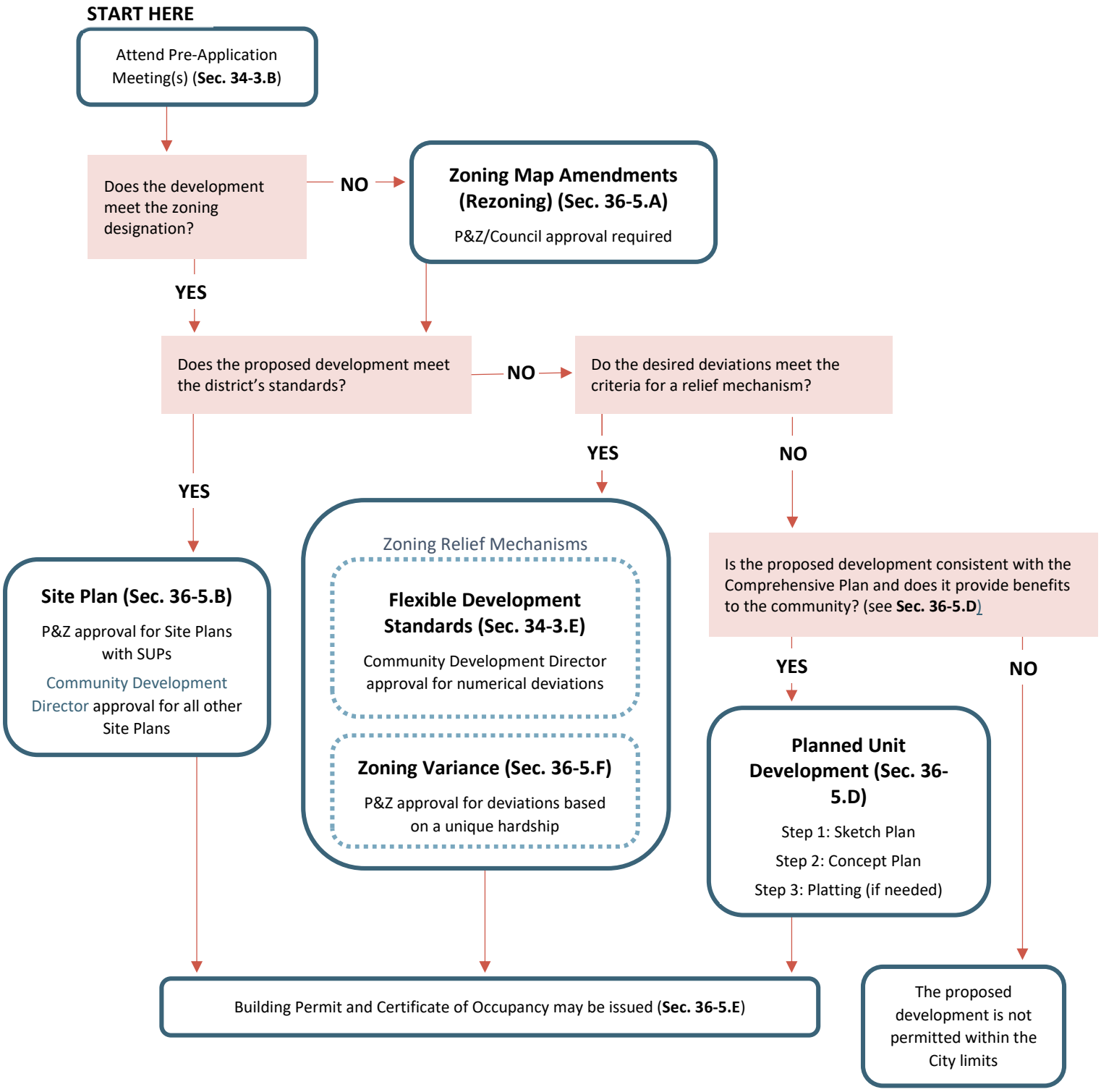
The purpose of these Zoning Regulations is to:

1. Ensure that all development is in accordance with this Code and the Comprehensive Plan;
2. Promote health, safety, and general welfare of the community;
3. Encourage innovations in land development and redevelopment that complement neighborhoods' existing character and support the consolidation of trips, and encourage bicycle, pedestrian, and transit modes of travel;
4. Regulate the erection, construction, alteration, repair, demolition, or use of buildings, structures, or land;
5. Control and abate the unlawful use of structures, buildings, or land;
6. Minimize adverse environmental impacts of development;
7. Reduce nuisances, such as noise, glare, and odor;
8. Encourage development of vacant properties within established areas; and
9. Conserve the value of buildings and land.

C. Applicability

1. All land, buildings, structures, and appurtenances thereon located in the City that are hereafter occupied, used, erected, altered, or converted shall be used, placed, and erected in conformance with these Zoning Regulations.
2. The provisions of this Code shall be considered the minimum requirements or standards to meet the purpose and intent expressed in **B. Purpose** above.

D. Zoning Process Overview



Sec. 36-2. Zoning Districts

A. Establishment of Zoning Districts, Map, and Boundaries

1. Designation of Official Districts

   The following shall be the official zoning districts:

   a) Zoning Districts

      i) NH-1, Neighborhood 1 District (Rural, Suburban, Urban)

      ii) NH-2, Neighborhood 2 District (Rural, Suburban, Urban)

      iii) NH-3, Neighborhood 3 District (Rural, Suburban, Urban)

      iv) CR, Commercial/Retail District (Rural, Suburban, Urban)

      v) LI, Light Industrial District (Rural, Suburban, Urban)

      vi) HI, Heavy Industrial District (Rural, Suburban, Urban)

      vii) OS-1, Open Space-Preserve and Recreational District (Rural, Suburban, Urban)

      viii) OS-2, Open Space-Drainage District (Rural, Suburban, Urban)

   b) Overlay Zoning Districts

      i) MXCO, Mixed Use Corridor Overlay District

      ii) TCO, Town Center Overlay District

      iii) NCO, Neighborhood Center Overlay District

      iv) AOD, Las Cruces International Airport Operations Overlay District

   c) Legacy Zoning Districts

      i) ADO, Alameda Depot Neighborhood Overlay District

      ii) LCIIP, Las Cruces Industrial Innovation and Industrial Overlay Zone District

      iii) SMO, South Mesquite Overlay District

      iv) UD, University District Overlay District

   d) Special Zoning Districts

      i) DDC, Downtown Development Code: See **E. DDC, Downtown Development Code** for applicable standards and procedures.

      ii) Historic Preservation District: See **Chapter 35. Historic Preservation** for applicable standards and procedures.

      iii) Planned Unit Developments (PUDs): See **Sec. 36-5.D. Planned Unit Developments (PUDs)** for applicable standards and procedures.

2. Zoning Map

   For the purpose of this Code, the City shall be divided into zoning districts, which shall be shown on the official Zoning Map.

3. Interpretation and Extension of District Boundaries

   Where uncertainty exists concerning the boundaries of any zoning district shown on the Zoning Map, the ordinance creating or changing a zoning district boundary shall be the governing document. The following rules shall apply if there is still uncertainty after reviewing the creating ordinance:

   a) Boundaries shall be construed as the centerline of existing, future, or vacated streets, highways, railroads, alleys, drainage or irrigation canals, other public rights-of-way, or un-zoned rights-of-way. The boundary extension of any zoning district shall be a projection of the property line and/or zoning district boundary line to the centerline of any applicable right-of-way centerline, regardless of the angle of intersection.

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

   c) Where property is not otherwise designated, divided, or subdivided, the boundary line shall be determined by the scaled distance shown on the Zoning Map.

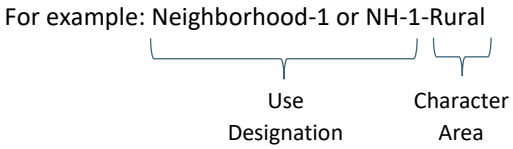
B. Zoning Districts

1. Generally

   a) This section establishes zoning districts based on predominant use types. Each zoning district includes different permitted uses, as shown in **Figure 36-3-2. Permitted Use Chart**.

   b) These zoning districts include Character Areas. The purpose of the Character Areas is to implement the Comprehensive Plan's Future Development Map's Place Classifications: Rural, Suburban, and Urban. Each character area includes standards relating to site design, building form, and development character.

   c) Each zoning district includes both a use designation (e.g., "NH-1") and character area (e.g., "Rural"). This approach creates a menu of regulatory tools that both allows flexibility and promotes context-sensitive development.



2. Character Areas

a) Rural Character Area

The Rural Character Area describes land that is sparsely developed with significant areas of open space, including lands used for ranching, agriculture, or resource extraction. Rural places include lower-density residential development that offers residents relative seclusion from a more developed setting supported by public infrastructure. Substantial investment in public infrastructure to service more intense development patterns is not expected.

Figure 36-2-1. Rural Character Area Example Illustrations

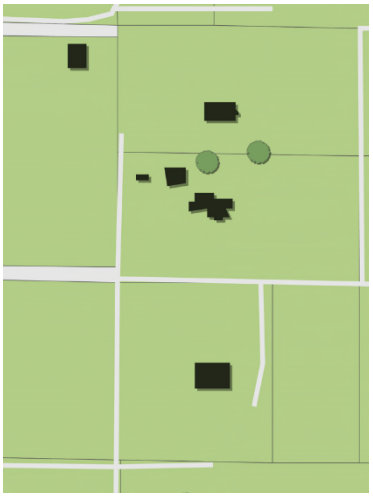
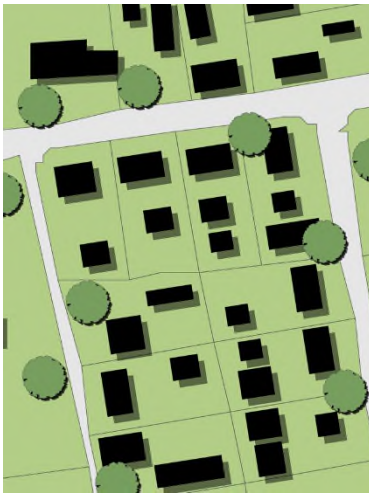
NH-1-Rural	NH-2-Rural	NH-3-Rural
		
Low-intensity areas with large lots and primarily residential development	Low-intensity areas with large lots and residential development with compatible-scale neighborhood services	Low-intensity areas with large lots and a mix of residential and nonresidential development

Figure 36-2-2. Rural Character Area Standards

Streetscape	
Street Cross-Section	See **Sec. 38-2.C. Street Design Criteria**
Streetlights	See **Sec. 38-2.I. Streetlighting**
Sidewalks & Trails	See **Sec. 38-2.M. Sidewalks and Multi-Use Paths**
Street Trees	See **Sec. 38-7.D. Required Landscaping**
Connectivity	See **Sec. 38-2.E.5. Block Length**
Site Design	
Parking Treatment	See **Sec. 38-2.N.6. General Standards for Off-Street Vehicular Parking and Loading Areas** Location-Specific Standard: Off-street parking is not required in the Urban Character Area; MXCO, Mixed Use Corridor Overlay District; TCO, Town Center Overlay District; NCO, Neighborhood Center Overlay District; or the DDC, Downtown Development Code area.
Transition Treatment	See **Sec. 38-8. Fencing, Screening, and Buffering**

b) Suburban Character Area

The Suburban Character Area describes areas of contemporary development where land uses are dispersed among distinct residential neighborhoods, retail centers, office parks, and industrial uses. While development intensities may vary, suburban places favor segmented land uses with transitions between development types over the blending of differing uses in a single site. This character area may also support urban development patterns. These areas balance the needs of drivers, pedestrians, bicyclists, and other multi-modal users.

Figure 36-2-3. Suburban Character Area Example Illustrations

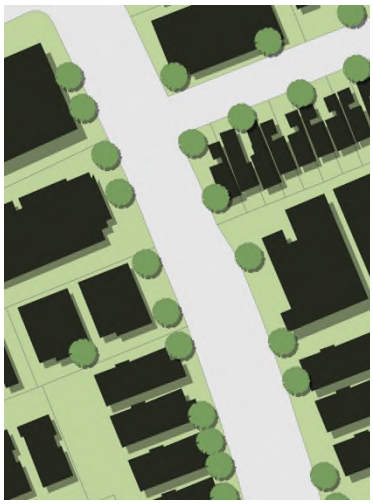
NH-1-Suburban	NH-2-Suburban	NH-3-Suburban
		
Mid-intensity, suburban areas with primarily residential development	Mid-intensity, suburban areas with compatible-scale neighborhood services	Mid-intensity, suburban areas with a mix of residential and nonresidential development

Figure 36-2-4. Suburban Character Area Standards

Streetscape	
Street Cross-Section	See **Sec. 38-2.C. Street Design Criteria**
Streetlights	See **Sec. 38-2.I. Streetlighting**
Sidewalks & Trails	See **Sec. 38-2.M. Sidewalks and Multi-Use Paths**
Street Trees	See **Sec. 38-7.D. Required Landscaping**
Connectivity	See **Sec. 38-2.E.5. Block Length**
Site Design	
Parking Treatment	See **Sec. 38-2.N.6. General Standards for Off-Street Vehicular Parking and Loading Areas** Character Area-Specific Standard: No more than 50 percent of off-street parking may be located between the front facade and the public right-of-way. Location-Specific Standard: Off-street parking is not required in the Urban Character Area; MXCO, Mixed Use Corridor Overlay District; TCO, Town Center Overlay District; NCO, Neighborhood Center Overlay District; or the DDC, Downtown Development Code area.
Transition Treatment	See **Sec. 38-8. Fencing, Screening, and Buffering**

c) Urban Character Area

The Urban Character Area describes areas including traditional downtowns and medium- to high-density center-city neighborhoods. Urban places blend a wide variety of land uses within individual districts, development sites, and buildings to promote compact development and walkable environments. These areas prioritize pedestrians, bicyclists, and other multi-modal users.

Figure 36-2-5. Urban Character Area Example Illustrations

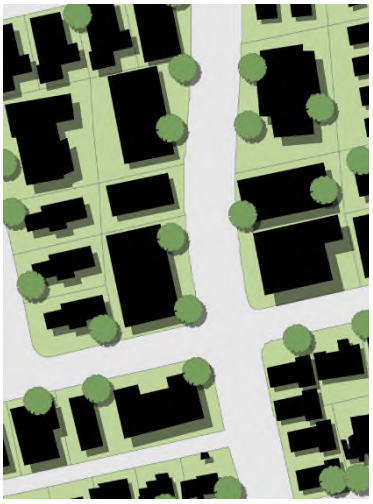
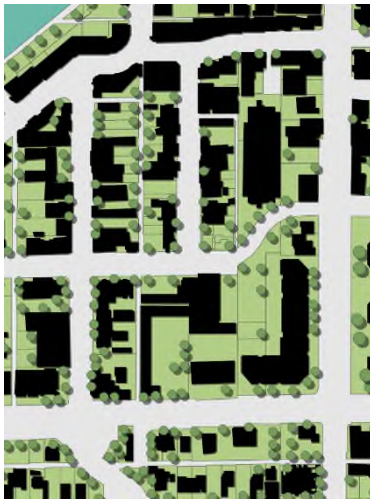
NH-1-Urban	NH-2-Urban	NH-3-Urban
		
Highest-intensity neighborhoods with primarily residential development	Highest-intensity neighborhoods with compatible-scale neighborhood services	Highest-intensity neighborhoods with a mix of residential and nonresidential development

Figure 36-2-6. Urban Character Area Standards

Streetscape	
Street Cross-Section	See **Sec. 38-2.C. Street Design Criteria**
Streetlights	See **Sec. 38-2.I. Streetlighting**
Sidewalks & Trails	See **Sec. 38-2.M. Sidewalks and Multi-Use Paths**
Street Trees	See **Sec. 38-7.D. Required Landscaping**
Connectivity	See **Sec. 38-2.E.5. Block Length**
Site Design	
Parking Treatment	See **Sec. 38-2.N.6. General Standards for Off-Street Vehicular Parking and Loading Areas** Character Area-Specific Standard: No off-street parking may be located between the front facade and the public right-of-way. Location-Specific Standard: Off-street parking is not required in the Urban Character Area; MXCO, Mixed Use Corridor Overlay District; TCO, Town Center Overlay District; NCO, Neighborhood Center Overlay District; or the DDC, Downtown Development Code area.
Transition Treatment	See **Sec. 38-8. Fencing, Screening, and Buffering**

3. NH-1, Neighborhood 1 District (Rural, Suburban, Urban)

   The NH-1 District supports areas primarily used for housing, offering housing options that vary in intensity and density based on the character of the area. These options include low-density detached homes, mid-density options like cottage courts and townhomes, and high-density apartment and condominium developments. While nonresidential development is limited, the district offers a mix of neighborhood services and public and semi-public uses such as parks, schools, and places of worship to provide basic amenities and services to the community.

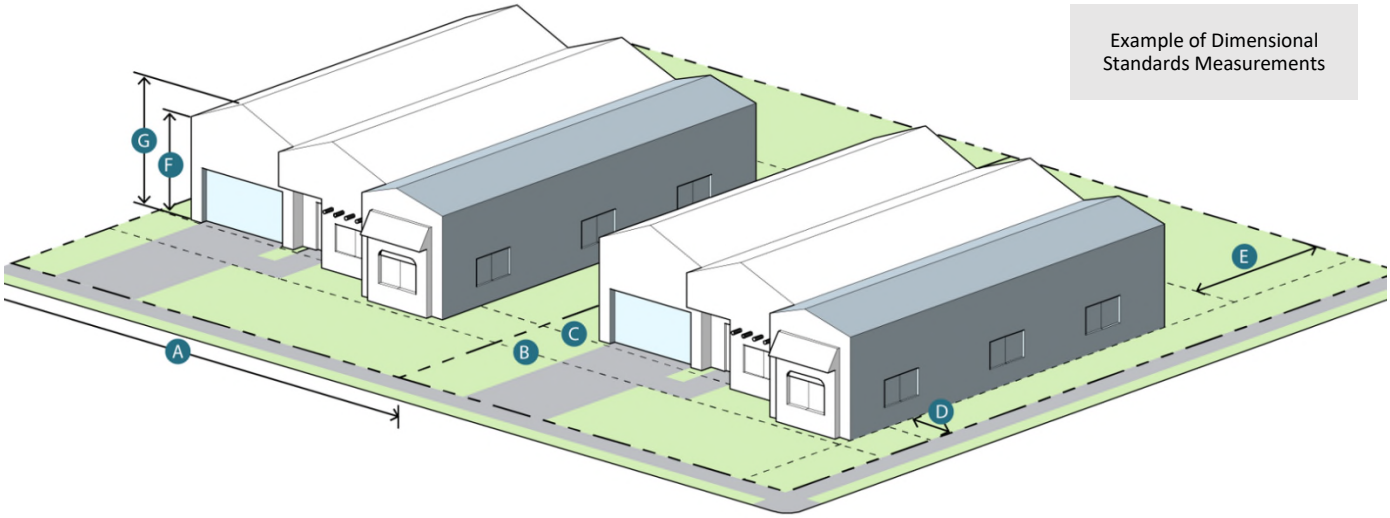


Figure 36-2-7. NH-1 Density, Dimensions, and Primary Building Design Standards

		NH-1-Rural	NH-1-Suburban	NH-1-Urban
	DENSITY			
	Residential Density (Max.)[1]	1 DUA	16 DUA	40 DUA
	DIMENSIONS			
A	Lot Width (Min.)	70’	40’	20’
B	Front Setback (Min.) Arterials/Collectors Locals	 25’ 20’	 20’ 15’	 15’ 12’
C	Front Build-To Line[2] Arterials/Collectors Locals	N/A	N/A	 15’ 12’
D	Side Setback (Min.)	15’	5’	0’
E	Rear Setback (Min.)	25’	15’	10’
F	Ground Floor Height (Min.)	N/A	N/A	12’ min. for buildings with 1-2 stories; 16’ min for buildings with 3+ stories
G	Building Height (Max.)	40’	50’	70’
	Garage Front Setback (Min.)	20’	20’	12’
	Accessory Structures	See **Sec. 36-4.B.2. Accessory Structures**.		

	NH-1-Rural	NH-1-Suburban	NH-1-Urban
PRIMARY BUILDING DESIGN			
Architectural Definition	N/A	N/A	Buildings with 3+ stories shall incorporate a tripartite design with architecturally defined base, middle, and top levels
Glazing (Min. – Mixed-Use, Commercial, Or Office Uses Only)	N/A	N/A	Ground floor front facade(s): 50% min. All other facades/floors: 20% min.

[1]Excludes accessory dwellings.

[2]At least 75% of the front facade shall be located in front of the Build-To Line.

4. NH-2, Neighborhood 2 District (Rural, Suburban, Urban)

   The NH-2 District includes a harmonious mix of well-integrated and compatible land uses that seamlessly blend together. Conveniently located neighborhood services support a vibrant living experience, with both vertical and horizontal mixed use development. This district is designed to enable people to live, work, and play in a cohesive environment.

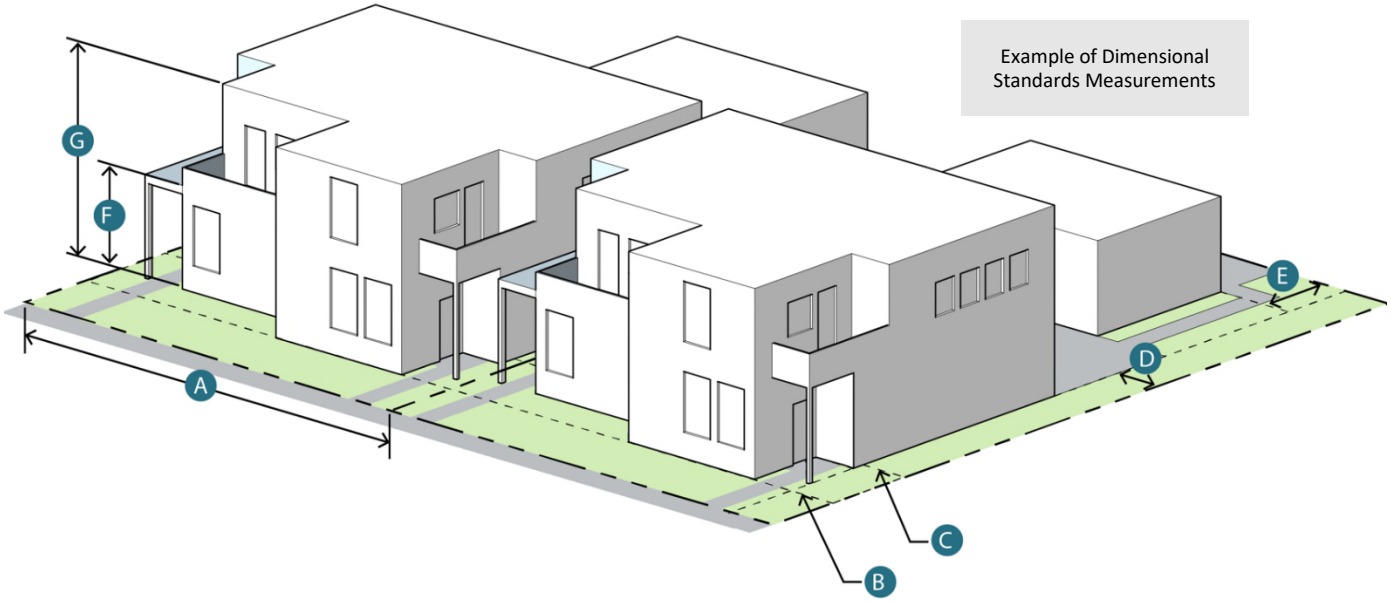


Figure 36-2-8. NH-2 Density, Dimensions, and Primary Building Design Standards

		NH-2-Rural	NH-2-Suburban	NH-2-Urban
	DENSITY			
	Residential Density (Max.)[1]	2 DUA	24 DUA	50 DUA
	DIMENSIONS			
A	Lot Width (Min.)	60’	35’	20’
B	Front Setback (Min.) Arterials/Collectors Locals	 25’ 20’	 20’ 15’	 15’ 12’
C	Front Build-To Line[2] Arterials/Collectors Locals	N/A	N/A	 15’ 12’
D	Side Setback (Min.)	15’	5’	0’
E	Rear Setback (Min.)	25’	15’	10’
F	Ground Floor Height (Min.)	N/A	N/A	12’ min. for buildings with 1-2 stories; 16’ min for buildings with 3+ stories
G	Building Height (Max.)	40’	50’	70’
	Garage Front Setback (Min.)	20’	20’	12’
	Accessory Structures	See **Sec. 36-4.B.2. Accessory Structures**.		

	NH-2-Rural	NH-2-Suburban	NH-2-Urban
PRIMARY BUILDING DESIGN			
Architectural Definition	N/A	N/A	Buildings with 3+ stories shall incorporate a tripartite design with architecturally defined base, middle, and top levels
Glazing (Min. – Mixed-Use, Commercial, Or Office Uses Only)	N/A	N/A	Ground floor front facade(s): 50% min. All other facades/floors: 20% min.

[1]Excludes accessory dwellings.

[2]At least 75% of the front facade shall be located in front of the Build-To Line.

5. NH-3, Neighborhood 3 District (Rural, Suburban, Urban)

   The NH-3 District is a transitional zone between residential and nonresidential areas that promotes interconnectivity and walkability within the district while ensuring compatibility with adjacent districts. Development intensity may vary throughout the site; the lowest intensities (e.g., larger lot size, increased setback, reduced height, residential uses) should be placed adjacent to a NH-1 or NH-2 District to ensure compatibility. Vertical mixed-use, retail, commercial, and office uses are appropriate in this district when appropriately integrated with nearby residential uses, ensuring that they complement and do not negatively impact the residential character of the adjacent districts. Intensive uses such as heavy commercial, industrial, and outdoor storage are not appropriate in this district.

Figure 36-2-9. NH-3 Density, Dimensions, and Building Design Standards

		NH-3-Rural	NH-3-Suburban	NH-3-Urban
DENSITY				
	Residential Density (Max.)[1]	4 DUA	30 DUA	60 DUA
DIMENSIONS				
A	Lot Width (Min.)	50’	30’	20’
B	Front Setback (Min.) Arterials/Collectors Locals	 25’ 20’	 20’ 15’	 15’ 12’
C	Front Build-To Line[2] Arterials/Collectors, Locals	N/A	N/A	 15’ 12’

	NH-3-Rural	NH-3-Suburban	NH-3-Urban
E Side Setback (Min.)	15’	5’	0’
F Rear Setback (Min.)	20’	10’	5’
G Ground Floor Height (Min.)	N/A	N/A	12’ min. for buildings with 1-2 stories; 16’ min for buildings with 3+ stories
H Building Height (Max.)	40’	50’	70’
Accessory Structures	See **Sec. 36-4.B.2. Accessory Structures**.		
PRIMARY BUILDING DESIGN			
Architectural Definition	N/A	N/A	Buildings with 3+ stories shall incorporate a tripartite design with architecturally defined base, middle, and top levels
Glazing (Min. – Mixed-Use, Commercial, Or Office Uses Only)	N/A	N/A	Ground floor front facade(s): 50% min. All other facades/floors: 20% min.

[1]Excludes accessory dwellings.

[2]At least 75% of the front facade shall be located between the Build-To Line.

6. CR, Commercial/Retail District (Rural, Suburban, Urban)

   The CR, Commercial/Retail District (Rural, Suburban, Urban) provides a wide range of commercial uses at various scales to serve residents and attract regional customers. This district specifically:

   a) Accommodates commercial, retail, office, and related nonresidential uses.

   b) Provides a system of convenient pedestrian and bicycle facilities to ensure connectivity between parking, adjacent streets, and all on-site facilities.

   c) Utilizes landscape areas of water-wise plantings along site frontages, within parking areas, and adjacent to public gathering areas to create aesthetically appealing commercial development.

   d) Mitigates intensive commercial development impacts through green infrastructure design, including xeriscaping and bioretention features.

   e) Promotes commercial development that manages vehicular access through consolidated curb cuts, cross-access easements, and driveway throat length.

   f) Provides uniform architectural styles and design features to foster holistic, attractive commercial development.

   g) Includes design standards for nonresidential buildings that fit the character of the surrounding community.

7. LI, Light Industrial District (Rural, Suburban, Urban)

   The LI, Light Industrial District (Rural, Suburban, Urban) provides for light industrial uses within a business/industrial park setting. Development intensity is low, with a focus on high-quality design and amenities. This district encourages uses that accommodate light industrial activities with secondary limited retail and service uses. This district specifically:

   a) Encourages industrial development in areas not directly adjacent to neighborhoods.

   b) Promotes industrial development to take direct access from Freeways, Principal Arterial, or Minor Arterial thoroughfares.

   c) Locates allowed land uses away from sensitive environmental areas.

8. HI, Heavy Industrial District (Rural, Suburban, Urban)

   The HI, Heavy Industrial District (Rural, Suburban, Urban) provides for the development of intensive industrial uses that generate significant development impacts. This district does not support secondary retail and commercial uses. This district specifically:

   a) Locates industrial development away from neighborhoods and commercial developments.

   b) Requires industrial development to take direct access from Freeways or Principal Arterial thoroughfares.

   c) Locates allowed land uses away from sensitive environmental areas.

9. OS-1, Open Space-Preserve and Recreational District (Rural, Suburban, Urban)

   a) The OS-1, Open Space-Preserve and Recreational District (Rural, Suburban, Urban) is intended to preserve, protect, and enhance areas set aside for parks, recreation, and open space. This district specifically:

      i) Allows both public and private lands to serve as areas providing passive recreational opportunities in a natural setting.

      ii) Protects, preserves, and/or restores natural resources and open spaces such as areas of undisturbed native vegetation, arroyos, and major land features when development within these areas would be detrimental to the health, safety, and general welfare of City residents.

      iii) Establishes buffer areas that are aimed at mitigating issues involving potentially incompatible land uses.

b) Application of the OS-1, Open Space-Preserve and Recreational District (Rural, Suburban, Urban) to private land requires the express written consent of the property owner(s).

10. OS-2, Open Space-Drainage District (Rural, Suburban, Urban)

The OS-2, Open Space-Drainage District (Rural, Suburban, Urban) is intended to provide for drainage areas or facilities, typically owned by or dedicated to the City.

Figure 36-2-10. Dimensional Standards

	CR	LI	HI	OS-1	OS-2
LOT STANDARDS					
Lot Width (Min.)	60’	60’	60’	N/A	N/A
Lot Depth (Min.)	70’	70’	70’	N/A	N/A
PRIMARY BUILDING SETBACKS					
Front (Min.)	15’	15’	15’	N/A	N/A
Side (Min.)	0’	0’	0’	N/A	N/A
Rear (Min.)	0’	0’	0’	N/A	N/A
Rear – Alley (Min.)	15’	0’	0’	N/A	N/A
BUILDING STANDARDS					
Building Height (Max.)	60’	60’	60’	N/A	N/A

Note: Zero lot line development shall meet all adopted building and fire codes.

C. Overlay Zoning Districts

1. Overlay Zoning Districts

   As overlay districts, these standards apply in addition to a base zoning district's standards unless otherwise stated. The following is a list of the overlay zoning districts described in this subsection:

   a) MXCO, Mixed Use Corridor Overlay District

   b) TCO, Town Center Overlay District

   c) NCO, Neighborhood Center Overlay District

   d) AOD, Las Cruces International Airport Operations Overlay District

2. MXCO, Mixed Use Corridor Overlay District

   The MXCO is intended to implement the Comprehensive Plan's Mixed Use Corridor Place Type Overlay. Mixed Use Corridors support a mix of residential and nonresidential land uses along roadway or trail corridors. Mixed Use Corridors mimic the built environment of a central business district or other mixed-use activity center by combining residential and nonresidential land uses within buildings or on shared parcels but arranges such uses in a linear manner along established thoroughfares. Land uses are prescribed by the underlying base district; however, typical land uses include retail businesses, commercial services, professional offices, multi-family residential, and limited single-family residential.

   In addition to the uses permitted in the underlying base district by **Sec. 36-3.B. Use Classifications and Use-Based Standards**, the following uses are permitted by-right in the MXCO:

   a) Multi-Family Dwelling (if Multi-Family Dwelling is not permitted in the base district, then density shall be based on NH-3)

   The MXCO is an optional overlay, meaning an applicant within the district may choose to use all of the standards prescribed by this section, or they may choose to use the base district's standards. Within the MXCO, an applicant may choose to combine the MXCO with the NCO to achieve more flexible standards. A property owner may request to become part of the MXCO if the property is adjacent to the existing overlay.

3. TCO, Town Center Overlay District

   The TCO is intended to implement the Comprehensive Plan's Town Center Place Type Overlay. Town Centers include a mix of residential and nonresidential land uses that collectively create a vibrant and walkable activity center. Town Centers support institutional, cultural, employment, shopping, and entertainment uses while also providing high-density residential living options to create an energized environment to live, work, and play. Land uses are prescribed by the underlying base district; however, typical land uses include retail businesses, commercial services, professional offices, multi-family residential, and limited single-family residential.

   The TCO is an optional overlay, meaning an applicant within the district may choose to use all of the standards prescribed by this section, or they may choose to use the base district's standards. A property owner may request to become part of the TCO if the property is adjacent to the existing overlay.

4. NCO, Neighborhood Center Overlay District

   The NCO is intended to implement the Comprehensive Plan's Neighborhood Center Place Type Overlay. Neighborhood Centers include a mix of residential and nonresidential land uses that provide nodes of community activity for surrounding residential neighborhoods. These walkable activity centers provide local employment, shopping, and entertainment opportunities. Neighborhood Centers are located at key neighborhood intersections, and can be used to provide a transition between single-family residential neighborhoods and areas of higher development intensity.

   Only the following uses are permitted in the NCO, including any use-based standards established by **Sec. 36-3.B. Use Classifications and Use-Based Standards**:

a) Walk-Up Window

b) Child Care Center

c) Community Building or Banquet Center

d) Indoor Entertainment

e) Art Studio or Instruction

f) Grocery (Local)

g) Personal Services

h) Retail Store (Local)

i) Bar

j) Cafe

k) Restaurant

l) Tap Room or Tasting Room

The NCO is an optional overlay, meaning an applicant within the district may choose to use all of the standards prescribed by this section, or they may choose to use the base district's standards. A property owner may request to become part of the NCO if the property is adjacent to the existing overlay.

Figure 36-2-11. MXCO, TCO, and NCO District Density, Dimensions, and Primary Building Design Standards

	MXCO, Mixed Use Corridor Overlay District	TCO, Town Center Overlay District	NCO, Neighborhood Center Overlay District
DENSITY			
Residential Density Range (Min./Max.)[1, 2]	75% / 150% of the base district DUA	75% / 150% of the base district DUA	N/A
DIMENSIONS			
Setbacks (Min.) Front Side Rear	 12' 0' As established by the base district	 12' 0' As established by the base district	 12' 0' As established by the base district
Front Build-To Line[3] Arterials/Collectors/Boulevards Locals/Avenues	 20' 15'	 20' 15'	 20' 15'
PRIMARY BUILDING DESIGN			
Building Height (Min. and Max.)	5 stories		Buildings shall not exceed the maximum building height of the base district by more than 15'
Facade Delineation	Changes in building elements (e.g., canopies, balconies, awnings, materials, offsets) shall delineate between adjacent buildings and storefronts and to distinguish ground-floor space from upper stories. Buildings with 3+ stories shall incorporate a tripartite design with architecturally defined base, middle, and top levels.		
Glazing of Nonresidential Facades (Min.)	Ground floor front facade(s): 50% min. All other facades/floors: 20% min.		Ground floor front facade(s): 35% min. All other facades/floors: 20% min.
	Numerous smaller openings rather than a few large ones shall be provided along these facades in the accomplishment of this provision. Reflective, translucent, or opaque glass is prohibited.		

	MXCO, Mixed Use Corridor Overlay District	TCO, Town Center Overlay District	NCO, Neighborhood Center Overlay District
Architectural Elements	See **Sec. 36-4.C. Nonresidential, Mixed-Use, and Multi-Family Development**, subsection **5. Architectural Features**,		
SITE DESIGN STANDARDS			
Street Design	New development shall use the Boulevard and Avenue cross-sections (see **Sec. 38-2.C. Street Design Criteria**). Redevelopment shall incorporate principles from these cross-sections as determined by the Development Review Committee.		NCOs shall not be located on Local Streets, except at an intersection with a Boulevard, Avenue, or larger facility.
Parking	No off-street parking may be located between the front facade and the public right-of-way. See parking reduction provisions in **Sec. 38-2.N.4. Minimum Off-Street Vehicular Parking Requirements**.		
Pedestrian Environment	Pedestrian areas adjacent to the buildings shall incorporate features to promote a walkable environment, such as seats, benches, shade trees, awnings, and arcades. Where awnings are used, they should be metal or an equivalent durable material.		
Signs	See **Figure 38-10-5. Permitted Sign Locations and Standards** in **Sec. 38-10. Signs**.		

[1] Excludes any accessory dwellings.

[2] An applicant must pick one overlay to use. Overlays cannot overlap to compound the density bonus.

[3] At least 75% of the front facade shall be located in front of the Build-To Line.

5. AOD, Las Cruces International Airport Operations Overlay District

   a) Purpose

      The purpose of the Las Cruces International Airport Operations Overlay District is to protect the operations of the Las Cruces International Airport ("Airport") from encroachment of land uses that could inhibit or restrict present airport operations or negatively affect the future growth and operation of the airport. Since the boundaries associated with this district are dependent upon the physical boundaries of specific airport features, the boundaries shall change as necessary with respect to any changes in these features.

   b) AOD Boundary

      The boundaries of this district are shown in **Figure 36-2-12. Las Cruces International Airport Operations Overlay District (AOD)**.

   c) Restrictions

      No residential uses shall be allowed within AOD unless the following requirements are met. These requirements are necessary to mitigate the encroachment of land uses that could inhibit or restrict present airport operations or negatively affect the future growth of the airport.

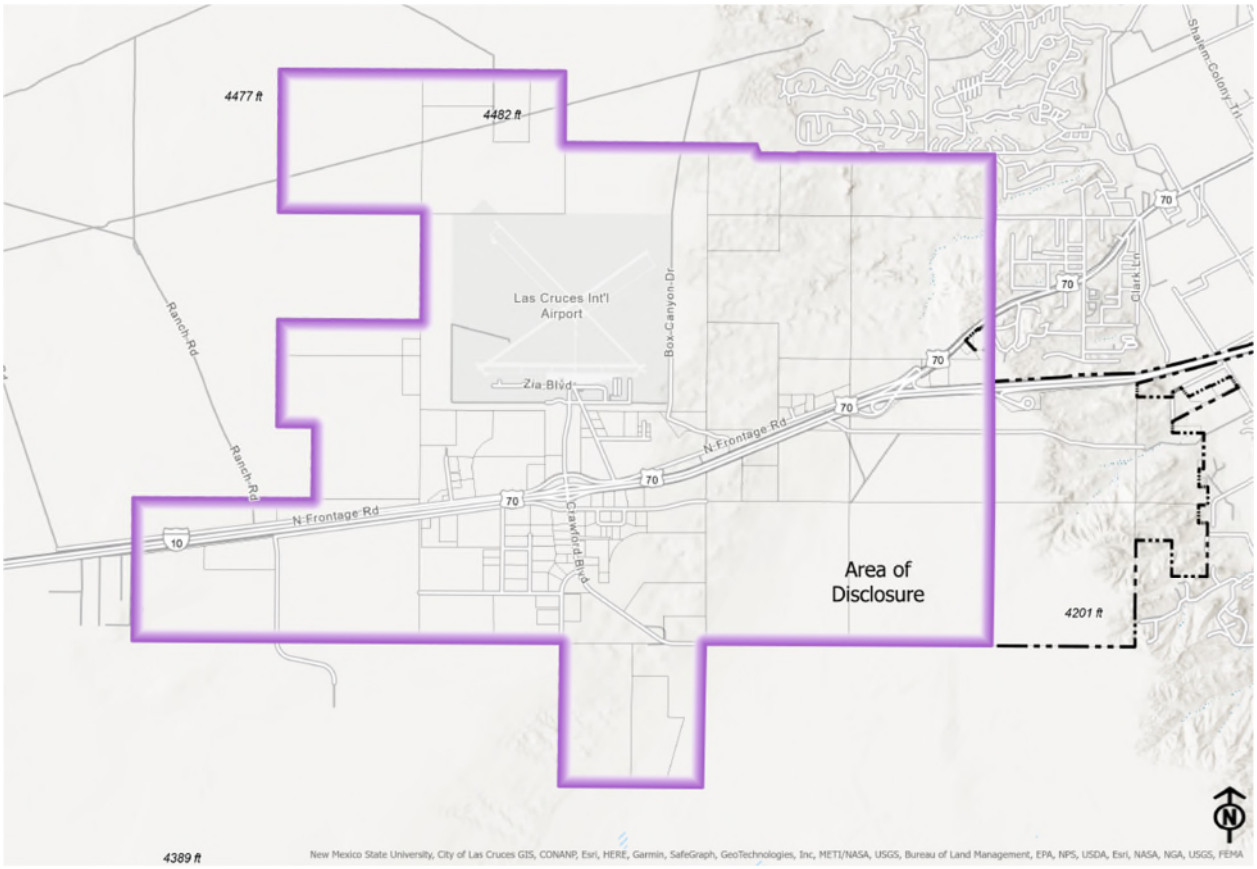
      i) No use may be made of land, water, or electrical power within any zone (includes approach, horizontal, conical, and transitional zones) in such a manner as to create electrical interference with navigational signals or radio communication between airport and aircraft, make it difficult for pilots to distinguish between airport lights and others, result in glare in the eyes of pilots using the airport, impair visibility in the vicinity of the airport, create bird strike hazards or otherwise in any way endanger or interfere with the landing, takeoff or maneuvering of aircraft intending to use the airport.

      ii) No structure shall be erected, altered, or maintained, and no tree shall be allowed to grow in any zone to a height in excess of applicable height limits established by that zone (including approach, horizontal, conical, and transitional zones).

      iii) Effective on the date of this overlay approval, all land subdivisions within the area of disclosure shall require disclosure of the land's proximity to the airport by any person or entity subdividing land within this area. Disclosure of this information shall be required on the final subdivision plat to be recorded with the County Clerk’s Office.

   d) Development Process. Development within the area of disclosure shall be subject to review and approval by the Airport Manager and shall adhere to all applicable restrictions stated and outlined in F.A.R. Part 77 (Height Restrictions) and F.A.R. Part 150 (Noise and Land Use Compatibility) as amended. The Airport Manager shall distribute the approved plans to the appropriate entity for permitting.

Figure 36-2-12. Las Cruces International Airport Operations Overlay District (AOD)



D. Legacy Zoning Districts

1. Legacy zoning districts are previously existing zoning districts that have been preserved within the Development Code but will not be applied to new land. The following is a list of the legacy zoning districts described in this subsection:

   a) ADO, Alameda Depot Neighborhood Overlay District

   b) LCIIP, Las Cruces Industrial Innovation and Industrial Overlay Zone District

   c) SMO, South Mesquite Overlay District

   d) UD, University District Overlay District

2. ADO, Alameda Depot Neighborhood Overlay District

   a) Purpose. The Alameda Depot neighborhood, with its rich history, diverse architecture and peaceful environment, is an important part of Las Cruces life. The purpose of the Alameda Depot Neighborhood Overlay (ADO) is to implement the policies that were established in the Alameda Depot Neighborhood Plan. As it is impacted by changes in downtown and surrounding neighborhoods, residents and property owners want to protect the characteristics that make the Alameda Depot neighborhood special. Specific provisions in this overlay provide greater flexibility for historic properties and address such things as such as setbacks, land uses, parking and changes to structures that predate the creation of development standards. The Alameda Depot Overlay contains a state historic district and a national historic district, but the neighborhood has not been designated a local historic district, and will be exempt from any future local historic district ordinances should they be adopted by the city.

   b) Applicability.

      i) Introduction. This overlay applies to all properties within the Alameda Depot neighborhood boundaries. These properties have been categorized into six sub-areas, and have been given new zoning designations based on the distinct characteristics of each (see **c)** below). The overlay shall be used to regulate development standards, land uses, design of new streets, new buildings, and new public spaces.

      ii) Terms. The provisions of this overlay are activated by "shall" when required; "should" when recommended; and "may" when optional. Technical terms used throughout this section may be defined in **d)** below. Those terms not defined in **d)** below shall be accorded their commonly accepted meanings or as defined in **Sec. 34-5. Definitions**. In the event of conflicts between these definitions and the provisions herein stated, the Community Development Director shall have the authority pursuant to **Sec. 34-1.I. Interpretations** and **Sec. 34-1.J. Conflicting Provisions** to determine which will be imposed.

      iii) Diagrams and illustrations. Diagrams and illustrations are an integral part of this overlay and are used to help explain standards and guidelines. The diagrams and illustrations are for illustrative purposes only. When in conflict, written text shall take precedence over diagrams and illustrations.

   c) Delineation of overlay. The Alameda Depot Overlay District shall include all properties noted on the associated map (**Figure 36-2-13**). Within the overlay, six distinct zones shall be established: ADO-1, the Alameda Corridor; ADO-2, the Griggs/Organ Corridor; ADO-3, the North and South Residential Cores; ADO-4, the Picacho Corridor; ADO-5, Amador Corridor; and ADO-6, the Railroad Corridor. Description of overlay zones:

      i) ADO-1, the Alameda Corridor: Uses in ADO-1 include single-family residential, multifamily residential, low-intensity office and commercial uses, and public/institutional uses that generate relatively little traffic or parking demand. The residential and historic character of the neighborhood shall be retained as closely as possible.

      ii) ADO-2, the Griggs/Organ Corridor: Uses in ADO-2 include single-family residential, multifamily residential, low-intensity office and commercial uses, and public/institutional uses that generate relatively little traffic or parking demand. The residential and historic character of the neighborhood shall be retained as closely as possible.

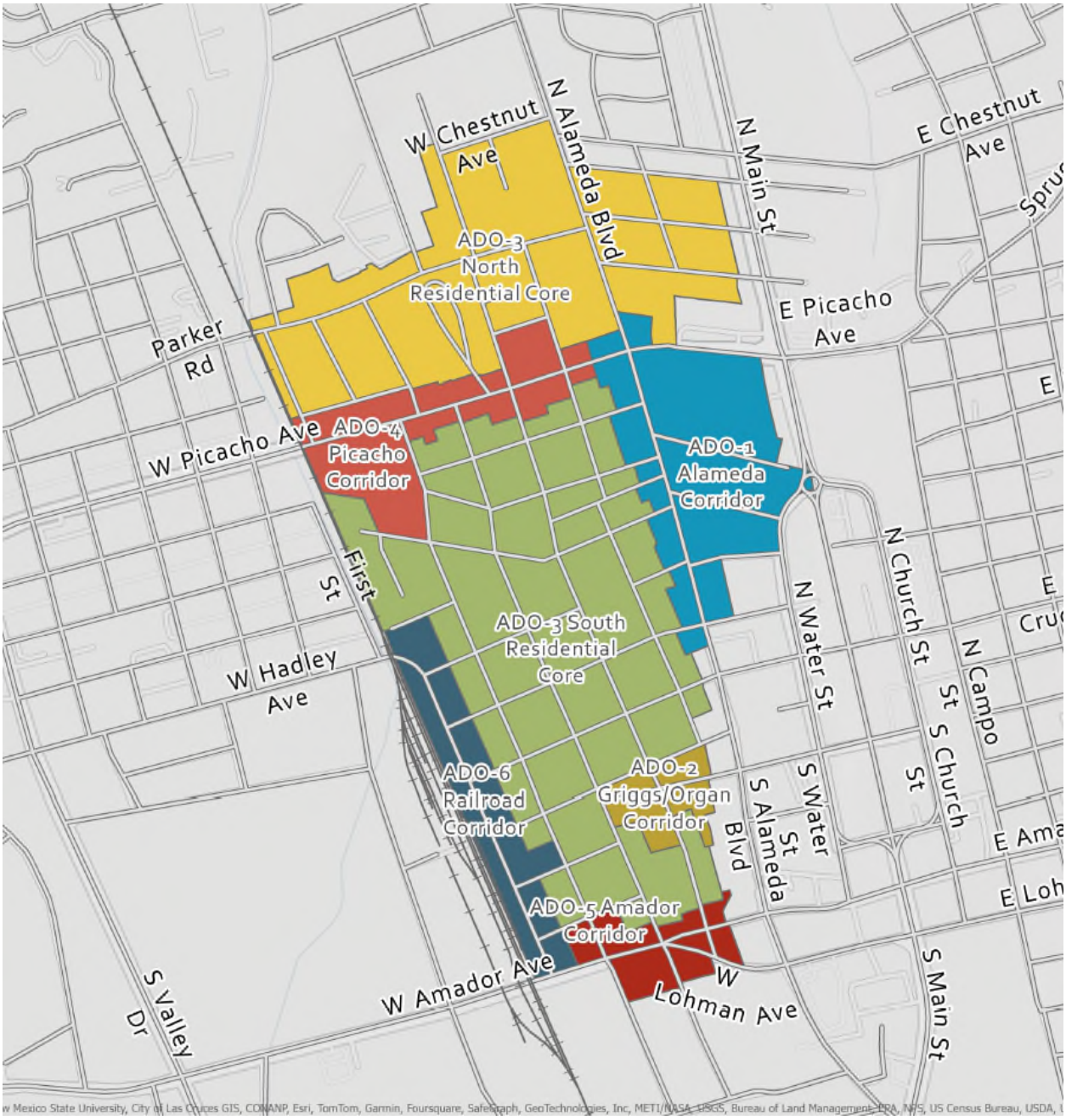
iii) ADO-3 the North and South Residential Cores: ADO-3, the Residential Core, is intended to accommodate primarily detached single-family dwelling units, with or without secondary residences, to maintain and protect a low-density residential character of development, and to maintain the historic appearance of this central area of the neighborhood as closely as possible.

iv) ADO-4, the Picacho Corridor: Uses in ADO-4 include single-family residential, multifamily residential, and low- and medium-intensity office and commercial uses. The residential and historic character of the neighborhood shall be retained as closely as possible. All office and commercial uses are intended to serve as transition zones between higher-intensity uses on Picacho Avenue and the predominantly residential uses of the neighborhood.

v) ADO-5, Amador Corridor: Uses in ADO-5 include single-family residential, multifamily residential, and low- and medium-intensity office and commercial uses. The residential and historic character of the neighborhood shall be retained as closely as possible. All office and commercial uses are intended to serve as transition zones between higher intensity uses on Amador Avenue and adjacent to the DDC, Downtown Development Code and the predominantly residential uses of the neighborhood.

vi) ADO-6, the Railroad Corridor: ADO-6, the Mesilla Street/Railroad Track Corridor, is intended to exist as a mixed-use environment allowing low-intensity manufacturing, low- and medium-intensity office and commercial, and limited residential uses. Residential uses must be part of a mixed-use development. Residential uses existing at the time of adoption of this overlay that are not a part of a mixed-use development are considered legally nonconforming, and shall adhere to the nonconforming use provisions stated below in **h)** below, with the exception of **h)i)a** below. These uses are not subject to the one-year vacancy limit.

Figure 36-2-13. Alameda Depot Overlay (ADO) Boundaries



d) Definitions. Definitions are in addition to those noted in **Sec. 34-5. Definitions**:

Accessory dwelling unit: A self-contained living quarter containing independent kitchen (cooking/culinary) facilities attached to and under the same roof as the main dwelling, created by: The conversion of an existing single-family dwelling; or the addition to an existing single-family dwelling; or the incorporation of applicable areas into a new single-family dwelling design which is subsequently constructed. (also see #19 Accessory Dwelling in **Sec. 36-3.B**).

Accessory use or structure: A subordinate use or structure, the use of which is incidental to and customarily found in connection with the principal dwelling on the same property. Examples: Gazebo, greenhouse, tool shed, detached garage, guest dwelling, swimming pool, tennis court, barn, and flagpole (also see **Sec. 36-4.B.2 Accessory Structures**).

Brew-pub: A brew-pub is a microbrewery that serves food or is combined with a pub. A microbrewery, or craft brewery, is a brewery that produces a limited amount of beer. The maximum amount of beer a brewery can produce and still be classed as a microbrewery in New Mexico is less than or equal to 200,000 barrels a year, according to the New Mexico Alcohol and Gaming Division.

Downtown Development Code (DDC)): All properties with zoning designation of DDC, Downtown Development Code.

Compatible: Capable of existing together in harmony. Parts of a whole that work well together when pieced together.

Consistent: That which is similar to, or nearly the same.

Contributing property: A property, structure, or object that adds to the historical integrity or architectural qualities that make the historic area significant. In general, a contributing property is key to a historic district's historic associations, historic architectural qualities, or archaeological qualities. (A list of contributing properties in the Alameda Depot Neighborhood Overlay is available from the community development department.)

Demolition: An act that destroys or removes in whole or in part of the exterior of a building or structure on a property.

Dwelling, above ground floor: Dwelling unit(s) located above ground floor office or commercial uses.

Facade: Any exterior wall of a structure.

Guest dwelling: A detached or attached dwelling to be used for temporary occupancy only and is not to be rented or leased. A guest dwelling shall be no more than 50 percent of the main dwelling's heated/cooled square footage and shall not contain a kitchen (also see #19 Accessory Dwelling in **Sec. 36-3.B**).

Historic: Structures/buildings deemed historic are those listed as contributing on the federal and/or state historic registers.

Historic district: Area in which historic buildings and their settings are protected by public review. Historic districts comprise the city's significant historic and architectural resources. Inclusion in a historic district signifies that a property contributes to an ensemble that is worth protecting by virtue of its historic importance or architectural quality.

LCMC: Most current edition of the Las Cruces Municipal Code.

Live/work unit: A building that may be used flexibly for living and working in the same building. A variety of uses in the buildings is encouraged. Dwelling units may be located above the ground floor, attached to the rear of a shop front, or detached and located in the rear or side yard. Work is of a commercial nature subject to business registration requirements and not a home occupation.

Manufactured home: A manufactured or modular home that is a single-family dwelling with a heated area of at least 36 feet by 24 feet and at least 864 square feet and constructed in a factory to the standards of the United States Department of Housing and Urban Development, the National Manufactured Housing

Construction and Safety Standards Act of 1974 and the Housing and Urban Development Zone Code 2 or the Uniform Building Code, as amended to the date of the unit's construction, and installed consistent with the Manufactured Housing Act and with the regulations made pursuant to that Act. (#3 Manufactured Home in **Sec. 36-3.B**).

Mixed-use: For the purposes of this overlay, the term refers to the practice of allowing more than one type of land use category (i.e., residential, office, or commercial, etc.) in a single building or set of buildings located on a single parcel. Condominium maps created and filed showing distinct sub-lots on an otherwise single parcel shall be considered as a single parcel for purposes herein stated.

Mobile home: A moveable or portable housing structure larger than 40 feet in body length, eight feet in width or 11 feet in overall height, designed for and occupied by no more than one family for living and sleeping purposes, but does not include structures built to the standards of any municipal building code and other technical codes. (#6 Mobile Home in **Sec. 36-3.B**).

National Historic District: An area that the U.S. Government designates as historically important through the U.S. Department of Interior, under the auspices of the National Park Service. Federally designated historic districts are listed on the National Register of Historic Places. The Alameda Depot Neighborhood Overlay contains a National Historic District.

Outdoor plaza or space: A generally open area that may be used for active or passive purposes by one or more businesses and the public visiting the location. An example may include an outdoor seating area for a cafe or restaurant, outdoor sales and service, a landscaped plaza serving as open space for patrons and visitors alike, etc.

Overlay and special zoning district: Synonymous terms used to define boundaries around an area that has a set of unique or unusual characteristics. Overlays and special zoning districts have a special purpose as defined in an accompanying plan, and may alter general residential, office, commercial or industrial zoning districts or replace them entirely.

Performing arts center: A multi-use performance facility that is intended for use by various types of the performing arts, including dance, music, and theatre.

Secondary residence: A dwelling unit that is subordinate in size and location to the main dwelling on a single property, and may be rented or leased as an independent dwelling unit. A secondary residence is different from a guest dwelling or accessory structure in that it is distinct dwelling unit containing a kitchen. Examples include a traditional guest house, apartment, cottage, or converted garage.

State historic district: An area that is designated by the state as historically important and which follows criteria similar to the federal standards. State listings can have similar benefits to federal designation, such as qualification for grants and tax incentives. Designation of a district is through a review process at the state historic preservation office. New Mexico's Register of Historic Places lists districts and individual properties. The Alameda Depot Neighborhood Overlay contains a state historic district.

Step-back: In buildings with multiple stories, a reduction in the footprint of each level located successively farther from the ground. Step-backs prevent a "canyon effect," which deprives neighboring properties of sun light, and ensure that streets and yards are provided adequate light and air. In addition, they create articulation and a sense of vertical rhythm in the architecture. The space created by a step-back may be used for terraces, gardens, outdoor seating, etc.

Structure: That which is built or constructed, an edifice or building of any kind, or any place of work artificially built up or composed of parts joined together in some definite manner.

Traditional guest house: A type of secondary residence with kitchen facilities found in the Alameda Depot neighborhood as a result of adaptive reuse of existing structures on the same parcel as the primary dwelling. Historically, these units were converted from nonresidential uses, such as a coach house.

e) Permitted uses.

i) Land uses in ADO-1, the Alameda Corridor; ADO-2, the Griggs/Organ Corridor; ADO-4, the Picacho Corridor; ADO-5, Amador Corridor; and ADO-6, the Railroad Corridor shall follow **Figure 36-2-14. ADO Permitted Use Chart** below.

ii) Uses in ADO-3, the North and South Residential Cores, shall be in accordance with the underlying zoning as designated in **Figure 36-3-2. Permitted Use Chart**.

iii) Land use definitions. Unless otherwise stated, land uses are as follows:

a. *Residential:* Low- and medium-density residential uses in the Alameda Depot Neighborhood Overlay are intended to accommodate single-family site built/manufactured dwelling units, including patio homes and townhouses, and multifamily dwellings up to 20 per acre, with no more than four attached units each.

b. *Low-intensity office:* These office uses are small-scale and provide low-intensity service activities. No goods or merchandise are prepared or sold on the premises with the exception of those activities that serve the primary use. Access to streets that are a major local or higher designation is recommended.

c. *Low-intensity commercial:* Low-intensity commercial uses are those that generate small-scale retail and service activities within a neighborhood area.

d. *Medium-intensity commercial*: Medium-intensity commercial areas facilitate and encourage development of those uses that provide retail and service activities as a convenience to the general public.

e. *Public/institutional:* These are uses dedicated to public or nonprofit service, such as schools, religious institutions, government and quasi-governmental agencies, libraries, etc.

f. *Low-intensity industrial:* Low-intensity industrial uses are those that accommodate a wide variety of light manufacturing, commercial, processing, storage, packaging, compounding, wholesaling and distribution operations. Such uses shall be constructed and operated to ensure that there is: 1) no activity producing noise, glare, or heat observable or measurable outside the building; 2) no emission of objectionable dust, fumes, odors, vapors, gases, smoke, or other forms of air pollution; 3) no vibration which is discernible beyond the property lines to the human sense of feeling for three minutes or more duration in any one hour of a day.

Figure 36-2-14. ADO Permitted Use Chart

a) RESIDENTIAL USES	ADO-1 ADO-2	ADO-4 ADO-5	ADO-6	CONDITIONS
Assisted Living or Retirement Facility	C	C	NP	Use shall be located on a collector or higher designated roadway.
Bed and Breakfast	C	C	NP	See #64 Bed and Breakfast in **Sec. 36-3.B**
Boarding House	A	A	NP	
Dwelling Unit, including: Accessory Dwelling Unit Apartments Detached Site Built Single Family DU (incl. manufactured homes) Duplex, Triplex, etc. Dwelling, Live-Work Guest Dwelling Patio Homes Townhouse (Attached Single Family DU) Secondary Residences	A	A	C	In ADO-6, residential uses are intended to be multi-family and must be part of a live/work or multi-use development project. Project must be no more than 50% residential.
Fraternity/Sorority House	A	A	NP	
Halfway House	S	S	NP	
Home for Disabled	A	A	NP	

a) RESIDENTIAL USES	ADO-1 ADO-2	ADO-4 ADO-5	ADO-6	CONDITIONS
Nursing Home	C	C	NP	Use shall be located on a collector or higher designated roadway.
Temporary/Homeless Shelter	A	A	NP	
A = Allowed C = Conditional S = Special Use Permit NP = Not Permitted				

b) RESIDENTIAL RELATED USES	ADO-1 ADO-2	ADO-4 ADO-5	ADO-6	CONDITIONS
Accessory Uses & Structures	C	C	C	See #Sec. 36-4.B.2 Accessory Structures in **Sec. 36-3.B**
Greenhouse (Noncommercial), Garden Shed, Tool Shed	C	C	C	See #Sec. 36-4.B.2 Accessory Structures in **Sec. 36-3.B**
Recreational Court, Tennis, etc., Private	C	C	C	See #Sec. 36-4.B.2 Accessory Structures in **Sec. 36-3.B**
A = Allowed C = Conditional S = Special Use Permit NP = Not Permitted				

c) RECREATIONAL USES	ADO-1 ADO-2	ADO-4 ADO-5	ADO-6	CONDITIONS
Health/Exercise Club/Gymnasium/Sports Institution	NP	A	A	
Park	A	A	A	
Recreational Court, Tennis, etc., Public	A	A	A	
Skating Rink	NP	A	NP	
Swimming Pool, Commercial or Public	C	C	C	See #71 Outdoor Entertainment in **Sec. 36-3.B**
A = Allowed C = Conditional S = Special Use Permit NP = Not Permitted				

d) INSTITUTIONAL RELATED USES	ADO-1 ADO-2	ADO-4 ADO-5	ADO-6	CONDITIONS
Child Care: Family Child Care Home (5—6 children)	C	C	C	See #37 Child Care Home (≤6) in **Sec. 36-3.B**
Child Care: Group Child Care Home (7—12 children)	C	C	C	See #38 Group Child Care Home (7-12) in **Sec. 36-3.B**
Child Care: Child Care Center or Preschool (over 12 children)	NP	S	S	See #36 Child Care Center in **Sec. 36-3.B**
Community Buildings	C	C	NP	
Convention Center/Exhibition Hall	A	A	NP	
Institutional Office (incl. quasi-governmental)	A	A	A	
Library/Museum	C	C	C	
Religious Institution w/Columbarium	C	C	C	See #43 Cemetery or Columbarium in **Sec. 36-3.B**
School (K-12) Public, Private, Parochial	C	C	NP	See #39 School (K-8)40School (9-12) in **Sec. 36-3.B**
School, College or University	C	C	NP	See #41 School (College or University) in **Sec. 36-3.B**
School, Commercial, Trade or Technical	C	C	C	See #42 School (Commercial, Trade, or Technical) in **Sec. 36-3.B**

d) INSTITUTIONAL RELATED USES	ADO-1 ADO-2	ADO-4 ADO-5	ADO-6	CONDITIONS
Theatre, Performing Arts	NP	C	C	Use shall be located on a collector or higher designated roadway.
A = Allowed C = Conditional S = Special Use Permit NP = Not Permitted				

e) OFFICE & COMMERCIAL LAND USES	ADO-1 ADO-2	ADO-4 ADO-5	ADO-6	CONDITIONS
Art Studio	C	C	C	Retail activity is limited to 25% of the gross floor area in ADO-1 and ADO-2, and 50% in ADO-4, ADO-5 and ADO-6.
Bank, Bonding & Financial Institution (No Drive-Thru)	A	A	A	
Eating and Drinking Establishments (Cafe, Cafeteria, Coffee Shop, Restaurant; Bar, Pub, Tavern (No Dancing); Brewpub; etc.)	C	A	A	No drive-thru permitted.
Equipment (Large) Repair & Service (Non-Vehicular)	NP	C	C	No outside storage of parts, materials. or equipment is permitted.
Equipment Rental	NP	C	C	No outside storage of parts, materials, or equipment is permitted.
Gas Station	NP	A	A	
General Office and Service (Accounting, Auditing & Bookkeeping; Architectural, Contracting, Engineering, Planning & Surveying; Photo Studio; Barber/Beauty/Hair Salon & Related Personal Care; Cleaning & Maid Services; Consulting Services; Counseling Services; Credit Reporting & Collection; Desktop Publishing & Graphic Design; Funeral Home; Insurance; Laboratory; Legal Services; Lessons (Art, Dance, Music, etc.); Mailing & Stenographic Services; Medical/Dental Office; Motion Picture Production; Real Estate; Research Organization, Noncommercial; Tax Preparation; and other similar Business Offices.)	A	A	A	
General Retail & Commercial (Bicycle Sales, Service and Repair; Building Materials; Delicatessen, Carpet/Window Treatments; Clothing Store; Convenience Store; Department Store; Produce/Meat Market; Grocery Store; Hardware Store w/out outdoor sales or storage; Furniture Store; Garden Supply; Home Furnishings; Laundry/Dry Cleaning Services; Liquor Store; Pawn Shop; Pharmacy; Photography Studio; Plant Nursery; Specialty Foods such as bakeries, confectionaries, etc.; Specialty Store such as books, music, toys, etc.; Variety Store; Video/DVD Rental/Sales; and other typical small-scale Commercial establishments.)	A	A	A	
Health Care Clinic (Non-Hospital)	NP	A	A	
Hotel/Motel/Youth Hostel	NP	A	A	
Petroleum/Propane Sales	NP	C	C	Use shall be screened with an opaque buffer or screen meeting current Fire Code standards. Also see #124 Hazardous Chemical Manufacturing or Storage in **Sec. 36-3.B**.
Private Club or Lodge	NP	A	A	
Radio/TV Studio/Station	NP	A	A	
Seasonal Sales, Non-temporary (Fireworks, Agricultural Produce, Snowcone Stand, Firewood Sales, etc.)	C	C	C	All structure locations shall meet all applicable setback requirements. If sited on property where other uses exist, there shall be no obstruction of the driving aisles or parking stalls unless it can be proven that there is an excess of parking area. If the use does not follow temporary use provisions, the property shall be subject to all applicable development requirements.

e) OFFICE & COMMERCIAL LAND USES	ADO-1 ADO-2	ADO-4 ADO-5	ADO-6	CONDITIONS
				See also #35 Seasonal/Temporary Sales or Use in **Sec. 36-3.B**.
Small Item Repair Shop	C	C	C	No outdoor storage of parts, materials, or equipment is permitted.
Telemarketing/Mail Order/Call Center	NP	C	C	No warehousing or distribution is permitted
Temporary (Non-Seasonal)	C	C	C	See #35 Seasonal/Temporary Sales or Use in **Sec. 36-3.B**.
Theater, Movie	NP	A	A	
Theater, Performing Arts	NP	C	C	Uses shall be located on a collector or higher designated roadway.
Upholstery Shop	C	C	C	No outdoor storage of parts, materials, or equipment is permitted.
Vehicle Sales/Service/Rental/Repair (incl. body shop, parts stores, repair & service, wash/wax/detailing (self- or full-service), sales, rental, campers, tire sales/repair, etc.)	NP	C	C	No salvage yard or related activities shall be permitted. No outside storage of parts, materials, or equipment permitted.
A = Allowed C = Conditional S = Special Use Permit NP = Not Permitted				

f) INDUSTRIAL LAND USES	ADO-1 ADO-2	ADO-4 ADO-5	ADO-6	CONDITIONS
Above Ground Storage Tanks for Flammable & Combustible Liquids and LP Gas	NP	NP	C	See #124 Hazardous Chemical Manufacturing or Storage in **Sec. 36-3.B**.
Cab Stand	NP	NP	A	
Cabinetry and Woodworking	NP	NP	A	
Communication/Vertical Structures	C	C	C	See **Sec. 38-11. Wireless Communication Facilities**
Contractor's yard (general, plumbing, mechanical, and others of a similar nature)	NP	NP	C	All storage outside of buildings shall be enclosed with an opaque screen
Face Mount (attached to primary use)	C	C	C	See **Sec. 38-11. Wireless Communication Facilities**
Jewelry, Silverware & Plated Ware	NP	NP	A	
Laboratories (Medical/Dental/R & D)	NP	NP	A	
Manufacturing, Low-Intensity	NP	NP	A	See **Sec. 36-2.D.2.d)** above
Ministorage Units	NP	NP	A	
Musical Instrument Fabrication/Manufacture	NP	NP	A	
Parking Facilities, Commercial (Garages & Public Parking Lots	NP	NP	A	
Printing and Publishing	NP	NP	A	
Railroad Terminal	NP	NP	A	
Signs & Advertising Fabrication/Manufacture	NP	NP	A	
Storage/Display of Merchandise for Sale (except Manufactured buildings, mobile homes & operable cars, trucks, motorcycles & RVs)	NP	NP	C	Outdoor display is permitted and is required to be enclosed behind a solid wall or solid fence no less than 6 feet in height.
Storage outside of buildings of materials, equipment, and supplies not for sale	NP	NP	C	All outdoor storage shall be enclosed with a Type A screen.
Storage, warehousing accessory to Office, Retail, Service, or Industry	NP	NP	C	All outdoor storage shall be enclosed with a Type A screen.
Utility Installation, Public/Private	C	C	C	See #53 Public Utilities (Major) and #54 Public Utilities (Minor) in **Sec. 36-3.B**
Water Purification, Commercial	NP	NP	A	

f) INDUSTRIAL LAND USES	ADO-1 ADO-2	ADO-4 ADO-5	ADO-6	CONDITIONS
Wholesale Trade, any product	NP	NP	A	
A = Allowed C = Conditional S = Special Use Permit NP = Not Permitted				

f) Development standards. There shall be no development or alteration of the lands, uses, or structures within the overlay zone district except as provided for by this section from the date of its enactment and other sections of the City Zoning Code and other City codes and ordinances where applicable. Development requirements and permitted uses shall be established for the entire overlay zoning district, as follows (unless otherwise indicated):

1. PLACEMENT OF PRIMARY STRUCTURES—RESIDENTIAL	
Lot Area/Size	Minimum: 3500 square feet Maximum: Not to exceed size of largest existing lot on both sides of the same block. Applications for replats that would result in a larger lot size will be considered on a case by case basis.
Minimum Lot Width/Frontage	40 feet
Minimum Lot Depth	70 feet
Front Setback	Within the range of primary building setbacks on both sides of the same block.
Secondary Front Setback	5 feet
Side Setback	Minimum: 5 feet • Setback may be zero only if there is an existing structure on the same property with a zero setback. • Stormwater required to be contained on subject parcel. • Separation between all structures, on same and adjacent property, must comply with the International Building Code and other companion codes.
Rear Setback	Minimum: 10 feet • Setback may be less than 10 feet only if there is an existing structure on the same property with a setback of less than 10 feet. • Stormwater required to be contained on subject parcel. • Separation between all structures, on same and adjacent property, must comply with the International Building Code and other companion codes.
Maximum Building Height	35 feet • Proposed development adjacent to the DDC, Downtown Development Code or Picacho Avenue may obtain a 35% Flexible Development Standard approval from the Community Development Director for structures greater than 35 feet, and will be considered on a case-by-case basis. If adjacent use is single-family residential, this exception shall not apply. • For buildings greater than 2 stories, the upper stories shall be stepped back from the line of the front facade (see definitions).
Maximum # Attached Units	4
Maximum Density	20 Dwelling Units/Acre

2. PLACEMENT OF PRIMARY STRUCTURES—NONRESIDENTIAL	
Lot Area/Size	Minimum: 5,000 square feet Maximum: Not to exceed size of largest existing lot on both sides of the same block. Applications for replats that would result in a larger lot size will be considered on a case-by-case basis.
Minimum Lot Width/Frontage	60 feet
Minimum Lot Depth	70 feet
Front Setback (Incl. Secondary Front Setback)	5 feet • Setback may be less than 5 feet only if there is an existing structure on the same property with a setback of less than 5 feet. • Buildings that request a greater setback shall use that setback frontage for active or passive open space as defined herein. Under no circumstances shall outdoor sales or service activities

2. PLACEMENT OF PRIMARY STRUCTURES—NONRESIDENTIAL	
	encroach on the public right-of-way. • Awnings and entrance canopies may protrude into the setback. • Second story bay windows, porches, decorative elements, landscaping, etc. may protrude into the setback.
Side Setback	Minimum: 5 feet • Setback may be zero only if there is an existing structure on the same property with a zero setback. • Stormwater required to be contained on subject parcel. • Separation between all structures, on same and adjacent property, must comply with the International Building Code and other companion codes.
Rear Setback	Minimum: 10 feet • Setback may be less than 10 feet only if there is an existing structure on the same property with a setback of less than 10 feet. • Stormwater required to be contained on subject parcel. • Separation between all structures, on same and adjacent property, must comply with the International Building Code and other companion codes.
Maximum Building Height	35 feet • Proposed development adjacent to the DDC, Downtown Development Code or Picacho Avenue may obtain a 35% Flexible Development Standard approval from the Community Development Director for structures greater than 35 feet, and will be considered on a case-by-case basis. If adjacent use is single-family residential, this exception shall not apply. • For buildings greater than 2 stories, the upper stories shall be stepped back from the line of the front facade (see definitions).

3. PLACEMENT OF GARAGES, SURFACE PARKING, SECONDARY RESIDENCES & ACCESSORY STRUCTURES	
Front Setback — Residential and Nonresidential	Garage (Single-Family Residential only): To maintain the historic context of buildings in the neighborhood, garages may be placed within the range of garage front setbacks on both sides of the same block. This ensures that the placement of newly constructed garages is compatible with the location of existing garages in the immediate area and is consistent with the existing integrity and character of the street frontage. If there are no garages on the block to provide a range, the garage setback will be 25 feet. Other: No closer than the rear facade of the primary building(s), 40 feet, or at least 50% of the lot depth, whichever is less.
Secondary Front Setback — Residential and Nonresidential	Surface Parking: 8 feet Other: 10 feet
Side Setback — Residential and Nonresidential	A setback is not required. • No encroachment into ROW permitted. • Stormwater required to be contained on subject parcel. • Separation between all structures, on same and adjacent property, must comply with the International Building Code and other companion codes.
Rear Setback — Residential and Nonresidential	A setback is not required. • No encroachment into ROW permitted. • Stormwater required to be contained on subject parcel. • Separation between all structures, on same and adjacent property, must comply with the International Building Code and other companion codes.
At the minimum, all setbacks shall meet clear sight triangle requirements, and where applicable, encroachment agreements must be entered into. Variances to clear sight triangle will be considered by the public works department.	

g) Property alteration, remodel, or renovation.

i) Purpose. Property alterations, remodels or renovation standards are established for this district to maintain consistent quality for all development and may be used for the purpose of adaptive re-use of the structure. For the purposes of this section, exterior remodel, renovation, or alteration shall be defined as: Any change or rearrangement in the supporting members of an existing building, such as bearing walls, columns, beams, girders, as well as any change in roof lines, or any enlargement to or diminution of a building or structure, whether horizontally or vertically. Normal maintenance activities, as verified by the Building Official, are exempt from this provision.

ii) Minor modifications. In most cases, expansion and/or modifications to a property must comply with the development standards of the Alameda Depot Neighborhood Overlay. However, if, through the determination of the Community Development Director, said compliance would substantially create an undue burden to the property owner or create a condition whereby the expansion and compliance measure, partially applied, would be substantially out of character with the existing development, an exception may be made. In no case shall a minor modification/expansion:

a. Equal or exceed a cumulative total of 15 percent of the gross floor area; or

b. Equal or exceed a cumulative total of $25,000.00 in valuation; or

c. Impact parking or landscape requirements.

iii) Any proposal meeting one or more of the above criteria shall not be considered as a minor addition and/or modification, and shall, therefore, be subject to normal review and consideration afforded development in the overlay and may be subject to nonconforming provisions that follow. The applicant must provide estimates for the cost of labor as a means of ensuring compliance with the valuation criteria. Once permission to proceed has been granted by the Community Development Director, the applicant may apply for the permit. Work shall not commence until permit approval is granted. All other nonconforming use requirements are subject to **Sec. 36-5.G. Nonconformities**.

h) Nonconforming uses, structures, and property. Nonconforming uses, structures and property that legally existed at the time of adoption of this overlay shall be considered legal nonconforming, and shall comply with the nonconforming use provisions found below.

i) Land uses that were legally in place at the time of adoption of this overlay and remain legal uses may continue to the extent the subject regulations allowed, but shall be required to come into compliance with current overlay standards when the following provisions take place:

a. The property remains vacant for a period of one continuous year or greater; or

b. Land use. A change in use occurs on the property that results in the alteration of the use intensity, e.g., low volume retail to high volume retail; use orientation, e.g., service to retail; or density, e.g., eight dwelling units to 15 dwelling units; or change in occupancy type from the building code perspective; or

c. Right-of-way or lighting. When nonconforming features regarding access from the right-of-way or lighting are involved, these features shall be brought into compliance with current standards when any one-time or cumulative increase of 15 percent or greater to the gross square footage of building area occurs; or

d. Signage, landscaping, walls or parking. When nonconforming features regarding signage, landscaping, walls or parking are involved, these features shall be brought into compliance with current standards when any one-time or cumulative increase of 25 percent or greater to the gross square footage of building area occurs; or

e. Development standards. Any noncompliant issues pertaining to setbacks, number of attached units and/or maximum density of existing development shall be brought into compliance with overlay standards to the extent possible. A nonconforming certificate may be issued based on appropriate documentation. Determination of the extent of compliance shall rest with the Community Development Director. Compliance with these matters shall not be triggered when a certificate has been issued as appropriate.

ii) Legal uses that existed prior to ordinance adoption (2010) that become a prohibited use with adoption may be allowed to continue to exist and may expand or enlarge (either one-time or cumulative increase) not more than 50 percent in gross square footage of lot or building area, provided that:

a. The property has not remained vacant for a period of one continuous year or greater; or

b. A change in use has not occurred on the property which results in the alteration of the use intensity (e.g., low volume retail to high volume retail); or use orientation (e.g., service to retail).

iii) Exceptions. Regarding any of the above, any one-time or cumulative increase of less than 15 percent to the gross square footage of building area may take place without requiring compliance to any nonconforming element associated with the property. Exceptions to this provision include those matters the city requires compliance on for purposes of meeting health, safety, and welfare concerns.

i) The Development Review Committee shall review applications for other Flexible Development Standards not specifically outlined herein based on requirements cited in **Sec. 34-3.E**.

j) Parking requirements.

Community Development Department staff shall review plans for adherence to parking requirements. Parking requirements shall follow **Sec. 38-2.N. Off-Street Parking**, with the exceptions stated below:		
1.	Parking Ranges	Parking requirements for automobiles and bicycles are set for land uses in each zone, as noted in **Sec. 36-3.A. Permitted Uses**. Requests to reduce parking requirements shall be evaluated on a case-by-case basis by the Community Development Director.
2.	Off-street Parking Location	Parking areas for nonresidential and multifamily uses shall be located to the side or back of the subject property and screened or buffered when visible from the street. (See subsequent section below, "Landscape requirement, planting for parking lots.")
3.	Adjustments in Required On-Site Parking Spaces	The following provisions are methods to reduce the number of required on-site parking spaces. Any combination of the following options may be used, but in no event shall the reduction amount to more than 50% of the total requirement. The minimum number of parking stalls required is two. These provisions may not be utilized for required accessible parking spaces. a. **Flexible Development Standards.** Applicant may utilize "Tier 1" Flexible Development Standards (**Sec. 34-3.E**) to reduce the number of required on-site parking spaces by up to 25%. Requests to utilize this option shall be evaluated on a case-by-case basis by the Community Development Director. Applicant may utilize this option in combination with other parking reduction options. b. **On-street Parking.** In areas where the city has determined that on-street parking is permissible, this parking may be used for up to 25% of the required parking. On-street parking shall be permitted on all local roadways or as deemed appropriate through a traffic analysis conducted and/or approved by the Public Works Director. c. **Shared Off-street Parking Areas.** Multi-dwelling and nonresidential uses are encouraged to seek shared parking agreements with other multi-dwelling and nonresidential uses on nearby properties. In general, shared parking agreements shall follow criteria found in **Sec. 38-2.N.4.c)ii) Shared and Joint Use of Parking Areas**. Properties within one-fourth mile, as measured along the street network and pedestrian right-of-way, may be considered when determining how parking demand will be met. d. For properties in the Alameda Depot Neighborhood Overlay that are listed as "significant" or "contributing" on the state or National Register of Historic Places and are utilized for office or commercial purposes, it is possible to allow exceptions to the number of on-site parking spaces required in exchange for the improvement or maintenance of the subject property in terms of the building and/or landscaping. e. Other methods to reduce the total number of parking spaces will be considered on a case-by-case basis by the Community Development Director. These provisions follow **Sec. 38-2.N.4.c) Off-Street Parking Alternatives and Reductions**. They include: • Adding more bicycle parking • Adding more landscaping • Building a parking structure • Arranging tandem parking stalls • Providing bus stop or bus shelter at bus stops within one-fourth mile
4.	Walkways	In parking lots larger than one acre or equal to or greater than 200 feet wide, walkways within the lot shall link perimeter sidewalks to primary building entrances.
5.	Prohibited Parking	All vehicles are to be parked along designated streets, in designated driveway or parking areas only. Parking on front lawns and/or landscaped areas shall be prohibited.
6.	Dimensions and ADA Standards	All standards for parking dimensional and ADA requirements for all development within the district shall be consistent with **Sec. 38-2.N. Off-Street Parking**.
7.	Driveways	Driveways width shall comply with city design standards.

k) Landscape requirements. The abundance of mature shade trees in the Alameda Depot neighborhood contributes to the distinct character of the area. Landscape requirements are intended to protect this verdant landscape through the careful selection of plants and the implementation of water conservation principles. Community development department staff shall review landscape plans for adherence to the landscape requirements. Landscaping shall follow **Sec. 38-7. Landscaping** with the following exceptions and specifications:

i) Applicability*:* Landscaping standards apply to all new development and redevelopment in the ADO with the exception of properties that are occupied by single-family residences and duplexes. Where conflict in regulation exists, the provisions of this section shall supersede other landscaping requirements within the Municipal Code.

ii) Areas to be landscaped: The required area to be landscaped is equal to a minimum of 25 percent of the entire parcel area, excluding the main building area. Landscape consists of native or drought-tolerant species of both overstory (shade and coniferous trees) and understory plantings (ornamental trees, shrubs, cacti and perennial grasses, groundcovers and flowers).

iii) Landscape shall be defined as:

a. A minimum of one two-inch caliper tree, 15 five-gallon shrubs and either five one-gallon shrubs or 50 square feet of groundcover plants shall be installed per each 500 square feet of provided landscape area.

b. All plant materials shall be species native to the Chihuahuan Desert or adapted to our climate and to the location of the Alameda Depot neighborhood in the valley. This is not to say that the landscape plan needs to adhere to "zero-scaping." Rather, plants should be chosen that will survive and thrive in the local climate. Appropriate species include, but are not limited to, those in the following table. It is recommended that the applicant consult with a professional landscape architect or the Dona Ana County Master Gardeners regarding appropriate plant selection.

TREES	SHRUBS	GROUNDCOVER
Arizona Ash Arizona Cypress Arizona Mesquite Canyon Hackberry Chinese Pistache Desert Willow Italian Cypress Lacebark Elm Palo Verde Pecan Pines Southern Live Oak Texas Honey Mesquite Texas Red Oak Sycamore Western Hackberry	Euonymus Juniper Pyracantha Sages (Texas, Chihuahuan, Desert, Cherry, Russian) Silverberry Spanish Broom	Bermuda TIFF, various Vinca Horizontal Juniper Trailing Rosemary Iceplant Creeping Thyme Powis Castle Artemesia Dalea capitata Clover Fern

c. All landscape planting should serve to enhance the architectural value of the building, ground the building in the site, create a pleasant and attractive environment for pedestrians, and mitigate environmental conditions such as excess heat, strong winds, and air pollution.

d. Trees shall include shade-producing trees that achieve a mature size of at least 25 feet high and 25 feet spread and ornamental trees that have particular features such as spring blooms, fall foliage color, or bark characteristics.

e. Shrubs shall include a mix of deciduous and evergreen plants.

f. Groundcovers shall serve to prevent soil erosion, provide color, and create an oasis feeling.

iv) Installation. The irrigation system and landscaping shall be installed before the completion of building construction and prior to the issuance of a certificate of occupancy unless a written agreement has been made with the city. Such agreements extending the time of installation will be for a maximum period of nine months, and shall be subject to temporary certificate of occupancy provisions and fees.

v) Planting for parking lots. All new construction and adaptive reuse of properties shall require planted parking areas. Landscaping in parking areas shall follow **Sec. 38-7.D.5. Parking Lot Landscaping** with the following exceptions or specifications:

a. One tree shall be planted for every five parking spaces within parking lots as they pertain to the uses listed for each area.

b. Trees may be located between the parking lot and the building, or within the parking lot itself. In the event that the landscaped area is between the building and the lot, the area shall be no less than eight feet in width.

c. In the event that the parking area is compliant with development standards above and remains adjacent to public right-of-way, there shall be a landscape buffer no less than eight feet wide between the building and the sidewalk or street. The buffer strip shall consist of shade trees and low shrubs or perennial flowers, which may count toward the landscape requirement specified above.

d. Trees in parking lots shall be located in an island or planter in which the tree trunks, at mature size, shall be protected from motor vehicles. Islands and planters shall be a minimum of six feet wide, have a minimum area of 36 square feet and a raised border of at least four inches in height.

vi) Property owners wishing to install landscaping in City right-of-way (for example, parkways or medians) shall first complete a maintenance and liability agreement with the Public Works Department, with the understanding that liability and maintenance shall be property owner's responsibility.

vii) In the event that a tree in City right-of-way must be removed in order to maintain or replace sidewalks, the regulations found in the Municipal Code Chapter 26, Article II, Division 2. Repair and Replacement of Sidewalks, shall be followed.

l) Walls and fences.

i) Existing fences within the district shall remain in place so long as they conform to the standards stated herein. Increases in structure height, length, or configuration shall require full compliance with fencing/wall requirements.

ii) Historic structures. On properties with contributing structures listed on the state or National Historic Register, new walls or fencing should complement or be in keeping with the style of the structure to the greatest extent possible demolition, removal or alteration of existing historic fences, walls, retaining walls, and steps is discouraged.

iii) Fences, walls, and hedges facing the street shall adhere to clear sight triangle regulations (see **Sec. 38-2.H. Clear Sight Triangle**).

iv) Fences, walls, and hedges that are within the rear and side yards shall be limited to a height of eight feet.

v) Retaining walls shall be designed in a manner limiting their height to what is absolutely necessary for the retaining purpose intended.

vi) All other provisions regarding walls and fences not noted herein shall follow those found in **Sec. 38-8. Fencing, Screening, and Buffering**.

m) Signs. All signage shall be of suitable materials and design so as to be compatible with the architecture of the structure and the residential character of the neighborhood. Sign permit applications shall be submitted for approval to the community development department in accordance **Sec. 38-10. Signs**, unless specified below.

i) Freestanding signs.

a. Ground signs shall be the only freestanding sign allowed within the ADO, and shall be no greater than 24 square feet in size and four feet in height. One sign per lot shall be permitted.

b. Freestanding signs are not permitted on parcels used for residential purposes, except for a development identification sign.

c. Ground signs may be illuminated, and shall follow regulations stated in **Sec. 38-9. Outdoor Lighting**.

d. Properties developed as business centers shall conform to the following:

i. A property containing a business center sign may not have additional freestanding signs, except for temporary signage, which shall follow **Sec. 38-10. Signs**.

e. Ground signs shall be placed at least five feet from the outside edge of the right-of-way, and at least five feet from adjacent property lines and not within the clear sight triangle as defined by **Sec. 38-2.H. Clear Sight Triangle**.

f. Freestanding multi-use development directory signs are not permitted.

ii) Attached signs.

a. Wall signs:

i. One square foot of signage for each linear foot of exterior wall space, not to exceed 50 square feet per wall.

ii. The sign(s) shall be placed on the side of the building used to calculate the square footage of the sign.

iii. Window and projecting signage shall be considered types of wall signs.

b. Home-occupation or live-work uses in residential areas shall be allowed one non-illuminated attached sign no greater than four square feet in size. Freestanding signs shall not be permitted for home-occupation or live-work uses.

c. Projecting signage:

i. Projecting signs shall be considered double-faced signs with each sign face of equal size. Only one side shall be used to determine the square footage.

ii. Projecting signs shall not exceed six square feet in sign face area.

iii. Only one projecting sign shall be allowed per business per street frontage.

iv. Only ground floor commercial businesses shall be permitted to utilize projecting signs.

v. Projecting signs must clear walkable areas by at least eight feet as measured from the bottom of the sign to grade and may project no more than four feet from the building or closer than two feet to the sidewalk, whichever is less.

vi. Projecting signs shall be installed at right angles to a building front.

d. Window signs:

i. There shall be no more than one permanent window sign per window.

ii. Neon signs displayed indoors constitute permanent window signs. Only one neon sign shall be permitted per business facade.

iii. The total coverage of all permanent, neon, and temporary window signs shall not exceed 25 percent of the total glass area of the window.

iii) Prohibited signs*:* The following signs are prohibited in the Alameda Depot Neighborhood Overlay:

a. Variable electronic message display boards, whether temporary or permanent.

b. Portable and pole signs, whether temporary or permanent.

c. Permanent banners.

d. Pennants, streamers, and other fluttering devices, whether temporary or permanent.

e. Real estate, construction, contractor and "coming soon" signs over 12 square feet in area or over five feet tall.

f. Billboards.

g. All other signs as prohibited in **Sec. 38-10.D. Prohibited Signs**.

iv) Temporary signs*:* Temporary signs shall follow provisions found in **Sec. 38-10. Signs**.

n) Demolition*.* To preserve any contributing structure listed on the historic register (state or national) in the Alameda Depot Neighborhood Overlay, this section creates a 60-day demolition permit review process that allows time for interested parties to explore alternatives to the demolition of historic structures. Demolition for all other structures shall follow section 30-491 of the LCMC.

i) Demolition permit. Demolition permit applications shall be submitted to the Community Development Department prior to any demolition activity taking place. Community Development Department staff will review the application for compliance with the LCMC. A proposal for redevelopment of the property must accompany the permit application.

ii) Posting. At the beginning of the 60-day demolition permit review process, the Community Development Department will issue a sign that is to be posted in a conspicuous place on the property. The applicant is responsible for posting the sign and ensuring that it is in place for the entire 60-day period.

iii) At the beginning of the 60-day demolition permit review process, the Community Development Department will inform the neighborhood associations, the New Mexico State Historic Preservation Office (SHPO) and the Dona Ana Historical Society that a demolition permit has been applied for.

iv) A demolition permit shall be issued upon the completion of the following items: 1) the completion of the 60-day period; and 2) the application meets all City Code requirements and has been approved by the Community Development Department staff. (The applicant may use the 60-day time period to resolve any necessary Code compliance comments.) The permit application may be withdrawn by the applicant at anytime without charge.

v) Prior to the demolition of a historic structure, the applicant shall be responsible for fully documenting the structure, both interior and exterior, to provide a permanent record, in accordance with documentation procedures as follows. The demolition permit will not be approved without submittal and approval of this documentation by Community Development staff.

a. Complete the Historic Cultural Property Inventory (HCPI) forms 1 and 2, available in the Community Development Department and online at:

b. Photograph the historic property: Take several exterior photos of the structure to be demolished (front, rear, sides, close-up views, details, setting, etc.). Photo processing, printing and labeling shall follow the protocol established on the National Register Photo Policy Fact Sheet, available in the Community Development Department and online at:
http://www.nps.gov/history/nr/publications/guidance/Photo_Policy_final.pdf

c. If measured drawings done by the Historic American Building Survey exist, the owner should annotate the drawings, showing changes to the property, interior and exterior, that have occurred up to the current date.

d. If known, a short history of the property should be included, in order to document how that property fits within the historic district or community.

e. The demolition permit will not be approved without submittal and approval of this documentation by Community Development staff.

vi) Compliance with the procedure set out in this section is not required if it is determined by the City of Las Cruces that the immediate demolition of a historic structure is in the best interest of public health, safety and welfare. The applicant shall be responsible for documenting the structure in accordance with the procedure above to fully demonstrate the need for demolition and to provide a historic record of the structure. In the event that entering the structure would pose a threat to the health, safety and welfare of the documenter, interior photos are not required. This documentation must accompany the memo of determination for demolition by the building official prior to the issuance of a demolition permit.

o) Land use/zone change requests. To request a land use that is not permitted in the current district, see **Sec. 34-3.I. Amendments to this Development Code** to request an amendment to the Permitted Use Chart, or **Sec. 36-5.A. Zoning Map Amendments** to request a change in zoning district.

p) Submittal and review process. The following submittal and review procedures are established for all new development to protect persons and property in the Alameda Depot Neighborhood Overlay. The applicant shall submit at minimum, one copy of all application materials to the Community Development Department for review. Upon submittal, staff shall review the submittal for completeness. If all the required items have been submitted, the Community Development Department shall issue a receipt for submittal.

i) Buildings/structures. Prior to the filing of an application for development and/or signs, a pre-application conference with Community Development Department staff to review the proposal is strongly encouraged.

ii) Subdivisions. For submittal and review of subdivisions, refer to **Sec. 37-2. Subdivision Procedures**.

iii) Signs. Sign permit applications shall be submitted for approval to the Community Development Department in accordance with **Sec. 38-10. Signs** and **g)** above.

iv) Numerical deviations to the requirements of **Sec. 38-2.H. Clear Sight Triangle** shall be considered, reviewed, and denied or approved by the Public Works Director.

q) Appeals. Any aggrieved person who is affected by a decision of an administrative official, commission, committee, or board in the enforcement of the Alameda Depot Neighborhood Overlay may appeal such decision in accordance with **Sec. 34-3.F. Appeals**.

r) Enforcement of overlay zone district. Provisions to enforce this section shall be consistent with the enforcement provisions of **Sec. 34-1.H. Violations and Enforcement**.

3. LCIIP, Las Cruces Industrial Innovation and Industrial Overlay Zone District

a) Purpose

The purpose of the Las Cruces Innovation and Industrial Park Overlay Zone District is to guide development within the Park and implement the policies found in the LCIIP Master Plan. It aims to promote the natural and existing environment within the Park, and encourage employment options for residents while enhancing the overall aesthetic features of the Park.

b) Applicability of Industrial Park Overlay Zone District boundaries

The Las Cruces Innovation and Industrial Park Overlay Zone District shall apply to all properties within the Overlay Zone District as identified in **Figure 36-2-16. LCIIP Zoning Designations** below. Most of the Park is regulated by the Overlay Zone District requirements except a few parcels, as indicated in **Figure 36-2-16. LCIIP Zoning Designations**. The Overlay Zone District includes permitted and prohibited uses along with development standards for site, architecture, landscape, and parking.

c) Land Use Districts

As established in Elevate Las Cruces, "Business Park and Industrial areas are reserved for concentrations or warehousing, trade, transportation, research and development, manufacturing, and industrial uses" (Elevate Las Cruces, Volume I, pg. 35).

d) Land Use Framework

i) The goal of the Land Use Framework is to accommodate a range of uses, with the intent of creating synergy between businesses with similar or complementary activities.

ii) The Land Use Framework also establishes a commercial district adjacent to Interstate 10. Uses such as restaurants and retail are permissive here to provide and encourage services to the local workforce. The Land Use Framework establishes four districts with specific permissive land uses. Since the Las Cruces Innovation and Industrial Park Overlay Zone District allows a wide variety of uses and covers almost all the land area within the Park boundary, the Land Use Framework establishes land use districts to group similar or complementary uses to provide a more organized built environment. The Land Use Framework, as illustrated in **Figure 36-2-15. LCIIP Overlay Zone & Districts**, breaks the Park down into four districts:

a. Value added agriculture;

b. Manufacturing/warehousing/distribution;

c. Aerospace/aviation/defense; and

d. Commercial.

iii) The Value-Added Agriculture district is located south of Interstate 10 in the southeastern portion of the Park. It is intended to accommodate agriculture-related manufacturing and other processes that enhance the value of basic agricultural commodities. Most of the parcels are larger in size to provide sufficient land for these types of activities.

iv) The Manufacturing/Warehousing/Distribution district is located south of Interstate 10 in the southwestern portion of the Park. It is intended to accommodate manufacturing, warehousing, and distribution types of uses. It offers a range of parcel sizes and has good access to the interstate.

v) The Aerospace/Aviation/Defense district is located north of Interstate 10 and is adjacent to the Las Cruces International Airport. It is intended to accommodate aviation- and defense-related uses and offers a range of parcel sizes with direct access to the airport.

vi) The Commercial district is located adjacent to Crawford Boulevard, on both sides of the Interstate 10 interchange. It is intended to accommodate commercial uses that offer services to the local workforce and interstate-associated business opportunities. This district has smaller parcel sizes more suited for uses like restaurants, with good visibility and access from the interchange.

e) Development Process

All development within the Overlay Zone District shall follow the applicable City of Las Cruces development processes.

Figure 36-2-15. LCIIP Overlay Zone & Districts

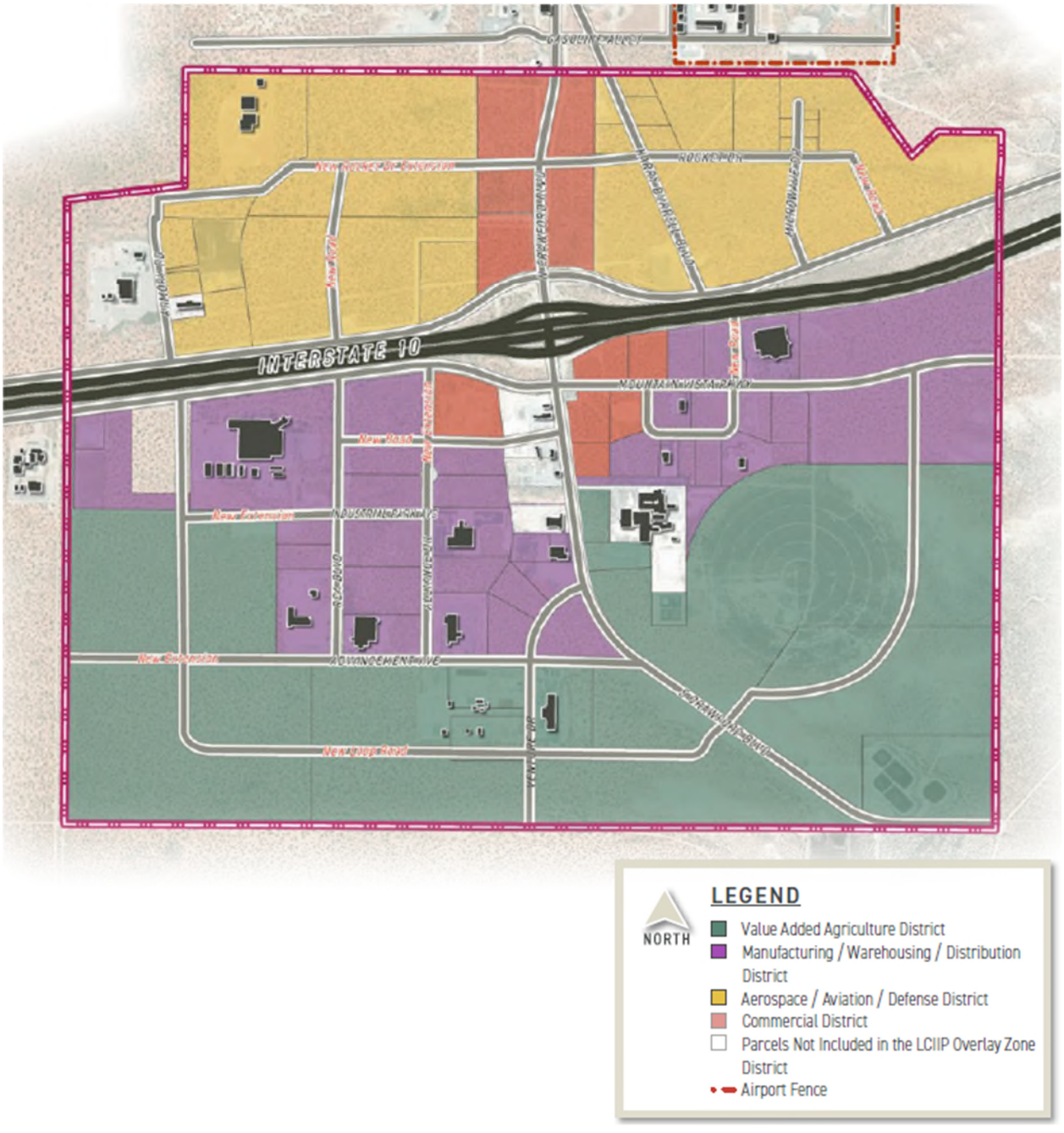


Figure 36-2-16. LCIIP Zoning Designations

f) Land Uses

Figure 36-2-17. LCIIP Use Table allocates uses into four Land Use Districts. A dash ("-") indicates the use is not permitted while a "P" indicates that a use is permitted. An "A" indicates that a use is accessory. Associated Conditional Use Standards are indicated with an "X" and detailed in Section "Conditional Use Standards." This indicates that a use is permitted with conditions. Uses not specified in **Figure 36-2-17. LCIIP Use Table** will be determined by the Community Development Director in consultation with the Economic Development Director.

Figure 36-2-17. LCIIP Use Table

— = Not permitted P = Permitted Use A = Accessory Use X = Existing Conditional Use Standard(s)	Commercia l	Manufacturing/ Warehousing	Aerospace/ Aviation/ Defense	Value Added Agriculture	Conditional Use
RESIDENTIAL USES					
All Residential Uses (except accessory dwelling units as outlined under the Accessory Use category)	—	—	—	—	
CIVIC AND INSTITUTIONAL USES					
Higher Education, Vocational School	P	P	P	P	
Fire and Police Station	P	P	P	P	
Military and Law Enforcement Agency	—	P	P	P	
Parks and Open Space	P	P	P	P	
COMMERCIAL USES					
Agriculture & Animal Related					
General Agriculture	—	P	—	P	X
Small Animal Facilities	P	P	—	P	X
Food, Beverage, Entertainment & Lodging					
Brewery, Microbrewery Facilities, Tasting Rooms	P	P	—	P	X
Food, Beverage, Hotel or Motel	P	—	—	—	
Indoor Entertainment/Recreation Venues	P	—	—	—	
Nightclub and Bar	P	—	—	—	
Motor Vehicle-Related					
Freight House or Truck Terminal	—	P	P	P	
Vehicle Services	P	P	—	P	X
Offices and Commercial Services					
Offices and Research Facility	P	P	P	P	
Commercial Services and General Retail	P	—	—	—	
Construction Contractor Facility and Yard	—	P	P	P	X
Outdoor Entertainment					
Outdoor Entertainment	P	P	-	-	X
INDUSTRIAL USES					
Manufacturing, Fabrications & Assembly					
Cannabis Cultivation, Infused Products Manufacturing	—	P	—	P	X
Light Manufacturing	P	P	P	P	X
Heavy Manufacturing	—	P	P	P	X

— = Not permitted P = Permitted Use A = Accessory Use X = Existing Conditional Use Standard(s)	Commercia l	Manufacturing/ Warehousing	Aerospace/ Aviation/ Defense	Value Added Agriculture	Conditional Use
Special Manufacturing	—	P	—	P	X
Natural Resource Extraction	—	P	—	—	
Recycling Sort Facilities and Electronics Recycling (paper/plastic/metal sorting-only and electronics recycling)	—	P	—	—	
Film and Media Production					
Film and Media Production	P	P	P	P	
Telecommunications, Towers, and Utilities					
Drainage & Major Utility, other	P	P	P	P	
Solar Energy Generation	—	—	P	P	X
Telecommunications, towers, and utilities	P	P	—	P	X
Wholesaling and Storage					
Outdoor Storage	—	P	P	P	X
Warehousing, Logistics, and Distribution	—	P	P	P	
TEMPORARY USES					
Construction Staging Area, Trailer, or Office	P	P	P	P	
Seasonal Outdoor Sales, Events	P	—	—	—	
ACCESSORY USES					
Commercial/Office Uses	A	A	A	A	X
Residential Use—Non-Primary	A	A	A	A	X
Parking Garage with/without Liner Building	A	A	A	A	
Recreational Vehicle Parking Stalls/Hook-Ups	P	—	—	—	X

i) Prohibited Uses

The following uses are prohibited:

a. All uses prohibited under FAA regulations;

b. All adult amusement establishments;

c. All residential uses, except as established under the accessory use category.

ii) Conditional Use Standards

a. Aerospace/Aviation/Defense District

i. All uses in the Aerospace & Aviation District shall comply with all applicable FAA regulations.

b. Commercial Uses

i. Agriculture and Animal Related

(a) General Agriculture

(i) Animals shall be confined to graze within the appropriate boundaries and cannot graze on surrounding properties and streets.

(ii) The keeping of large and small livestock animals shall comply with the City of Las Cruces Municipal Code.

(b) Small Animal Facilities

(i) Kennels must be conducted within fully enclosed building. Outdoor pens shall be enclosed on all sides by a wall or fence at least six feet high.

(ii) This use must be screened as required by **Sec. 36-2.D.3.h)vii) Walls, Fences, and Screening**.

ii. Food, Beverage, Hotel or Motel

(a) Brewery and micro-brewery facilities, including tasting rooms.

(i) Alcohol sales for on-premises consumption is allowed, provided that the establishment complies with all New Mexico State law requirements.

iii. Motor Vehicle-Related

(a) Vehicle Services

(i) This use must be screened as required by **Sec. 36-2.D.3.h)vii) Walls, Fences, and Screening**.

(ii) Vehicle repair, servicing, and maintenance shall be conducted within a fully enclosed building.

(iii) Recreational Vehicle/Parking Stalls/Hook-ups are ancillary to the primary use and cannot be a standalone land use.

iv. Offices and Commercial Services

(a) Construction Contractor Facility and Yard

(i) This use must be screened as required by **Sec. 36-2.D.3.h)vii) Walls, Fences, and Screening**.

v. Outdoor Entertainment

(a) Outdoor Entertainment

(i) Drive-In Theater use shall be enclosed with a wall, fence, or vegetative screen of at least six feet in height. A screen located less than 500 feet from Interstate 10 shall be shielded so that the picture surface cannot be seen from Interstate 10.

(ii) All other outdoor entertainment uses shall include fencing or screening meeting the standards established in **Sec. 36-2.D.3.h)vii) Walls, Fences, and Screening** designed to prevent any objects from passing beyond the property line and onto surrounding properties and streets. Uses shall be limited to one acre in size.

iii) Industrial Uses

a. Manufacturing, Fabrications & Assembly

i. Cannabis cultivation, Infused Products Manufacturing

(a) This use shall comply with all New Mexico State law requirements.

ii. Light Manufacturing

(a) All activities in this use shall be conducted within a fully enclosed building unless a Special Use Approval is obtained pursuant to the City of Las Cruces Special Use Permit Process.

(b) Incidental outdoor storage is permitted but must comply with **Sec. 36-2.D.3.h)vii) Walls, Fences, and Screening**.

(c) This use may include a sales/display room for items manufactured on the property.

iii. Heavy Manufacturing

(a) This use may be conducted outside of a building, provided the activities are screened from view according to **Sec. 36-2.D.3.h)vii) Walls, Fences, and Screening**.

(b) Incidental outdoor storage is permitted but must comply with **Sec. 36-2.D.3.h)vii) Walls, Fences, and Screening**.

iv. Special Manufacturing

(a) This use must obtain all applicable State and federal permits or approvals for the activity and comply with the terms of those permits and approvals throughout the duration of the activity.

(b) This use may be conducted outside of a building, provided the activities are screened from view according to **Sec. 36-2.D.3.h)vii) Walls, Fences, and Screening**.

b. Telecommunications, Towers, and Utilities

i. Solar Energy Generation

(a) This use must obtain all applicable State and federal permits or approvals for the activity and comply with the terms of those permits and approvals throughout the duration of the activity.

ii. Telecommunications, Towers, and Utilities

(a) This use shall comply with the City of Las Cruces Municipal Code.

c. Wholesaling and Storage

i. Outdoor Storage

(a) This use must be screened as required by **Sec. 36-2.D.3.h)vii) Walls, Fences, and Screening**.

iv) Accessory Uses

a. Accessory Commercial Uses

i. In all districts, all uses listed under the 'Food, Beverage, Entertainment & Lodging' use and 'Offices and Commercial Services' use category shall be permissive as an accessory use not to exceed a maximum of 40 percent of the gross floor area of the building for commercial purposes associated with that specific industrial or manufacturing use.

b. Accessory Residential Use—Non-Primary

i. Residential use—non-primary is allowed for caretakers of the primary non-residential use and may be attached or detached.

g) Administration and Enforcement

i) Applicability

The following development standards shall apply to all parcels located within the Overlay Zone District's boundary as identified on **Figure 36-2-15. LCIIP Overlay Zone & Districts**. City of Las Cruces Municipal Code standards shall apply unless otherwise stated in the document.

ii) Non-Conforming

a. Uses and structures that are non-conforming with the standards of the Las Cruces Innovation and Industrial Park Overlay Zone District shall comply with this section.

i. There are two instances of non-conformance:

(a) Instance 1: A non-conforming use/structure which was initiated/constructed prior to the adoption of the Overlay Zone District standards.

(b) Uses that are classified as instance 1 may continue in perpetuity unless the use ceases for a period of no less than 12 consecutive months. However, the use/structure cannot be expanded, enlarged, or extended.

(c) Instance 2: A non-conforming use/structure initiated/constructed after the adoption of the Overlay Zone District standards.

(d) Uses that are classified as instance 2 shall be brought into compliance immediately and shall not be permitted to expand.

h) General Development Standards

i) Streets and Public Right-of-Way

a. All streets within Las Cruces Innovation and Industrial Park must adhere to City of Las Cruces Design and Roadway Construction Standards currently amended/adopted.

b. Property owners shall provide dedicated right-of-way including easements for trail corridors and pedestrian facilities.

c. The property owner is responsible for providing landscaping in accordance with standards outlined in this section in contiguous parkways and medians at the time of site development.

d. All additions, rehabilitation, remodeling, or structural modifications to existing buildings with a value of $100,000.00 or more, including all new parking lots require installation of parkway and median landscaping.

e. Landscape in parkways and medians shall be maintained by the property owner of the contiguous property.

ii) Dimensional Standards

a. All buildings and structures within Las Cruces Innovation and Industrial Park will be limited to the following development requirements:

Figure 36-2-18. LCIIP Dimensional Standards

Dimension	Minimum
Minimum Lot Width	60 feet
Minimum Lot Depth	70 feet
Front Setback, Minimum	25 feet
Secondary Front Setback, Minimum	25 feet
Side Yard Setback, Minimum	20 feet
Rear Setback, Minimum	25 feet
Building Height, Maximum	100 feet

iii) Site Layout

a. Orient building entries, office areas, showrooms and/or lobbies, and amenities to front the primary public street.

b. On-site circulation shall have an adequate length of stacking for industrial facilities, e.g. loading docks, terminals, etc. that do not interfere with the movement of traffic (on- or off-site) and/or pedestrian areas.

c. Outdoor lighting shall follow the regulations provided in **Sec. 38-9. Outdoor Lighting**.

d. Provide on-site pedestrian walkways at a minimum six-foot clear width that are separate from drive aisles to connect to primary building entrances.

e. A public space such as an outdoor patio space, plaza, or courtyard shall be provided for any buildings greater than or equal to 75,000 square feet. For lots with more than one building, shared public spaces are permitted.

f. Sidewalk installation is required with any development located on the north side of Interstate 10.

g. Sidewalk installation is not required with any development located on the south side of Interstate 10.

iv) Parking

a. Accessible parking shall be provided according to Federal ADA parking standards.

b. Landscaped islands and medians shall be incorporated into parking areas to provide shade, define parking areas and pedestrian access, and allow for passive water harvesting. See **Sec. 36-2.D.3.h)vi) Landscaping** for requirements.

c. Surface runoff in parking lots shall be directed to landscaped passive water harvesting areas.

d. A minimum of 20 percent of parking spaces provided shall use previous materials such as previous concrete, previous asphalt, permeable pavers, compacted gravel or gravel. If gravel is used, a minimum of four-inch base course that is compacted to ensure stabilization of gravel is required.

e. Carports, including solar carport canopies, are allowed within surface parking lots, provided the materials are compatible with the building architecture.

f. Fleet vehicle parking and loading docks shall not be located along the site main frontage. The placement of such facilities shall be located in the rear half of the site, secondary front, or behind the principal structure.

g. Outdoor storage areas used for fleet vehicles shall be paved or use a similarly compacted material that is stable and does not produce dust.

h. Bike parking shall be located at the primary entrance of the primary building.

v) Architecture

a. Building Materials

i. Buildings shall be designed to incorporate contemporary architectural styles and materials to create the appearance of a state-of-the-art industrial park. Common elements such as architectural style, color, materials and ornamentation shall be used to create a cohesive park identity.

ii. Permitted materials include:

(a) Exterior plaster or stucco.

(b) Architectural metal; decorative panels, structural elements and decorative support or trim members.

(c) Precast concrete and tilt-up wall systems.

(d) Textured, patterned and/or integrally colored cast-in-place concrete.

(e) Integrally colored, precast CMU (concrete masonry units), provided that surfaces are molded, serrated or treated to give wall surfaces a three-dimensional texture.

(f) Brick.

(g) Natural stone.

(h) Glass curtain wall systems.

iii. Higher quality materials shall be utilized to draw attention to the office areas and entrances. Higher quality materials include architectural metal, decorative panels, structural elements and decorative support or trim members, brick and natural stone, among others.

iv. The use of reflective or shiny metallic roofs shall be prohibited.

b. Massing

i. Building heights, massing and setbacks shall be varied, to define the different functions within a building such as offices and warehousing.

ii. Primary buildings shall have clearly defined entries. To emphasize entries, one or a combination of the following elements shall be applied; portals, overhangs, fenestration, canopies, material and color changes. The "large box" components of the industrial buildings that are visible from a public right-of-way shall feature both vertical and horizontal articulation and be compatible with the more articulated office area.

iii. Metal structures are acceptable; however, they must visually tie to other building elements, such as the office, storage areas, etc.

iv. Temporary or portable buildings shall be limited in use for construction purposes only.

c. Screening

i. Exposed industrial systems and equipment shall be architecturally integrated or screened unless otherwise determined by the Community Development Director upon consultation with the Economic Development Director.

ii. All heavy industrial processing, assembling of materials shall be conducted within an enclosed structure or be screened according to **Sec. 36-2.D.3.h)vii) Walls, Fences, and Screening**.

vi) Landscaping

a. General Provisions

i. Landscaping Calculations and Definitions

For all developments within the Las Cruces Innovation and Industrial Park, the following formula shall be used to calculate the amount of landscape area is required:

Total Lot Area multiplied by the following percentages, not exclusive of building area:

Figure 36-2-19. LCIIP Required Landscaping

Lot Size	Multiplier
1.00 to 4.00 acres	12%
4.01 to 8.00 acres	10%
8.01 to 12.00 acres	8%
>= 12.01 acres	6%

ii. One-fourth of the total area required to be landscaped shall be located within the front setback area of the property.

iii. Where the site exceeds one acre, only the portion of the site that includes the operational area where the primary building is situated and is being developed/disturbed shall be calculated. If the

area to be left undeveloped/undisturbed is disturbed during construction, replacement of vegetation is required.

iv. Passive water harvesting drainage swales shall be considered and installed when possible within landscape areas to capture runoff from impervious surfaces as illustrated in **Figure 36-2-20. Drainage Swales**.

v. Impervious areas shall be graded to drain into drainage swales. Drainage swales shall be designed as follows:

(a) Swale channel alignments and side slopes must be designed in close coordination with civil engineers to ensure that they convey stormwater while minimizing erosion damage.

(b) Swales shall capture at minimum the first flush of a storm event.

(c) Swale side slopes shall not exceed 4:1. Where adjacent to walkways or accessible hardscape areas they shall not exceed 6:1.

(d) Runoff that enters the swale in a sheet flow fashion requires that the edge of the swale be flush with grade. Where curbs are necessary, intermittently spaced curb cuts shall be installed to allow runoff to enter the swale. Curb cuts shall be at least 18 inches wide and spaced from three to 15 feet apart.

vi. For further guidance on design and installation of drainage swales in landscape areas, refer to the NMDOT National Pollutant Discharge Elimination System (NPDES) Manual.

b. Plant/Landscape Materials

i. The Las Cruces Airport Landscape Plan shall be used as a guide for acceptable plant materials.

ii. Living plant material shall be provided according to the following:

(a) A minimum of one live tree shall be provided for every 1,000 square feet of required landscaped area.

(b) A minimum of twenty live shrubs shall be provided for every 1,000 square feet of required landscaped area.

(c) One hundred square feet of ground-over or ten one-gallon size plants shall be provided for every 1,000 square feet of required landscaped area.

iii. Plant substitution is permitted following the City of Las Cruces Design Standards.

iv. Minimum plant material sizes at the time of installation shall be:

(a) Deciduous Canopy Trees and Deciduous Accent Trees—Two-inch Caliper.

(b) Evergreen Trees—Ten-foot Minimum height.

(c) Shrubs and groundcover—One gallon minimum.

v. Xeriscape or drought tolerant landscaping is required for all provided landscaping areas.

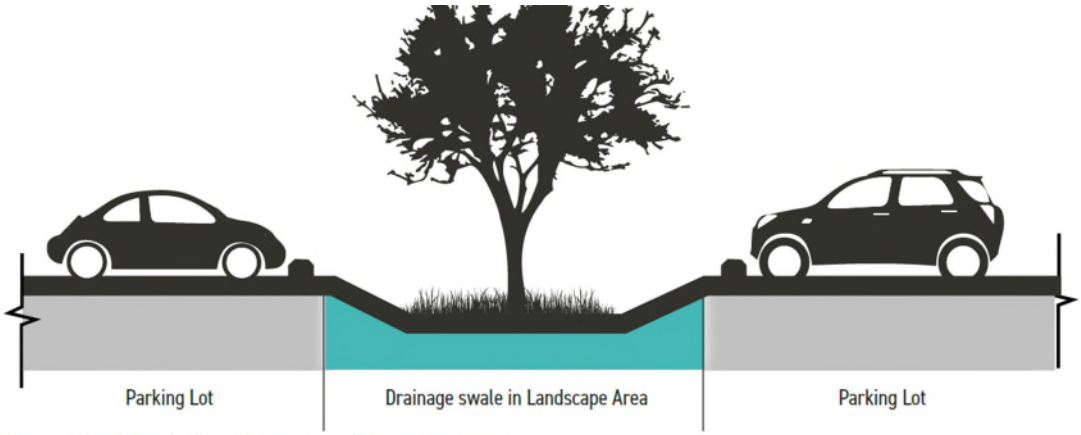
vi. Gravel, rock mulch or organic mulch, and similar mulch materials are acceptable within landscape areas. If gravel is used as ground cover, its use shall be limited to a maximum of 75 percent within landscape areas.

vii. Gravel, colored rock, and similar mulch materials shall not be permitted north of Interstate 10.

viii. All plant material shall be maintained by the owner in a living, attractive condition. All areas shall be free of weeds.

ix. If used, weed barriers shall be permeable to optimize stormwater infiltration and prevent runoff.

Figure 36-2-20. Drainage Swales



Conceptual depiction of one possible stormwater harvesting feature in parking lot.

c. Off-Street Parking Lots

i. Off-street parking lots shall have one tree for every ten parking spaces. Where covered carports are utilized, this requirement may be reduced or eliminate the tree requirement within parking lots through a determination of the Community Development Director. The Community Development Director shall consider the overall landscaping plan and the scale of the development to determine if covered carports shall either reduce or eliminate the tree requirement within parking lots.

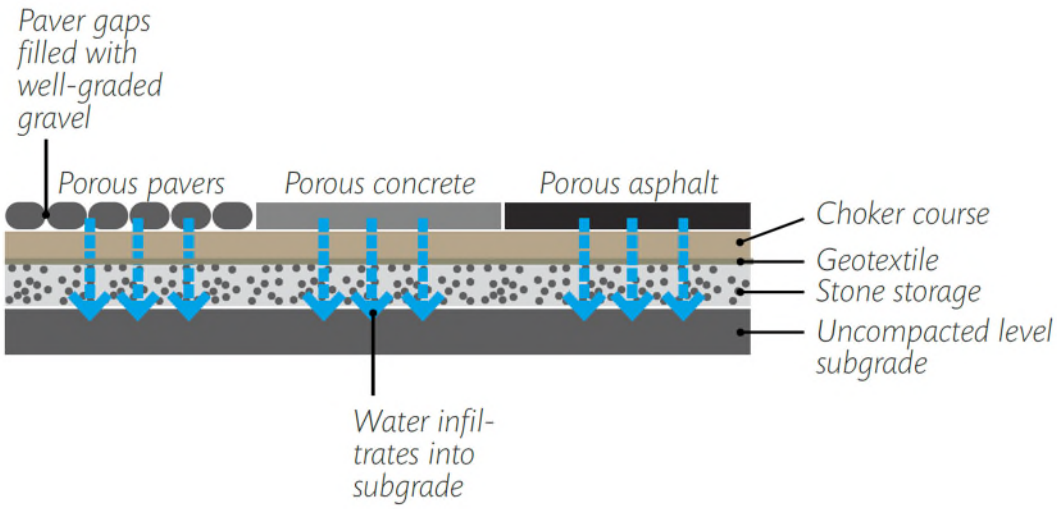
ii. The minimum size of tree planters within off-street parking lots shall be 60 square feet per tree.

iii. In parking lots of 100 spaces or more, the ends of parking aisles shall be defined as landscaped islands no narrower than eight feet in any dimension.

iv. Off-street parking lot landscaping standards do not apply to fleet vehicle parking areas.

v. Any landscaping provided to meet the off-street parking lot standards will be credited towards the overall site ten percent landscape requirement.

Figure 36-2-21. Porous Surface with Typical Features



vii) Walls, Fences, and Screening

a. The maximum allowed height for a fence depends on where the fence is located on a property. All fences and walls shall comply with the height limits established in **Figure 36-2-22. Maximum Wall Height** and illustrated in **Figure 36-2-23. Wall Height**.

Figure 36-2-22. Maximum Wall Height

Location	*Maximum Height*
Within required primary front yard setback	8'
Within secondary front yard setback	10'
Within tertiary front yard setback	10'
Within required side yard setback	10'
Within required rear yard setback	10'
Within the clear sight triangle at the intersections of streets and driveways	3'

Figure 36-2-23. Wall Height

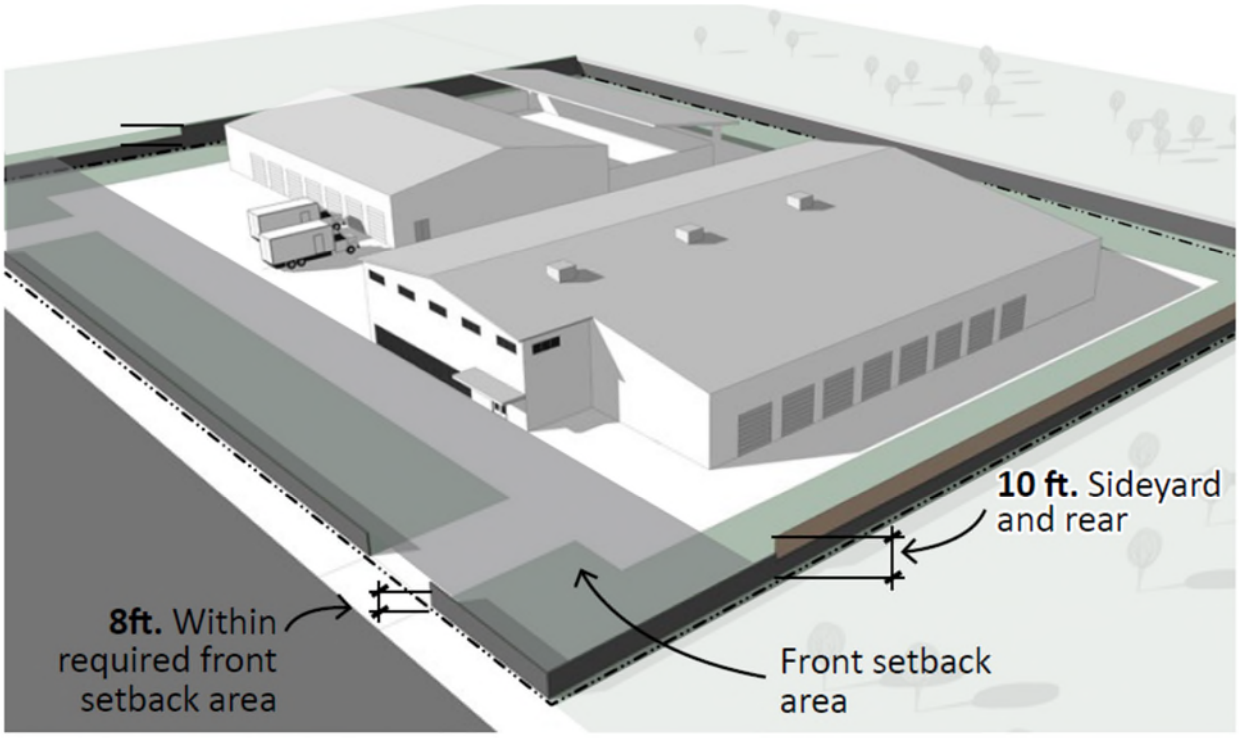
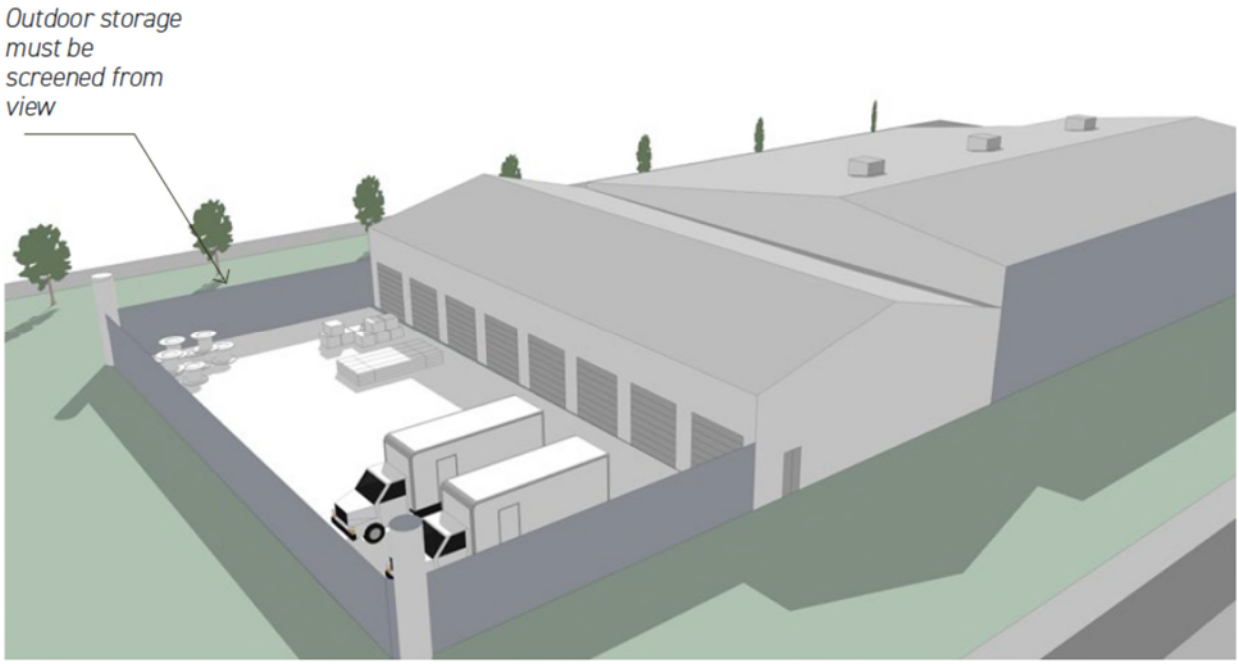


Figure 36-2-24. View Fencing in the Front Setback Area

Figure 36-2-25. Storage Screening



b. Within the required front setback area, the maximum allowable fence height is eight feet if two feet consists of view fencing. If opaque fencing is applied, the maximum height is six feet.

c. The finish of walls and fences shall be constructed of durable materials manufactured for exterior use and shall be weather and decay-resistant, which are compatible with the adjacent building(s) in regard to materials, detailing, and color. Acceptable materials include:

   i. Stucco over concrete masonry units (CMU).

   ii. Split face block.

   iii. Brick.

   iv. Stone.

   v. Curved interlock blocks.

   vi. Gabions.

   vii. Tubular steel, wrought iron bars, or other grill work.

d. Unfinished solid CMU or chain link are acceptable materials, except in areas visible from the public rights-of-way.

e. The use of razor ribbon (concertina), barbed wire, or cyclone fencing is prohibited.

f. Any required screening of mechanical equipment and support/services areas shall be accomplished by one of the following:

   i. An architectural building element, such as a wing wall, that screens the equipment or area being screened;

   ii. A wall or fence of a height equal to or greater than the height of the equipment or area being screened. Walls or fences shall incorporate at least one of the primary materials and colors of the nearest wall of the primary building; or

iii. A vegetative screen planted along the full length of the equipment or area to be screened of a height equal to or greater than the height of the equipment or area to be screened at the time of planting.

viii) Signage

a. All signs shall comply with **Sec. 38-10. Signs** except as outlined below.

b. All signs shall be designed in accordance with the Overlay Zone District's adopted signage plans and regulations.

c. At key locations such as intersections, joint tenant/monument signs shall include language in Spanish, Braille and larger print for sight-impaired populations.

d. Vehicular directional signage within public right-of-way or on City property shall be exempt from signage standards.

e. Freestanding Monument Signs.

i. Freestanding monument signs will be limited to a maximum of one per street frontage.

ii. The maximum signage size shall not exceed 450 square feet for lots adjacent to interstate frontage. The maximum signage size for all other lots shall not exceed 50 square feet.

iii. The maximum height shall not exceed 80 feet for lots adjacent to interstate frontage. The maximum height for all other lots shall not exceed 18 feet.

iv. Monument signs shall match the architectural style, color, materials and ornamentation of the primary building(s).

v. For all lots with more than one monument sign, all signs shall be of uniform design and materials.

vi. Free standing monument signage is permissive at the primary park entrances.

vii. The maximum height for directional signage is 6 feet.

f. Building Mounted Signs

i. Building mounted sign size shall not exceed ten percent of the building facade to which it is applied.

ii. Building mounted signs may not project more than 15 inches from the wall.

iii. Building mounted signs shall have contrasting colors from the background and text height and font that ensures readability, but must blend with the architectural style, color, materials and ornamentation of the main building(s).

iv. No building mounted sign shall intrude upon architectural features including windows, columns, or canopies or decorative features.

g. Temporary Signage

i. Temporary construction signs shall be permitted in accordance with the **Sec. 38-10. Signs**, with the following exceptions:

(a) For properties less than ten acres, one sign is permitted not to exceed 64 square feet in sign area and eight feet in height.

(b) For properties in excess of ten acres, one sign is permitted not to exceed 96 square feet in sign area and eight feet in height.

h. Prohibited Signage

i. The following sign types are prohibited within the Las Cruces Innovation and Industrial Park:

(a) Banners.

(b) Billboards.

(c) Portable or temporary signs, except for those permitted above.

(d) Window Signs.

i. Signage Illumination

i. Exterior and interior illumination will be allowed for both attached and freestanding signs, provided they comply with the following standards:

(a) Signs that are illuminated shall have concealed lighting fixtures. This provision applies also to neon tubing and fluorescent fixtures.

i) Definitions for the LCIIP, Las Cruces Industrial Innovation and Industrial Overlay Zone District

i) Accessory, Commercial/Office Uses

Any offices and commercial services and food, beverage uses listed in **Figure 36-2-17. LCIIP Use Table**. These uses must be incidental to the primary use.

ii) Accessory, Residential Use—Non-Primary

An accessory dwelling on a nonresidential premise, occupied by the person who oversees the nonresidential operation 24 hours a day.

iii) Cannabis Cultivation and Cannabis-Infused Products Manufacturing

A facility in which cannabis is grown, harvested, dried, cured, or trimmed. This use may also include the process in which a product is infused with cannabis that is intended for use or consumption other than by smoking including but not limited to, edible products, ointments, and tinctures.

iv) Commercial Services and General Retail

An establishment providing for the retail sale of general merchandise or food directly to the consumer; this includes, but is not limited to, sale of general merchandise, clothing and other apparel, flowers and household plants that are not grown on-site, dry goods, convenience and specialty foods, hardware and similar consumer goods, or other retail sales.

v) Construction Contractor Facility and Yard

A building and related outdoor area used to store and maintain construction equipment and materials including, but not limited to, plumbing, electrical, carpentry, roofing, and landscaping, and facilities customarily required in the building trade by a construction contractor. Any outside storage is required to be screened with an opaque fence.

vi) Contemporary Style Architecture

The use of innovative and new construction technologies and materials with a focus on steel, reinforced concrete, and glass, clean lines and a form that follows function.

vii) Drainage and Major Utility, Other

A facility regulated as a public utility or common carrier by the state or other relevant jurisdiction or agency, including, but not limited to, major telephone facilities, natural gas facilities, water treatment plants, water pump stations, sewage treatment plants, stormwater drainage facilities, irrigation facilities, or similar public services. Major facilities are those sized or designed to serve the entire park, or a wide area of the park.

viii) Film and Media Production

Outdoor or enclosed entertainment-related facilities including, without limitation, movie studios and production facilities, distribution facilities, editing facilities, catering facilities, printing facilities, postproduction facilities, set construction facilities, sound studios, special effects facilities and other entertainment-related production operations.

ix) Fire and Police Station

A public facility operated by a governmental agency where fire engines and other equipment are housed, and from which calls for emergency fire responses are handled. This use may include administrative offices, storage of equipment, temporary detention facilities, and the open or enclosed parking of patrol vehicles excluding, however, correctional institutions.

x) Fleet Vehicle

Any vehicle owned or operated by the person, company or business which is used for purposes of delivery, pick up or service to patrons of the primary use. A fleet vehicle may also be a commercial vehicle.

xi) Fleet Vehicle Parking

Parking of fleet vehicles.

xii) Freight House or Truck Terminal

Property or building used primarily for freight pick-up or distribution and the temporary parking of trucks of common or contract carriers during loading or unloading, including necessary warehouse space for storage of transitory freight. May also include intermodal distribution facilities for truck or shipping transport. Accessory uses may include, but are not limited to, a truck wash and loading and unloading from rail spurs.

xiii) General Agriculture

Any use of land for the purpose of production of crops and horticulture specialties, the raising of livestock and poultry, and the processing, packaging, storage and sale of agricultural products which are raised on the premises, and including all the types of structures normally associated with these uses, such as storage bins, barns, sheds, tool houses, greenhouses, garages, and any other use or facility ancillary to farming or open land. This use may also include the growing of plants for wholesale or retail sales, which may take place outside or in greenhouses. Outdoor sales of plants are allowed.

xiv) Heavy Manufacturing

Mechanical or chemical transformation of materials or substances into new products, including the assembling of component parts, the manufacturing of products, and the blending of materials, such as lubricating oils, plastics, resins, or liquors. This use ordinarily creates a greater than average impact on the environment or has significant impacts on the use and enjoyment of other properties in terms of noise, smoke, fumes, odors, glare, or health or safety hazards. However, this use does not include processes that input or create hazardous byproducts, as defined by federal regulation, in the course of manufacturing, assembly, fabrication, or materials treatment, or that uses manufacturing, assembly, fabrication, or treatment processes that create potentially hazardous impacts including, but not limited to, explosions or leakage of nuclear or electromagnetic radiation into the environment or surrounding areas. These processes are covered under the special manufacturing zone.

xv) Higher Education, Vocational School

A private institution that provides full-time or part-time education beyond high school, including college, university and vocational schools that provides specialized training and education beyond the high school level.

xvi) Indoor Entertainment/Recreation Venues

A commercial indoor entertainment venue where food, nonalcoholic beverages or other refreshments may be obtained for consumption on the premises and where floor shows, bands or other forms of entertainment may be provided for customers. This use also includes health club or gyms, and non-medical service establishment intended to maintain or improve the physical condition of persons.

xvii) Light Manufacturing

Assembly, fabrication, or processing of goods and materials, primarily conducted within an enclosed building, which is designed, built and maintained so as to prevent smoke, noise, glare, dust, odors or other development impacts from being detected beyond the boundaries of the property. Assembly, fabrication, or processing may include compounding, processing, assembling, packaging or testing of goods. This use does not include any use that meets the definition of Heavy Manufacturing or Special Manufacturing.

xviii) Military and Law Enforcement Agency

A public facility operated by the federal government where engines and other equipment are housed. This use may also include administrative offices, storage of equipment, and grounds for training and practice.

xix) Natural Resource Extraction

On-site extraction of surface or subsurface mineral products or natural resources, including solids, such as coal and ores; liquids, such as crude petroleum; and gases, such as natural gases. Uses may include quarries, borrow pits, sand and gravel operation, mining, soil mining, rock crushing, screening, and the accessory storage of explosives

xx) Nightclub and Bar

An establishment that is devoted to the selling or serving of alcoholic beverages for consumption by patrons on the premises and in which the serving of food is only incidental to the consumption of those beverages, including taverns, nightclubs, cocktail lounges and cabarets.

xxi) Offices and Research Facility

A premise where professional, clerical, business management or public administration work is carried out and where the sale of merchandise on the premises is totally absent or a very limited activity in support of the work being carried on. This use may also include a medical or dental clinic for patients that are not lodged overnight and research and testing facilities for scientific research, investigation, testing, or experimentation, but not facilities for the manufacture or sale of products, except as incidental to the main purpose of the laboratory.

xxii) Outdoor Entertainment

An outdoor commercial or entertainment activity that is open to the general public. This use may include outdoor markets, drive-in theater, stadium or other entertainment and recreation activities like batting cages, golf driving ranges, miniature golf courses, go-cart tracks, skating rinks, skateboard parks, swimming pools, tennis courts, or sports courts.

xxiii) Outdoor Storage

The keeping of any goods, material, or merchandise outside of a building in the same place.

xxiv) Parking Garage with/without Liner Building

A combination of structures for parking and a mix of uses (commercial, residential, office) where parking is designed to be concealed from view and levels of parking are at- grade, above grade, or partially below grade (but not fully underground). A liner building is a specialized building that may be built as part of the parking structure or separate; it is parallel to the street and designed to conceal a parking structure from the street with active ground floor uses such as retail shops or residential stoops. A parking garage may be designed without a liner building provided that it is designed in such a way so as to incorporate active ground floor uses, architectural features and articulated elements to mitigate blank walls and screen parking.

xxv) Recycling Sort Facilities and Electronic Recycling

A facility that sorts reusable materials in preparation for introduction into an industrial process by which the material is transformed into a new product in such a manner that the original identity as a product is lost. Material is limited to paper, plastic, and metal as well as electronics recycling.

xxvi) Small Animal Facilities

A facility that serves small animals for their care and treatment. This use may include outdoor pens for temporary animal holding. This use does not include animal raising.

xxvii) Solar Energy Generation

The use of land or buildings as locations for mounting of solar collectors or other devices that rely on sunshine as an energy source and are capable of collecting, distributing, or storing the sun's radiant energy.

xxviii) Special Manufacturing

Mechanical or chemical transformation of materials or substances into new products, including the assembling of component parts, the manufacturing of products, and the blending of materials, such as lubricating oils, plastics, resins. This use ordinarily creates a greater than average impact on the environment or has significant impacts on the use and enjoyment of other properties in terms of noise, smoke, fumes, odors, glare, or health or safety hazards. This use includes processes that input or create hazardous by-products, as defined by federal regulation, in the course of manufacturing, assembly, fabrication, or materials treatment, or that uses manufacturing, assembly, fabrication, or treatment processes that create potentially hazardous impacts including but not limited to explosions or leakage of nuclear or electromagnetic radiation into the environment or surrounding areas.

xxix) Telecommunications, Towers, and Utilities

Any facility used for wireless communications, usually consisting of a support structure for antennas, equipment shelters or cabinets, and/or other transmission and reception devices used for business or commercial purposes.

xxx) Temporary, Construction Staging Area, Trailer, or Office

Temporary use of a structure, including a mobile office, as a construction site office by a building contractor while a specific project is under construction, or as a real estate office during the construction and initial marketing phase of a new development.

xxxi) Temporary, Seasonal Outdoor Sales, Events

Temporary outdoor or indoor retail display and sales of new or used goods, produce, and/or handcrafts or services associated with the season or a cultural event such as sales of fireworks, pumpkins, Christmas trees, or other seasonal items; semi-annual sales of art or handcrafted items in conjunction with community festivals or art shows; sidewalk or parking lot sales. Incidental sales of food and beverages is allowed.

xxxii) Vehicle Services

Commercial services dealing with vehicles. This use may include car wash, vehicle and equipment sales, rental, fueling, recreational vehicle parking stalls and hook-ups, and repair.

xxxiii) Warehousing, Logistics and Distribution

Building or premise in which goods, merchandise or equipment are stored and frequent heavy trucking activity may occur. Open storage of material, or nuisances such as dust, noise, and odors may be part of this use.

4. SMO, South Mesquite Overlay District

   a) Purpose

      The South Mesquite Overlay District is designed to positively address issues unique to Las Cruces' Original Townsite and surrounding area. This area is addressed in the 2005 adopted Mesquite Neighborhood Plan and the 2007 adopted Mesquite Historic District Neighborhood Design Plan. Specific provisions in this Ordinance deal with issues such as compatible design, parking, setbacks, and land use/zoning designations that are better suited to this older part of the city characterized by smaller lots with multiple dwellings and scarce off-street parking resources. Additionally, neighborhood design guidelines and standards have been created that will help enhance and preserve the unique character of Las Cruces' first neighborhood.

   b) Delineation of Overlay District Boundaries

      The South Mesquite Overlay (SMO) District shall include all properties located within the boundaries shown on **Figure 36-2-26**.

Figure 36-2-26. South Mesquite Overlay Boundaries

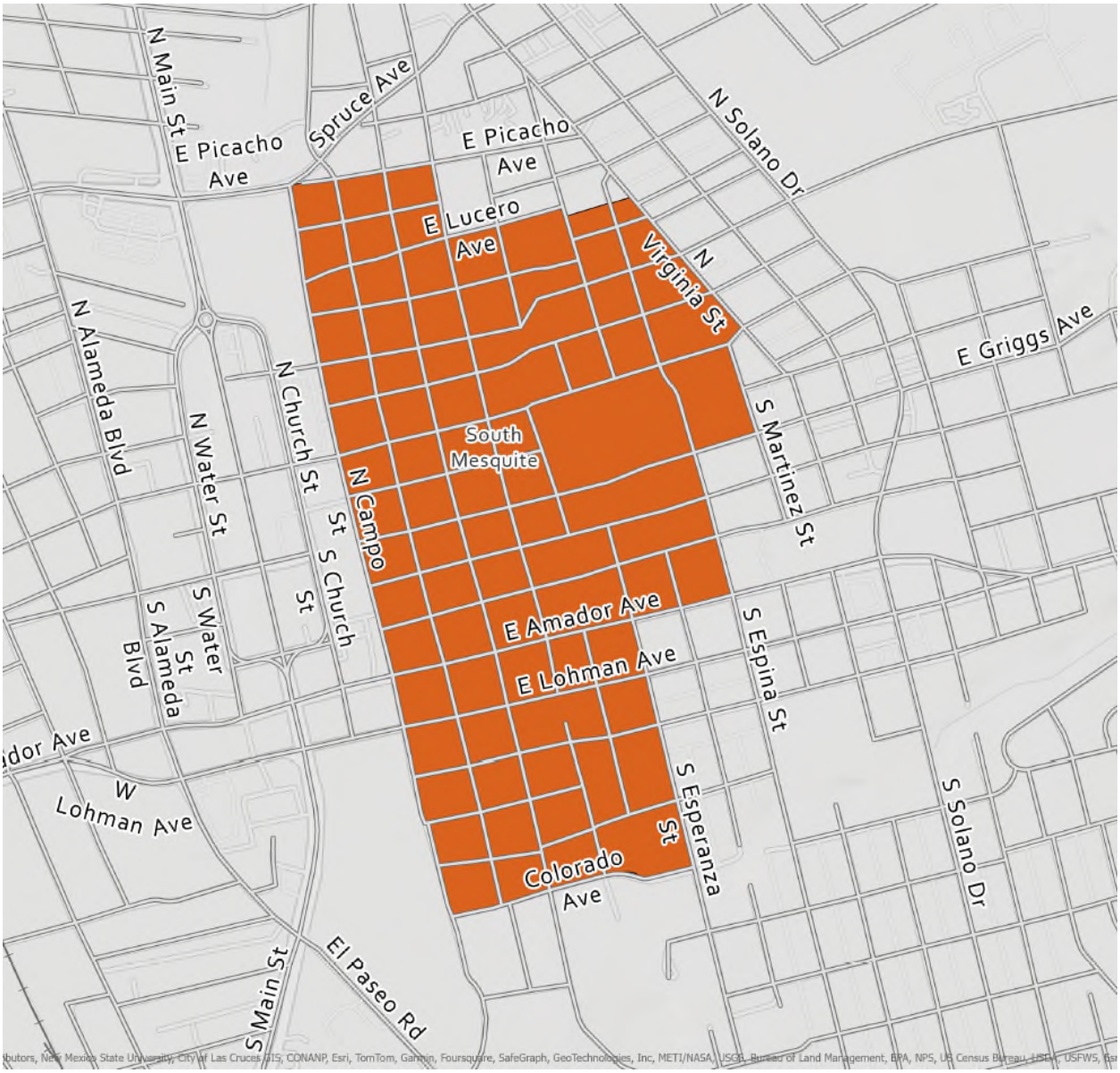


Figure 36-2-27. Boundary of the Mesquite Street—Original Townsite State & Federal Historic Districts

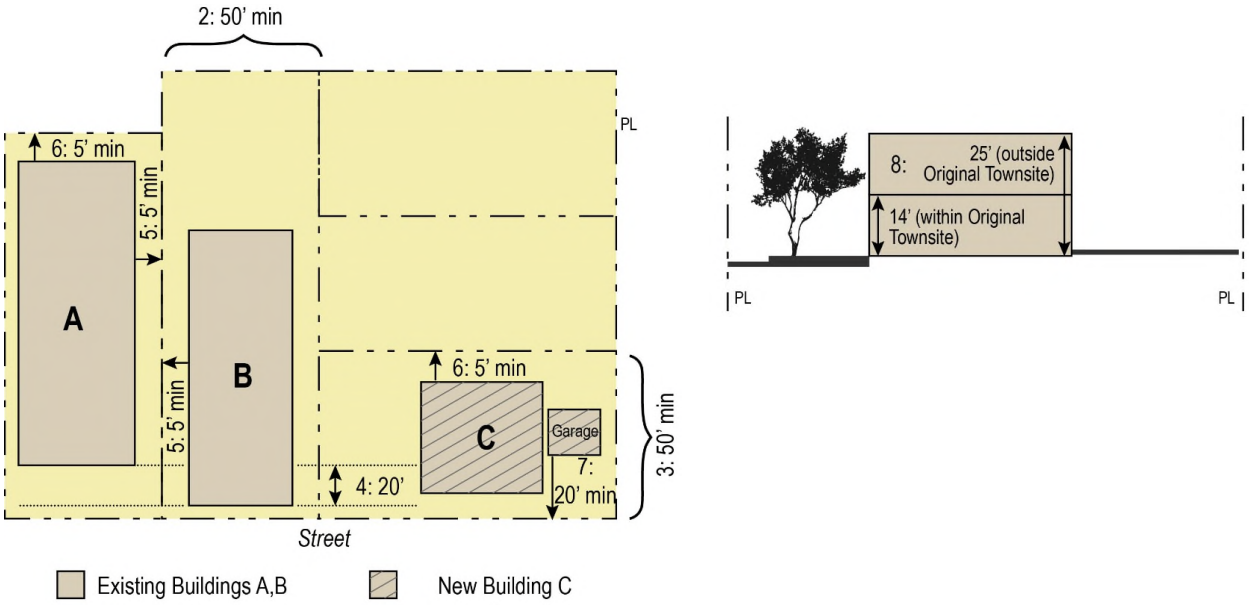
c) Development Standards

There shall be no development or alteration of the lands, uses, or structures within the SMO except as provided for by this Section, other sections of the Zoning Regulations, and other City Codes and Ordinances where applicable. Development requirements are established for the entire SMO, as follows (unless indicated in other sections of this Overlay):

Figure 36-2-28. SMO Development Standards

#1	Lot Area/Size	3,500 square feet minimum
#2	Lot Width/Frontage	50' minimum
#3	Lot Depth	50' minimum
#4	Front Setback	Within the range of existing setbacks and compatible with the surrounding area*
#5	Side Setback	5' minimum**
#6	Rear Setback	5' minimum**
#7	Garage Setback	20' minimum
#8	Building Height	14' in the Original Townsite and 25' elsewhere***
	Townhouses	Zero lot lines are permitted for townhouse development provided the structure meets the attachment requirements of **Sec. 36-4.B. Single-Family Home, Duplex, Triplex, or Quadplex, and Townhouse Residential Development**.
	Accessory Structures	There shall be no limit to the number or square footage of accessory structures
	Residential Density	Lot size, setbacks, parking requirements and building heights shall determine residential density per property.

* Surrounding area generally mean all primary structures on the same side of the block. If there aren't at least two primary structures on the same side of the block, both sides of the block shall be used. The Applicant shall work with Community Development Department staff to determine a front setback distance with staff having the final determination.
** Overhangs are not permitted within required setbacks. Canales and viga ends are not deemed overhangs for the purpose of this limitation.
***Any requests for building heights greater than those stated above require an application for a height exception be reviewed and approved by the SMDRB; applications shall meet the design criteria noted in **Sec. 36-2.D.4.j). Design Guidelines**.
The regulations of this Overlay District shall supersede any regulations of the Zoning Regulations. However, when the regulations of this SMO do not address a particular design or development standard or regulation, the applicable local, state, or federal regulation shall apply. Numerical Flexible Development Standards may be granted by the Community Development Director or non-numerical Flexible Development Standards by the Development Review Committee within the SMO; however, such requests must also be approved by the SMDRB.



d) Landscape Requirements

Landscaping shall follow standards set forth in **Sec. 38-7. Landscaping** with the following modifications:

i) Applicability

Landscaping standards apply to all new development in the SMO with the exception of single family dwellings and duplexes, unless noted elsewhere in this section.

ii) A variety of landscaping materials shall be employed to create visual interest and complement other plantings in the neighborhood. Care should be taken when planting too close to adobe structures, which can be damaged by plant watering. Plant materials, including shade trees, shall be native and/or draught tolerant, as these are best suited to the Chihuahua Desert. This is not to say that the landscape plan needs to adhere to Xeriscaping. On the contrary, plants should be chosen that will survive and thrive in the local climate. Appropriate species include, but are not limited to, the following:

Figure 36-2-29. Permitted Plant Types

TREES	SHRUBS	GROUNDCOVER
Arizona Ash Arizona Cypress Arizona Mesquite Canyon Hackberry Chinese Pistache Desert Willow Italian Cypress Lacebark Elm Palo Verde Pecan Pines Southern Live Oak Texas Honey Mesquite Texas Red Oak Sycamore Western Hackberry	Euonymus Pyracantha Sages (Texas, Desert Chihuahuan, Cherry, Russian, etc.) Silverberry Spanish Broom	Bermuda TIFF, various Vinca Trailing Rosemary Iceplant Creeping Thyme Powis Castle Artemesia Dalea capitata Clover Fern

iii) All new development, except single-family dwellings and duplexes, and adaptive reuse of properties (such as a change of use) shall be required to plant trees within parking lots for shade and visual relief (see subsection 5 below).

iv) Landscaping gravel, decorative stone or other organic landscaping materials may be used for landscaping, provided such materials blend visually with other landscaping material and planting style standards and meet the City's wind erosion control ordinance).

v) Landscaping for Parking Lots: All new construction, except single-family dwellings and duplexes and adaptive reuse of properties, shall require landscaped parking areas. Landscaping in parking areas shall follow **Sec. 38-7. Landscaping**, **Sec. 38-7.D.5. Parking Lot Landscaping**, with the following modifications:

a. Trees in parking lots shall be located in an island or planter in which the tree trunks shall be protected from motor vehicles. Islands shall be a minimum of six feet wide, have a minimum area of thirty-six (36) square feet and a raised border of at least four (4) inches in height.

b. One tree shall be planted for every five (5) parking spaces within parking lots as they pertain to the uses listed for each area.

vi) The HPC shall have the authority to modify or waive landscaping requirements of **Sec. 38-7. Landscaping** or this Section if the HPC determines that such modification would result in a project that better advances the purposes of the SMO and positively addresses it design standards.

vii) Community Development Department staff shall review landscape plans.

e) Permitted Uses

There shall be no land uses within this Overlay District except as identified in **Figure 36-2-30. SMO Permitted Use Chart**. Zoning districts are as follows:

i) R-la: Single-family Low Density Residential District

ii) R-2: Medium Density Residential District

iii) R-3: High Density Residential District

iv) R-4: High Density Residential and Limited Office District

v) O-1: Neighborhood Office District

vi) O-2: Professional Office with Limited Retail Service

vii) C-1: Neighborhood Commercial District

viii) C-2: General Commercial District

ix) C-3: High Density Commercial. C-3 zoning and land uses are not permitted in the Overlay District with the exception of those uses which existed at the time of SMO adoption, Ordinance 2200, May 24, 2005. Uses that were pre-existing at the time of adoption and are no longer permitted by right shall be considered non-conforming and shall follow the provisions of **Sec. 36-2.D.4.f). Nonconforming Uses, Structures, and Property** below and **Sec. 36-5.G. Nonconformities**.

x) PUD: Planned Unit Developments are allowed as part of a specific rezoning.

Figure 36-2-30. SMO Permitted Use Chart

Legend:

A= Allowed-by-right;

C=Conditional Use with the conditions noted; and

S= Special Use Permit with public meeting required.

Land Use	R-1a	R-2	R-3	R-4	O-1	O-2	C-1	C-2	Comments
Accessory dwelling units	A	A	A	A	A	A	A	A	
Apartments		A	A	A	A	A	A	A	
Assisted Living, Retirement home		A	A	A	A	A	A	A	
Detached single-family dwelling	A	A	A	C	C	C	C	C	C: residential densities in R-4 and commercial zones limited to a maximum of 40 DU/acre.
Guest dwelling unit	C	C	C	C	C	C	C	C	C: see **Sec. 36-3.B. Use Classifications and Use-Based Standards**, #19 Accessory Dwelling
Duplex		A	A	A	C	C	C	C	C: residential densities in R-4 and commercial zones limited to a maximum of 40 DU/acre.
Triplex		A	A	A	A	A	A	A	
Quadplex		A	A	A	A	A	A	A	
Home for the Elderly	A	A	A	A	A	A	A	A	
Home for the Disabled	C	C	C	A	A	A	A	A	C: 10 or fewer persons allowed
Hostel				C	C	C	C	C	C: limited to 10 persons per establishment and a maximum stay of 14 continuous days per guest.
Nursing Home	C	C	C	A	A	A	A	A	C: 10 or fewer persons allowed
Halfway house	S	S	S	S	S	S	S	S	See **Sec. 36-3.B. Use Classifications and Use-Based Standards**, #18 Sober Living House

Land Use	R-1a	R-2	R-3	R-4	O-1	O-2	C-1	C-2	Comments
Fraternity/sorority house			C	C	C	C	C	C	C: Limited to 10 persons per establishment;
Temporary/homeless shelter	S	S	S	S	S	S	S	S	
Manufactured home	A	A	A	C	C	C	C	C	All manufactured homes shall meet the design standards of the SMO and skirting and exterior wall materials shall be consistent with the architecture of adjacent structures. Residential densities in R-4 and commercial zones are limited to a maximum of 40 DU/acre.
Townhouse [one room attached to the neighboring single-family dwelling]		A	A	A	A	A	A	A	
Patio home [100% built to side property line]	C	C	C	C	C	C	C	C	C: see **Sec. 36-4.B. Single-Family Home, Duplex, Triplex, or Quadplex, and Townhouse Residential Development**.
Accessory uses and structures	A	A	A	A	A	A	A	A	
Bed & Breakfast Establishment	C	C	C	C	C	C	C	C	C: Number of guest rooms is limited to 8.
Greenhouse, private (non-commercial)	A	A	A	A	A	A	A	A	
Community Gardens (neighborhood based)	A	A	A	A	A	A	A	A	
Home occupations	C	C	C	C	C	C	C	C	C: See **Sec. 36-3.B. Use Classifications and Use-Based Standards**, #23 Home Occupation
Kennel/cattery, private residential	C	C	C	C	C	C	C	C	C: Permitted in accordance with Chapter 7 of the LCMC; noise from barking dogs and odors from this activity shall not be discerned off the premises.
Recreational court, tennis, etc., private	S	S	S	S	S	S	S	S	Must mitigate off-site noise and light glare.
Storage of RVs and motor vehicle appurtenances	C	C	C	C	C	C	C	C	C: Maximum 1 per parcel located within any open area between the front setback and the rear setback and shall otherwise meet the standards of **Sec. 38-2.N.6.g) Parking and Storage of Large Motor Vehicles**
Swimming pool, private	C	C	C	C	C	C	C	C	C: A swimming pool shall be at least 5 feet from property lines; also see **Sec. 38-8.F.1. Swimming Pools, Whirlpools, Hot Tubs, and Other Similar Structures**.
Temporary uses	C	C	C	C	C	C	C	C	C: See **Sec. 36-3.B. Use Classifications and Use-Based Standards**, #35 Seasonal/Temporary Sales or Use
Produce stands	C	C	C	C	C	C	C	C	C: Allowed per State law; may be accessory to community gardens.
Veterinary facility								C	C: Noise from barking dogs shall not be discerned off the premises.
Cemetery/columbarium	S	C	C	C	C	C	C	C	C/S: See **Sec. 36-3.B. Use Classifications and Use-Based Standards**, #43 Cemetery or Columbarium
Family child care home (up to 6 children)	A	A	A	A	A	A	A	A	See **Sec. 36-3.B. Use Classifications and Use-Based Standards**, #37 Child Care Home (≤6).
Group child care home (7 to 12 children)	S	A	A	A	A	A	A	A	S: See **Sec. 36-3.B. Use Classifications and Use-Based Standards**, #38 Group Child Care Home (7-12)
Child care center or preschool		S	S	S	S	S	S	S	S: See **Sec. 36-3.B. Use Classifications and Use-Based Standards**, #36 Child Care Center.

Land Use	R-1a	R-2	R-3	R-4	O-1	O-2	C-1	C-2	Comments
Community buildings/uses	C	C	C	C	A	A	A	A	C: Shall be located on a major local or higher classification road.
Convention center/exhibition hall					C	C	C	C	C: Must be accessed from an arterial road (Lohman, Amador); size is limited to 5,000 GFA.
Library/museum		A	A	A	A	A	A	A	
Religious institutions	C	C	C	C	C	C	C	C	C: Shall be located on a major local or higher classification road; all sites shall have a minimum 1 acre; structures or parking located within 25 feet of a residential use shall provide an opaque buffer consisting of landscaping and walls or fences. Dumpsters or other garbage collection facilities shall not be located within 25 feet of a residential use.
School, college, trade school, private or public	S	S	S	S	S	S	S	S	S: On a case-by-case basis, application shall address safe access, off-street parking demand, screening and landscaping, noise and other relevant impacts of the development on adjacent residential uses. Structures or parking located within 25 feet of a dwelling unit shall provide a Type A opaque buffer consisting of landscaping and walls or fences. Dumpsters or other garbage collection facilities shall not be located within 25 feet of property used for residential purposes.
Arcade, game room							A	A	
Batting cage, indoor							A	A	
Billiard, Pool Hall							A	A	
Bowling alley							A	A	
Miniature golf course								A	
Health/exercise club/gymnasium/sports instruction				C	C	C	C	C	C: Noise from this activity shall not be discerned off-premises.
Park	C	C	C	C	C	C	C	C	C: Limited to neighborhood park or private park. See **Sec. 36-3.B. Use Classifications and Use-Based Standards**, #52 Public Park. Public parks shall also comply with Chapter 20 of the LCMC.
Mini-race tracks (e.g., go carts)								C	C: Hours of operation limited to between 10 a.m. and 10 p.m.
Recreation courts, public			S	S	S	S	S	S	S: Must mitigate off-site noise and light glare.
Skating rink, Indoor				A	A	A	A	A	
Swimming pool, commercial or public; indoor only					S	S	S	S	
Botanical garden				A	A	A	A	A	
Personal or business service office uses		C	C	C	A	A	A	A	C: In R districts, non-residential uses are permitted only on the ground floor; no more than 35% of the GFA of the buildings on the parcel, combined, is permitted to be non-residential uses.
Art studio		C	C	C	C	C	C	C	C: Noise from activities shall not be discerned off the premises.
Barber/beauty/hair salon and related personal care services		A	A	A	A	A	A	A	
Medical/dental office; counselor/therapy services		A	A	A	A	A	A	A	
Bank, bonding, and financial						C	C	C	C: Each business establishment is limited to a sole practitioner and only one such business establishment per parcel.

Land Use	R-1a	R-2	R-3	R-4	O-1	O-2	C-1	C-2	Comments
institution/facility; no drive-through									
Business office: consulting; credit reporting & collection; desktop publishing, graphic design; institutional office, public or private; educational office; religious office; philanthropic office; mailing & stenographic services; motion picture production; noncommercial research organization					A	A	A	A	
Adult day care services/facility					A	A	A	A	
Funeral home; laboratory					A	A	A	A	
Pharmacy; no drive-through						C	C	C	C: Permitted only as accessory to a medical, dental or similar office use and strictly for the purpose of serving the patients of the medical office use.
Auto/truck parts store								A	
Auto/truck repair & service								C	C: No salvage yard or related activities shall be permitted. No outside storage of parts, materials, or equipment is permitted. All outdoor storage of non-operable vehicles must be screened with opaque fencing.
Auto/truck self-service/automated or full service wash/wax/detailing								C	C: Limited to a collector or higher classification road.
Bar/pub/tavern (no dancing)								A	
Sale of building material								A	
Café, cafeteria, coffee shop, restaurant, etc. No drive-thru				A	A	A	A	A	
Cannabis dispensary								A	See **Sec. 36-3.B. Use Classifications and Use-Based Standards**, #107 Cannabis Dispensary.
Cannabis indoor agriculture							A	A	See **Sec. 36-3.B. Use Classifications and Use-Based Standards**, #108 Cannabis Production.
Cannabis microbusiness							A	A	See **Sec. 36-3.B. Use Classifications and Use-Based Standards**, #109 Integrated Cannabis Business.
Sale of carpet/window treatments							C	C	
Cleaning & maid services							A	A	
Clothing store								C	
Convenience store (no gas sales)			S	S	S	S	S	S	C: No drive-through facility.
Delicatessen, produce/meat market; No eating facilities				A	A	A	A	A	
Delicatessen, produce/meat market with eating facilities							C	C	C: No drive-through facility.
Firewood sales								C	C: If displayed outside a building, a semi-opaque screen around the perimeter of the use shall be

Land Use	R-1a	R-2	R-3	R-4	O-1	O-2	C-1	C-2	Comments
									provided; 20 cord maximum stored on site; see **Sec. 36-3.B. Use Classifications and Use-Based Standards**, #35 Seasonal/Temporary Sales or Use.
Furniture store								A	
Sale of garden supplies								A	
Grocery store							A	A	
Hardware store							C	A	C: No outside storage of supplies or materials.
Home furnishings							A	A	
Kennel/cattery, commercial or non-profit								C	C: Use allowed in accordance with Chapter 7 of the LCMC; noise from barking dogs shall not be discerned at the nearest dwelling unit.
Laundry/dry cleaning services							A	A	
Newspaper distribution								A	
Pawn shop								A	
Petroleum/propane sales								C	C: Sale of portable propane tanks and similar gas only is allowed as an accessory use to a retail establishment; use of such equipment is allowed as an accessory use when meeting current Fire Code standards. Gas stations are not permitted.
Plant nursery								A	
Private club or lodge	C	C	C	C	C	C	C	C	C: See **Sec. 36-3.B. Use Classifications and Use-Based Standards**, #90 Private Club or Lodge. A private club or lodge shall be located on a major local or higher designated street. Structures or parking located within 25 feet of a dwelling unit shall provide a Type A opaque buffer consisting of landscaping and walls or fences. Dumpsters or other garbage collection facilities shall not be located within 25 feet of property used for residential purposes.
Radio/TV station								A	
Seasonal sales of fireworks, agricultural products (non-temporary), snowcone stand, etc.							C	C	C: All structure locations shall meet setback requirements; if sited on property with other uses, there shall be no obstruction of the driving aisles or parking stalls unless it can be proven that there is an excess of parking areas. If the use does not follow temporary use provisions, the property shall be subject to all applicable development requirements.
Small item repair shop							A	A	
Specialty foods store (bakeries, candies, etc.)							A	A	
Specialty store (books, music, toys, sports equip, stationary, etc.)							A	A	
Telephone communication business (call center)								A	
Temporary Use (non-seasonal)				C	C	C	C	C	C: See **Sec. 36-3.B. Use Classifications and Use-Based Standards**, #35 Seasonal/Temporary Sales or Use.
Theater (non-drive in)								A	
Tire sales/repair								A	
Upholstery shop							A	A	
Variety store							A	A	

Land Use	R-1a	R-2	R-3	R-4	O-1	O-2	C-1	C-2	Comments
Video/DVD rental/sales (non-adult oriented)							A	A	
Cab stand								A	
Distribution centers								A	
Parking facilities, commercial (garages & parking lots)	S	S	S	S	S	S	S	S	
Storage outside of buildings of materials, equipment, and supplies not for sale								C	C: All outside storage shall be enclosed with an opaque, Type A screen.
Storage, warehousing accessory to office, retail trade, service, or industry businesses								C	C: Maximum of 95% of the total square footage may be used for this storage.
Storage/display of merchandise for sale (except manufactured buildings, manufactured homes, mobile homes & operable cars, trucks, motorcycles, and RVs)					C	C	C	C	C: Outdoor display of goods sold on the premises is limited to 25% of the gross floor area devoted to the business use.
Wholesale trade, any product								C	C: No outdoor storage allowed.
Construction yard or buildings, temporary	C	C	C	C	C	C	C	C	C: See **Sec. 36-3.B. Use Classifications and Use-Based Standards**, #31 Construction Building (Temporary) and 32 Construction Yard (Temporary): Such yard or building(s), including a mobile home or recreational vehicle for a temporary residence or construction office, or any other facilities or arrangement approved by the Community Development Director shall be removed upon completion of construction and in compliance with the Chapter 30 of the Municipal Code. Construction yards and buildings or any other facilities shall be maintained in a neat and orderly fashion. Open yards shall be enclosed by a fence at least five (5) feet in height.
Contractor's Yard								C	C: All outdoor storage shall be enclosed with an opaque Type A screen
Cottage Industry with retail sales or service (manufacture or processing of goods such as beer or food products for sale on the premises)							C	C	C: Allowed only when such use occurs within a totally enclosed building where the primary use (retail/service) is conducted. The processing of goods shall be clearly secondary to the primary use, shall be sold on-site only, and shall not pose any significant adverse impact on adjacent properties due to noise, odor, dust, or vibration. A maximum of 49% of the total business floor area, not to exceed 3,000 square feet, may be used in the conduct of the cottage industry manufacturing or processing.
Crematorium								C	C: See **Sec. 36-3.B. Use Classifications and Use-Based Standards**, #95 Crematorium.
Antennas, towers, communication structures, and other utility vertical structures							S	S	See **Sec. 38-11. Wireless Communication Facilities**.
Facial mounted antennae (attached to the primary use)							C	C	C: Facial mounts must be placed or erected to the primary use/structure in a manner that conceals, to the extent possible, the antenna or face mount. No more than ten (10) additional feet in height to the maximum building height shall be allowed as a result of application or erection of the antenna or

Land Use	R-1a	R-2	R-3	R-4	O-1	O-2	C-1	C-2	Comments
									face mount. **Sec. 38-11. Wireless Communication Facilities**.
Private/public utility (e.g., substations, water wells, transformers, regulators, lift stations, telecommunications site)	S	S	S	S	S	S	S	S	See **Sec. 36-3.B. Use Classifications and Use-Based Standards**, #53 Public Utilities (Major). A solid wall or fence shall surround the installation. Landscaping as per Sec. 36-2.D.4.d). Landscape Requirements shall be provided to screen and/or buffer the installation as necessary to allow the use to blend with the surrounding properties and minimize noise and visual pollution.
Recycling collection centers (neighborhood scale only)				S	S	S	S	S	Hours of operation may be limited to mitigate noise to adjacent residences; equipment rooms and outdoor storage of materials shall be screened with opaque fencing; trash shall be contained and properly disposed of; the DRB and Planning and Zoning Commission may impose conditions to insure that noise, fumes, odors and congestion is avoided.
Private "Ham" radio telecommunication antennae	C	C	C	C	C	C	C	C	C: Antennae shall not exceed the building height limit.

f) Nonconforming Uses, Structures, and Property

i) Many people refer to nonconforming uses as the "Grandfather Clause." If a use, structure, etc., was established legally under the previous code, it is considered a legal nonconforming use or nonconforming or non-complying structure. Except for the following, requirements stated in **Sec. 36-5.G. Nonconformities** shall apply.

ii) If a legal non-conforming use becomes and remains vacant, a two (2) year time limit shall be placed on reestablishing the non-conforming use at that location.

g) Parking Requirements

The following exceptions to the parking requirements found in **Sec. 36-3.A.1. Permitted Use Chart** shall be used in the SMO:

i) Buildings within the SMO constructed prior to 1955 shall not be required to provide off-street parking.

ii) Buildings within the SMO constructed after 1955 shall be required to provide off-street parking pursuant to the requirements of **Sec. 36-3.A.1. Permitted Use Chart**. These buildings and properties shall be eligible to use:

a. The Urban Character Area parking exceptions found in **Sec. 38-2.N.4. Minimum Off-Street Vehicular Parking Requirements**; and/or

b. Surface materials for parking areas for residential or non-residential developments may be pervious materials such as stone or brick pavers or compacted crushed stone (gravel). If gravel is used, single-family and duplex parking areas may use compacted crusher fine or "pea" gravel, but multi-family and non-residential development parking areas shall be limited to using a minimum one-inch diameter size, compacted gravel. Concrete parking pads are not permitted to be installed abutting adobe walls to avoid damage due to "wicking" (transfer of moisture trapped beneath the concrete to the adobe wall).

iii) Parking areas for new development of non-residential and multi-family uses, including garages and carports, are not permitted in the required front setback of the subject property.

iv) The HPC shall have the authority to modify or waive off-street requirements, with the concurrence of the City's Traffic Engineer, if the HPC determines that such modification would result in a project that better advances the purposes of the SMO and positively addresses its design standards.

h) Signage

All signage shall be of materials and design that are compatible with the architecture of the structure and the residential character of the neighborhood. Electronic moving/digital signs are not permitted in the SMO. Sign permit applications shall be submitted for approval to the Community Development Department in accordance with **Sec. 38-10. Signs** with the following modifications:

i) Freestanding Signs

a. Ground signs are allowed and shall be no greater than five feet in height. Only one ground sign per commercial property shall be permitted. Ground signs must be set back at least five feet from any property line and must be at least five feet away from the wall of the building.

b. Ground signs shall be no greater than two square feet in overall size.

c. Ground signs may be illuminated and shall follow regulations stated in **Sec. 38-10.I.3. Sign Lighting**.

d. Temporary Ground Signs are permitted in accordance with **Sec. 38-10.G.12**.

e. Pole signs are allowed only on Lohman and Amador Avenues and shall follow the standards of **Sec. 38-10. Signs**.

ii) Attached Signs

Attached signs shall follow size and placement regulations for attached signage in **Sec. 38-10. Signs**.

iii) Portable A-Frame Signs

An A-frame sign means a self-supporting, portable sign with one or two faces that are adjoined at the top and displayed at an angle, which is designed to be placed where pedestrians walk or gather and ADA accessibility is assured. The sign shall not be permanently anchored or secured and shall be removed at the end of the establishment's business hours.

a. All agents, employees, or representatives displaying an A-frame sign on public property in the DDC shall comply with the following provisions:

i. One A-frame sign per business may be displayed during regular business hours;

ii. A-frame signs shall be no greater than 6 square feet on one side, no more than 12 square feet total, and shall be no greater than 3 1/2 feet in height;

iii. An A-frame sign shall be installed and removed by the business or property owner;

iv. No A-frame sign shall be erected in such a manner so as to obstruct ADA access or vehicular traffic;

v. A-frame signs shall only be displayed immediately in front of the business;

vi. No A-frame sign may be located on public property such as sidewalks or parkways;

vii. The business or property owner shall be responsible for any damage caused to public property by the sign;

viii. The business or property owner assumes all risks with setting up an A-frame sign and shall not hold the City responsible for any accidents or loss in the installation, removal, or operation of the sign.

iv) Inflatable Signs or Pennants

Temporary inflatable pennants, streamers and other fluttering devices shall be permitted for a special event lasting up to 14 days per event and only four such events shall be allowed per parcel per calendar year.

v) Prohibited Signs

The following signs are prohibited:

a. Variable electronic message display boards, whether temporary or permanent.

b. Permanent banners.

c. Pennants, streamers, and other fluttering devices exceeding the time limits of temporary uses noted above.

d. Temporary Ground Signs (e.g., real estate, political, construction, contractor and "coming soon" signs) over 12 square feet in area or over five feet tall.

e. All other signs as prohibited in **Sec. 38-10.D. Prohibited Signs**.

vi) Existing legally permitted signs shall be considered legally non-conforming and shall be regulated in accordance with **Sec. 38-10.L. Nonconforming Signs**.

i) Duties of the Historic Preservation Committee (HPC)

To ensure quality property development and renovation and to protect the historic character of the neighborhood, the design review duties are assigned to the Historic Preservation Committee. In accordance with **Sec. 35-2.B. Duties and Responsibilities of the Historic Preservation Committee**, the HPC shall evaluate and determine the exterior design appropriateness of proposals for new construction, additions, exterior alterations, and rehabilitation of properties within the South Mesquite Overlay.

i) The Historic Preservation Committee is established in **Sec. 35-2. Historic Preservation Committee**.

ii) Duties of the HPC relevant to the South Mesquite Overlay (SMO).

a. The HPC shall review the following permit applications for properties lying within the SMO and shall have final authority on these permits relative to exterior design criteria for:

i. Any new primary structure(s);

ii. Manufactured homes for compliance with SMO design standards, with limitations pursuant to State statute;

iii. Any new accessory structure in excess of 120 square feet;

iv. The conversion of an accessory structure to a primary structure such as a garage or shed to a casita;

v. Additions to an existing primary structure that was constructed 50 years prior to the current building permit application, whether or not it is listed as Contributing on the State or National Mesquite Street-Original Townsite Historic District Inventory. The Applicant shall provide evidence of the year built;

vi. Additions to accessory structures in excess of 120 square feet (one time or cumulative);

vii. Window or door replacement on street-facing facades;

viii. Any alterations to the street facade of the primary structure or any alternations to an accessory structure over 120 square feet in size; and

ix. Any alterations, replacement, or changes to the roof resulting in an alteration of the style of roof of a primary structure or accessory structure over 120 square feet in size.

b. The HPC shall establish criteria for issuance of Certificates of Appropriateness (CoA) which shall reflect the purposes of the design guidelines, standards, and criteria of this Section. These criteria shall be attached to the permit application for Applicants to review prior to submittal.

c. The HPC shall review and make recommendations to the Planning and Zoning Commission for the following:

i. Planned Unit Developments (PUDs) (**Sec. 36-5.D**)

ii. Zoning Variances (**Sec. 36-5.F**)

iii. Special Use Permits (SUPs) (**Sec. 36-5.C**)

iv. Zoning Map Amendments (**Sec. 36-5.A**)

d. Cases not listed above shall also go before the HPC if design issues related to the historic integrity of the neighborhood are involved or at the discretion of the Department Director.

e. State- or nationally-funded projects requiring review by the State Historic Preservation Officer (SHPO) are exempt from review by the HPC. In New Mexico, "State-funded" includes funding by municipalities.

iii) Decisions of the HPC

a. Members of the HPC shall state the factual basis and the findings of their vote. Findings shall be based on Design Standards found herein, information from staff reports and staff presentations, public comment, and one or more of the following:

i. References to the Zoning Regulations or other applicable codes;

ii. Design Guidelines for the South Mesquite District;

iii. The Secretary of Interior Standards for Rehabilitation;

iv. The New Mexico Historic Cultural Properties Inventory Manual; and

v. Projects other than those requiring approval by the HPC shall be reviewed for compliance with design standards by Community Development staff and are required to meet all other applicable City Codes.

b. Decision of Approval

If the HPC approves an application, it shall articulate the conditions (if any) to the approval and instruct staff to issue a Certificate of Appropriateness (i.e., action form). A copy of the Certificate shall be placed in the case file and a copy shall be provided to the Applicant and to the permitting and inspections sections.

c. Decision of Denial

If the HPC denies an application, the Notice of Decision shall identify the design standards or other requirements of this **Sec. 36-2.D.4. SMO, South Mesquite Overlay District** that the proposed work conflicts with and shall also explain the Applicant's right to appeal the denial to City Council (as per **Sec. 36-2.D.4.o) Appeals** below). A copy of the Notice of Decision shall be placed in the case file and a copy shall be provided to the Applicant.

iv) Issuance of Certificates of Occupancy or Completion

Staff having prepared the Certificate of Appropriateness (CoA) shall review the final completion of the project for consistency with CoA prior to the issuance of the Certificate of Occupancy or Completion for the project.

j) Design Guidelines

Specific design guidelines, standards, and criteria shall be used by staff and the HPC to determine the appropriateness of construction and rehabilitation projects, and to determine whether the request is consistent or inconsistent with existing development.

i) Applicable development must ultimately utilize architectural styles, methods, and materials that are visually compatible with the original structure, surrounding structures (especially where new construction is proposed), and the overall character of the historic district. This should not be interpreted as a requirement to mimic existing styles or construction materials, but as a means for these types of projects to result in a visually compatible transition between old and new structures within the general neighborhood and/or on a single parcel of land.

ii) When evaluating proposals for new development, additions, or rehabilitation in the SMO, the structure's contribution to the neighborhood comes into play. Most of the SMO historic structures are located within the Original Townsite. These historic structures deserve the most protection and, therefore, the design standards for these are stricter than for newer buildings. There are also many structures listed as contributing on the historic register outside of the Original Townsite; these, too, follow the same design standards as those in the Original Townsite.

iii) In addition to the standards stated herein, staff and the HPC shall review projects based upon The Secretary of the Interior's Standards and Guidelines for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitation, Restoring, and Reconstructing Historic Buildings, and The New Mexico Historic Building Inventory Manual (1980). These resources are available for public review in the Community Development Department or on the City's website.

iv) Ordinary maintenance and repair of any exterior architectural feature in or on a contributing building may be undertaken without a Certificate of Appropriateness provided this work is in keeping with the architecture or character of the building and does not cause a loss of its historic integrity. If such work requires a permit, Community Development staff shall evaluate these permits for consistency with the Design Standards of this Section.

v) Criteria for Requesting and Granting Building Height Exceptions

Pursuant to **Sec. 36-2.D.4.c). Development Standards**, the building heights within the SMO are limited to 14 feet and one story. Through a variance procedure to the HPC, a property owner may request a variance from this maximum building height or number of stories limitation provided that the HPC finds that the proposed building satisfies the following criteria:

a. For new construction:

i. The building is similar in height to another building or buildings within the same block;

ii. The second story is set back from the first story by a minimum of 15 feet;

iii. Second-story windows facing the street shall be small or clerestory;

iv. Second-story windows facing adjacent residential properties shall be frosted to ensure neighbors' privacy; and

v. The design of the building shall satisfy the design standards and guidelines of the SMO.

b. For additions:

i. The addition is limited to 20 percent of the total footprint of the primary building;

ii. The addition must be setback or stepped back from the street-facing facade;

iii. For additions to buildings deemed Contributory to the Historic District, materials and colors of the addition shall distinguish the addition from the original structure;

iv. Second-story windows facing the street shall be small or clerestory;

v. Second-story windows facing adjacent residential properties shall be frosted to ensure neighbors' privacy; and

vi. The design of the building shall satisfy the design standards and guidelines of the SMO.

vii. The maximum building height allowed with a variance procedure shall be 25 feet. The maximum number of building stories allowed with a variance shall be two stories.

k) Design Standards

Additional components that must be given specific attention include the following criteria:

i) Design Standards for All Properties in the SMO:

a. New construction shall reflect a style consistent with those found in The New Mexico Historic Building Inventory Manual (1980) and shall be consistent with the styles of Design Guidelines or Manual established by the HPC for the SMO and with other historic structures found on the same street segment.

b. New construction shall maintain a visual balance and rhythm of the walls, doors and windows along any given street segment.

c. Manufactured homes shall meet design criteria for new construction to the greatest extent possible without altering the structural integrity of the home. This shall include the style and type of materials forming the exterior facade as well as the type and material of skirting that is used. Manufactured homes shall be is compatible in type and materials with adjacent and nearby historic structures.

d. Additions and remodeling projects shall utilize materials that are consistent with the character and architecture of the existing structure. The same materials must be used on all sides of a structure.

e. Changes in materials on a single structure, such as stucco to wood siding or vice-versa, may be made if the different material is also in keeping with the architecture or character of the structure and does not diminish the historic integrity of the structure to any great extent. Changes in materials must also be consistent with other materials used in the neighborhood.

f. Fences/walls shall be of a material that is compatible with the structure or compatible with other fences/walls in the neighborhood.

   i. Chain link or square wire fencing is prohibited except if used in a small area within the interior of a lot, such as for a dog run or surrounding a private swimming pool, and cannot be viewed from a public street.

   ii. Existing chain link or square wire fencing may be temporarily removed if necessary, but the same fencing must be replaced exactly as it was.

   iii. An old chain link or square wire fence may not be replaced with new chain link or square wire fencing; if replaced, the new fence must come into compliance with this Section.

   iv. If a chain link or square wire fence is damaged through no fault of the property owner, the fence may be replaced exactly as it was.

   v. The HPC has the authority to modify or waive the above wire fence restrictions on a case-by-case basis with a Certificate of Appropriateness.

g. Construction fencing must be removed from the site within three (3) days of issuance of a Certificate of Occupancy or a Certificate of Completion.

h. Dumpsters for commercial or multi-family developments are required to be screened from any streetside facade.

i. Second story elements and single-story structures built to the side or rear property lines shall incorporate window types (e.g. clerestory, frosted) and placement in such a way as to protect the privacy of adjacent neighbors.

j. Outdoor lighting shall meet the requirements of **Sec. 38-9. Outdoor Lighting** and light fixtures shall be consistent with the architectural character of the structure and neighborhood. Fluorescent tube lighting fixtures are prohibited.

ii) Design Standards for Structures Listed as Contributing on the State or National Mesquite Street-Original Townsite Historic District Inventory

a. Additions are not permitted to primary facades, it must be set back from the front facade.

b. Additions and remodeling projects shall have architectural treatments and styles, features, and details as the existing structure, but shall not duplicate those of the existing structure in a manner that will

make the addition indistinguishable from the existing structure. Distinguishing characteristics could include, but are not limited to:

i. Setting back the addition from the original structure a distance to be determined by the proposed addition's relation to the scale and form of the original structure;

ii. Varying trim, finish texture, facade height, color, etc., to some slight degree;

iii. Separating the addition from the original structure by a connector;

iv. Varying the window or brick pattern from the original.

c. If applicable, to the extent architecturally practicable, new additions should be attached to any existing noncontributing portion of the structure instead of attaching them to the contributing portion.

d. The owner shall make every attempt to repair or restore historic windows. Historic windows that cannot be repaired or restored shall be duplicated in size, style, and material of the original to the greatest extent possible. No opening shall be widened or narrowed except as required to comply with building code standards, unless historic documentation supports its prior existence. Vinyl-clad or aluminum windows may be used if they resemble the original windows in size and style. Thermal double pane glass may be used.

e. Original doors shall be retained, and repaired or restored to the greatest extent possible. If existing doors are beyond repair, new ones shall match the original material and should also be similar in design. Flat surfaced and contemporary doors with small decorative windows shall be avoided. No door opening shall be widened or narrowed except as required to comply with Building Code standards, unless historic documentation supports its prior existence.

f. Existing porches or portals shall not be enclosed, unless historic documentation supports its prior existence.

g. No new opening shall be made where one presently does not exist unless historical documentation supports its prior existence. An exception may be made to comply with Building Code standards for egress.

h. No existing opening shall be enclosed unless historical documentation shows that the existing opening is not original to the structure.

i. Existing roof styles and materials shall be maintained or replaced in kind. The addition of parapets, canales, or other roof features should only be considered if they are in keeping with the architectural style of the structure.

j. Specific colors of structure and trim shall not be criteria in evaluating the proposal.

l) Installation of Solar Panels or Other Alternative Energy Equipment

Enhancing the energy efficiency of a historic building is important. To that end, it is often possible to install features such as solar panels and photovoltaic cells, provided they are installed in a sensitive manner. However, for some historic buildings, it may not be possible to incorporate solar panels and meet the Secretary of the Interior's Standards for Rehabilitation. The following standards for installation of these systems shall apply:

i) Installation of panels must be reversible and not damage the historic integrity of the building and district.

ii) Solar panels should be installed on rear slopes or other locations not highly visible from the public right of way whenever possible. Panels should be installed flat and not alter the slope of the roof.

iii) Flat roof structures should have solar panels set back from the roof edge to minimize visibility. Pitch and elevation should be adjusted to reduce visibility from the public right-of-way.

iv) Use solar panels and mounting systems that are compatible in color to established roof materials. Mechanical equipment associated with the solar panel system should be treated to be as unobtrusive as possible.

v) Use of solar systems in windows or on walls, siding, awnings, or shutters should be installed with limited visibility from the public right-of-way.

vi) In circumstances where solar collectors are not placed on rooftops, they should only be positioned in limited or no-visibility locations in secondary areas of the property. Use vegetation or a compatible screen if necessary to further reduce the visual impact of these features on a historic property.

m) Submittal and Review Process

The following submittal and review procedures are established to protect persons and property in the South Mesquite Overlay District. Applications shall be obtained from the Community Development Department, Building Permit Section.

i) Buildings/Structures

Prior to the filing of an application for development and/or signs, a pre-application conference to meet with Community Development Department Staff to review the proposal is required.

ii) Following the pre-application meeting, the Applicant shall submit one copy of all application materials for the development to the Community Development Department for review. Upon submittal, staff shall review the submittal for completeness. If all the required items have been submitted, the Community Development Department shall deem the application complete and shall begin its review process.

iii) The minimum submittal requirements for development proposals shall include the following information that is relevant to the proposal:

a. A Development Application, with appropriate materials required for the SMO, as determined by Community Development staff at the pre-application meeting. The submittal shall include a scaled site plan that includes the following, as applicable:

i. Property boundaries.

ii. Location of all structures.

iii. Age of structures.

iv. Setbacks of all structures, existing and proposed.

v. Parking layout, if applicable.

vi. Ingress/egress access points.

vii. Areas proposed for landscaping.

viii. Surfacing material for impervious surfaces, if applicable.

ix. Stormwater ponding areas.

x. Dumpster location(s).

xi. Location of service and loading area(s).

xii. Freestanding and attached sign locations where applicable.

xiii. North arrow.

xiv. Any other information that conveys how the proposal will meet development requirements.

b. A statement of objectives to be achieved by the development, inclusive of a description of the character and anticipated use of the proposed development.

c. If the structure is listed as contributing on the State or National Mesquite Street—Original Townsite Historic District inventory, a description of the known history of the structure shall be included. Photos are encouraged to support the purpose of the application.

d. Scaled elevations or renderings that are detailed enough so that a realistic picture is given of the proposed project to a close approximation of the finished project. It should be apparent from the submission that the design criteria herein have been met to the greatest extent possible. Color architectural/artistic renderings shall:

   i. Reflect all aspects/views of the exterior of the structure.

   ii. Demonstrate the use of building materials through the drawings or with a legend or an attached list.

   iii. Detail the fenestrations, other building openings, rooflines, ornamentation, woodwork, and other features of the structure.

e. If required, the Applicants shall present their proposal to the HPC at a public meeting. At that time, a formal decision by the HPC regarding the proposed project will be made and a Certificate of Appropriateness or Letter of Denial will be issued by staff within five days. This record of the HPC shall be entered into the Case File for reference by building inspectors, plan examiners, and other relevant City staff. Public meeting procedures and notice requirements will follow that of the Planning and Zoning Commission found in **Sec. 34-3.G. Notice for a Public Meeting**.

f. Those projects not required to be reviewed by the HPC shall be reviewed by Community Development staff using the same criteria and procedures found herein.

g. A scaled landscaping plan shall include:

   i. Location, size, and common name of all landscaping

   ii. A complete irrigation plan shall be included, clearly identifying how the landscape will be sustained.

h. Community Development staff shall ensure that the Applicant satisfies any conditions of approval stated in the Certificate of Appropriateness (CoA); if the Applicant proposes any changes to the project involving architectural or structural elements, location, or materials that alters the CoA approval conditions, the Applicant shall submit revised plans for review by the HPC. If the Community Development staff, upon inspection prior to issuance of a Certificate of Occupancy or Completion, notices that the Applicant changed a design element that is inconsistent with the CoA, the Applicant shall submit a revised plan showing the changed element and the HPC shall review the change to see if it meets the SMO design guidelines, standards, and criteria. The HPC shall have the authority to recommend to the City's Building Official that the substituted element be removed and replaced with one that is approved by the HPC.

n) Demolition

To preserve the character of the State and National Mesquite Street-Original Townsite Historic Districts and surroundings, this ordinance creates a 60-day demolition permit application review process that will allow time for interested parties to explore alternatives to the demolition of historic structures.

i) Property owners intending to demolish any structure located within the SMO must adhere to the following 60-calendar day process. The Applicant may withdraw the permit application at any time with a written notice to the Director of the Community Development Department.

ii) Demolition permit applications shall be submitted to the Community Development Department prior to any demolition activity taking place. During the 60-day review, Community Development Department staff will review the application for compliance with the Las Cruces Building Code (Chapter 30 of the LCMC).

iii) A proposal for redevelopment of the property, with elevations, must accompany the permit application; this proposal shall describe a potential or proposed development proposal for the property, and whether it is proposed for the near or distant future.

iv) Prior to the demolition of a structure designated as Contributing within the State or National Historic District, the Applicant shall be responsible for fully documenting the structure, both interior and exterior, to provide a permanent record, in accordance with documentation procedures as follows. The demolition permit will not be approved without submittal and approval of this documentation by Community Development staff:

a. Completion of the New Mexico Historic Cultural Properties Inventory (HCPI)-Form, available in the Community Development office and online.

b. Photographing the property

c. Take several photos (front, rear, sides, close-up views, details, setting, etc.) of the historic structure proposed for demolition (primary structure and/or each historic accessory structure, such as a garage, sheds, etc.) Buildings that are not listed on the historic register need not be included. For more information on documentation, please refer to the National Register Photo Policy Fact Sheet available in the Community Development Department and online.

d. If known, a short history of the property should be included, in order to document how that property fits within the historic district or community.

v) Posting

At the beginning of the 60-day review process, the Community Development Department will prepare a public notice sign that is to be posted by the Applicant in a conspicuous place on the property. The Applicant is responsible for ensuring that it is in place for the entire 60-day period. The Department will publish a legal notice describing the proposed demolition and contact information for the Applicant. A fee shall be charged to the Applicant for the cost of the public notice.

vi) At the beginning of the 60-day review process, the Community Development Department will inform the HPC, neighborhood associations, the New Mexico State Historic Preservation Office (SHPO), and other pertinent organizations or interested parties that a demolition permit has been applied for.

vii) A demolition permit shall be issued upon the completion of the following items:

a. The completion of the 60-day period;

b. Documentation of the structure as described above; and

c. The application meets all City Code requirements and has been approved by the Community Development Department Staff. (Code compliance comments regarding the proposed demolition may be resolved within the 60-day time period).

viii) Compliance with the procedure set out in this Section may be waived by the City Manager if it is determined that immediate demolition of a historic structure is necessary to remove a hazard to the health, safety, and welfare of the public. In such a case, the Community Development Department shall immediately notify the HPC, neighborhood associations, SHPO, and other pertinent organizations and interested parties that demolition of the structure is imminent.

o) Appeals

In the South Mesquite Overlay District, any applications for development must be approved by the City in order for a use permit, building permit, or sign permit to be issued. If required by this Section, review and approval by the HPC must precede issuance of a permit.

i) A decision made by staff may be appealed by any aggrieved person to the HPC. Such appeal must be made in writing within 15 calendar days of the staff decision. The appeal will be presented to the HPC at their next regularly scheduled meeting.

ii) Appeals for a decision made by the HPC, Planning & Zoning Commission, or City Council shall be in accordance with **Sec. 34-3.F.1.c) Timing for Filing Appeal**.

iii) A request that is denied by the HPC and/or City Council shall not be resubmitted or reconsidered for a period of one year. However, after meeting with Community Development Department staff, a different request on the same property may be submitted no less than six months after such denial decision.

5. UD, University District Overlay District

   a) Intent and purpose. The University District Overlay intends to allow greater flexibility to developers and land owners while encouraging the development of a vibrant, mixed-use University District. The purpose of this document is to implement transportation, land use, and urban design policies as established in the University District plan. Specifically, the purpose of this overlay is to stipulate provisions which will:

      i) Promote a pedestrian-oriented urban form in the University District. The focus on form promotes buildings that conform to tested urban design principles and that adapt to changing conditions over time.

      ii) Establish an area with a rich mix of uses: Commercial, cultural resources, residential, and transportation choices.

      iii) Maximize connectivity and access in a multimodal circulation network in which residents, workers, and visitors may conveniently walk, drive, bike, or ride public transportation to destinations within and outside of the district.

      iv) Support existing University District businesses.

      v) Promote sustainable development that minimizes negative impacts on natural resources. A walkable, mixed-use, higher-density University District supports sustainable development by providing an alternative to low-density development in peripheral areas. University District's buildings, transportation systems, and public spaces should be designed to minimize negative impacts on air and water quality and promote innovation in environmental design.

      vi) Create a seamless destination where the City of Las Cruces and New Mexico State University meet.

   b) Applicability.

      i) Introduction. This overlay applies to all properties that have been rezoned within the University District overlay zone. It shall be used to regulate the design of new streets, new buildings, and new public spaces.

      ii) Terms. The provisions of this overlay are activated by "shall" when required; "should" when recommended; and "may" when optional. Technical terms used throughout this Code may be defined in **Sec. 34-5. Definitions**. Those terms not defined in **Sec. 34-5. Definitions** shall be accorded their commonly accepted meanings. In the event of conflicts between these definitions and the provisions herein stated, the Community Development Director shall have the authority pursuant to **Sec. 34-1.I. Interpretations** to determine which will be imposed.

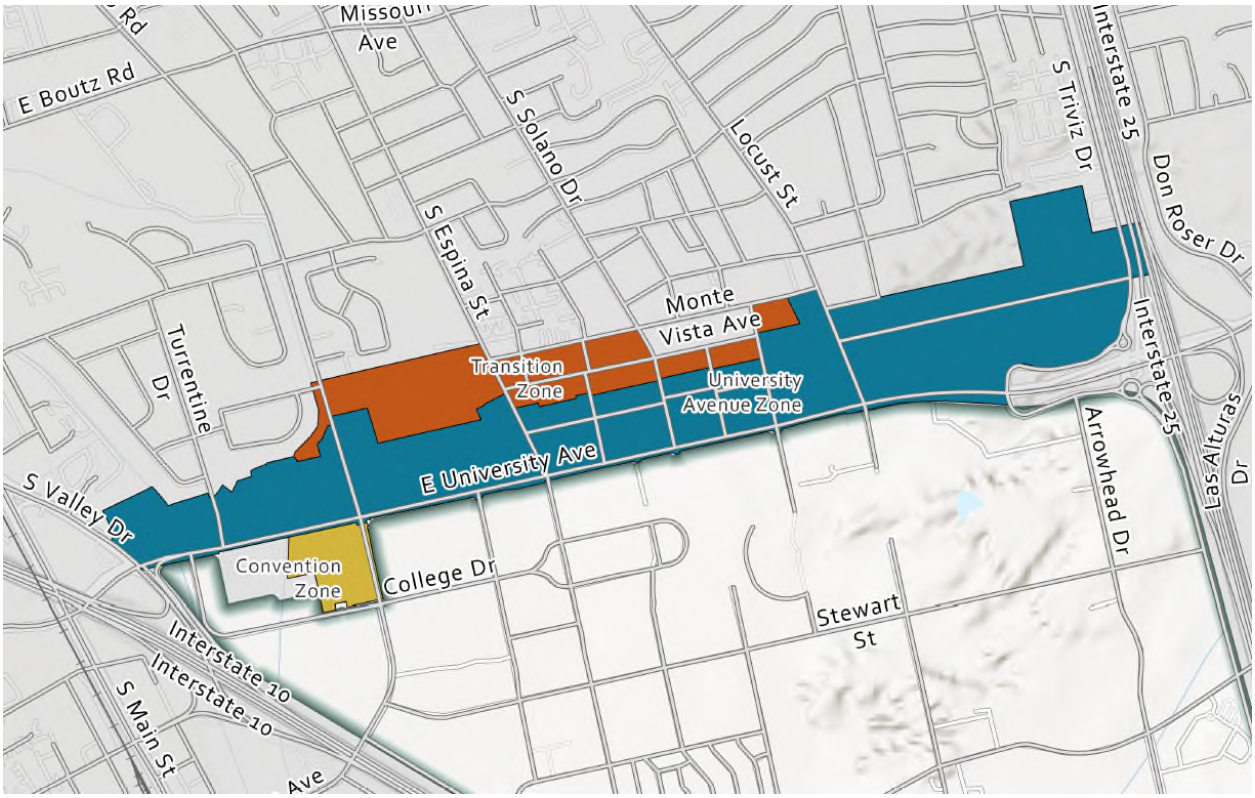
   c) Diagrams and Illustrations. Diagrams and illustrations are an integral part of this overlay and are used to help explain standards and guidelines. The diagrams and illustrations are for illustrative purposes only. When in conflict, written text shall take precedence over diagrams and illustrations.

   d) Delineation of Overlay District.

      i) The University District Overlay applies to all properties within the boundaries noted on the associated map. Please refer to **Figure 36-2-31. University District Overlay**.

      ii) Within the boundary of this overlay, three distinct zones shall be established: University Avenue Zone (UD-UAZ), Transition Zone (UD-TZ), and Convention Zone (UD-CZ). The locations of these zones are on the associated map.

Figure 36-2-31. University District Overlay



e) The vision for the zones.

i) University Avenue Zone (UD-UAZ): The UD-UAZ is assigned to land appropriate for an urban neighborhood center with a mix of building types and uses. These lands are generally occupied by attached residential houses, apartment buildings, and commercial or mixed-use buildings. Civic and religious use buildings may also be present. Lands may also be used for playgrounds, squares, and plazas. Two- to five-story buildings are encouraged. Block sizes are limited to create a walkable and well-connected network of streets. Streets are designed to encourage pedestrian activity by generally including on-street parking, curbs and gutters, parkways with street trees, and wide sidewalks. University Avenue shall be the primary frontage for properties on University Avenue.

ii) Transition Zone (UD-TZ): The UD-TZ is assigned to land appropriate for neighborhoods with a mix of building types and uses. These lands are generally occupied by detached and attached residential houses, small apartment buildings, and small commercial or mixed-use buildings. Civic and religious use buildings may also be present. Lands may also be used for playgrounds, passive and active neighborhood parks, and squares. The buildings may be one to three stories high with shallow front setbacks and small or no side and rear yards. Block sizes are limited to create a walkable and well-connected network of streets. Streets are designed to encourage pedestrian activity by generally including on-street parking, curbs and gutters, parkways with street trees, and wide sidewalks.

iii) Convention Zone (UD-CZ): The UD-CZ is assigned to land suitable for development that, by its intrinsic size, function, or configuration, may not conform to the descriptions and standards for one of the other zones. The development types include convention and exhibition hall, hotel, and ancillary uses such as restaurants and specialty retail.

f) Definitions. Definitions are in addition to those noted in **Sec. 34-5. Definitions** unless otherwise noted here:

Brew-pub: A brew-pub is a microbrewery that serves food or is combined with a pub. A microbrewery, or craft brewery, is a brewery that produces a limited amount of beer. The maximum amount of beer a brewery may produce and still be classed as a microbrewery in New Mexico is less than or equal to 200,000 barrels a year, according to the New Mexico Alcohol and Gaming Division.

Callecita or *lane:* Combines the space for a car with the space for the pedestrian. See also the Las Cruces Downtown Revitalization Final Schematic Design and Concept Report, adopted August 2005.

Dwelling, above ground floor: Dwelling unit(s) located above ground floor office or commercial uses.

Front facade: A term that is equivalent to "primary front" or “primary frontage” throughout this Development Code. It is the elevation with the main entrance to a building that faces a public street. In the UAZ, the primary or front facade faces University Avenue.

Green roof: As defined by the U.S. Environmental Protection Agency, green roofs, also known as rooftop gardens, are planted over existing roof structures, and consist of a waterproof, root-safe membrane that is covered by a drainage system, lightweight growing medium, and plants. Green roofs reduce rooftop and building temperatures, filter pollution, lessen pressure on sewer systems, and reduce the heat island effect.

Guest dwelling: A dwelling to be used for temporary occupancy only and is not to be rented or leased. A guest dwelling shall be no more than 50 percent of the main dwelling's heated/cooled square footage and shall not contain a kitchen. (See also **Sec. 36-3.B. Use Classifications and Use-Based Standards**, #19 Accessory Dwelling.)

Live/work unit: A building that may be used flexibly for living and working in the same building. A variety of uses in the buildings is encouraged. Dwelling units may be located above the ground floor, attached to the rear of a shop front, or detached and located in the rear or side yard. Work is of a commercial nature subject to business registration requirements and not a home occupation.

Mixed-use: For the purposes of this overlay, the term refers to the practice of allowing more than one type of land use category (For example, residential, office or commercial, etc.) in a single building or set of buildings located on a single parcel.

Outdoor plaza or space: A generally open area that may be used for active or passive purposes by one or more businesses and the public visiting the location. An example may include an outdoor seating area for a cafe or restaurant serving as an extension of one or more business, a landscaped plaza serving as open space for patrons and visitors alike, etc.

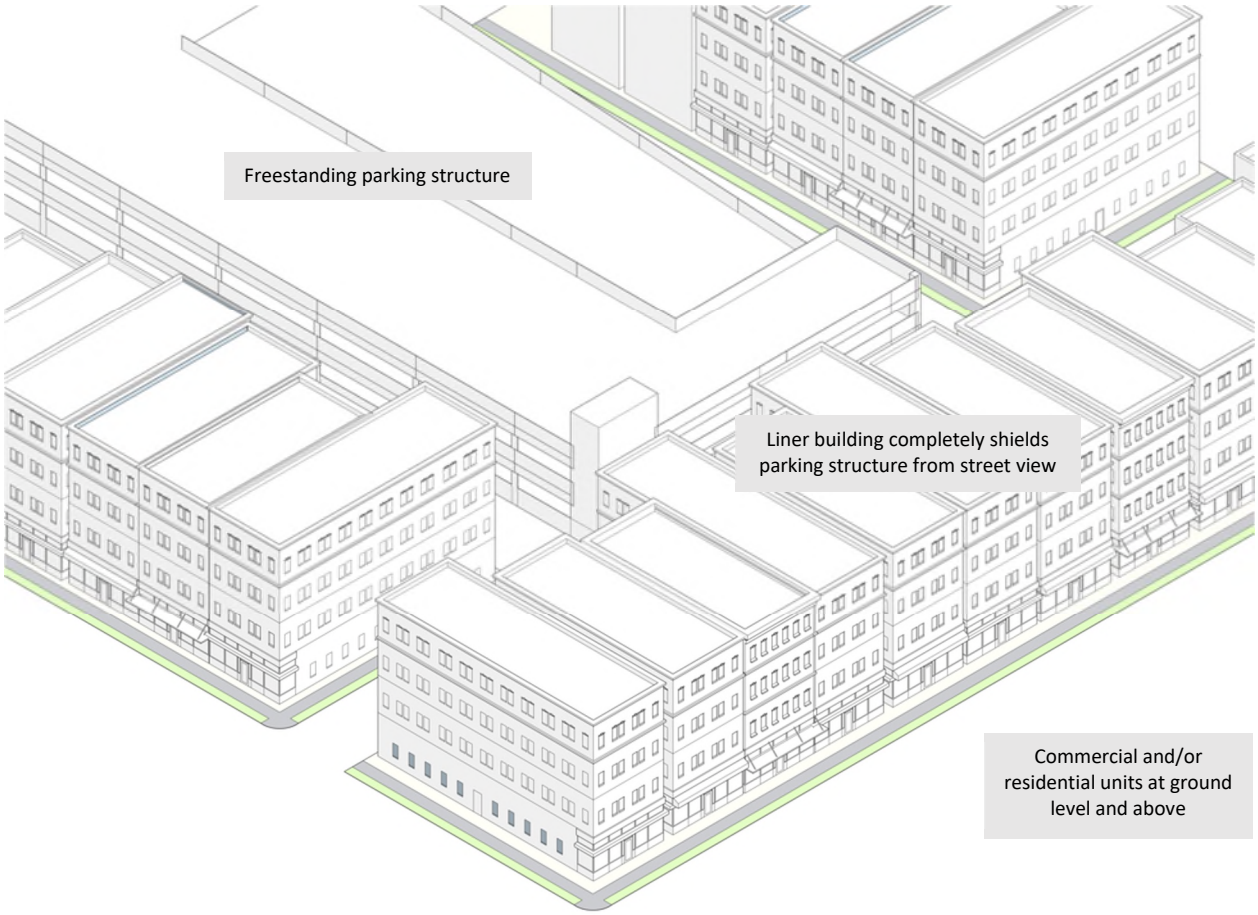
Parking garage with and without liner building: A combination of structures for parking and a mix of uses (commercial, residential, office) where parking is designed to be concealed from view and levels of parking are at-grade, above grade, or partially below-grade (but not fully underground). A liner building is a specialized building that may be built as part of the parking structure or separate; it is parallel to the street and designed to conceal a parking structure from the street with active ground floor uses such as retail shops or residential stoops. A parking garage may be designed without a liner building provided that it is designed in such a way so as to incorporate active ground floor uses, architectural features, and articulated elements to mitigate blank walls and screen parking.

Pedestrian scale lighting: Lighting that shall be a maximum of 16 feet in height and shall contribute to the overall character of the surrounding community, site architecture, or other site features.

Performing arts center: A multi-use performance space that is intended for use by various types of performing arts, including dance, music, and theatre.

Secondary residence: A dwelling unit that is subordinate in size and location to the main dwelling on a single property, and may be rented or leased as an independent dwelling unit. A secondary residence is different from a guest dwelling or accessory structure in that it is a distinct dwelling unit containing a kitchen. Examples include an apartment or cottage.

Single use: For the purposes of this overlay, the term refers to either one or multiple component parts of a single land use category, such as residential, office, or commercial. Multiple office-related businesses on a single parcel or tract shall be considered a single use. For the purpose of this overlay, there shall be a limit to a concentration of single land uses in favor of a mix of uses.



g) Permitted Uses

i) General Provisions

a. Mixed-use development is permitted throughout the University District. Mixed-use is defined as the practice of allowing more than one type of use, including residential, in a building or set of buildings.

b. The City shall seek to streamline review, subdivision processing, and waiver of permit and application fees as appropriate within the University District Overlay. Use of these provisions shall be allowed regardless of a parcel's status (vacant, underutilized, etc.).

c. There shall be no development or alteration of the lands, uses, or structures within this overlay except as provided for by this section of the Development Code and other codes where applicable. For example, under no circumstances shall development violate the City's traffic standards for maintaining a clear sight triangle (**Sec. 38-2.H. Clear Sight Triangle**).

d. Commercial (retail and service) and office drive-thru windows/drive-up windows are discouraged in the University District. Drive-through uses do not support a pedestrian-oriented environment and are inconsistent with the goals for the University District. Although drive-through facilities are discouraged, the following standards shall apply to facilities approval by the UD-CDRC.

i. Windows and stacking lanes. Drive-through windows and stacking lanes shall not be located within the front yard setback or along facades that face a street. Drive-through windows shall be located at the rear of buildings.

ii. Circulation. The design and location of the facility shall not impede vehicular traffic flow and shall not impede pedestrian movement and safety. Shared driveways and/or driveways located off of non-arterial streets should be used, where possible.

iii. Screening. Architectural elements, landscaping, and/or other screening elements shall be used to minimize the visual impacts of the drive-through facility.

e. Developments with frontage on University Avenue greater than 400 linear feet shall be mixed-use.

f. Land uses that do not appear on this list shall be reviewed by the Community Development Director and a determination will be made as to whether said use is consistent and/or congruous with others listed or whether or not it requires a special use permit by its intended omission.

ii) University Avenue Zone (UD-UAZ), Transition Zone (UD-TZ) and Convention Zone (UD-CZ). Please refer to **Figure 36-2-32. UD Overlay Permitted Uses** for uses that are allowed (A), conditional (C) and not permitted (NP). Please refer to **Sec. 36-3.A.1. Permitted Use Chart** for the number of auto parking stalls required per land use.

Figure 36-2-32. UD Overlay Permitted Uses

A = Approved by Right, C = Conditions apply to more than one zone unless otherwise noted, NP = Not Permitted

	UD-UAZ	UD-TZ	UD-CZ	CONDITIONS	BICYCLE PARKING SPACES (BPS)
AGRICULTURE & EQUESTRIAN USES					
Veterinary Facility	A	C	NP	Close 10 p.m.	1 BPS/20 employees on maximum shift
INDUSTRIAL LAND USES					
Light Manufacturing (Cabinetry and Woodworking; Cottage Industry Retail or Service, Jewelry, Silverware & Plated Ware; Musical Instrument Fabrication/Manufacture; Printing and Publishing; Signs & Advertising) Fabrication/Manufacture	C	C	NP	NEW: Light manufacturing uses permitted shall be an accessory use to a retail business in the UD. A maximum of 49 percent of the square footage of the buildings may be used for light manufacturing uses. The use shall meet all requirements for the district including the intent and purpose. CONDITIONS: 1. No activity producing noise, glare or heat observable or measurable outside the building is allowed. 2. No emission of objectionable dust, fumes, odors, vapors, gases, smoke or other forms of air pollution shall be permitted. 3. No vibration shall be permitted which is discernible beyond the property lines to the human sense of feeling for three minutes or more duration in any one hour of a day. 4. No outside storage.	1 BPS/20 employees on maximum shift
Communication/Vertical Structures	C	C	C	See **Sec. 38-11. Wireless Communication Facilities**	
Face Mount (attached to primary use)	C	C	C	See **Sec. 38-11. Wireless Communication Facilities**	N/A
Laboratories (Medical/Dental/R & D)	NP	NP	NP		

A = Approved by Right, C = Conditions apply to more than one zone unless otherwise noted, NP = Not Permitted

	UD-UAZ	UD-TZ	UD-CZ	CONDITIONS	BICYCLE PARKING SPACES (BPS)
Manufacturing, General	NP	NP	NP		
Ministorage Units	NP	NP	NP		
Parking Lots (Private or Public)	NP	NP	NP		
Parking Garage with Liner Building, Commercial or Public	A	C	A	Not to exceed maximum height (45 feet).	
Storage/Display of Merchandise for Sale (exc. Manufactured buildings, mobile homes & operable cars, trucks, motorcycles & RVs)	NP	NP	NP		
Storage outside of buildings of materials, equipment and supplies not for sale	NP	NP	NP		
Storage, warehousing accessory to Office, Retail, Service, or Industry	NP	NP	NP		
Recycling Centers	NP	NP	NP		
Water Purification, Commercial	NP	NP	NP		
Wholesale Trade, any product	NP	NP	NP		
INSTITUTIONAL RELATED USES					
Child Care or Preschool (13 or more children)	C	C	NP	See #36 Child Care Center in **Sec. 36-3.B**	1 BPS/7000 GFA
Community Buildings - Uses (includes Community Recreation Facility, etc.)	A	C	C		1 BPS/5000 GFA
Convention Center/Exhibition Hall	NP	NP	A		1 BPS/75 Maximum occupancy
Family Child Care Home (5-6 children)	C	C	NP	See #37 Child Care Home (≤6) in **Sec. 36-3.B**	1 BPS/7000 GFA
Group Child Care Home (7-12 children)	C	C	NP	See #38 Group Child Care Home (7-12) in **Sec. 36-3.B**	1 BPS/7000 GFA
Institutional Office (i.e., Convention & Visitors Bureau, etc.)	A	A	C	Accessory to Convention Center/Exhibition Hall	1 BPS/8000 GFA
Religious Institution w/Columbarium	C	C	NP	See #43 Cemetery or Columbarium in **Sec. 36-3.B**	1 BPS/40 seats in primary assembly
Library/Museum	A	C	A	Building and site design requires pedestrian orientation and compliance with Building and Site Standards in UD Overlay [b) Placement of Primary Building; d) Frontage Elements, Primary Building]	1 BPS/1000 GFA
Performing Arts Center	A	C	A	Close 10 p.m.	1 BPS/50 Maximum occupancy
School (K-8) Public, Private, Parochial	C	C	NP	See #39 School (K-8) in **Sec. 36-3.B**	6 BPS/classroom
School (9-12) Public, Private, Parochial	C	C	NP	See #40 School (9-12) in **Sec. 36-3.B**	4 BPS/classroom
School, College or University	C	C	C	See #41 School (College or University) in **Sec. 36-3.B**	1 BPS/20 Employees + 1 BPS/4 Students
School, Commercial, Trade or Technical	C	C	C	See #42 School (Commercial, Trade, or Technical) in **Sec. 36-3.B**	1 BPS/20 Employees + 1 BPS/4 Students
OFFICE & COMMERCIAL LAND USES					
Adult Amusement Establishment	NP	NP	NP		

A = Approved by Right, C = Conditions apply to more than one zone unless otherwise noted, NP = Not Permitted

	UD-UAZ	UD-TZ	UD-CZ	CONDITIONS	BICYCLE PARKING SPACES (BPS)
Adult Bookstore/Video Store	NP	NP	NP		
Art or Photography Studio	A	A	NP		1 BPS/8000 GFA
Auto/Truck/Trailer Rental	NP	NP	C	Auto rental only when accessory use to Hotel, Convention Center, Exhibition Hall. Not to exceed 10 parked cars.	1 BPS/6000 GFA
Cab Stand	NP	NP	NP		
Eating & Drinking Establishments (Bar, Pub, Tavern (Dancing & No Dancing); Cafe, Cafeteria, Coffee Shop, Convenience Store; Deli with eating facilities; Restaurant, etc.; Brew-Pub)	A	A	C	New use category that contains both uses in current zoning code and a new one for Brew-Pub.) CONDITIONS: Ancillary to primary Hotel use, Convention Center, & Exhibition Hall.	1 BPS/1000 GFA
Equipment (Large) Repair & Service (Non-Vehicular)	NP	NP	NP		
Equipment Rental	C	C	NP	Outside storage prohibited.	1 BPS/20 employees
Gas Station with Convenience Store	C	NP	NP	Prohibit mid-block locations and at intersections on University Avenue between Turrentine Drive and Locust Street. Repair facilities prohibited.	1 BPS/2000 GFA
General Commercial & Retail (Bicycle Sales, Service & Repair; Building Material (no outdoor sales or storage); Carpet/Window Treatments; Clothing Store; Department Store; Furniture Store; Garden Supply; Grocery Store; Hardware Store w/out outdoor sales or storage; Specialty Store such as books, music, toys, etc.; Pawn Shop; Plant Nursery; Small Item Repair Shop; Telephone & Communication Center; Upholstery Shop, no outdoor storage; Variety Store; Video Tape/DVD/Rental/Sales; and other typical small-scale Commercial establishments)	A	A	C	Ancillary to primary Hotel or Convention Center use.	1 BPS/2000 GFA
General Office & Service (Accounting, Auditing & Bookkeeping; Architectural, Engineering, Planning & Surveying; Bank, Bonding & Financial Institution (No Drive-Thru); Barber/Beauty/Hair Salon & Related Personal Care; Cleaning & Maid Services; Consulting Services; Counseling Services; Credit Reporting & Collection; Desktop Publishing & Graphic Design; Funeral Home; Health Care Clinic (non-hospital); Insurance; Laboratory; Legal Services; Lessons (Art, Dance, Music, etc.); Mailing & Records Management Services; Medical/Dental Office; Motion Picture Production; Pharmacy; Radio/TV Studio/Station; Real Estate; Research Organization, Noncommercial; Tax Preparation; Telemarketing/Mail Order/Call Center; and other similar Business Offices.)	A	C	C	TZ: Close 10 p.m. CZ: Ancillary to primary Hotel or Convention Center use.	1 BPS/8000 GFA. Medical Office add 1 BPS/2 Doctors
Health Care Clinic (Non-Hospital)	A	C	NP	Close 10 p.m., location on Collector or higher.	1 BPS/10000 GFA
Hospital	NP	NP	NP		

A = Approved by Right, C = Conditions apply to more than one zone unless otherwise noted, NP = Not Permitted

	UD-UAZ	UD-TZ	UD-CZ	CONDITIONS	BICYCLE PARKING SPACES (BPS)
Hotel/Motel	A	NP	A		1 BPS/20 employees on maximum shift. For additional onsite uses (offices, meeting rooms, ...) see individual req'ts.
Kennel/Cattery, Commercial	NP	NP	NP		
Newspaper Distribution	NP	NP	NP		
Petroleum/Propane Sales	C	C	NP	Ancillary to retail use.	N/A
Private Club or Lodge	A	C	NP	Close 10 p.m.	1 BPS/2000 GFA
Temporary (Non-seasonal)	C	C	C	See #35 Seasonal/Temporary Sales or Use in **Sec. 36-3.B**	1 BPS/2000 GFA
Theater, Movie (Commercial)	A	C	NP	Building and site design requires pedestrian orientation and compliance with Building and Site Standards in UD Overlay [b) Placement of Primary Building; d) Frontage Elements of the Primary Building].	1 BPS/60 seats
Mobile Home, Auto, Motorcycle & Manufactured Home Sales, Service & Repair (Auto Body Shop; Auto/Truck Parts Store; Auto/Truck Repair & Service; Auto/Truck Wash/Wax/Detailing; Self-Service/Automated or Full Service; Auto/Truck/Motorcycle Dealers; Truck/Trailer Rental (separated Auto Rental conditioned in CZ as an accessory to hotel use); Automobile, Truck and Camper Sales, Service and Repair); Tire Sales/Repair	NP	NP	NP		
RECREATIONAL USES					
Arcade/Game Room	A	C	NP	Hours of operation: Close 10 p.m.	1 BPS/1000 sqft GFA
Billiard/Pool hall	A	C	C	TZ: Hours of operation: Close 10 p.m.; CZ: Ancillary to primary hotel use and subject to NMSU lease agreement.	1 BPS/4000 sqft GFA
Golf Course, Miniature	A	C	NP	Hours of operation: Close 10 p.m.	1 BPS/6 tees + 1/1500 sqft GFA
Health/Exercise Club/Gymnasium/Sports Instruction	A	A	C	Ancillary to primary hotel use.	1 BPS/1500 sqft GFA
Park	A	A	NP		per Director
Recreational Court, Tennis, etc., Public/Private	A	A	NP*		1 BPS/5 courts
Swimming Pool, Commercial or Public/Private	C	C	C	UAZ + TZ: if the pool is part of a MU development & meets the conditions of the code for placement, utilities, walls & fences, stormwater retention. CZ: When ancillary to primary hotel use.	1 BPS/1250 sqft of pool surface
Botanical Park	C	C	NP	Building and site design requires pedestrian orientation and compliance	2 BPS/acre

A = Approved by Right, C = Conditions apply to more than one zone unless otherwise noted, NP = Not Permitted

	UD-UAZ	UD-TZ	UD-CZ	CONDITIONS	BICYCLE PARKING SPACES (BPS)
				with Building and Site Standards in UD Overlay [b) Placement of Primary Building and d) Frontage Elements of Primary Building]	
Apartments (including Condominiums)	C	C	NP	Achieve minimum density: 10 DU/ac in TZ and 15 DU/ac in UAZ	1 BPS/4 DU
Assisted Living or Retirement Facility	C	C	NP	Building and site design requires pedestrian orientation and compliance with Building and Site Standards in UD Overlay (B: Placement of Primary Building; F: Frontage Elements (Primary Building)	1 BPS/20 Employees on maximum shift
Bed and Breakfast	C	C	NP	UAZ: Maximum 15 rooms; TZ: maximum 8 rooms. Consistent with design guidelines in this overlay.	1 BPS/4 rooms
Boarding House	A	A	A		1 BPS/4 rooms
Detached Site Built Single Family DU	C	C	NP	Achieve minimum density: 15 DU/ac in UAZ, 10 DU/ac in TZ	N/A
Duplex (including Condominiums)	C	C	NP	Achieve minimum density: 15 DU/ac in UAZ, 10 DU/ac in TZ	1 BPS/Unit
Dwelling, Live-Work	C	C	NP	Dwelling unit is attached to the rear of a shop front or detached and located in the rear or side yard or located above the ground floor and that work is of a commercial nature subject to business registration requirements and not a home occupation.	2 BPS/Unit
Dwelling, Located Above Ground Floor	C	C	NP	Achieve minimum density: 15 DU/ac UAZ and 10 DU/ac TZ.	1 BPS/Unit
Fraternity/Sorority House	A	A	NP		1 BPS/2 Bdrms
Guest Dwelling	C	C	NP	See #19 Accessory Dwelling in **Sec. 36-3.B**	1 BPS/Unit
Halfway House	A	A	NP		1 BPS/4 Bdrms
Home for Disabled	A	C	NP	Ten or fewer persons served allowed in TZ. More than 10 persons served, allowed in UAZ only.	1 BPS/20 Employees on maximum shift
Manufactured Dwelling Unit	C	C	NP	Achieve minimum density: 15 DU/ac in UAZ, 10 DU/ac in TZ	N/A
Nursing Home	C	C	NP	Building and site design requires pedestrian orientation and compliance with Building and Site Standards in UD Overlay [b) Placement of Primary Building and d) Frontage Elements of Primary Building].	1 BPS/80 Beds
Patio Home	C	C	NP	See **Sec. 36-4.B.4 Dimensional Standards for Patio Homes and Townhouses**, Achieve minimum density: 15 DU/ac in UAZ, 10 DO/ac in TZ	1 BPS/Unit
Quadplex (including Condominiums)	C	C	NP	Achieve minimum density: 15 DU/ac in UAZ, 10 DU/ac in TZ	1 BPS/4 DU
Secondary Residences	C	C	NP	Achieve minimum density: 15 DU/ac in UAZ, 10 DU/ac in TZ.	1 BPS/Unit
Townhouse (Attached Single Family DU)	C	C	NP	Achieve minimum density: 15 DU/ac in UAZ, 10 DU/ac in TZ	1 BPS/Unit

A = Approved by Right, C = Conditions apply to more than one zone unless otherwise noted, NP = Not Permitted

	UD-UAZ	UD-TZ	UD-CZ	CONDITIONS	BICYCLE PARKING SPACES (BPS)
Triplex (including Condos)	C	C	NP	Achieve minimum density: 15 DU/ac in UAZ, 10 DU/ac in TZ	1 BPS/Unit
Youth Hostel	A	A	NP		1 BPS/10 Beds
RESIDENTIAL RELATED USES					
Accessory Dwelling Unit	A	A	NP	See #19 Accessory Dwelling in **Sec. 36-3.B**	N/A
Accessory Uses & Structures	C	C	NP	**Sec. 36-4.B.2 Accessory Structures**	N/A
Greenhouse (Non-commercial), Garden Shed, Tool Shed	C	C	NP	See **Sec. 36-4.B.2 Accessory Structures**	N/A
Home Occupation	C	C	NP	See #23 in Home Occupation in **Sec. 36-3.B**	N/A
Kennel/Cattery (Private Residential)	C	C	NP	In accordance with Chapter 7 of the LCMC Code of Ordinances	N/A
Storage of recreational vehicles and motor vehicle appurtenances	C	C	NP	See #67 Recreational Vehicle Park in **Sec. 36-3.B** and **Sec. 38-2.N.6.g) Parking and Storage of Large Motor Vehicles**	N/A

h) Property alteration, remodel, or renovation.

i) Purpose. Property alterations, remodels, or renovation standards are established for this district to maintain consistent quality standards for all development and may be for the purpose of adaptive re-use of the structure. For the purposes of this section, exterior remodel, renovation, or alteration shall be defined as: Any change or rearrangement in the supporting members of an existing building, such as bearing walls, columns, beams, girders, as well as any change in rooflines, or any enlargement to or diminution of a building or structure, whether horizontally or vertically. Normal maintenance activities as verified by the Building Official are exempt from this provision.

ii) Minor modifications. Changes to a property may be made without requiring compliance with the University District Overlay Urban Design Standards (architecture, landscaping, signage, and utilities). The expansion and/or modification must comply with the urban design standards of the University District Overlay unless through the determination of the Community Development Director, said compliance would substantially create an undue burden to the property owner or create a condition whereby the expansion and compliance measure, partially applied, would be substantially out of character with the existing development. In no case shall a minor modification/expansion equal or exceed a cumulative total of 15 percent of the gross floor area, nor shall an expansion or modification equal or exceed a cumulative total of $25,000.00 in valuation. A proposal equal to or exceeding these values or one that impacts parking and landscaping shall not be considered as a minor addition and/or modification. It shall, therefore, be subject to normal review and consideration afforded development in the overlay and may be subject to nonconforming provisions that follow. The applicant must provide estimates for the cost of labor as a means of ensuring compliance with the valuation criteria.

a. Once permission to proceed has been granted by the Community Development Director, the applicant may apply for the permit. Work shall not commence until permit approval is granted.

b. Should an applicant or aggrieved party not agree with the interpretation by the Community Development Director, the interpretation may be appealed to the University District Citizens Design Review Committee for their recommendation to the Planning and Zoning Commission. All other nonconforming use requirements are subject to **Sec. 36-5.G. Nonconformities** and the City's design standards.

i) Nonconforming uses. Nonconforming uses within the University District Overlay shall be subject to the following provisions.

i) Permitted uses—Nonconforming.

a. When nonconforming site/urban design features regarding access from the right-of-way or lighting are involved, these features shall be brought into compliance with current standards when:

i. The property remains vacant for a period of one continuous year or greater; or

ii. Any one-time or cumulative increase of 15 percent or greater to the gross square footage of building area occurs; or

iii. Any interior/exterior remodel, renovation, or alteration occurs to the building in the amount of $25,000.00 or greater; or

iv. A change in use occurs on the property that results in the alteration of the use intensity (for example, low volume retail to high volume retail), use orientation (for example, service to retail), or density (for example, eight dwelling units to 15 dwelling units) or change in occupancy type from the building code perspective.

b. When nonconforming site/urban design features regarding signage, landscaping, walls, or parking are involved, these features shall be brought into compliance with current standards when:

i. The property remains vacant for a period of one continuous year or greater; or

ii. Any one-time or cumulative increase of 50 percent or greater to the gross square footage of building area occurs; or

iii. Any interior/exterior remodel, renovation, or alteration occurs to the building in the amount of $75,000.00 or greater; or

iv. A change in use occurs on the property that results in the alteration of the use intensity (for example, low-volume retail to high-volume retail), use orientation (for example, service to retail), or density (for example, eight dwelling units to 15 dwelling units) or change in occupancy type from the building code perspective.

c. When nonconforming site/urban design features regarding architecture/building elements associated with Glazing requirements are involved, these features shall be brought into compliance with current standards when:

i. The property remains vacant for a period of one continuous year or greater; or

ii. Any one-time or cumulative increase greater than 75 percent or greater to the gross square footage of building area occurs; or

iii. Any interior/exterior remodel, renovation, or alteration occurs to the building in the amount of $200,000.00 or greater; or

iv. A change in use occurs on the property that results in the alteration of the use intensity (for example, low-volume retail to high-volume retail), use orientation (for example, service to retail), or density (for example, eight dwelling units to 15 dwelling units) or change in occupancy type from the building code perspective.

ii) Prohibited uses—Nonconforming.

a. Uses that existed within the overlay prior to plan/ordinance adoption (2010) that are deemed a prohibited use may be allowed to continue to exist and expand or enlarge (either one-time or cumulative increase) provided that:

i. The property has not remained vacant for a period of one continuous year or greater; or

ii. A change in use has not occurred on the property that results in the alteration of the use intensity (for example, low-volume retail to high-volume retail), or use orientation (for example, service to retail).

b. If the above two criteria are confirmed not to have existed, the use may:

i. Increase or expand in area (lot or building) not more than 50 percent in gross square footage of lot or building area; and

ii. Any noncompliant site/urban design standards existing shall be brought into compliance with overlay standards to the extent possible. Determination of the extent of compliance shall rest with the Community Development Director.

j) Development and urban design standards.

i) Building and site development standards for the UD-UAZ: University District, University Avenue Zone.

a. UAZ: Block, lot, and density standards.

1	Maximum Block Size (For new subdivisions and/or resubdivided parcels or tracts)	All new subdivisions shall require the construction of new streets that create blocks with a maximum perimeter of 2,000 linear feet. When a full block cannot be constructed, street stubs-outs to adjacent properties shall be provided to allow for the future connection and completion of the block by subsequent development.
2	Density	Up to 36 units per acre by right and up to 54 units per acre provided that outdoor space is appropriately designed into the project as defined herein and deemed acceptable by the city. Accessory units and guest dwellings are excluded from this calculation.
3	Lot Width	No minimum except as needed to meet other requirements in this section.
4	Lot Depth	No minimum except as needed to meet other requirements in this section.
5	Impervious Surfaces	No more than 90 percent of the site shall consist of impervious surfaces.

b. UAZ: Setbacks—Primary building.

1	Front Setback—Arterials	A minimum five-foot setback is required. Within the setback, awnings, porches, window shades, bay windows among other architectural features shall be incorporated into facade design. Buildings that require a setback greater than five feet shall use that setback frontage for active or passive open space as defined herein.
2	Front Setback—Non-Arterials	A minimum five-foot setback is required. No specific architectural features are necessary in the facade design.
3	Secondary Front Setback	Five-foot minimum
4	Side Setback	Ten-foot minimum
5	Rear Setback	Ten-foot minimum

c. UAZ: Building design (primary building).

1	Number of Floors	3 floors maximum if single use plus an optional basement by right. BONUS: Up to four floors maximum with either open space as defined herein or mixed land use considerations incorporated into the development. Up to five floors maximum with open space and mixed land use considerations incorporated into the development.
2	Architectural Definition	Buildings over two stories shall have a well-defined base, middle, and top such that architectural details articulate the different uses at lower building levels.
3	Ground Floor Elevation	The elevation of the ground floor may be elevated a maximum of five feet above the average grade of the site along the front facade of the building. If it can be demonstrated that elevation above five feet is necessary due to floodplain or similar site issues, consideration of said elevation may be considered. If the ground floor is designed to accommodate nonresidential uses, the elevation of the ground floor should be placed near the elevation of the sidewalk to minimize the need for stairs and ADA ramps.
4	Ground Floor Height	If the ground floor is designed to accommodate nonresidential space, the height of the ceiling (as measured from floor plate to floor plate) shall be at least 12 feet for buildings less than three floors and at least 16 feet for buildings with three or more floors.

5	Maximum Height	75-foot maximum as measured from the average grade of the site along the front facade of the building. For buildings greater than 30 feet or two stories, the upper stories shall be stepped back from the line of the front facade to provide areas for outdoor terraces, rooftop patios, etc.
6	Maximum GFA per single use	A single use shall not exceed 15,000 square feet of GFA per building.

d. UAZ: Frontage elements (primary building).

1	Entrance and Frontage	The primary entrance shall be located on the facade along the primary front setback. The entrance shall be located within a stoop, storefront, terrace/lightwell, gallery, or forecourt frontage.
2	Rear Access	The appearance of rear entrances should orient customers and provide safe and convenient access to the building without sacrificing the primary entrance purpose.
3	Windows, All Floors	At least 50 percent of the surface area of ground floor primary front and secondary front setback facades with storefronts shall be occupied by windows with Glazing of no less than 60 percent transparency. At least 20 percent of the surface area of all other facades shall be occupied by windows. Numerous smaller openings rather than a few large ones shall be provided along these facades in the accomplishment of this provision. Reflective, translucent or opaque glass is prohibited.

e. UAZ: Placement of surface parking and accessory buildings.

1	Front Setback	No closer than the rear facade of the primary building(s), 40 feet, or at least 50 percent of the lot depth, whichever is less.
2	Secondary Front Setback	Eight-foot minimum—Parking lot Ten-foot minimum—Accessory building
3	Side Setback	A setback is not required. No encroachment into ROW permitted. Stormwater required to be contained on subject parcel.
4	Rear Setback	A setback is not required. No encroachment into ROW permitted. Stormwater required to be contained on subject parcel.

f. UAZ: Placement of parking structures.

1	Front Setback	A setback is not required if liner building is designed into and a component part of the parking structure (Please refer to definitions—Parking garage with liner building). If the design involves a separate parking structure from a liner building, the structure may be placed no closer than the depth of the liner building across the entire lot. Building code separation shall be required when applicable.
2	Secondary Front Setback	Five-foot minimum
3	Side Setback	Ten-foot minimum.
4	Rear Setback	Ten-foot minimum.

g. UAZ: Building design (accessory buildings).

1	Number of Floros	One to two floors, not to exceed number of floors of the primary building.
2	Maximum Height	24-foot maximum as measured from the average grade of the site along the rear facade of the building.

h. UAZ: Outdoor lighting.

1	Yard or Outdoor Lighting	Ensure that any outdoor lighting follows **Sec. 38-9. Outdoor Lighting**.
		For nonresidential uses, it is recommended that the UAZ should have a lighting curfew of 12:00 a.m. or close of business, whichever is later. Appropriate security lighting is hereby authorized.
2	Public Spaces	Pedestrian scale lighting shall be installed throughout the University District. Please refer to definitions in this overlay.

i. UAZ: Garbage, recycle, mechanical equipment, loading areas, and compost storage.

1	Allowed Locations	Garbage, recycle, and compost receptacles shall be stored within a garage, an outbuilding, or a rear or side yard that is enclosed by a wall or fence that meets **Sec. 38-8. Fencing, Screening, and Buffering**. Mechanical equipment and loading areas shall be located away from the street edge and screened from any right-of-way vantage point as applicable.

ii) Building and site development standards for the UD-TZ: University District Transition Zone.

a. TZ: Block, lot, and density standards.

1	Maximum Block Size (For new subdivisions and/or resubdivided parcels or tracts)	All new subdivisions shall require the construction of new streets that create blocks with a maximum perimeter of 2,000 linear feet. When a full block cannot be constructed, street stubs-outs to adjacent properties shall be provided to allow for the future connection and completion of the block by subsequent development.
2	Density	10 minimum to 24 maximum units per acre by right. Accessory units and guest dwellings are excluded from this calculation.
3	Maximum Lot Width	100-foot maximum (as measured along the front property line)
4	Lot Depth	No minimum except as needed to meet other requirements in this section.
5	Impervious Surfaces	No more than 80 percent of the site shall consist of impervious surfaces.

b. TZ: Setbacks—Primary building.

1	Front Setback—Arterials	A minimum five-foot setback is required. Within the setback, awnings, porches, window shades, bay windows among other architectural features shall be incorporated into facade design. Buildings that require a setback greater than five feet shall use that setback frontage for active or passive open space as defined herein.
2	Front Setback—Non-Arterials	A minimum five-foot setback is required. No specific architectural features are necessary in the facade design.
3	Secondary Front Setback	Five-foot minimum
4	Side Setback	Ten-foot minimum
5	Rear Setback	Ten foot minimum

c. TZ: Building design (primary building).

1	Number of Floors	Three floors maximum if single use plus an optional basement by right. BONUS: Up to four floors maximum with either open space as defined herein or mixed land use considerations incorporated into the development.
2	Architectural Definition	Buildings over two stories shall have a well-defined base, middle and top such that architectural details articulate the different uses at lower building levels.
3	Ground Floor Elevation	The elevation of the ground floor may be elevated a maximum of five feet above the average grade of the site along the front facade of the building. If it can be demonstrated that elevation above five feet is necessary due to floodplain or similar site issues, consideration of said elevation may be considered. If the ground floor is designed to accommodate nonresidential uses, the elevation of the ground floor should be placed near the elevation of the sidewalk to minimize the need for stairs and ADA ramps.
4	Ground Floor Height	If the ground floor is designed to accommodate nonresidential space, the height of the ceiling (as measured from floor plate to floor plate) shall be at least 12 feet for buildings less than three floors and at least 16 feet for buildings with three or more floors.
5	Maximum Height	35-foot maximum as measured from the average grade of the site along the front facade of the building. For buildings greater than 30 feet or two stories, the upper stories shall be stepped back from the line of the front facade to provide areas for outdoor terraces, rooftop patios, etc.
6	Maximum GFA per single use	A single use shall not exceed 10,000 square feet of GFA.

d. TZ: Frontage elements (primary building).

1	Entrance and Frontage	The primary entrance shall be located on the facade along the primary front setback. The entrance shall be located within a stoop, storefront, terrace/lightwell, gallery, or forecourt frontage. (Buildings on corner lots: Primary frontage is the facade that faces the street that corresponds to the property address.)
2	Windows, All Floors	At least 50 percent of the surface area of ground floor front and external side facades with storefronts shall be occupied by windows. At least 20 percent of the surface area of all other facades shall be occupied by windows. Numerous smaller openings rather than a few large ones shall be provided along these facades in the accomplishment of this provision. Reflective, translucent, or opaque glass is prohibited.

e. TZ: Placement of surface parking and accessory buildings.

1	Front Setback	No closer than the rear facade of the primary building(s), 40 feet, or at least 50 percent of the lot depth, whichever is less.
2	Secondary Front Setback	Eight-foot minimum—Parking lot Ten-foot minimum—Accessory building
3	Side Setback	A setback is not required. No encroachment into ROW permitted. Stormwater required to be contained on subject parcel. One-hour fire-rated wall required pursuant to the building code.
4	Rear Setback	A setback is not required. No encroachment into ROW permitted. Stormwater required to be contained on subject parcel. One-hour fire-rated wall required pursuant to the building code.

f. TZ: Placement of parking structures.

1	Front Setback	A setback is not required if liner building is designed into and a component part of the parking structure (please refer to definitions - Parking garage with liner building). If the design involves a separate parking structure from a liner building, the structure may be placed no closer than the depth of the liner building across the entire lot. Building code separation shall be required when applicable.
2	Secondary Front Setback	Five-foot minimum
3	Side Setback	Ten-foot minimum.
4	Rear Setback	Ten-foot minimum.
5	Exceptions	Setbacks for podium and underground parking levels may have the same setbacks as the building. Screening requirements in **Sec. 38-8.E.4. Parking Structures** apply to structures proposed in the Transition Zone (TZ) adjacent to NH Districts located outside the UD Overlay. For purposes of buffer requirements, the use on parcels shall be the primary determining factor in buffer requirements.

g. TZ: Building design (accessory buildings).

1	Number of Floors	One to two floors, not to exceed number of floors of the primary building.
2	Maximum Height	Twenty-four foot maximum as measured from the average grade of the site along the rear facade of the building.

h. TZ: Outdoor lighting.

1	Yard or Outdoor Lighting	Ensure that any outdoor lighting follows **Sec. 38-9. Outdoor Lighting**.
		For nonresidential uses, it is recommended that the TZ should have a lighting curfew of 10:00 p.m. or close of business, whichever is later. Appropriate security lighting is hereby authorized.
2	Public Spaces	Pedestrian scale lighting shall be installed throughout the University District.

iii) TZ: Garbage, recycle, mechanical equipment, loading areas, and compost storage.

1	Allowed Locations	Garbage, recycle, and compost receptacles shall be stored within a garage, an outbuilding, or a rear or side yard that is enclosed by a wall or fence that meets **Sec. 38-8. Fencing, Screening, and Buffering**. Mechanical equipment and loading areas shall be located away from the street edge and screened from any right-of-way vantage point as applicable.

iv) Building and site design standards for the UD-CZ: University District Convention Zone.

a. Civic standards.

i. Introduction. Civic buildings are buildings operated by not-for-profit organizations (including governmental organizations) that are dedicated to arts, culture, education, recreation, government, transit, and or for use approved by the legislative body. The above uses with a religious foundation are not considered civic buildings.

b. Standards. The following standards apply to civic buildings:

i. Civic buildings should be architecturally distinctive, designed appropriately for their function, and designed with outdoor gathering spaces.

ii. Civic buildings may be located within civic spaces.

iii. Civic buildings shall not be subject to the standards of this article (Building Standards). The particulars of their design shall be determined by the University District Citizens Design Review Committee (UD-CDRC) and as required by the director.

c. Historic building standards.

i. Introduction. Historic buildings are structures that are listed on the National and/or New Mexico Registers of Historic Places.

ii. *Standards.* The following standards apply to historic buildings:

(a) Uses for historic buildings and properties shall comply with **Figure 36-2-32. UD Overlay Permitted Uses**.

(b) Alterations and additions to historic buildings shall comply with the Secretary of the Interior's Standards for Rehabilitation.

v) Landscaping—*All zones.* All landscape planting should serve to enhance the architectural value of the building, ground the building in the site, create a pleasant and attractive environment for pedestrians, and mitigate environmental conditions such as excess heat, strong winds, and air pollution.

a. Purpose. Landscaping standards are established for this district to create a more comfortable environment for pedestrians and transit users; to achieve the intended character of a walkable district that meets the desires of the community; and provide stormwater management by reducing runoff and improving water quality by filtering runoff before it enters the collection system. Where City uses of easement area or right-of-way requires displacement of landscaping or damage to drainage ponds, the City shall replace or repair those pond and landscaping elements to the extent possible as determined by the City.

b. Applicability. The provisions of this section shall supersede other landscaping requirements within the Municipal Code, where conflict in regulation exists, as it applies to the landscaping of the University District only.

c. Landscaping standards apply to all development in the University District with the exception of properties that are occupied by single-family residences. Landscape consists of native or drought-tolerant species of both overstory (shade and coniferous trees) and understory plantings of ornamental trees, shrubs, cacti and perennial grasses, groundcovers, and flowers, the standards for which apply to the entire site and parking lot area, excluding building area.

i. Landscaping for new development within the University District shall comply with principles of water conservation that address:

(a) Planning and design;

(b) Soil improvements;

(c) Efficient irrigation;

(d) Zoning of plants;

(e) Mulches;

(f) Turf alternatives; and

(g) Appropriate maintenance. (Please refer to Curtis Smith's article, Principles of Xeriscape.)

d. Area to be Landscaped. The required area to be landscaped is equal to a minimum of 20 percent of the total parking area. For the purposes of this article, the parking area shall be defined as the surface area of the entire tract of land excluding the building pad.

i. Parking bays in excess of ten spaces in length should be divided by intermittent landscape islands. Landscape islands shall be no less than six feet by six feet for each tree and accompanying groundcovers.

ii. One tree shall be planted in the parking lot area for every five parking spaces. Each tree shall be planted in an area that is no less than six feet by six feet.

iii. A landscape buffer no less than eight feet wide should be provided between all parking areas and the sidewalk or street, the purpose of which is to screen parked vehicles from view from the street. The buffer strip should contain a mix of shade trees, low shrubs or perennial flowers, boulders and may include a decorative fence that ensures visibility. (Please refer to fencing in section J. Development and urban design standards.) If a solid wall or dense hedge is used it should be no less than 18 inches and no more than four feet (48 inches) in height to allow views into and out of parking areas. If a berm is used, the slope should not exceed 20 percent (5:1).

iv. In parking lots larger than one acre or 200 feet or more wide, walkways are required that link perimeter sidewalks to primary building entrances.

v. Green roofs (please refer to **Sec. 36-2.D.5.f) Definitions**) may be used to meet minimum landscape requirements at a 1:1 ratio excluding the above listed requirements for landscaping parking lots.

e. Installation. The irrigation system and landscaping shall be installed before the completion of building construction and prior to the issuance of a certificate of occupancy unless a temporary certificate of occupancy or other written agreement has been arranged with the city. Such agreements extending the time of installation will be for a maximum period of nine months. (Ord. No. 978, § 4.6, 6-20-88)

f. The total required landscape area shall be evenly distributed throughout the site. Businesses offering outdoor seating within their front setbacks may reduce the required landscaping, subject to review by the city and the citizen's design review committee (to be discussed later in this Code).

g. Plants at the time of installation shall be sized and quantities shall be defined according to the following: Two 2¼-inch caliper tree, five 15-gallon shrubs, and a choice of either five one-gallon shrubs or 50 square feet of groundcover, for every 500 square feet of lot area excluding building area and parking lot area.

h. Trees shall include shade producing trees which achieve a mature size of at least 25 feet high and 25 feet spread and ornamental trees which have particular features such as spring blooms, fall foliage color or bark characteristics. Evergreen trees such as pines, junipers, and cypress are also allowed. Shrubs shall include a mix of deciduous and evergreen plants including plants native to the Chihuahuan Desert

and others adapted to our climate. Groundcovers shall serve to prevent soil erosion, provide color, and create an oasis feeling.

vi) Fencing, walls and retaining walls—General all zones.

a. Existing noncompliant fences and walls within the district may remain in place so long as they conform to existing City ordinances regarding permitting, height and placement. Increases in structure height or length shall require full compliance with fencing/wall requirements.

b. New fences/walls shall be of a generally "open" design to maintain visibility from the street. As an example, an open fence including gates has for each one-foot wide segment 60 percent of the surface area in open spaces which afford a direct view through the fence. Picket, post and rail, tubular steel and wrought iron are examples of acceptable open fencing. A base not greater than three feet in height may be used in combination with the "open" design. Chain link fencing is prohibited. All fences/walls in front yards must be "open" by design. A "closed" fence/wall is defined as a structure, including gates, which conceals from view from adjoining properties, streets, or alleys, activities conducted behind it. "Closed" fences/walls may only be constructed in side and rear yards. They are not allowed in front yards.

c. Fences, walls and hedges within the primary front yard (where primary front yard setback is determined) shall be limited to a height of four feet. The design of manmade structures shall conform to the provisions found in **b** above.

d. Fences, walls and hedges that are within five feet of the secondary front property line (side where secondary front yard setback is determined) shall be limited to a height of four feet. If the fence, wall or hedge is setback at least eight feet from the property line, the maximum height shall be limited to height of eight feet. The design of man-made structures shall conform to the provisions found in **b** above.

e. Fences, walls, and hedges that are within the rear and side yards shall be limited to a height of eight feet.

f. Retaining walls used within the various districts shall be designed in a manner limiting their height to what is absolutely necessary for the retaining purpose intended.

vii) Signage—All zones.

a. Purpose. The University District Overlay Sign Code shall be established for aesthetics, height, overall size, type, and lighting considerations for signage consistent with district urban design standards.

b. Attached signage. Only window, wall, awning signs and multi-use development directory signs are allowed. Awnings and the attached signs are subject to the design standards of all applicable codes.

i. Wall signs: Flush-mount:

(a) Commercial/nonresidential development.

- No wall sign shall project beyond the ends of the wall or beyond the top of the building to which it is affixed.
- Walls signs shall be affixed flat against the building wall. Any necessary frame mounting shall not extend more than six inches from the wall.
- Wall signs shall be placed on the ground floor of the structure in which the use takes place.
- No more than three wall signs shall be allowed per building facade in buildings with more than one business or use.
- No more than one wall sign shall be allowed per business or use per building facade. When there are more than three business occupants per building refer to the multi-use development directory sign standards of this section.

- One square foot of signage for each linear foot of exterior wall space, not to exceed 50 square feet per wall. The sign(s) shall be placed on the side of the building used to calculate the square footage of the sign. For buildings that are set back 100 or more feet from the sidewalk, signage may exceed the 50-foot maximum as determined by the Community Development Director.

(b) Multifamily residential development.

- Up to two wall signs, not to exceed 32 square feet each, with the name, logo, and associated graphics on a building containing eight or more residential units.
- Only one sign is allowed per wall. These attached signs are subject to the design standards of all applicable codes.

ii. Wall signs: Projecting:

(a) Projecting signs shall be considered double-faced signs with each sign face of equal size.

(b) Projecting signs shall not exceed 12 square feet in sign face area (six square feet per sign face).

(c) Only one projecting sign shall be allowed per business per street frontage.

(d) Only ground floor commercial businesses shall be permitted to utilize projecting signs.

(e) Projecting signs must maintain at least eight feet of clearance as measured from the bottom of the sign to grade and may project no more than four feet from the building or closer than two feet to the edge of the sidewalk, whichever is less.

(f) Projecting signs shall be installed at right angles to a building front.

iii. Window signs:

(a) There shall be no more than one permanent window sign per window.

(b) Neon signs displayed indoors constitute permanent window signs. Only one neon sign shall be permitted per business facade.

(c) The total coverage of all permanent, neon, and temporary window signs shall not exceed 25 percent of the total glass area of the window.

iv. Awnings and canopies:

(a) Awnings and canopies shall be supported solely by the building to which they are attached and no columns or posts shall be permitted as supports.

(b) No portion of an awning or canopy shall be less than eight feet above grade. However, if the awning and canopy extends beyond four feet between the building and curb, it must be 12 feet above grade.

(c) The roofs of all awnings and canopies shall be used for no other purpose than to form and constitute a roof. The roofs of all awnings and canopies shall not drain directly or into the public right-of-way. The roofs of all awnings and canopies shall be constructed in accordance with the building code.

(d) Awnings and canopies shall be designed to withstand a wind speed of not less than 90 miles per hour.

(e) Awnings and canopies shall not interfere with street trees or traffic signs.

(f) No advertising shall be placed on the awning or canopy except the name or logo of the owner, business or industry conducted within the premises, address of the building, or the building name.

(g) Lettering or logos shall be painted or otherwise permanently affixed in letters not exceeding 20 inches in height on the front and side portions thereof.

(h) Translucent awnings and canopies are not permitted.

(i) Any awning or canopy that encroaches into the public right-of-way shall obtain an approved encroachment agreement from the City's land management department prior to placement and use of the awning or canopy and comply with chapter 32 of the International Building Code, as adopted by the City.

v. Multi-use development directory sign. Exterior directory signs, with the name and location of all businesses within a multi-use development, shall be wall-mounted as specified above. One square foot of signage is allowed for each linear foot of exterior wall space, not to exceed 50 square feet per wall. The sign(s) shall be placed on the side of the building used to calculate the square footage of the sign.

c. Freestanding ground signage—All development.

i. Ground signs shall be the only freestanding signage permitted within the district.

ii. One ground sign is allowed per lot. The ground sign shall identify the primary tenant, the name of the business center or the name of the residential units.

iii. Individual ground signs shall be limited to properties which own direct, unobstructed (on-site) access to a public street.

iv. Ground signs shall not exceed 24 square feet in area, and shall not exceed three feet in height. Signs shall be placed at least five feet from the outside edge of the right-of-way, and at least five feet from adjacent property lines and not within the clear sight triangle as defined by **Sec. 38-2.H. Clear Sight Triangle**.

d. Design standards.

i. The silhouette, shape, and materials of signs in the University District Overlay shall be simple and compatible with the building or facade to which they relate.

ii. Freestanding signs shall not be placed so they obscure important architectural features such as entrances, display windows, or decorative cornices when viewed from the right-of-way.

iii. Attached signs shall not disrupt the architectural composition of the building facade. No part of any attached sign shall overlap or cover architectural features of the building such as cornices, eaves, window and door frames, columns, vigas, and other decorative elements.

iv. Signs within a business center shall be compatible with the architectural character of the center.

v. The number of different lettering styles or fonts on a sign shall be kept to a minimum, and shall relate to the architectural character of the property. Lettering and copy shall not be crowded onto a sign and shall leave ample space around the copy to preserve legibility.

vi. The visual appearance of signs shall reinforce the architectural character of the site.

vii. Illumination:

(a) Signs that are illuminated shall have concealed lighting fixtures with the exception of LED and neon.

(b) No reflectors, arms, fixtures or wires shall be visible from the street.

(c) Internally illuminated signs shall not be permitted.

(d) No sign shall be illuminated to create a nuisance, traffic hazard or excessive glare to adjacent property and shall comply with **Sec. 38-10.I.3. Sign Lighting** to prevent illumination of the night

sky so as to lessen light pollution. Please refer to **Sec. 38-2.I. Streetlighting** and **Sec. 38-9. Outdoor Lighting**.

(e) Freestanding signs shall be landscaped at their base in a manner that is compatible with the character of the site. Landscaping shall form an attractive cluster at the base of the sign.

(f) The top of any sign shall not exceed 20 feet above grade.

e. Temporary promotional banners and pole banners.

i. Building-mounted banner displays*:* In addition to permitted permanent signage, businesses and organizations in the University District Overlay are allowed temporary, promotional displays in the form of a banner for promotional purposes that are subject to the following conditions:

(a) Each business and organization, with the exception of those within the convention zone, shall be permitted one banner three times during each calendar year for a maximum of ten consecutive days each or for a maximum of 30 consecutive days. Due to the nature of the convention zone and the number of special events, banners are expected to change more frequently than three times during each calendar year.

(b) Only one banner per business or organization may be displayed at a time.

(c) Banners shall be made of a durable material that may include 12- to 16-ounce weight materials, such as, nylon or vinyl reinforced canvas. Banners must have hemmed and reinforced edges. Grommets should be located on the banner's edge to allow it to be securely fastened to its supporting structure. If grommets are not used, some other mechanism such as rope shall be placed within the hem to allow for its attachment.

(d) Banners may not exceed 25 square feet in area.

(e) Banners shall be securely attached to a permanent building.

(f) The applicant shall provide to the Community Development Director the name and address of the business/organization where the banner is to be placed, the first day the banner is to be displayed, the date it is to be removed, the size of the proposed banner, and its design.

(g) Banners may be erected only when a sign permit has been issued. All banners shall be removed not later than the permissible time limit stated above. Failure to do so may forfeit the ability to use these provisions in the future. A permit will be issued to the applicant and will remain in effect for the duration of that event.

ii. Pole banners*:* Banners may be placed on city-owned utility and light poles promoting city-sponsored events and/or messages with approval by the city manager or his/her designee. (For the purposes of pole banners, a City-sponsored event shall be defined as an event for which the City of Las Cruces donates money and/or services/personnel.) Examples of these types of messages include: "Las Cruces Sparkles on the 4th of July" and "Happy Holidays". Other governmental entities, such as New Mexico State University, may also place banners on City-owned utility and light poles that display a community-wide message and are approved by the city manager or his/her designee. Examples of these types of messages include: "Go Aggies!" and "Welcome Back to School!" Approval with New Mexico State Highway Department will also be required when appropriate. To place banners on City-owned utility and light poles, arrangements shall be made through the traffic engineering section of the public works department. Fees may be imposed to offset expenses.

f. Prohibited signs*:* The following signs are prohibited in the University District Overlay:

i. Portable and pole signs, whether temporary or permanent.

ii. Permanent banners.

iii. Pennants, streamers, and other fluttering devices, whether temporary or permanent.

iv. Temporary Ground Signs (e.g., real estate, political, construction, contractor, and "coming soon" signs) over 12 square feet in area or over five feet tall.

v. Billboards and all other off-premises signs.

vi. All other signs as prohibited in **Sec. 38-10.D. Prohibited Signs**.

g. *Applicability:* Where there are areas concerning signage not addressed by the University District Sign Code, **Sec. 38-10. Signs** shall apply.

k) Transportation (streets and public spaces).

i) Right-of-way improvements (traveled way, roadside and intersections) throughout the district shall be in accordance with the City's Active Transportation Plan and Complete Streets Ordinance. (Please refer to City Council Resolution No. 19-059 and Ordinance No. 2993.)

ii) Project initiation and preliminary engineering shall be initiated at the earliest opportunity for right-of-way improvements to the traveled way, roadside, and intersections of University Avenue between Interstate 25 and Interstate 10.

iii) Future amendments to this section are anticipated and shall convey design parameters for University Avenue as a walkable thoroughfare.

iv) Callecitas shall be considered and alleys shall be preserved, whenever possible, for improving pedestrian connectivity and providing vehicular access to properties. (Please refer to **Sec. 36-2.D.5.f) Definitions**.)

l) Parking, general—All zones.

i) Parking requirements.

a. Parking ranges are set for land uses in each zone, as noted in **Sec. 36-3.A.1. Permitted Use Chart**. Requests to reduce parking requirements shall be evaluated on a case-by-case basis by the Community Development Director. Requests to exceed maximum parking requirements shall be granted for parking structures that meet the development and urban design standards set forth in this Code.

b. Shared parking and access agreements among neighboring properties are encouraged and will count toward off-street parking requirements. **Sec. 38-2.N.4.c)ii) Shared and Joint Use of Parking Areas** dictates the requirements for this application.

c. Off-street parking requirements can be met by entering into a shared parking agreement within one-fourth mile, as measured along the street network and pedestrian right-of-way, that shall be used to identify how parking demand will be met and which properties are involved.

d. All standards for parking dimensional and ADA requirements for all development within the district shall be consistent with **Sec. 38-2.N. Off-Street Parking**.

e. All vehicles are to be parked along designated streets, in designated driveway or parking areas only. Parking on front lawns and/or landscaped areas shall be prohibited.

ii) Parking options: (Please refer to **Sec. 36-2.D.5.g) Permitted Uses** for allowed parking locations.)

To reduce development costs, parking garages are not required. Parking may be provided within an attached garage, detached garage, parking structure with or without liner building, or surface parking lot. Parking for nonresidential uses may also be provided off-site in a public parking lot or structure if a parking management district is formed for the area. Dedicated surface parking areas shall meet the landscape requirements of **Sec. 36-2.D.5.j) Development and urban design standards.** of this overlay.

iii) Parking access:

Alleys. Alleys are required for projects that create new blocks to provide access to parking areas and to minimize driveway curb cuts along streets. Alleys are encouraged (but not required) for projects on existing

blocks to provide access to parking areas. Driveway access from the street is only allowed on lots where an alley cannot be provided.

Driveways. Driveway width shall comply with City design standards.

Pedestrian connectivity. In parking lots larger than one acre or equal to or greater than 200 feet wide, walkways shall link perimeter sidewalks to primary building entrances.

Parking prohibition. A parking management plan would improve mobility and access to shops and business centers as well as controlling the amount of land dedicated to surface parking lots and parking structures. Until a parking management plan is adopted, parking shall be prohibited from 8:00 a.m. to 5:00 p.m., Monday through Friday, on the following streets:

Chaparral St. between University Ave. and Plain St. (east side only);

Hagarty Ave. between University Ave. and Plain St. (west side only);

Mesa St. between Jordan St. and Espina St. (south side only).

m) Demolition. To preserve any contributing structure listed on the historic register (state or national) in the University District Overlay; this section creates a 60-day demolition permit review process that allows time for interested parties to explore alternatives to the demolition of historic structures. Demolition for all other structures shall follow Chapters 30-491.

i) Demolition permit. Demolition permit applications shall be submitted to the Community Development Department prior to any demolition activity taking place. Community Development Department staff will review the application for compliance with this Development Code, as amended. A proposal for redevelopment of the property must accompany the permit application.

ii) Posting. At the beginning of the 60-day demolition permit review process, the Community Development Department will issue a sign that is to be posted in a conspicuous place on the property. The applicant is responsible for posting the sign and ensuring that it is in place for the entire 60-day period.

iii) At the beginning of the 60-day demolition permit review process, the Community Development Department will inform the neighborhood associations, the New Mexico Historic Preservation Division, and the Dona Ana Historic Society that a demolition permit has been applied for.

iv) A demolition permit shall be issued upon the completion of the following items: 1) the completion of the 60-day period; and 2) the application meets all City Code requirements and has been approved by the Community Development Department staff. (The applicant may use the 60-day time period to resolve any necessary code compliance comments.) The permit application may be withdrawn by the applicant at anytime without charge.

v) Prior to the demolition of a historic structure, the applicant shall be responsible for fully documenting the structure, both interior and exterior, to provide a permanent record, in accordance with documentation procedures as follows. The demolition permit will not be approved without submittal and approval of this documentation by community development staff.

a. Complete the Historic Cultural Property Inventory (HCPI) forms 1 and 2;

b. Photograph the property:

i. Photo processing, printing and labeling shall follow the protocol established by the National Parks Service; please refer to the National Register Photo Policy Fact Sheet.

ii. Take several exterior photos of the primary structure (front, rear, sides, close-up views, details, setting, etc.) and exterior photos of each historic secondary structure, such as a garage, sheds, etc. (Accessory buildings that are not listed on the historic register should not be included.) For assistance in taking quality photographs, please refer to NPS Bulletin #23 at the link listed above.

iii. Include several interior photos of the primary structure, with attention to any distinctive architectural or historic features (vigas, carvings, coping, special flooring, bullet holes, etc.)

iv. Staff strongly suggests that wide-angle camera lenses not be used for exterior photographs since these lenses tend to distort vertical dimensions of buildings. A perspective-correction lens is highly recommended for best results.

v. The submitted photo packet must include one set of black and white (B&W) photographs and full-color digital images. Printed size may be 3½ × 5; 4 × 6; or 5 × 7.

vi. Include a continuation sheet that provides information common to all photographs, followed by a list providing information pertinent to each photograph.

vii. The file name for each electronic image must correspond with the photo log included on the continuation sheet and the information labeled on the back of each photograph, and reference the county and state in which the property is located.

viii. All photographs and media (e.g., USB drive) with electronic files must be put into a folder with the property name, location, and the date the photographs were taken.

c. If measured drawings done by the Historic American Building Survey exist, the owner should annotate the drawings, showing changes to the property, interior and exterior, that have occurred up to the current date.

d. If known, a short history of the property should be included, in order to document how that property fits within the historic district or community.

e. The demolition permit will not be approved without submittal and approval of this documentation by Community Development staff.

vi) Compliance with the procedure set out in this section is not required if it is determined by the City of Las Cruces that the immediate demolition of a historic structure is in the best interest of public health, safety, and welfare. The applicant shall be responsible for documenting the structure in accordance with the procedure above to fully demonstrate the need for demolition and to provide a record of the structure. In the event that entering the structure would pose a threat to the health, safety and welfare of the documenter, interior photos are not required. This documentation must accompany the memo of determination for demolition by the building official prior to the issuance of a demolition permit.

n) Administration. Submittal and review process.

i) Purpose. Submittal and review procedures are established for all new development to protect persons and property in the University District Overlay as directed in the University District Plan.

ii) Subject to review by the Citizens' Design Review Committee (UD-CDRC).

a. Subdivisions. For submittal and review of subdivisions within the district, refer to **Sec. 37-2. Subdivision Procedures**.

b. Buildings.

i. Pre-application conference: Prior to filing an application for development of new buildings in the district, the applicant is encouraged to meet with staff of the City Community Development Department to review the proposed project. At this conference, staff shall review the development proposal and advise the applicant concerning the compatibility of the proposal with the intent and standards of the University District Plan and all other applicable City codes.

ii. Application procedure*:* Upon completion of the pre-application conference, the applicant shall submit at minimum, one copy of all application materials for new development to the Community Development Department for review. Upon submittal, staff shall review the submittal for completeness. If all the required items have been submitted, the Community Development Department shall issue a receipt for submittal.

iii. University District Citizens' Design Review Committee (UD-CDRC): Applicants shall meet with the UD-CDRC and City staff at a public meeting for a formal recommendation by the UD-CDRC regarding the proposed project.

iv. Final approval*:* An application shall be effective for no more than one year from the date of approval. If development proposed by the application has not been initiated within the one year stipulated, the application must be resubmitted for approval as established in this section. The applicant may submit a request for extension of approval prior to the expiration date, if desired. The request will be reviewed by the Community Development Department.

c. Variances*.* Variances in the numerical requirements for development within the district will be considered in accordance to fulfilling the policies of the University District Plan and not contradictory to the policies therein. Variances may be granted by the Planning and Zoning Commission at a public meeting in accordance with **Sec. 36-5.F. Zoning Variances**.

i. An application for a numerical variance will be processed by applicable City departments and the Citizen's Design Review Committee.

ii. Applicants must present their request to the citizen's design review committee for their recommendation to the Planning and Zoning Commission. Recommendations from the UD-CDRC shall be delivered to the Planning and Zoning Commission prior to the public meeting.

iii. Decisions of the Planning and Zoning Commission may be appealed to City Council, in accordance with **Sec. 34-3.F. Appeals**.

d. Special use permit (SUP). The Community Development Director determines SUP needed for uses not listed in this overlay.

e. Zone change*.* Applicants must present requests for zone change to the citizen's design review committee for the committee's recommendation to the Planning and Zoning Commission. Recommendations from the design review committee shall be delivered to the Planning and Zoning Commission prior to the public meeting. Decisions of the Planning and Zoning Commission may be appealed to City Council in accordance with **Sec. 34-3.F. Appeals**.

f. Plan amendments, code amendments. Applicants must present requests for plan amendments and code amendments to the University District Citizen's Design Review Committee (UD-CDRC) for the committee's recommendation to the Planning and Zoning Commission. Such requests will be considered once a year at the January meeting of the UD-CDRC. An exception to the once-a-year rule and expedited review applies to cases deemed necessary by the city in order to ensure successful implementation of the goals and objectives of the plan and ordinance where there is direct conflict between the plan and overlay. The UD-CDRC will determine which amendments may be processed gratis; all others incur a fee established by Resolution No. 00-360, July 3, 2000. Recommendations from the UD-CDRC shall be delivered to the Planning and Zoning Commission prior to the public meeting. Recommendation of the Planning and Zoning Commission are made to City Council which makes the final decision.

g. Property alteration, remodel or renovation. Any related activities to existing buildings within the district shall require review by the Community Development Department and the citizen's design review committee to ensure that the building and the property of the site will be brought into conformance with all applicable urban design standards of the University District Plan and this section.

A portion of the submittal requirements may not be required in all renovation cases. Upon receipt of a written request justifying the deletion of required information, the Community Development Department may waive any submittal requirement.

iii) Courtesy review of NMSU projects. Although NMSU is neither within the City limits, nor subject to its jurisdiction, the campus and City share a stake in development along University Avenue and in the region as a whole. As such, the UD-CDRC respectfully requests "courtesy design review" of the university's projects, particularly those planned for and close to University Avenue.

iv) Subject to administrative review by Community Development Department staff.

a. Request to vacate alley;

b. Signs;

c. Minor modifications. A modification or change to a property that is less than a cumulative total of 15 percent of gross floor area, nor exceeds a cumulative total of $25,000.00 in valuation.

v) Application materials and fees. Applications for development in the University District Overlay shall be obtained from the community development department. All applicants with submittals requiring public notice, such as new development and/or property renovation, shall be required to submit a development statement with their application. Development statement forms may be obtained from the community development department. Application and permitting fees are waived for development in the University District. Requirements for applications for all types of development shall include the following:

a. A letter of intent stating the following:

i. A statement of the purpose and use of the property.

ii. All property improvements to be made.

iii. A statement of the sustainable building practices to be employed.

iv. A development schedule indicating the approximate dates at which construction or phases of construction will begin and end.

b. A boundary survey as prepared by the appropriate licensed professional that is accurate and complete shall be made of the land to be developed. Property lines shall be shown giving the bearings in degrees, minutes and seconds. Distances shall be shown in feet and hundredths. Curved boundaries or lines on the survey shall provide sufficient data to enable the re-establishment of curves on the property. The location and description of all monuments set or found shall be included when applicable.

c. Site plan. The site plan shall be at a scale that adequately represents the information. Copies provided shall be legible and of a good quality, with no limit to the number of sheets used. The plans shall indicate the following:

i. Title of site plan.

ii. Total acreage of site.

iii. Date of preparation, north arrow, written and graphic scale.

iv. Identification of district planning area.

v. Identification of site by lot, block, subdivision, if applicable.

vi. A statement of ownership, signed by the property owner.

vii. Name and address of property owner.

viii. Name and address of applicant, if applicable.

ix. Name and address of consulting firm or representative, if applicable.

x. Location and type of all land uses.

xi. All site improvements with all setbacks indicated.

xii. Dimensions of all buildings.

xiii. 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.

xiv. A landscaping plan, to include the location, size, common name, and biological name of all landscaping materials.

xv. Where applicable, pedestrian and bicycle circulation system, and its relation to surrounding circulation.

xvi. Where applicable, location and arrangement of all open space, common recreational space, and private open space.

xvii. Architectural renderings or artistic drawings. Copies provided shall be legible and of a good quality, with no limit to the number of sheets used. The drawings shall illustrate the following:

(a) All new development illustrating all exterior building design, materials, and colors.

(b) All new development illustrating relationships to neighboring uses, including site lighting.

(c) Sign location, materials, color, size, shape and lighting.

(d) Quality of materials: Application materials that are illegible and/or otherwise of a low quality will not be accepted.

d. Three-dimensional model. For projects proposed in the convention zone (CZ), provide computer-generated or physical modeling to enhance public understanding and review of the buildings within the context of the district as a whole.

e. *Waivers.* A portion of the submittal requirements may not be required in all development cases. Upon receipt of a written request justifying the deletion of required information, the community development department may waive any submittal requirement.

o) Enforcement of overlay zone district. Provisions to enforce this section shall be consistent with the enforcement provisions of **Sec. 34-1.H. Violations and Enforcement**.

E. DDC, Downtown Development Code

1. Purpose

   The purpose of this section and the zoning districts defined herein is to accommodate government facilities, retail, office, residential, and other similar uses in the Downtown area of the City with appropriate height, yard, and intensity standards to allow for a higher density and intensity of development. Further, the properties described within the Main Street (MS) zoning district are identified as a special area within the Downtown to encourage revitalization through incentives and clearly defined development standards. See **Figure 36-2-33. Downtown Regulating Plan** for the district boundaries, See **11. MS Architectural Standards** for development standards that apply to the MS district only.

   a) The Downtown Development Code is designed to foster infill redevelopment in a mixed-use pattern as part of a vibrant, diverse downtown.

   b) This Section is intended to promote traditional urban form and a lively mix of uses, allowing for shopfronts, sidewalk cafes, and other commercial uses at the street level, with wide sidewalks and shade trees, overlooked by upper story residences and offices. It also provides a setting for major activities that benefit the community such as markets, festivals, and entertainment.

   c) A range of open spaces should be distributed within adjacent neighborhoods and throughout downtown.

   d) Buildings and landscaping should contribute to the physical definition of thoroughfares as civic places.

   e) The transect designations in **2. Zoning Districts** below shall describe the general character of downtown.

2. Zoning Districts

   Zoning districts are limited to the following transect designations:

   a) Downtown (DT): This district consists of higher-intensity mixed-use buildings that accommodate retail, offices, institutional, and residences. The thoroughfares have wide sidewalks with street trees, and buildings are set close to the sidewalks.

   b) Main Street (MS): This district is similar in use and character to DT, but the massing and proportions are in harmony with an urban core.

   c) General Urban (GU): This district includes a mix of uses, but is primarily in the form of medium-intensity mixed use structures. It may have a wide range of building types: residences, live-work units, commercial buildings, theaters, and mixed-use buildings. The thoroughfares have wide sidewalks and buildings are set close to the sidewalks.

3. Downtown Regulating Plan

   a) The regulating plan is the zoning map and principal tool for implementing the Downtown Master Plan, as amended. It identifies the transect district for the building site (See **Figure 36-2-33. Downtown Regulating Plan**) which regulates standards for each lot.

   b) New development in Downtown shall provide sidewalk improvements, civic spaces as needed, and contribute to a shared parking and access strategy to create a complementary pattern for growth and development. The rules below will enhance a compact, economically sustainable, mixed-use downtown that complements the adjacent neighborhoods and provides flexible opportunities for residential, employment, government, institutional, and commercial uses.

   c) Where present, alleys shall provide access to the rear of all lots. Alley dedication and construction within the rear setback is required as part of a redevelopment project if they do not exist. Alleys shall be constructed pursuant to **17. Streetscape** and **Sec. 38-2.E.7. Alleys**.

4. Instructions

   a) Find the transect zone for your parcel in **Figure 36-2-33. Downtown Regulating Plan**.

b) Site and building plans submitted under this Section shall include the following, in compliance with the standards described in this Section:

i) Site Plan/Building Placement (See **6** below)

ii) Building Specifications including floor plans (See **7** through **10** below)

iii) MS Architectural Standards, if applicable (See **11** below)

iv) Fencing (See **12** below)

v) Signs (See **13** below)

vi) Use (See **14** below)

vii) Parking (See **15** below)

viii) Landscaping (See **16** below)

ix) Streetscape, if applicable (See **17** below)

c) Site and building plans submitted under this Section require review by respective City departments for appropriate compliance with other applicable City codes and ordinances and final approval by the Community Development Department.

5. Existing Building and Property Alteration, Remodel, or Renovation

a) For the purpose of this section, alteration, remodel, or renovation shall be defined as: Any change or rearrangement in the supporting members of an existing building, such as bearing walls, columns, beams, girders, as well as any change in rooflines, or any enlargement to or diminution of a building or structure, whether horizontally or vertically.

b) Minor modifications. For the purpose of this section, a minor modification shall be one that does not result in an alteration, remodel, or renovation as described in **a)** above. The minor modification of an existing building or property is permitted by-right if such changes result in greater conformance with the purposes and specifications of this Section. The minor modification must comply with the design standards and codes unless, through the determination of the Community Development Director, said compliance would substantially create an undue burden to the property owner or create a condition whereby the expansion and compliance measure, partially applied, would be substantially out of character with the existing development.

c) Existing buildings and properties that do not conform to the provision of this Section may continue in use as they are. However, they shall be brought into compliance with current codes and standards (to the extent possible, as determined by the Community Development Director) when:

i) The building remains vacant for a period of one continuous year or greater; or

ii) Alteration, remodel, or renovation causes one-time or cumulative amendments to 30 percent or greater of the gross square footage of building area; or

iii) A change in use occurs on the property that results in the alteration of the use orientation (e.g., service to retail), density (e.g., eight dwelling units to 15 dwelling units), or occupancy type from the building code perspective.

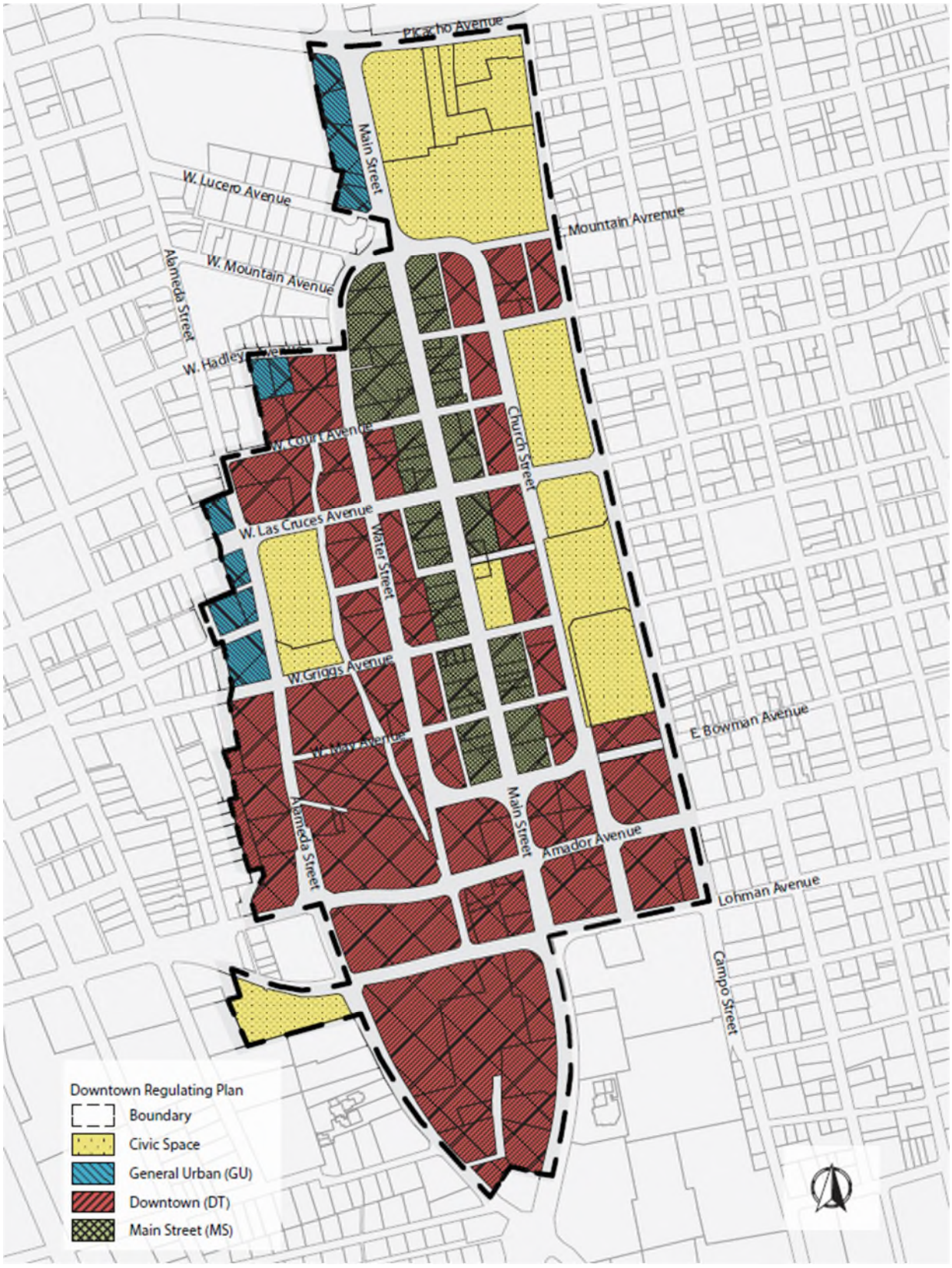
d) Once permission to proceed has been granted by the Community Development Director, the applicant may apply for the permit. Work shall not commence until permit approval is granted.

e) The restoration or rehabilitation of an existing building shall not require the provision of parking in addition to that existing, nor on-site stormwater retention/detention in addition to that existing, unless otherwise required by County or State code.

f) Normal maintenance activities, as verified by the Building Official, are exempt from this provision.

g) Should an applicant not agree with the interpretation by the Community Development Director, the interpretation may be appealed to the Planning & Zoning Commission.

Figure 36-2-33. Downtown Regulating Plan



6. Building Placement

   a) Lot coverage by building shall not exceed that recorded in **Figure 36-2-34**, **Figure 36-2-35**, and **Figure 36-2-36**.

   b) Facades shall be built parallel to the principal frontage line, and along a minimum percentage of the frontage width at the setback, as specified as frontage buildout in **Figure 36-2-34**, **Figure 36-2-35**, and **Figure 36-2-36**.

   c) Setbacks for principal buildings and accessory buildings shall be as shown in **Figure 36-2-34**, **Figure 36-2-35**, and **Figure 36-2-36**. Setbacks may be adjusted by up to 10 percent by administrative waiver to accommodate specific site conditions. The Director shall make the following written findings:

      i) The waiver is consistent with the provisions of **2. Zoning Districts**.

      ii) The waiver is consistent with the Downtown Master Plan.

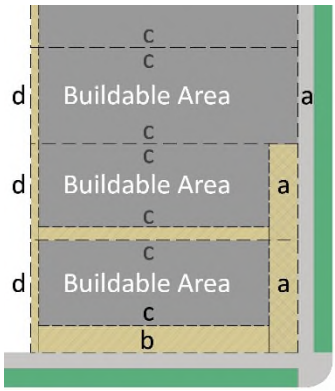
      iii) The building placement will not materially endanger the public health or safety.

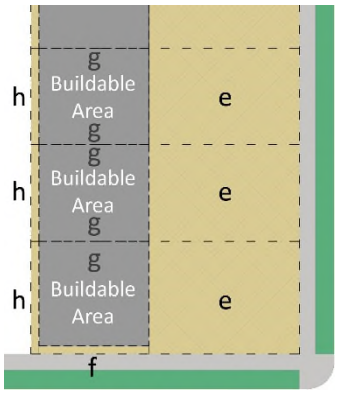
      iv) The location and character of the building placement, if developed according to the plans and information approved, will be in harmony with proximate land uses, and consistent with the purposes of the district.

      v) The building placement will not adversely affect Downtown by altering its character.

Figure 36-2-34. Building Form Standards – GU

BUILDING SETBACKS





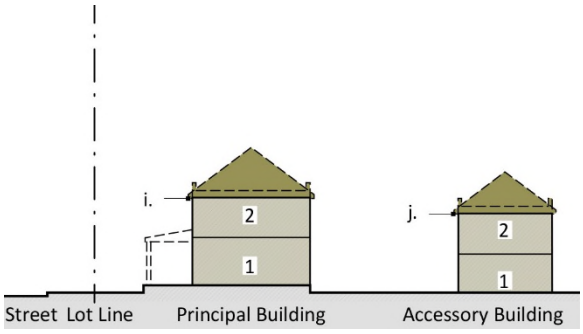
PRINCIPAL BUILDINGS

a	Primary Frontage	15’ max.
b	Secondary Frontage	10’ max.
c	Side Lot Line	0’ or 5’ min.
d	Rear Lot Line	3’ min.

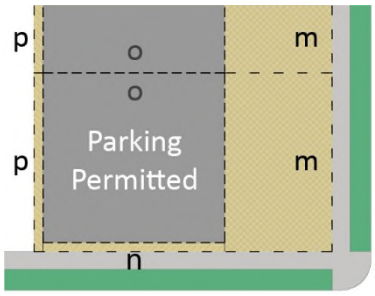
ACCESSORY BUILDING

e	From Rear Lot Line	40’ max.
f	Secondary Frontage	5’ min.
g	Side Lot Line	0’ min.
h	Rear Lot Line	3’ min.

BUILDING ENVELOPE



PARKING AND STORAGE SETBACKS



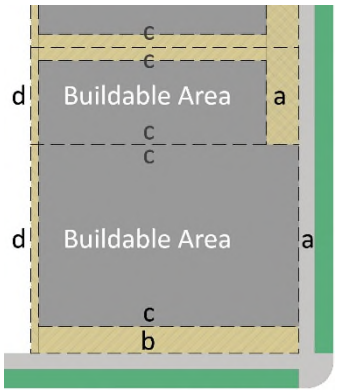
i	Building Height	2.5 stories max. (i.e., 2 stories plus an attic level)	m	Primary Frontage	20’ + principal building setback
j	Accessory Building Height	2 stories max.	n	Secondary Frontage	5’ min.
k	Parking Height	n/a	o	Side Lot Line	0’ min.
l	Lot Coverage	70% max.	p	Rear Lot Line	3’ min.

BUILDING FRONTAGE

Permitted Frontages, see **Figure 36-2-37** and **Figure 36-2-38**	Yard Walled Yard Terrace No Yard	Yard Porch Stoop Shopfront
Frontage Buildout	60% min.	

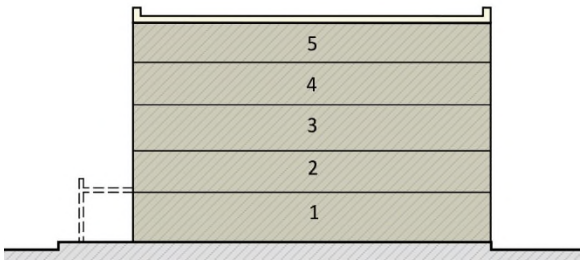
Figure 36-2-35. Building Form Standards – DT

BUILDING SETBACKS

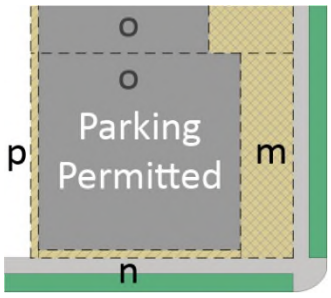


PRINCIPAL BUILDINGS			ACCESSORY BUILDING		
a	Primary Frontage	12’ max.	e	From Rear Lot Line	n/a
b	Secondary Frontage	8’ max.	f	Secondary Frontage	n/a
c	Side Lot Line	0’ or 5’ min.	g	Side Lot Line	n/a
d	Rear Lot Line	3’ min.	h	Rear Lot Line	n/a

BUILDING ENVELOPE



PARKING AND STORAGE SETBACKS

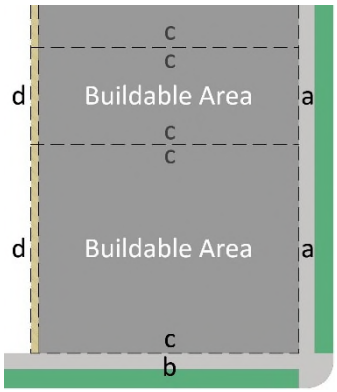
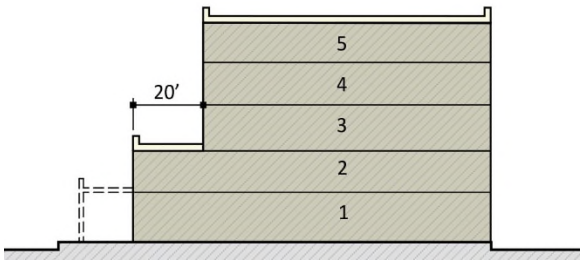
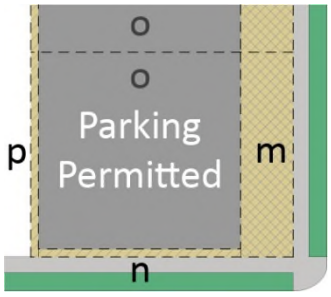


i	Building Height	5 stories max.	m	Primary Frontage	20’ + principal building setback
j	Accessory Building Height	n/a	n	Secondary Frontage	5’ min.
k	Parking Height	5 stories max.	o	Side Lot Line	0’ min.
l	Lot Coverage	100% max.	p	Rear Lot Line	3’ min.

BUILDING FRONTAGE

Permitted Frontages, see **Figure 36-2-37** and **Figure 36-2-38**	Yard No Yard Terrace Forecourt	Configuration Stoop Common Entry Shopfront Gallery
Frontage Buildout	70% min.	

Figure 36-2-36. Building Form Standards – MS

BUILDING SETBACKS					
					
PRINCIPAL BUILDINGS			**ACCESSORY BUILDING**		
a	Primary Frontage	0’ max.	e	From Rear Lot Line	n/a
b	Secondary Frontage	0’ max.	f	Secondary Frontage	n/a
c	Side Lot Line	6’ max.	g	Side Lot Line	n/a
d	Rear Lot Line	0’ min.	h	Rear Lot Line	n/a
BUILDING ENVELOPE			**PARKING AND STORAGE SETBACKS**		
					
i	Building Height Main Street Stepback	5 stories max. 20’ after 2nd story	m	Primary Frontage	20’ + principal building setback
j	Accessory Building Height	n/a	n	Secondary Frontage	5’ min.
k	Parking Height	5 stories max.	o	Side Lot Line	0’ min.
l	Lot Coverage	100% max.	p	Rear Lot Line	0’ min.
BUILDING FRONTAGE					
Permitted Frontages, see **Figure 36-2-37** and **Figure 36-2-38**		Yard No Yard Terrace		Configuration Common Entry Shopfront Gallery	
Frontage Buildout		100% min.			

7. Building Specifications: Height
   a) Building height is regulated by **Figure 36-2-34**, **Figure 36-2-35**, and **Figure 36-2-36**, measured as follows:
      i) Building height is measured in above-ground stories.
      ii) Stories are measured from finished floor to finished ceiling.
      iii) Stories above the ground floor are limited to 14 feet after which height they are counted as two stories.
      iv) For residential uses, a ground floor story of 16 feet or less is counted as one story. Ground floors exceeding 16 feet in height are counted as two stories.
      v) For non-residential and mixed-uses a ground floor story shall be no less than 10 feet in height. A ground floor story of 25 feet or less is counted as one story. Ground floors exceeding 25 feet in height are counted as two stories. Mezzanines extending beyond 33% of the floor area shall be counted as an additional floor.
      vi) Height limits do not apply to unfinished attics, masts, belfries, clock towers, chimney flues, water tanks, or elevator bulkheads.
      vii) Building stepbacks shall be required in MS pursuant to **Figure 36-2-34** item i.
8. Building Specifications: Frontage Requirements
   a) Lot lines abutting a right-of-way are designated as a primary frontage or secondary frontage as follows:
      i) For lots abutting a right-of-way along a single lot line, the lot line abutting the right-of-way is designated the primary frontage.
      ii) For lots abutting a right-of-way along multiple lot lines, the lot line relating to the address of the principal building is designated the primary frontage. All remaining lot lines are designed secondary frontages.
      iii) Main Street is considered the primary frontage for all lots abutting the right-of-way.
   b) Regulations pertaining to primary frontages and secondary frontages, collectively frontage requirements, apply to the area of the lot within the front setback and secondary front setback, including the following:
      i) Building facades;
      ii) Structures that project from the façade, such as porches, terraces, stoops, awnings, canopies, and galleries;
      iii) Landscape elements and ground surfaces between the building facade and the lot line.
   c) Where building facades do not occupy the entire frontage length, a streetscreen is required as follows:
      i) Streetscreens must be between 4 and 8 feet in height.
      ii) Openings in the streetscreen for vehicular access may be no wider than 26 feet.
      iii) Streetscreens shall provide no less than 70% opacity.
   d) Frontages are regulated by frontage type according to **Figure 36-2-37**, **Figure 36-2-38**, and as follows:
      i) Landscaping, fencing, and general surface treatment are regulated according to frontage yard type pursuant to **Figure 36-2-37**.
      ii) Encroachments and configurations are regulated according to frontage configuration type pursuant to **Figure 36-2-38**.
      iii) Frontage types are a combination of frontage yard type and frontage configuration type.
      iv) Where frontage yard types permit multiple frontage configuration types, one or more frontage configuration type may be selected for each facade.
   e) Frontage types must be designated at all building frontages and must comply with the standards for that type.
   f) A shopfront frontage is required for all ground floor retail uses.

g) Building entries must be provided along frontages as follows:

   i) The principal entrance must be located at the primary frontage.

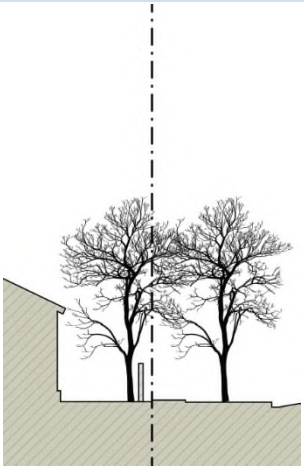
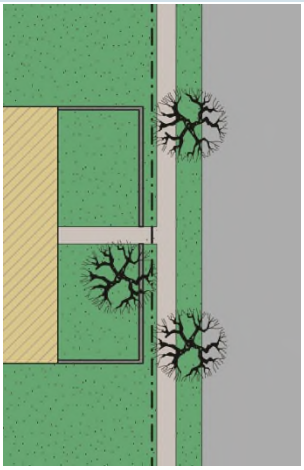
   ii) All habitable spaces within a building must be accessible from frontages.

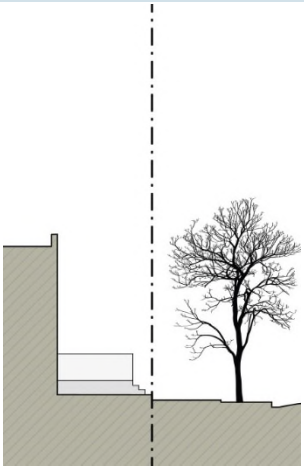
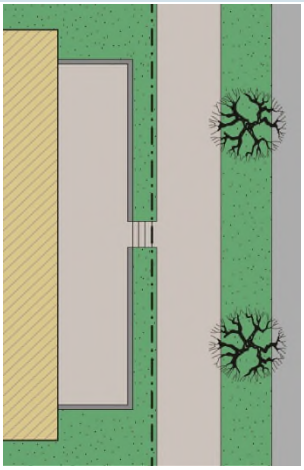
   iii) Building entries must be provided at primary frontages at a minimum of one entry for every 50 feet of frontage.

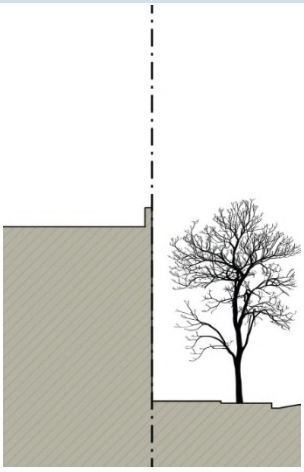
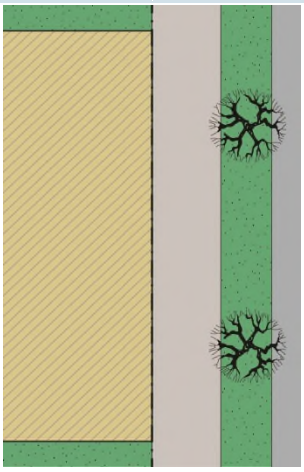
   iv) Building entries must be provided at secondary frontages at a minimum of one entry for every 150 feet of frontage.

h) Loading docks and service areas up to a combined width of 30 feet may be incorporated into secondary frontages no more than 50 feet from the rear lot line.

Figure 36-2-37. Frontage Types – Yard

FRONTAGE TYPE REQUIREMENTS		SECTION		PLAN	
YARD A – WALLED		PRIVATE	PUBLIC	PRIVATE	PUBLIC
District	GU				
Setback Depth	0’ min, 1.5’ max.				
Combinations	Porch, Stoop				
Landscape and Fencing Requirements	(a) The front setback must be landscaped. (b) Walls are required within 18” of frontage lines. (c) 1 understory tree, or 10 shrubs, is required for every 500 sf of landscaped area, or fraction thereof.				
Additional Requirements	(a) Retaining walls are permitted for landscape level changes. (b) Paving is limited to permitted walkways and driveways. (c) 1 walkway per frontage providing access to the primary entrance is permitted up to 48” in width. (d) This yard type must be combined with either a porch or stoop frontage.				

FRONTAGE TYPE REQUIREMENTS		SECTION		PLAN	
YARD B – TERRACE		PRIVATE	PUBLIC	PRIVATE	PUBLIC
District	GU, DT, MS				
Setback Depth	12’ max.				
Combinations	Common Entry, Shopfront, Gallery				
Landscape and Fencing Requirements	(a) The front setback must be landscaped and may be paved in DT and MS. (b) Fencing is permitted at or behind the building setback line. (c) In GU, fencing is permitted at frontage lines.				
Additional Requirements	(a) The frontage setback must be raised between 12” and 36”. (b) Terraces may be no less than 8’ in depth. (c) Retaining walls are permitted for level changes. (d) If in MS, the Terrace must be embedded within to maintain the zero setback. (e) This yard type must be combined with a Shopfront or Common Entry frontage or a combination of both.				

FRONTAGE TYPE REQUIREMENTS		SECTION		PLAN	
YARD C – NO-YARD		PRIVATE	PUBLIC	PRIVATE	PUBLIC
District	GU, DT, MS				
Setback Depth	8’ max.				
Combinations	Common Entry, Shopfront, Gallery				
Landscape and Fencing Requirements	(a) The frontage setback must be paved and integrated with the public sidewalk. (b) Raised planters and portable and non-permanent planters are permitted.				
Additional Requirements	(a) The frontage setback must match sidewalk grade. (b) The frontage setbacks may be used for outdoor seating and merchandise sales and display. The frontage setback may not be used for storage.				

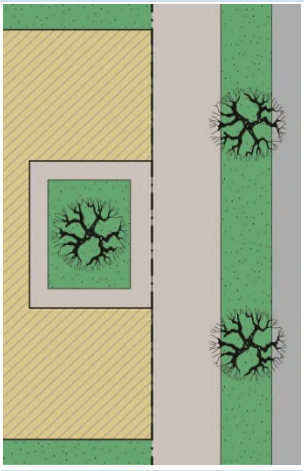
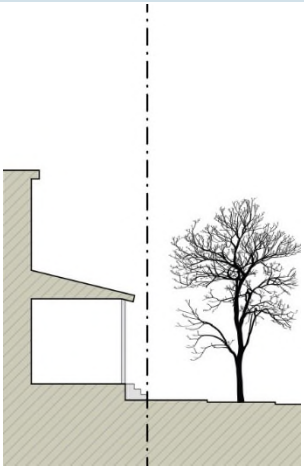
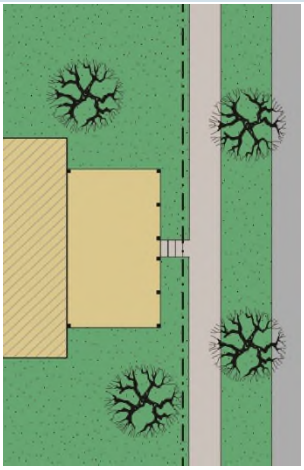
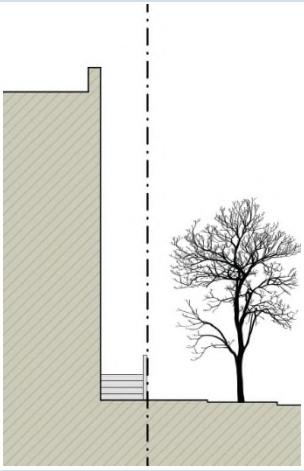
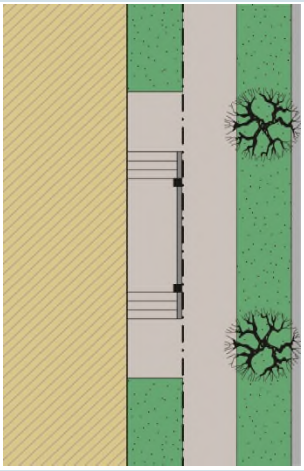
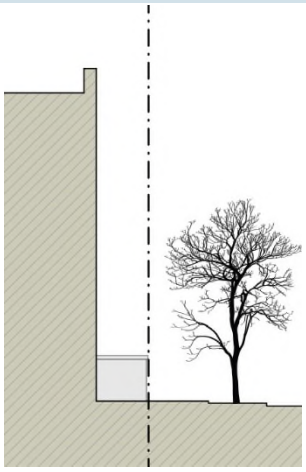
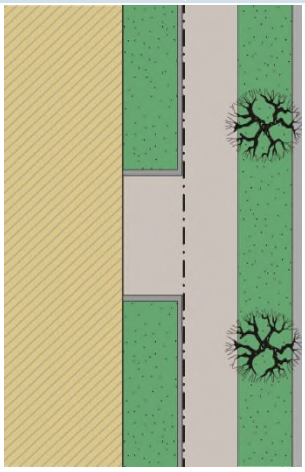
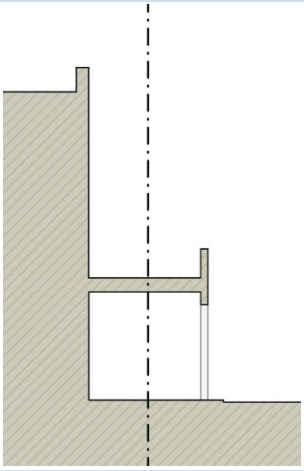
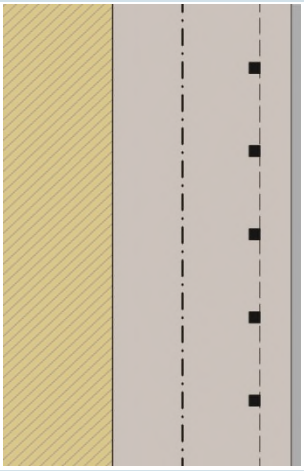
FRONTAGE TYPE REQUIREMENTS		SECTION		PLAN	
YARD D – FORECOURT		PRIVATE	PUBLIC	PRIVATE	PUBLIC
District	DT				
Setback Depth	8’ max., excluding Forecourt				
Combinations	Shopfront, Common Entry, Gallery				
Landscape and Fencing Requirements	(a) The frontage setback must be paved and integrated with the public sidewalk. (b) Raised planters and portable and non-permanent planters are permitted. (c) Forecourts may be paved or landscaped.				
Additional Requirements	(a) A Forecourt shall be located at the primary entrance, and shall be no greater than 600 sf in area. (b) The Forecourt must be bound by facades on a minimum of 2 sides. (c) Facades at the Forecourt may exceed maximum frontage setback. (d) The frontage setback must be configured according to Yard C – No-Yard.				

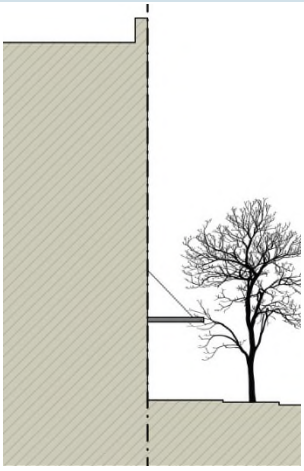
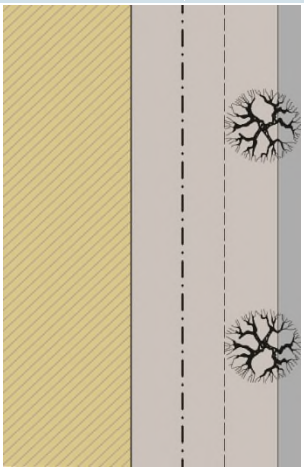
Figure 36-2-38. Frontage Types – Configuration

FRONTAGE CONFIGURATION REQUIREMENTS		SECTION		PLAN	
CONFIGURATION A – PORCH		PRIVATE	PUBLIC	PRIVATE	PUBLIC
District	GU				
Entry Grade	36” max.				
Combinations	n/a				
Setback and Encroachment	(a) Porches and related structure may encroach into frontage setbacks up to 100% of their depth in GU.				
Additional Requirements	(a) A Porch may only occur at the primary entrance. (b) Porches may be no less than 6’ in depth.				

FRONTAGE CONFIGURATION REQUIREMENTS		SECTION		PLAN	
CONFIGURATION B – STOOP		PRIVATE	PUBLIC	PRIVATE	PUBLIC
District	GU, DT				
Entry Grade	36” max.				
Combinations	Common Entry				
Setback and Encroachment	(a) Stoops and related structure may encroach into frontage setbacks up to 100%. (b) Stoops may be recessed into building facades.				
Additional Requirements	(a) A Stoop is required at the primary entrance. (b) Stoops may be masonry, stone, stucco, or concrete. (c) Wood is prohibited for Stoop railings. (d) Stoop landings may be covered.				

FRONTAGE CONFIGURATION REQUIREMENTS		SECTION		PLAN	
CONFIGURATION C – COMMON ENTRY		PRIVATE	PUBLIC	PRIVATE	PUBLIC
District	DT, MS				
Entry Grade	20” max.				
Combinations	Shopfront, Stoop				
Setback and Encroachment	(a) Canopies and awnings may encroach into frontage setbacks up to 100% of their depth. (b) Canopies and awnings may encroach into the public pedestrian way up to 10’.				
Additional Requirements	(a) A Stoop combination is permitted in DT. (b) Canopies are permitted at the primary entrance. (c) Awnings are permitted along facades.				

FRONTAGE CONFIGURATION REQUIREMENTS		SECTION		PLAN	
CONFIGURATION D – GALLERY		PRIVATE	PUBLIC	PRIVATE	PUBLIC
District	DT, MS				
Entry Grade	Sidewalk grade				
Combinations	Shopfront, Common Entry				
Setback and Encroachment	(a) Galleries may encroach into frontage setbacks up to 100% of their depth. (b) Galleries may encroach into the public pedestrian way to up 10’. (c) Awnings are not permitted in combination with Galleries.				
Additional Requirements	(a) Galleries may be no less than 8’ in depth. (b) Galleries must have a minimum clearance of 10’. (c) Galleries must be supported by columns. (d) Galleries must be covered by roofing, green roofing, upper terraces, trellises, solar collectors, or fabric.				

FRONTAGE CONFIGURATION REQUIREMENTS		SECTION		PLAN	
CONFIGURATION E – SHOPFRONT		PRIVATE	PUBLIC	PRIVATE	PUBLIC
District	DT, MS				
Entry Grade	Sidewalk grade				
Combinations	Shopfront, Common Entry				
Setback and Encroachment	(a) Display windows may encroach into frontage setbacks up to 5' in depth. (b) Awnings may encroach into frontage setbacks up to 100% of their depth. (c) Awnings may encroach into the public pedestrian way to up to 10'.				
Additional Requirements	(a) Entries may be recessed from the facade up to 5' in depth. (b) Tenant spaces must provide Shopfronts along no less than 70% of tenant space frontage. (c) Tenant spaces with frontage on both primary and secondary frontages must provide Shopfronts along no less than 30% of the secondary frontage.				

9. Building Specifications: Encroachments.
   a) Encroachments into frontages are permitted as follows:
      i) Encroachments in frontage setback are prohibited except where specifically permitted in this Section, **Figure 36-2-37**, and **Figure 36-2-38**.
      ii) Roof overhangs, cornices, window and door surrounds and other facade decorations may encroach into the front setback up to 2 feet but not beyond the lot line, and may not obscure views from windows to the street or from the street into windows.
      iii) Shading devices may encroach into frontage setbacks as follows:
      iv) In GU, shading devices attached to facades may encroach up to 6 feet, but not beyond the lot line.
      v) In DT and MS, shading devices may encroach into the front setback up to the lot line, and into the right-of-way up to 10 feet or within 2 feet of the curb.
      vi) Balconies may encroach into the frontage setback a maximum of 3 feet, but not beyond the lot line.
      vii) Bay and bow windows may encroach into the frontage setbacks up to 3 feet, but not beyond the lot line.
   b) Encroachments into pedestrian passages are permitted as follows:
      i) A minimum of 14 feet in height must be maintained along the entire length of pedestrian passage.
      ii) Buildings and structures may encroach over pedestrian passages.
      iii) An unobstructed pedestrian path must be maintained a minimum of 5 feet in width and 8 feet in height. The pedestrian path is required to be continuous, however, it is not required to follow a straight line.
      iv) Signage, bay and bow windows, balconies, lighting fixtures, and display windows may encroach into pedestrian passages.

v) Outdoor seating, outdoor dining, and other non-permanent fixtures may encroach into pedestrian passages.

10. Building Specifications: Glazing.

a) Facade Glazing of building frontages must meet the minimum area requirements, calculated by glass area for each facade separately, as specified in **Figure 36-2-39. Minimum Facade Glazing**.

b) Mirrored and reflective glass is prohibited.

c) Shopfront frontages must meet the following Glazing requirements:

Figure 36-2-39. Minimum Facade Glazing

MEASUREMENT	GU	DT
Ground Floor	20%	20%
Second Floor	20%	20%
Upper Floors	N/A	20%

i) Shopfronts must provide clear glazed areas for visibility into tenant spaces for no less than 60 percent of the shopfront area.

a. Facade area is calculated as the height from finished floor to finished ceiling times the width of the tenant space.

ii) Shopfront Glazing requirements are calculated separately for each tenant space.

d) Signs and posters shall cover no more than 30 percent of the total Glazing area.

11. MS Architectural Standards

This sub-section supersedes the zoning district standards for any subject addressed in the MS zoning district.

a) Building Width:

i) New buildings facing Main Street shall not exceed the average building width on their block except as follows:

a. Buildings may be a maximum of 150 feet wide if the facade is designed to simulate the average width of buildings on the block.

ii) Facade Standards:

a. Glazing at the second story shall not exceed 30% of the second story building facade wall area.

b. Mechanical equipment shall be screened from the street view.

iii) Sidewalk Coverings:

a. When awnings, canopies, or galleries are used, they shall be designed and installed in compliance with building codes.

b. Sidewalk coverings shall not obscure architectural details of designated historic building facades.

iv) Signs:

a. Signs shall not obscure other building elements such as windows, cornices, or architectural details.

b. Individual business signs in a single storefront shall relate to each other in design, size, and placement on the building and lettering style.

c. Externally illuminated signs shall contain light within the sign frame and shall not spill light over to other portions of the building.

12. Fencing

a) Hedges in frontage fences shall be evergreen.

b) Wood frontage fences shall be painted or stained.

c) Lot line fences shall be between 60 and 72 inches in height.

d) Frontage fences shall not exceed 48 inches in height nor violate the clear sight triangle.

e) Frontage fences may occur at the lot line, or up to 18 inches behind the lot line to permit landscaping.

f) When erected on a lot line, all of the fence and any of its supporting structures shall be contained within the lot.

g) The supporting members and posts shall be on the inside, and the smooth or flat faces on the outside. If two faces are used, each face shall be of the same type and finish. Board on board fences is considered equal treatment.

h) Chain link, barbed wire, razor wire, and electrically charged fences are not permitted.

13. Signs

The general intent of regulating signs that are visible from the public frontage is to ensure proper dimensioning and placement with respect to existing or planned architectural features, to maintain or improve public safety, to maintain or improve the aesthetic character of the context in which they are located (See **Figure 36-2-40. General Sign Restrictions**). Signage provides legible information for pedestrians as well as drivers.

Except with respect to the additional provisions in this section, **Sec. 38-10. Signs** shall be applicable and govern pursuant to the administration, processes and provisions for all signage within the City Limits of the City of Las Cruces. However, only the signage types permitted in this subsection and **Figure 36-2-40. General Sign Restrictions** hereof shall be permitted in the Downtown.

a) Prohibited Signs

i) Moving, flashing, or animated signs, including, but not limited to searchlights, streamers, and spinners;

ii) Inflatable signs, such as but not limited to balloons, gas-inflated signs, or similar inflated signs;

iii) Portable signs, except for sidewalk signs, as allowed in **Figure 36-2-40. General Sign Restrictions**;

iv) Flags, other than those specifically allowed in **Sec. 38-10. Signs**;

v) Outdoor image projections (signs projected from an external light source onto a building or structure) or any other similar devices.

b) Permitted Signs and Sign Restrictions.

i) Permitted sign types are limited by Transect district and the following restrictions according to **Figure 36-2-40. General Sign Restrictions**:

a. The number of signs per sign type;

b. The area of signs;

c. Height of sign copy.

ii) Additional sign restrictions apply per sign type, according to **Figure 36-2-41. Specific Sign Regulations**.

iii) A permit is required for the installation or modification of all signs as specified in **Figure 36-2-41** as Permit.

a. Signs projecting into rights-of-way require a permit.

b. Signs not requiring a permit must meet all of the requirements of this section.

c. Any freestanding sign over 20 feet in height above grade or any sign extending above the public right-of-way shall require the seal of a professional engineer, indicating that the sign meets all best engineering practices and standards.

iv) Signs may be installed and maintained for the period of time specified according to **Figure 36-2-40. General Sign Restrictions** as Period.

a. All signs must be removed within 14 days of the termination of the permitted period. Signs permitted for a permanent period are not regulated by this subsection.

b. Where the period of a sign is limited to during business hours, the sign must be removed during all hours the establishment is not in operation.

c. Any moveable signs must be removed from outdoor spaces during high winds or other weather conditions that might pose a hazard to public safety.

v) All signs must provide the following clearance except where specified otherwise:

a. 8 feet at pedestrian ways;

b. 13.5 feet at vehicular ways.

vi) Illuminated signs are permitted as follows:

a. Signs may be illuminated by a light source external to the sign;

b. Internally illuminated signs are permitted at shopfront frontages.

vii) Changeable copy is permitted for display cases, suspended, kiosk, ground, and sidewalk signs, and at community and regional parks. Change of copy does not require a permit.

Figure 36-2-40. General Sign Restrictions

SIGN TYPE	MS	DT	PERMIT	PERIOD	NUMBER	MAX. SIZE
Awning	•	•	S	O	1 sloping plane, plus 1 valence per awning	75% of sloping plane; 75% area of awning valence
Banner	•		N/A	O	1 per frontage	48 sqft
Canopy	•		S	P	1 per canopy	2 sqft per linear foot of shopfront
Corner	•	•	S	P	1 per building	24 in. wide
Display Case	•		S	P	1 per business	6 sqft
Ground			S	P	1 per frontage	36 sqft
Kiosk	•		S	P	N/A	24 sqft
Marquee	•		S	P	1 per entry	N/A
Projecting	•	•	S	P	1 per tenant	9 sqft
Sidewalk	•	•	N/A	B	1 per tenant	8 sqft
Suspended	•	•	S	P	1 per entry	9 sqft
Wall Sign	•	•	S	O	1 per frontage	3 sqft per 1 linear ft. up to 90% of the width of tenant space
Wall Mural Sign	•	•	S	P	1 per frontage	3 sqft per 1 linear ft. up to 90% of the width of tenant space
Window	•	•	S	O	1 per window	25% of glazed area
Window: Neon	•		N/A	O	N/A	25% of glazed area

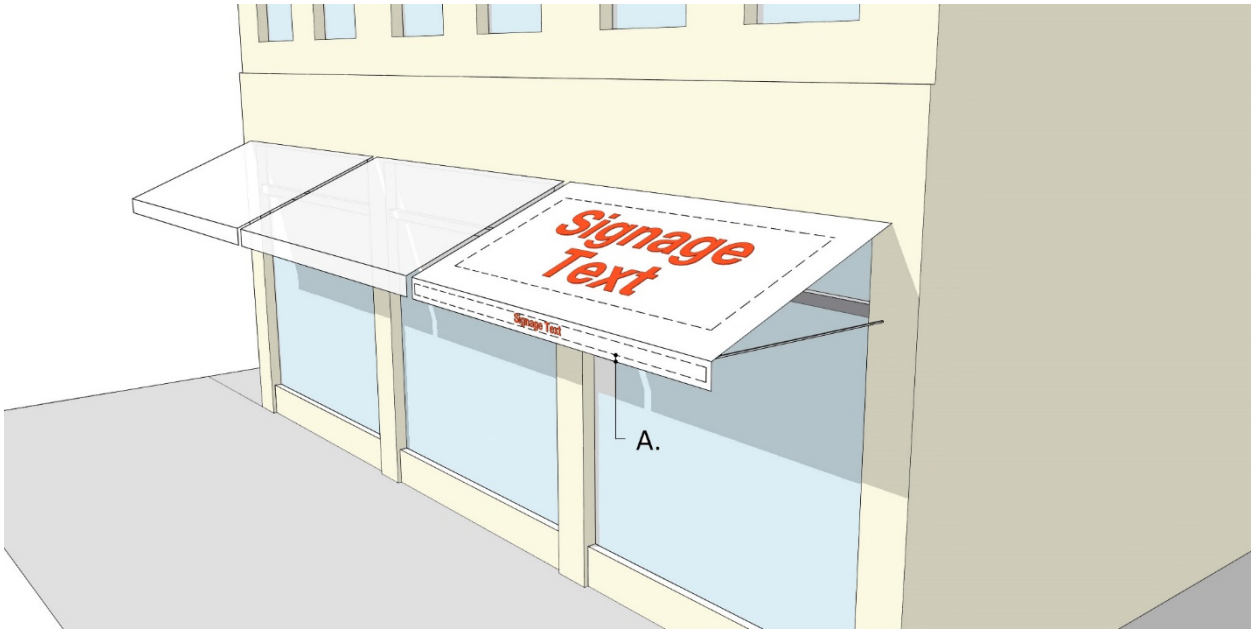
Symbol	Meaning
•	Permitted
<blank>	Not Permitted
n/a	Not Required
P	Permanent
O	Period of Occupation
B	During Business House
S	Standards

Figure 36-2-41. Specific Sign Regulations

Awning Sign

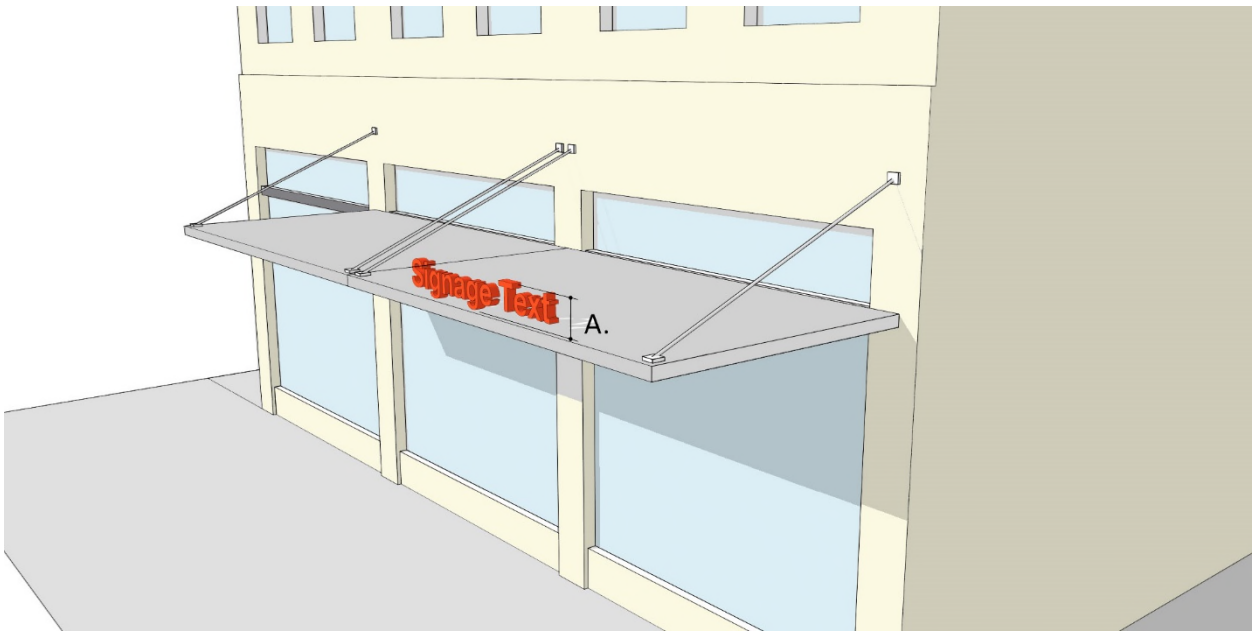
A. Signage area must have a 1" border.

B. Signage area may not exceed 75% of each portion of the sign area, which shall be calculated individually.



Canopy Sign

A. Canopy signs may be externally illuminated or neon. Fixtures must be shielded to prevent glare. Conduit, raceways, and wiring may not be exposed to view from the sidewalk.



Corner Sign

A. Corner signs must provide 10’ of clearance.

B. Corner signs may extend up to 6’ above the parapets.

C. Corner signs may only be located at the corner of a building located on a corner (i.e., with both primary and secondary frontages).

Ground Sign

A. Ground signs must not exceed 6’ in height or width with a signable area of 12 sqft max.

B. One ground sign per frontage is permitted and may be double-sided.

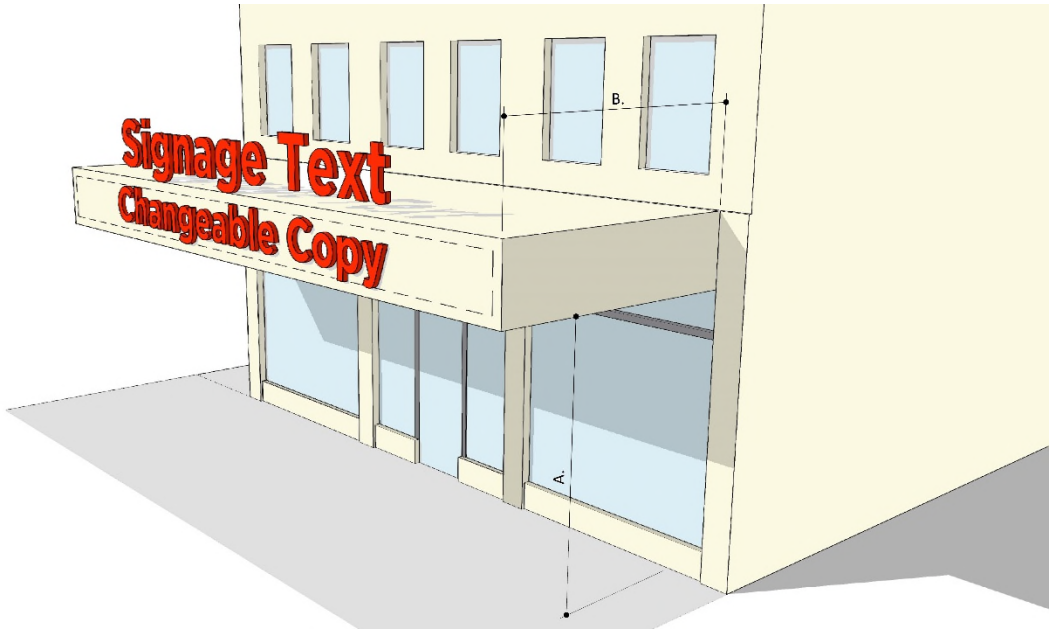
C. Ground signs must be constructed of durable materials.

Marquee Sign

A. Marquee signs must provide 8’ of clearance.

B. Marquee signs project to within 2’ of the curb.

C. Marquee signs may be combined with a Canopy sign or a Projecting sign.

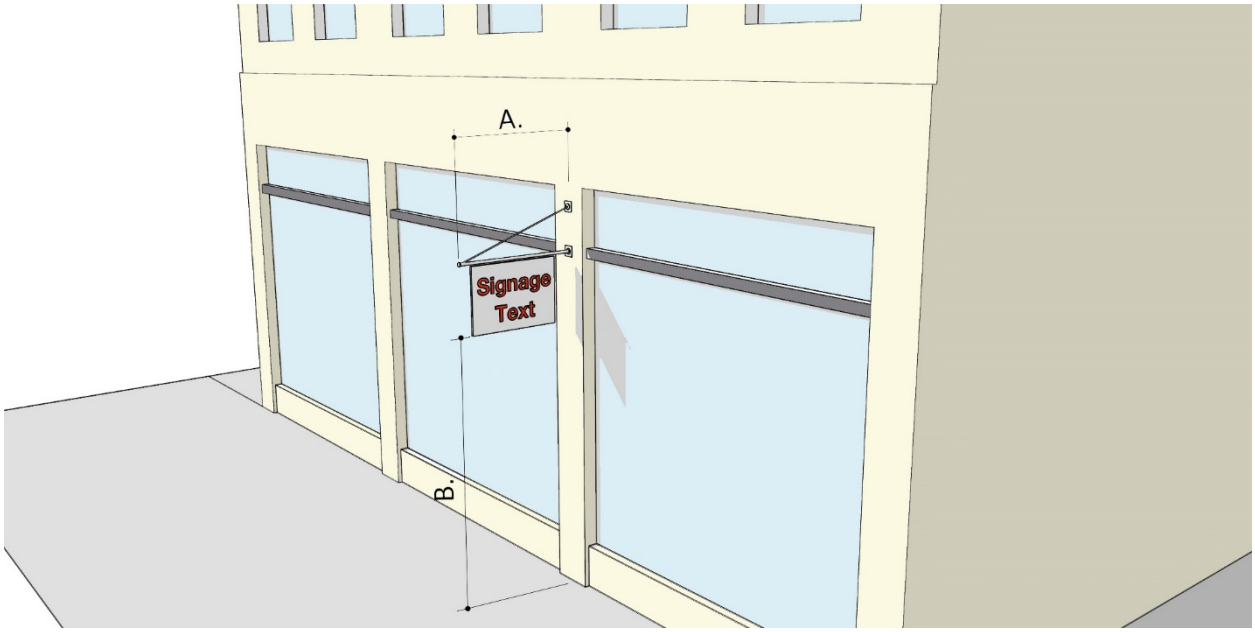


Projecting Sign

A. Projecting signs may encroach into the right-of-way up to 3’.

B. Projecting signs must provide 8’ of clearance.

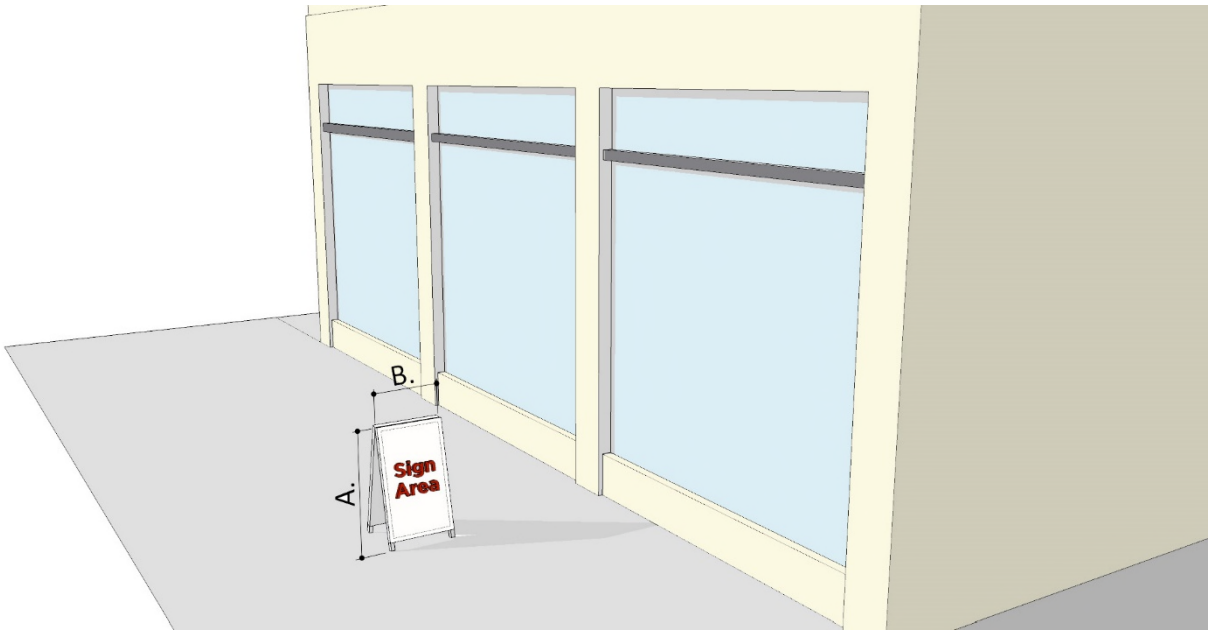
C. Projecting signs may be double-sided.



Sidewalk Sign

A. Sign height may not exceed 42”.

B. Sign width may not exceed 26” inches.

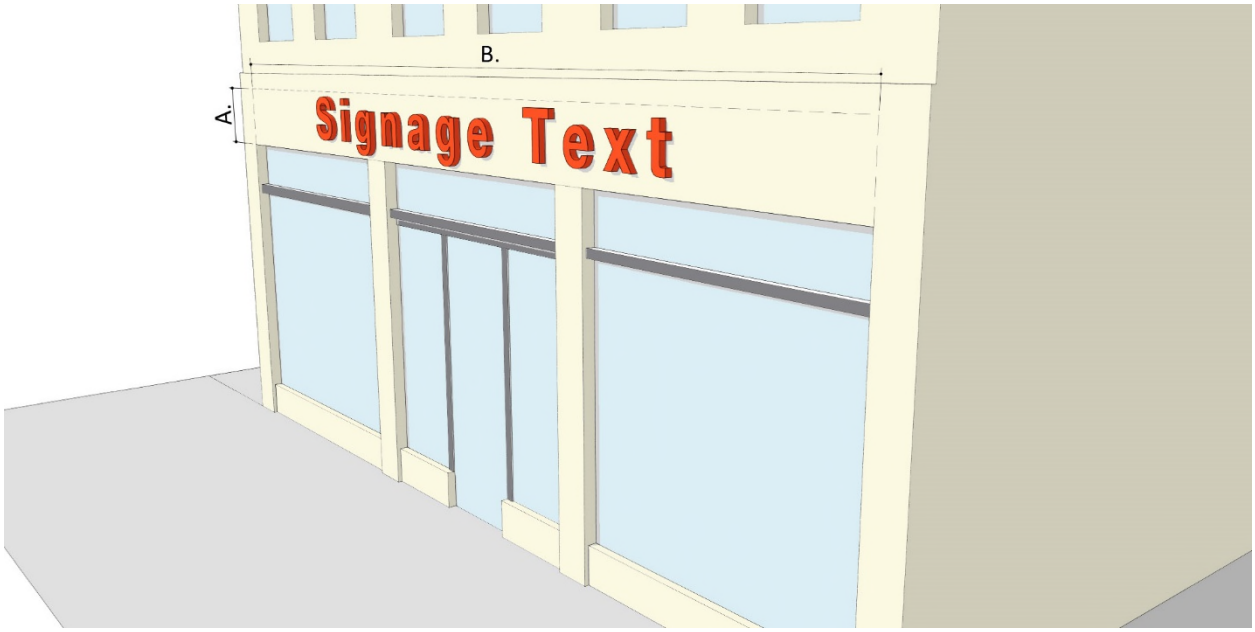


Wall Sign

A. Sign height may not exceed 36”.

B. Sign width may be 90% of storefront width.

C. Wall signs may be externally illuminated or neon. Fixtures must be shielded to prevent glare.



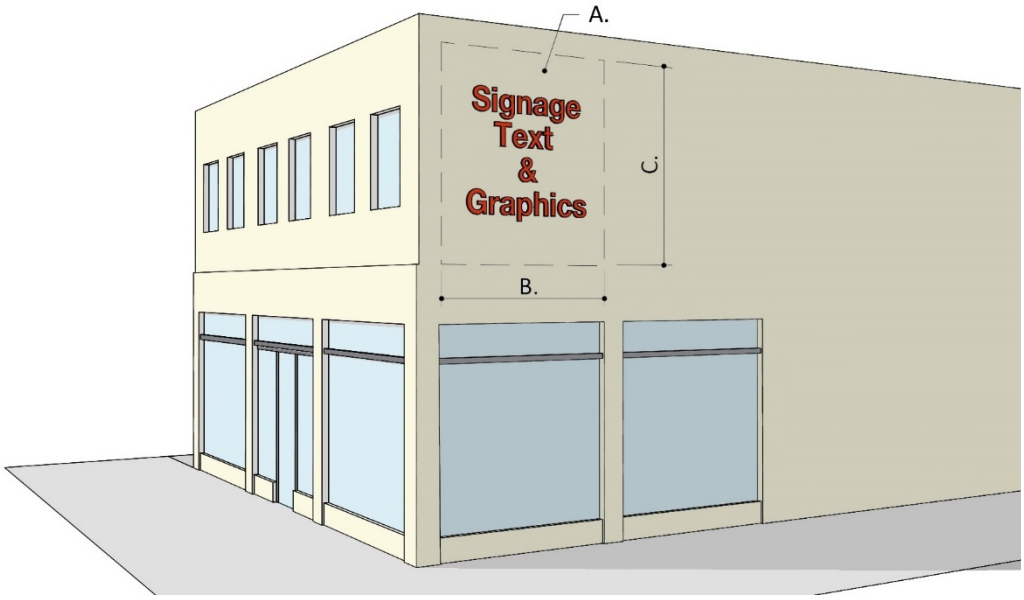
Wall Mural Sign

A. Signable area is 1,000 sqft max.

B. Sign width is 50’ max.

C. Sign height is 60’ max.

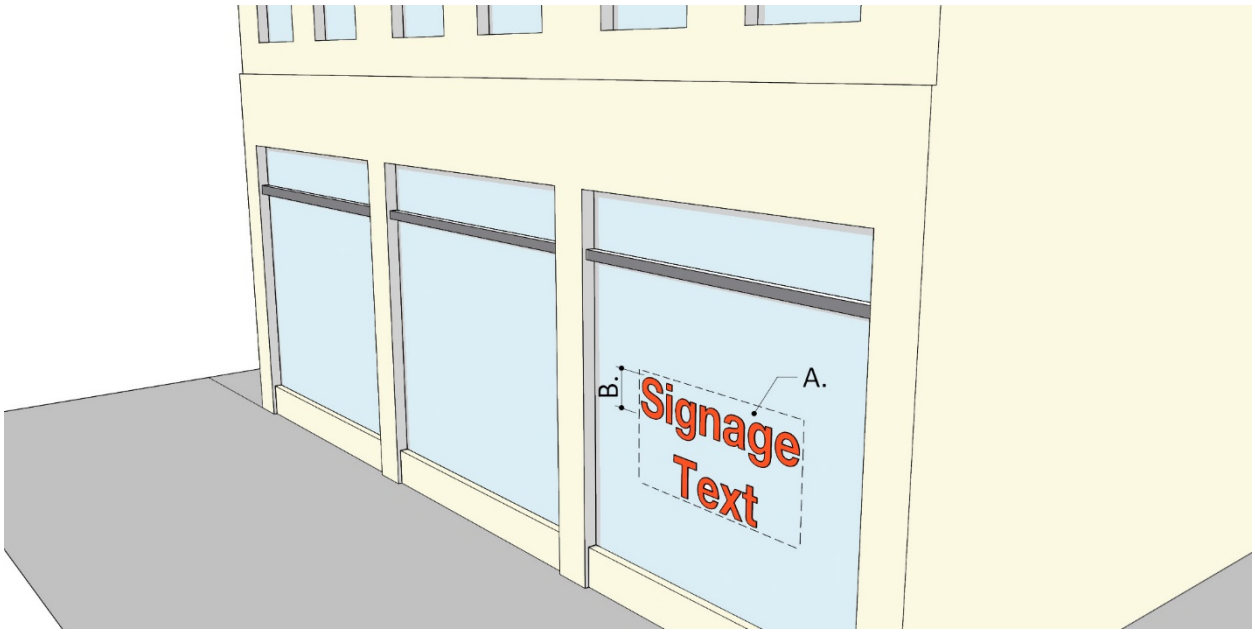
D. Only text or graphics painted directly on the wall or a graphic mural are permitted.



Window Sign

A. Signage area is 25% max. of shopfront window.

B. Copy height is 12” max.



14. Uses

a) Lot and building use is allowed according to **Figure 36-2-42. Downtown Development Code Allowed Uses** by use category and subcategory.

b) Multiple uses within a single lot or building are permitted in all districts.

c) Accessory uses are permitted as follows:

i) Accessory dwellings in GU are limited to housing related to the principal dwelling, rental housing, and home office uses, not exceeding 600 square feet per story.

ii) Home occupations are permitted in accordance with the provisions of **Sec. 36-3.B. Use Classifications and Use-Based Standards**, #23. Home Occupation.

d) Manufacturing uses, other than cottage industries, are not permitted Downtown.

e) Conditional Uses are permitted pursuant to noted conditions.

Figure 36-2-42. Downtown Development Code Allowed Uses

USE CATEGORY	GU	DT	MS	CONDITIONS
RESIDENTIAL				
Single or Two-family Dwelling	A	NP	NP	
Family Child Care Home (1-6 occupants)	C	C	C	See **Sec. 36-3.B. Use Classifications and Use-Based Standards**, #37 Child Care Home (≤6)
Accessory Dwelling Unit	A	A	A	
Multi-family Dwelling	A	A	A	
Group Home (up to 16 occupants)	C	C	C	See **Sec. 36-3.B. Use Classifications and Use-Based Standards**, #13 Community Residence (Licensed for Persons with Disabilities)
LODGING				
Lodging in Accessory Dwelling Unit	A	A	A	
Bed and Breakfast (up to 6 rooms)	A	NP	NP	
Inn (up to 12 rooms)	A	A	A	
Hotel	A	A	A	
OFFICE				
Accessory Office	A	A	A	
Live-work Unit	A	A	A	
Office	C	A	A	Building area available for office use is limited to the first story.
Outpatient Clinic	NP	A	A	
Laboratory	NP	C	C	Medical, dental, or similar uses. Permitted only when entirely contained within an office building and used strictly for the purpose of serving the occupants of the office complex. There shall be no advertising signs or other visible displays indicating the use from the exterior of the building.
RETAIL				
Open Market Space	A	A	A	

USE CATEGORY	GU	DT	MS	CONDITIONS
Retail	C	A	A	Building area available for retail use is limited to the first story.
Push Cart	A	A	A	
Kiosk	NP	A	A	
Gasoline Sales	C	C	NP	Permitted only when vehicle repair activities are not associated with the use.
Restaurant or Other Dining Establishment	C	A	A	Seating shall not exceed 40.
Outdoor Cooking	A	A	A	
Outdoor Dining	A	A	A	
Tavern or Bar	C	A	A	Seating shall not exceed 40.
Nightclub	NP	A	A	
INSTITUTIONAL				
Live Theater or Movie Theater	NP	A	A	
Broadcasting Studios	NP	A	NP	
Gallery	C	A	A	Building area available for gallery use is limited to the first story.
Museum	C	A	A	Building area available for museum use is limited to the first story.
Libraries	A	A	A	
Legislative and Court Chambers	NP	A	A	
Conference Center	NP	A	A	
Terminal Waiting Areas	NP	A	A	
Funeral Homes	NP	A	NP	
Participatory Assembly	A	A	A	
Nursing Home with Medical Care	C	C	C	Must be located on a collector or higher designated roadway.
Classroom for Participatory Assembly Uses	A	A	A	
Child Classrooms & Daycare	A	A	A	
Accessory Daycare (fewer than 6 children)	A	A	A	
School, K-12	A	A	A	
School, college or university	A	A	A	
School, commercial, trade or technical	C	A	A	Located on a minor arterial or higher designated roadway.
AGRICULTURAL				
Animal (Pet) Care Facility	NP	A	A	
Animal (Pet) Day Care Facility	NP	A	A	
Chickens	C	NP	NP	Roosters are not permitted.
Garden Supply or Greenhouse	A	NP	NP	

(A) Approved by Right (C) Conditional (NP) Not Permitted

15. Parking

a) Off-street Parking Location and Access.

i) Off-street parking shall be provided in accordance with achieving the Downtown Master Plan goals and policies and supporting the development proposal.

ii) Additional off-street parking is not required in the downtown transects. Unless otherwise specified, off-street parking design shall comply with **Sec. 38-2. Roads, Rights-of-Way, and Parking** as well as any state and federal regulations.

iii) When provided, parking may not be located within 30 feet of the primary frontage line and 20 feet of secondary frontage lines.

iv) Parking areas shall have well-delineated pedestrian access routes to the most direct entrance of the building they serve.

v) Parking may be fulfilled in the following locations:

a. Parking spaces provided within the lot.

b. Parking spaces provided along a parking lane (on-street) corresponding to lot frontages.

c. Parking spaces leased from a private or public parking facility within 500 feet of the lot.

d. Parking spaces managed by an established parking district.

b) Parking lots and structures visible from frontages require one of the following screening methods or a combination of methods:

i) Liner Buildings, optional at parking lots and required at parking structures. The ground floor frontages of parking structures shall be screened with Liner Buildings with the exception of ingress and egress points.

ii) A masonry wall no less than 4 feet in height.

iii) An evergreen hedge, or other landscape element to screen the view of parking, no less than 4 feet in height.

c) Driveways providing access to off-street parking are limited to 24 feet (2-way) in width in DT or MS and 10 feet (1-way) in width in GU.

d) Vehicular access to off-street parking is restricted as follows:

i) Lots with rear alley access must provide vehicular access from a rear alley.

ii) One curb-cut is permitted for each secondary frontage. Curb cuts shall comply with **Sec. 38-2. Roads, Rights-of-Way, and Parking**.

iii) Where secondary frontages are not available, one curb-cut is permitted at the primary frontage for lots with a minimum width of 80 feet.

e) Pedestrian access to off-street parking must be provided from frontages, according to the following:

i) A minimum of one ADA-compliant walkway must be provided between each lot frontage and off-street parking areas.

ii) Pedestrian access walkways must be a minimum of 6 feet in width in DT.

f) Shared Vehicular Parking Options.

i) The number of spaces provided may be reduced according to **Figure 36-2-43. Shared Parking**, completed as follows:

a. For each use, enter the minimum required spaces as specified in **Figure 36-2-43**, into the first column.

b. For each time of day, multiply the required spaces per use by the occupancy rate, and enter the sum of the resulting column in the bottom row.

c. The resulting reduced minimum required parking spaces is the highest value entered in the bottom row.

Figure 36-2-43. Shared Parking

USES	REQ#	M—F 8AM—6PM	M—F 6PM—12AM	M—F 12AM—8AM	SAT & SUN 8AM—6PM	SAT & SUN 6PM—12AM	SAT & SUN 12AM—8AM
Residential		60%	100%	100%	80%	100%	100%
Office		70%	100%	100%	70%	100%	100%
Lodging		100%	20%	5%	5%	5%	5%
Retail		90%	80%	5%	100%	70%	5%
Restaurant		70%	100%	100%	70%	100%	100%
Theater		40%	80%	10%	80%	100%	10%
Entertainment		40%	100%	10%	80%	100%	50%
Conference		100%	100%	5%	100%	100%	5%
Civic		100%	20%	5%	10%	10%	5%
Civic Religious		20%	20%	5%	100%	50%	5%
Total Required							

16. Landscaping

a) The spacing and placement of plants shall be adequate and appropriate for the typical size, shape and habit of the plant species at maturity.

b) Landscape quantities shall be determined by **Sec. 38-7. Landscaping**.

c) Proposed trees and understory trees shall be centered horizontally and minimally:

i) Three (3) feet from walkways, curbing, and other impervious pavements;

ii) Five (5) feet from street lights, underground utilities, utility meters and service lines, fences, walls, and other ground level obstructions;

iii) Six (6) feet from porch eaves, awnings, and similar overhead obstructions associated with the ground level of buildings;

iv) Eight (8) feet from balconies, verandas, building eaves and cornices, and similar overhead obstructions associated with the upper stories of buildings.

d) Ground vegetation with spines, thorns or needles that may present hazards to pedestrians, bicyclists or vehicles are prohibited within two (2) feet of the sidewalk or street.

e) Bare and exposed ground shall be covered with live plant materials and/or mulch, including gravel mulch.

f) Artificial plants or artificial turf are prohibited.

g) Specific to DT and MS.

i) Landscape islands in interior parking lots shall only occur at the end of drive aisles. Islands should be the minimum size for healthy growth for the specific species of tree.

ii) Porous paving materials and other green infrastructure methods may be used in order to increase stormwater infiltration on site.

h) Any tree species and cultivar applicable for planting in the Downtown Las Cruces microclimate may be considered for planting within Downtown public squares, plazas, and private parcels, with the exception of those identified in **Figure 36-2-44. Prohibited Plants**.

Figure 36-2-44. Prohibited Plants

BOTANICAL NAME	COMMON NAME
Pennisetum setaceum	Crimson fountaingrass
Tamarix spp.	Saltcedar
x Chitalpa	Chitalpa
Elaeagnus angustifolia	Russian olive
Brassica tournefortii	Sahara mustard
Peganum harmala	African rue
Arundo donax	Giant cane
Saccharum ravennae	Ravennagrass
Ulmus pumila	Siberian elm
Ailanthus altissima	Tree of heaven

17. Streetscape

The primary use of thoroughfares is to provide access to private lots and public civic spaces. In accordance with the intent of this Section, streetscape improvements shall be designed to support several modes of transportation: public transportation, motor vehicles, and non-motorized vehicles such as bicycles and pedestrians.

a) Alley easements include one (1) bi-directional vehicular lane, within a total width alley of not less than 20 feet. The entire right-of-way should be paved and remain with clear access.

b) At the time of, and within, new or infill development trees shall be planted at an average spacing of no less than 40 feet on center within the front setback of the parcel being developed unless the front setback is less than 8 feet pursuant to **Figure 36-2-45. Public Frontage Type**.

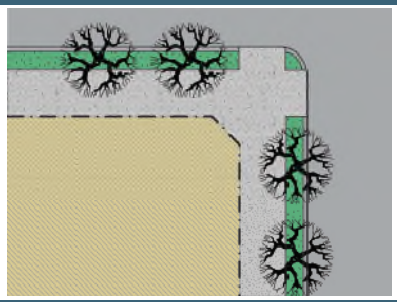
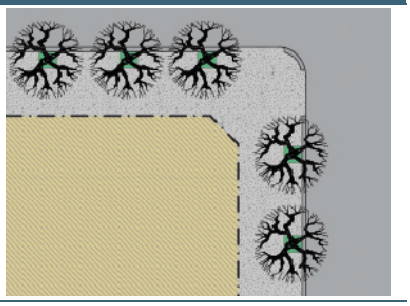
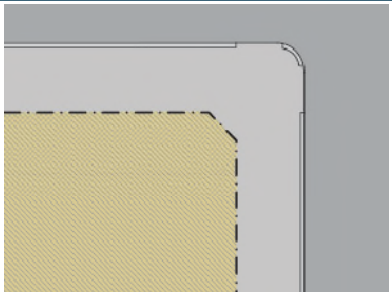
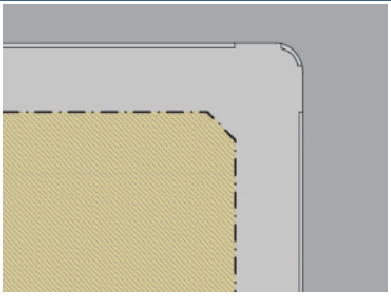
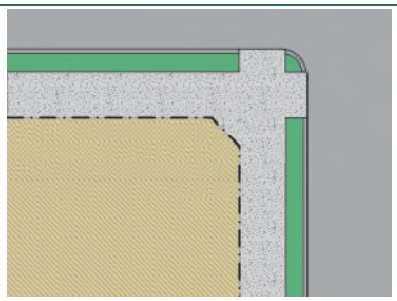
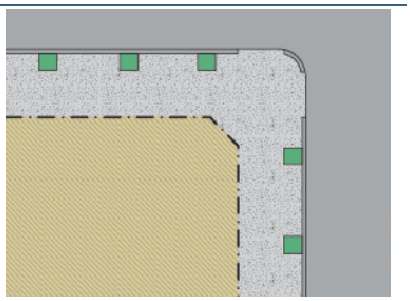
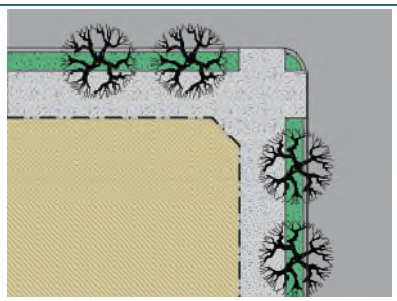
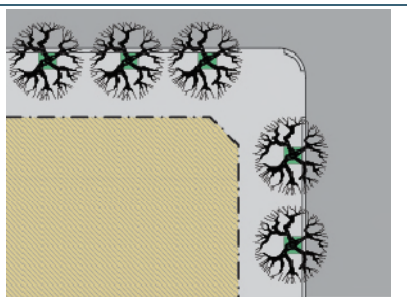
c) Streetscape improvements may be made pursuant to **Figure 36-2-45**.

i) At commercial frontages the spacing of trees may be irregular to avoid visually obscuring shopfronts.

ii) At gallery frontages, public planting is not required and public lighting may be provided within the gallery.

iii) Tree spacing may be adjusted up to 20 percent by administrative waiver to accommodate specific site conditions.

Figure 36-2-45. Public Frontage Type

PUBLIC FRONTAGE TYPE	A	B
Assembly: The principal variance are the type and dimension of curbs, walkways, planters, and landscape.		
Total Width	10-20’	16-20’
Curbing: The detailing of the edge of the vehicular way, incorporating drainage.		
Type Cuts	Raised Curb Ramp at 1:12 slope	Raised Curb Ramp at 1:12 slope
Walkway: The portion of the thoroughfare dedicated exclusively to pedestrian activity		
Type Width	Sidewalk 10-15’	Sidewalk 12-16’
Planter: The portion of the thoroughfare accommodating street trees and other landscape.		
Arrangement Planter Type Planter Width	Opportunistic Continuous 5’	Opportunistic Tree Well 4’x9’

18. Sidewalk Displays on Public Property.

a) *Sidewalk display* means the outdoor display of merchandise for sale to the public during regular business hours by any person, persons or organization when such merchandise is displayed on a portion of, or entirely on a public sidewalk or public place not designed for vehicular traffic.

i) All agents, employees, or representatives conducting a sidewalk display on Main Street between the roundabout and Bowman in downtown Las Cruces, shall comply with the following provisions:

a. All sidewalk displays shall only be conducted during regular business hours;

b. All displays shall be installed and removed by the business or property owner daily;

c. No booths, tables, or display merchandise shall obstruct ADA access, vehicular traffic, business entrances, or designated fire access points;

d. Sidewalk displays shall be limited to 100 square feet in total size;

e. Sidewalk displays shall only be conducted immediately in front of the permanent business located immediately adjacent to Main Street;

f. No person shall leave merchandise, booths, tables, or cases on the site of the display after the conclusion of regular business hours.

g. No person shall display merchandise of a type that is not originally sold by the permanent business located immediately adjacent to Main Street.

h. Sidewalk displays shall not include vending machines, food or beverage, outdoor lighting, or provide entertainment.

i. All debris and trash created by the sidewalk displays shall be immediately cleaned from the public property.

j. No sidewalk displays shall be allowed after the entity with which it is associated is not open to the public.

k. No permanent structure may be affixed to the sidewalk or any building. The business or property owner shall be responsible for any damage caused to the sidewalk or public property by the display;

l. The business or property owner assumes all risks with setting up a sidewalk display and shall not hold the City responsible for any accidents or loss in the installation, removal, or operation of the displays.

Sec. 36-3. Permitted Uses and Use-Based Standards

A. Permitted Uses

1. Permitted Use Chart

   a) The Permitted Use Chart is contained in the tables on the following pages.

   b) Land and buildings in each of the zoning districts may be used for any of the specified uses in the Permitted Use Chart. No land shall be used and no building or structure shall be erected, altered, or converted for any use other than those specified as a permitted use in the district in which the property is located.

   c) Use-Based Standards apply to uses as indicated in **Figure 36-3-2. Permitted Use Chart**. The associated standards are located in **Sec. 36-3.B. Use Classifications and Use-Based Standards**.

   d) The chart is organized by the following generalized land use groupings:

Residential Uses	Accessory or Temporary Uses	Public and Institutional Uses	Retail, Service, and Office Uses	Commercial, Auto, Industrial, and Agricultural Uses
Household Living Congregate Living Residential Care	Accessory Uses Temporary Uses	Child Care Schools Public/Semi-Public	Professional Office Medical Lodging Recreational and Entertainment Retail Shops and Services Food and Beverage	Commercial Cannabis-Related Automotive and Transportation Light Industrial Heavy Industrial Animals and Agriculture

2. Classification of New and Unlisted Uses

   It is recognized that new types of land use will develop and forms of land use not anticipated may seek to locate in the City. In order to provide for such changes and contingencies, a determination as to the appropriate classification of any new or unlisted use shall be made as follows:

   a) The new or unlisted use will be referred to the Community Development Director who will make a determination as to the appropriate classification of the new or unlisted use based on findings of fact in relation to the nature of the use and whether it involves dwelling activity, sales, processing, type of product, storage and amount and nature thereof, enclosed or open storage, anticipated employment, transportation requirements, amount of noise, odor, fumes, light, dust, toxic material and vibration likely to be generated and the general requirements for public utilities.

   b) The Community Development Director may seek input from other sources, such as professional urban planning publications, or economic development professionals or others familiar with the proposed use.

   c) The Community Development Director shall consider the nature and described performance of the proposed use and its compatibility with the uses permitted in the various districts and determine the zoning district or districts within which such uses shall be permitted.

   d) In such cases that any party may be aggrieved by the decision of the Community Development Director, the matter may be appealed in accordance with **Sec. 34-3.F. Appeals**.

3. Multiple Principal Uses within a Single Site

   When multiple principal uses are included on a single site, each individual use must be permitted on that site. For example, if a Retail Store includes a Restaurant, both uses must be allowed; or if a Funeral Home includes a Crematorium, both uses must be permitted.

a) Exception: Customarily incidental uses (as determined by the Community Development Director) are included in the primary use. For example, if a Hospital includes a gift shop, a Retail Store use is not required; or if a Warehouse or Distribution Center includes an office area, a Professional Office use is not required.

4. Parking Requirements

Minimum vehicle and bicycle parking requirements are included in **Figure 36-3-2. Permitted Use Chart**. Off-street parking is not required in the Urban Character Area; MXCO, Mixed Use Corridor Overlay District; TCO, Town Center Overlay District; NCO, Neighborhood Center Overlay District; or the DDC, Downtown Development Code area. See **Sec. 38-2.N. Off-Street Parking** (specifically **Sec. 38-2.N.4. Minimum Off-Street Vehicular Parking Requirements** and **Sec. 38-2.N.5. Bicycle Parking Standards**) for more information regarding parking requirements.

Figure 36-3-1. Legend for the Permitted Use Chart

Symbol	Meaning
●	Use is permitted in district indicated
○	Use is permitted in district upon approval of a Special Use Permit; see **Sec. 36-5.C. Special Use Permits (SUPs)**
	Use is prohibited in district indicated
*	Use-based standards apply; see **Sec. 36-3.B. Use Classifications and Use-Based Standards**

Figure 36-3-2. Permitted Use Chart

# - See Sec. 36-3.B. Use Classifications and Use-Based Standards	● = Permitted ○ = SUP * = Use-Based Standards Uses	NH-1, Neighborhood 1 District (Rural, Suburban, Urban)	NH-2, Neighborhood 2 District (Rural, Suburban, Urban)	NH-3, Neighborhood 3 District (Rural, Suburban, Urban)	CR, Commercial/Retail District (Rural, Suburban, Urban)	LI, Light Industrial District (Rural, Suburban, Urban)	HI, Heavy Industrial District (Rural, Suburban, Urban)	OS-1, Open Space-Preserve and Recreational District (Rural, Suburban, Urban)	OS-2, Open Space-Drainage District (Rural, Suburban, Urban)	Min. Vehicle Parking	Min. Bicycle Parking
Residential Uses											
Household Living (Note: See **Sec. 36-2.B. Zoning DistrictsError! Reference source not found.** for maximum dwelling units per acre in each district)											
1	Duplex, Triplex, or Quadplex	●	●	●	○					1 : dwelling unit	N/A
2	Live/Work*	●	●	●	○					1 : dwelling unit + parking required for business	Only parking required for business
3	Manufactured Home	●	●	●						2 : dwelling unit	N/A
4	Manufactured Home Park (MHP)*	○	○	○						2 : dwelling unit	N/A
5	Mixed-Use*	○	●	●	○					Per use multiplied by 0.5	Per use
6	Mobile Home*	●	●	●						2: dwelling unit	N/A

# - See Sec. 36-3.B. Use Classifications and Use-Based Standards	● = Permitted ○ = SUP * = Use-Based Standards Uses	NH-1, Neighborhood 1 District (Rural, Suburban, Urban)	NH-2, Neighborhood 2 District (Rural, Suburban, Urban)	NH-3, Neighborhood 3 District (Rural, Suburban, Urban)	CR, Commercial/Retail District (Rural, Suburban, Urban)	LI, Light Industrial District (Rural, Suburban, Urban)	HI, Heavy Industrial District (Rural, Suburban, Urban)	OS-1, Open Space-Preserve and Recreational District (Rural, Suburban, Urban)	OS-2, Open Space-Drainage District (Rural, Suburban, Urban)	Min. Vehicle Parking	Min. Bicycle Parking
7	Multi-Family Dwelling*	●	●	●	○					1 : dwelling unit	1 : 4 dwelling units
8	Single-Family Home	●	●	●						2 : dwelling unit	N/A
9	Townhouse*	●	●	●	○					2 : dwelling unit	1 : 2 bedrooms
Congregate Living											
10	Boarding House or Hostel	○	●	●						1 : bedroom + 1 : employee	1 : 2 bedrooms
11	Fraternity or Sorority House	○	●	●						0.5 : bedroom	1 : 2 bedrooms
Residential Care											
12	Assisted Living	○	●	●						1 : 4 beds + 1 : 2 employees on maximum shift	1 : 5 employees on maximum shift
13	Community Residence (Licensed for Persons with Disabilities)	●	●	●						1 : 4 beds + 1 : 2 employees on maximum shift	1 : 5 employees on maximum shift
14	Community Residence (Other)	○	●	●						1 : 2 employees on maximum shift	1 : 5 employees on maximum shift
15	Halfway House	○	○	○						1 : 2 employees on maximum shift	1 : 5 employees on maximum shift
16	Independent Senior Living	○	●	●						1 : dwelling unit	1 : dwelling unit
17	Nursing Home	○	○	●	●					1 : 4 beds + 1 : 2 employees	1 : 20 beds + 1 : 5 employees on maximum shift
18	Sober Living House	●	●	●						1 : 2 employees on maximum shift	1 : 5 employees on maximum shift
Accessory or Temporary Uses											
Accessory Uses											
19	Accessory Dwelling*	●	●	●						N/A	N/A
20	Accessory Structures*	●	●	●						N/A	N/A
21	Animal Raising (Accessory)*	●	●	●	●	●	●	○		N/A	N/A

# - See Sec. 36-3.B. Use Classifications and Use-Based Standards	● = Permitted ○ = SUP * = Use-Based Standards Uses	NH-1, Neighborhood 1 District (Rural, Suburban, Urban)	NH-2, Neighborhood 2 District (Rural, Suburban, Urban)	NH-3, Neighborhood 3 District (Rural, Suburban, Urban)	CR, Commercial/Retail District (Rural, Suburban, Urban)	LI, Light Industrial District (Rural, Suburban, Urban)	HI, Heavy Industrial District (Rural, Suburban, Urban)	OS-1, Open Space-Preserve and Recreational District (Rural, Suburban, Urban)	OS-2, Open Space-Drainage District (Rural, Suburban, Urban)	Min. Vehicle Parking	Min. Bicycle Parking
22	Drive-Thru*		○	●	●	●				N/A	N/A
23	Home Occupation*	●	●	●						N/A	N/A
24	Outdoor Display (Permanent)			○	●	●	●			1 : 1,000 sqft of display area	N/A
25	Outdoor Storage*				○	●	●			1 : employee on maximum shift or 1 : 10,000 sqft of storage area	N/A
26	Pools and Recreational Courts	●	●	●	●					1 : 250 sqft of accompanying floor area where patrons circulate, sit, or congregate or 1 : 750 sqft of all gross surfaces	1 : 1,250 sqft of accompanying floor area where patrons circulate, sit, or congregate or 1 : 3,750 sqft of all gross surfaces
27	Solar Energy System (Accessory)*	●	●	●	●	●	●			N/A	N/A
28	Walk-Up Window*	●	●	●	●					N/A	N/A
29	Wind Energy System (Accessory)*	●	●	●	●	●	●			N/A	N/A
Temporary Uses											
30	Concrete Batch Plant (Temporary)	○	○	○	●	●	●			1 : employee on maximum shift	1 : 5 employees on maximum shift
31	Construction Building (Temporary)	●	●	●	●	●	●			1 : 400 sqft	1 : 5 employees on maximum shift
32	Construction Yard (Temporary)	○	○	○	●	●	●			1 : employee on maximum shift	1 : 5 employees on maximum shift
33	Outdoor Display (Temporary)*	●	●	●	●	●	●			1 : 1,000 sqft of display area	1 : 5 employees or 1 : 2,000 sqft
34	Real Estate Office (Temporary)*	●	●	●	●	●	●			1 : 400 sqft	1 : 5 employees
35	Seasonal/Temporary Sales or Use*	●	●	●	●	●	●			1 : 1,000 sqft of sales area + 1 : employee at maximum shift	1 : 5 employees or 1 : 2,000 sqft

# - See Sec. 36-3.B. Use Classifications and Use-Based Standards	● = Permitted ○ = SUP * = Use-Based Standards Uses	NH-1, Neighborhood 1 District (Rural, Suburban, Urban)	NH-2, Neighborhood 2 District (Rural, Suburban, Urban)	NH-3, Neighborhood 3 District (Rural, Suburban, Urban)	CR, Commercial/Retail District (Rural, Suburban, Urban)	LI, Light Industrial District (Rural, Suburban, Urban)	HI, Heavy Industrial District (Rural, Suburban, Urban)	OS-1, Open Space-Preserve and Recreational District (Rural, Suburban, Urban)	OS-2, Open Space-Drainage District (Rural, Suburban, Urban)	Min. Vehicle Parking	Min. Bicycle Parking
Public and Institutional Uses											
Child Care											
36	Child Care Center*	○	○	●	●					2 spaces + 1: 10 children	1 : 30 children
37	Child Care Home (≤6)*	●	●	●						N/A	N/A
38	Group Child Care Home (7-12)*	○	●	●						1 additional space	1 additional space
Schools											
39	School (K-8)*	●	●	●	●					2 : classroom	10 : classroom
40	School (9-12)*	●	●	●	●					4: classroom + 1: 250 sqft in assembly areas	6 : classroom
41	School (College or University)*	○	●	●	●					1 : 600 sqft of indoor area	1: 1,500 sqft of indoor area
42	School (Commercial, Trade, or Technical)	○	●	●	●	●				1 : 500 sqft	1 : 1,500 sqft
Public/Semi-Public											
43	Cemetery or Columbarium*				●					1: 500 sqft of assembly areas	1: 1,500 sqft of assembly area
44	City Facility or Building	●	●	●	●	●	●	●		As specified for use	As specified for use
45	Community Building or Banquet Center	○	●	●	●					1 : 250 sqft	1 : 1,000 sqft of assembly area
46	Community Garden	●	●	●	●	●	●	●		1 : 5,000 sqft	1 : 10,000 sqft
47	Convention Center or Exhibition Hall				●					1 : 5 maximum occupancy	1 : 75 maximum occupancy
48	Correctional Facility					●	●			1 : 1,000 sqft + 1 : employee on maximum shift	1 : 20 employees on maximum shift
49	Landfill						●			1 : 400 sqft of office	N/A
50	Library or Museum	●	●	●	●					1 : 600 sqft	1 : 1,000 sqft

# - See Sec. 36-3.B. Use Classifications and Use-Based Standards	● = Permitted ○ = SUP * = Use-Based Standards Uses	NH-1, Neighborhood 1 District (Rural, Suburban, Urban)	NH-2, Neighborhood 2 District (Rural, Suburban, Urban)	NH-3, Neighborhood 3 District (Rural, Suburban, Urban)	CR, Commercial/Retail District (Rural, Suburban, Urban)	LI, Light Industrial District (Rural, Suburban, Urban)	HI, Heavy Industrial District (Rural, Suburban, Urban)	OS-1, Open Space-Preserve and Recreational District (Rural, Suburban, Urban)	OS-2, Open Space-Drainage District (Rural, Suburban, Urban)	Min. Vehicle Parking	Min. Bicycle Parking
51	Place of Worship	●	●	●	●					1 : 200 sqft of assembly area	1: 1,000 sqft of assembly area
52	Public Park*	●	●	●	●			●		Based on facilities provided	Based on facilities provided
53	Public Utilities (Major)*	●	●	●	●				●	N/A	N/A
54	Public Utilities (Minor)*	●	●	●	●				●	N/A	N/A
55	Recycling Drop-Off Point				●	●	●			1 : employee on maximum shift	1: 5 employees on maximum shift
56	Waste or Recycling Processing Facility					○	●			1 : 400 sqft of office or 1 : employee on maximum shift	1: 20 employees on maximum shift
Retail, Service, and Office Uses											
Professional Office											
57	Professional Office (Local)		○	●	●	●	○			1 : 450 sqft	1 : 8,000 sqft
58	Professional Office (Regional)			●	●	●	○			1 : 450 sqft	1 : 8,000 sqft
Medical											
59	Emergency Room (Standalone)*			●	●					1 : 3 beds	1 : 20 employees on maximum shift
60	Hospital*			○	●					1 : 3 beds or 3 : 1,000 sqft	1 : 20 employees on maximum shift
61	Medical Clinic or Office		○	●	●					1 : 450 sqft	1 : 2,000 sqft
62	Medical or Research Laboratory			○	●					1 : 1,000 sqft	1 : 20 employees on maximum shift
63	Urgent Care		○	●	●					1 : 400 sqft or 2 : exam room	1 : 2,500 sqft
Lodging											
64	Bed and Breakfast*	○	●	●	●					0.5 : bedroom	1 : 5 employees

# - See Sec. 36-3.B. Use Classifications and Use-Based Standards	● = Permitted ○ = SUP * = Use-Based Standards Uses	NH-1, Neighborhood 1 District (Rural, Suburban, Urban)	NH-2, Neighborhood 2 District (Rural, Suburban, Urban)	NH-3, Neighborhood 3 District (Rural, Suburban, Urban)	CR, Commercial/Retail District (Rural, Suburban, Urban)	LI, Light Industrial District (Rural, Suburban, Urban)	HI, Heavy Industrial District (Rural, Suburban, Urban)	OS-1, Open Space-Preserve and Recreational District (Rural, Suburban, Urban)	OS-2, Open Space-Drainage District (Rural, Suburban, Urban)	Min. Vehicle Parking	Min. Bicycle Parking
65	Campground*				●	●		●		1 : camp site + 1: 400 sqft office space	1 : 5 employees
66	Hotel or Motel		○	●	●	○				0.75 : room + 1 : 800 sqft of other uses	1 : 5 employees on maximum shift + 1 : 20 rooms
67	Recreational Vehicle Park*				●	●				1 : RV space + 1 : 2 employees	1 : 5 employees
Recreational and Entertainment											
68	Botanical Garden	●	●							Parking study required	1 : 20 auto spaces
69	Golf Course*	●	●	●	●	●		●		30 : 9 holes	1 : 9 holes
70	Indoor Entertainment		○	●	●	●				1 : 3 persons maximum capacity	1 : 20 persons maximum capacity
71	Outdoor Entertainment*		○	●	●	●				3 : 1,000 sqft	1 : 2,500 sqft
Retail Shops and Services											
72	Adult Business*				○	○				1 : 350 sqft	1 : 6,000 sqft
73	Art Studio or Instruction	○	●	●	●					1 : 450 sqft or 1 : student	1 : 2,500 or 1 : 5 students
74	Bank or Financial Institution		●	●	●					1 : 450 sqft	1 : 8,000 sqft
75	Flea Market			●	●					1 : 400 sqft of vendor area + 1 : food vendor	1 : 20 auto spaces
76	Gas Station*	○	○	●	●	●	○			1 : 300 sqft	1 : 2,000 sqft
77	Grocery (Local)	●	●	●	●					1 : 350 sqft	1 : 6,000 sqft
78	Grocery (Regional)*			●	●	●				1 : 350 sqft	1 : 6,000 sqft
79	Liquor or Package Store*				●	●				1 : 400 sqft	1 : 800 sqft
80	Payday Loans, Check Cashing, or Bail Bonds		○	○	●					1 : 450 sqft	1 : 8,000 sqft
81	Pawn Shop			●	●	●				1 : 400 sqft	1 : 3,000 sqft
82	Personal Services		●	●	●					1 : 450 sqft	1 : 8,000 sqft

# - See Sec. 36-3.B. Use Classifications and Use-Based Standards	● = Permitted ○ = SUP * = Use-Based Standards Uses	NH-1, Neighborhood 1 District (Rural, Suburban, Urban)	NH-2, Neighborhood 2 District (Rural, Suburban, Urban)	NH-3, Neighborhood 3 District (Rural, Suburban, Urban)	CR, Commercial/Retail District (Rural, Suburban, Urban)	LI, Light Industrial District (Rural, Suburban, Urban)	HI, Heavy Industrial District (Rural, Suburban, Urban)	OS-1, Open Space-Preserve and Recreational District (Rural, Suburban, Urban)	OS-2, Open Space-Drainage District (Rural, Suburban, Urban)	Min. Vehicle Parking	Min. Bicycle Parking
83	Retail Store (Local)*	○	●	●	●	○	○			1 : 400 sqft	1 : 3,000 sqft
84	Retail Store (Regional)*			●	●	○	○			1 : 450 sqft	1 : 4,000 sqft
85	Retail Store (Sundry)*	○	●	●	●					1 : 400 sqft	1 : 3,000 sqft
86	Shopping Center*		●	●	●	○				1 : 450 sqft	1 : 4,000 sqft
Food and Beverage											
87	Bar*			●	●	●				1 : 500 sqft	1 : 1,000 sqft
88	Cafe*	●	●	●	●					1 : 300 sqft	1 : 1,000 sqft
89	Food Truck Park*		○	●	●	●				2 : 1,000 sqft of area where patrons eat, queue, or congregate	1 : 10 auto spaces
90	Private Club or Lodge			●	●	●				1 : 500 sqft	1 : 1,000 sqft
91	Restaurant		○	●	●	●	○			1 : 300 sqft	1 : 1,000 sqft
92	Tap Room or Tasting Room*			●	●	●				1 : 500 sqft (tasting room only)	1 : 2,000 sqft (tasting room only)
Commercial, Auto, Industrial, and Agricultural Uses											
Commercial											
93	Catering or Commercial Off-Site Kitchen			●	●	●				1 : 500 sqft	1 : 5 employees on maximum shift
94	Contractors Yard or Building Material Sales*				●	●				1 : 1,000 sqft office space	1 : 5 employees on maximum shift
95	Crematorium					●	●			1 : 800 sqft	1 : 5 employees on maximum shift
96	Dispatch Service			●	●	●				1 : 400 sqft	1 : 5 employees on maximum shift
97	Dry Cleaning Plant				●	●				1 : 1,000 sqft	1 : 5 employees on maximum shift
98	Equipment Rental, Sales, or Repairs				●	●	●			1 : 400 sqft office space	1 : 5 employees on maximum shift

# - See Sec. 36-3.B. Use Classifications and Use-Based Standards	● = Permitted ○ = SUP * = Use-Based Standards Uses	NH-1, Neighborhood 1 District (Rural, Suburban, Urban)	NH-2, Neighborhood 2 District (Rural, Suburban, Urban)	NH-3, Neighborhood 3 District (Rural, Suburban, Urban)	CR, Commercial/Retail District (Rural, Suburban, Urban)	LI, Light Industrial District (Rural, Suburban, Urban)	HI, Heavy Industrial District (Rural, Suburban, Urban)	OS-1, Open Space-Preserve and Recreational District (Rural, Suburban, Urban)	OS-2, Open Space-Drainage District (Rural, Suburban, Urban)	Min. Vehicle Parking	Min. Bicycle Parking
99	Film Staging or Production Studios				●	●	●			1 : 500 sqft	1 : 20 employees on maximum shift
100	Funeral Home			●	●	●				1 : 500 sqft	1 : 2,000 sqft
101	Industrial Printing or Distribution				●	●				1 : 1,000 sqft	1 : 20 employees on maximum shift
102	Manufactured Housing or Building Sales				●	●	●			1 : 450 sqft office space	1 : 8,000 sqft
103	Postal or Printing Services		○	●	●	●	○			1 : 1,000 sqft.	1 : 5 employees on maximum shift
104	Repair Shop		●	●	●	●				1 : 500 sqft or 1 : employee on maximum shift	1 : 5 employees on maximum shift
105	Self-Storage Warehouse				●	●	●			None if units have direct vehicular access; if not, 1 : 4,000 sqft	1 : 5 employees on maximum shift
106	Wireless Communication Facilities*	○	●	●	●	●	●	●		1 space	N/A
Cannabis-Related											
107	Cannabis Dispensary*			○	●					1 : 400 sqft	1 : 3,000 sqft
108	Cannabis Production			○	●	●	●			1 : employee on maximum shift	1 : 5 employees on maximum shift
109	Integrated Cannabis Business*			○	●	●				1 : 1,000 sqft	1 : 20 employees on maximum shift
Automotive and Transportation											
110	Auto Sales or Rental*			●	●	●				1 : 500 sqft showroom + office	1 : 5 employees on maximum shift
111	Auto Repair and Services (Major)*				●	●				5 : service bay + 1 : employee on maximum shift	1 : 5 employees on maximum shift
112	Auto Repair and Services (Minor)*			●	●	●				3 : service bay + 1 : employee on maximum shift	1 : 5 employees on maximum shift

# - See Sec. 36-3.B. Use Classifications and Use-Based Standards	● = Permitted ○ = SUP * = Use-Based Standards Uses	NH-1, Neighborhood 1 District (Rural, Suburban, Urban)	NH-2, Neighborhood 2 District (Rural, Suburban, Urban)	NH-3, Neighborhood 3 District (Rural, Suburban, Urban)	CR, Commercial/Retail District (Rural, Suburban, Urban)	LI, Light Industrial District (Rural, Suburban, Urban)	HI, Heavy Industrial District (Rural, Suburban, Urban)	OS-1, Open Space-Preserve and Recreational District (Rural, Suburban, Urban)	OS-2, Open Space-Drainage District (Rural, Suburban, Urban)	Min. Vehicle Parking	Min. Bicycle Parking
113	Car Wash*		○	●	●	●				2 : service lane	1 : 5 employees on maximum shift
114	Commercial Parking Lot or Garage*		○	●	●	●				N/A	1 : 20 auto spaces
115	Heliport/Helistop*				○	○	○			N/A if accessory use; 2 spaces if primary use	N/A
116	Passenger Transportation Terminal*				●	●				1 : 300 sqft	1 : 500 sqft
117	Salvage or Wrecking Yard*					○	●			1 : 1,500 sqft of yard area + 1 : 400 sqft of office space	1 : 5 employees on maximum shift
118	Semi-Truck Wash					●	●			2 : service lane	N/A
119	Truck, Trailer, Boat, and RV Sales or Rental				●	●				1 : 500 sqft showroom + office	1 : 5 employees on maximum shift
Light Industrial											
120	Animal Processing (Slaughterhouse)					●	●			1 : 1,000 sqft	1 : 20 employees on maximum shift
121	Animal Processing (Taxidermy)				●	●	●			1 : 1,000 sqft	1 : 5 employees on maximum shift
122	Artisan Manufacturing*	○	○	●	●	●	●			1 : 1,000 sqft	1 : 20 employees on maximum shift
123	Data Center*				○	●	●			1 : 1,000 sqft	1 : 20 employees on maximum shift
124	Hazardous Chemical Manufacturing or Storage					●	●			1 : 1,000 sqft	1 : 20 employees on maximum shift
125	Manufacturing or Fabricating*					●	●			1 : 1,000 sqft	1 : 20 employees on maximum shift
126	Warehouse or Distribution Center					●	●			1 : 1,000 sqft	1 : 20 employees on maximum shift
Heavy Industrial											
127	Above-Ground Storage Tanks for Hazardous Materials*						●			1 : installation	N/A

# - See Sec. 36-3.B. Use Classifications and Use-Based Standards	● = Permitted ○ = SUP * = Use-Based Standards Uses	NH-1, Neighborhood 1 District (Rural, Suburban, Urban)	NH-2, Neighborhood 2 District (Rural, Suburban, Urban)	NH-3, Neighborhood 3 District (Rural, Suburban, Urban)	CR, Commercial/Retail District (Rural, Suburban, Urban)	LI, Light Industrial District (Rural, Suburban, Urban)	HI, Heavy Industrial District (Rural, Suburban, Urban)	OS-1, Open Space-Preserve and Recreational District (Rural, Suburban, Urban)	OS-2, Open Space-Drainage District (Rural, Suburban, Urban)	Min. Vehicle Parking	Min. Bicycle Parking
128	Energy Production or Refinement						●			1 : 400 sqft office + 1 : employee on maximum shift	1 : 20 employees on maximum shift
129	Extraction of Raw Materials*				○	●	●			1 employee on maximum shift	1 : 20 employees on maximum shift
Animals and Agriculture											
130	Animal Raising (Commercial Feed Lots)*						○			1 : employee on maximum shift	1 : 5 employees on maximum shift
131	Animal Raising (General Agriculture)*	●	●				●			N/A	N/A
132	Animal Services (Indoor Only)*	○	●	●	●	●				1 : employee on maximum shift	1 : 5 employees on maximum shift
133	Animal Services (With Outdoor Pens)	○	○	○	●	●				1 : employee on maximum shift	1 : 5 employees on maximum shift
134	Commercial Crop Farming	○					○			1 : employee on maximum shift	1 : 5 employees on maximum shift
135	Indoor Agriculture	○	○	○	●	●	●			1 : employee on maximum shift	1 : 5 employees on maximum shift
136	Plant Nursery		●	●	●	●				1 : 400 sqft of enclosed space	1 : 10,000 sqft enclosed space + 1 : 5 employees on maximum shift
137	Stables or Training	○			○	●	●			1 : employee on maximum shift	1 : 5 employees on maximum shift
138	Wind or Solar Farm	○			○	●	●			N/A	N/A

B. Use Classifications and Use-Based Standards

Residential Uses

Household Living

1. Duplex, Triplex, or Quadplex

CLASSIFICATION

A building or buildings designed for two, three, or four units situated on a single lot.

2. Live/Work

CLASSIFICATION

A single building developed with a nonresidential use including, but not limited to, office and retail uses, where the proprietor of the nonresidential use resides in an attached dwelling unit above or adjacent to the establishment.

STANDARDS

The nonresidential use must be permitted within the district and be accessible from the main street frontage. No portion of the complete unit may be separately leased or sold.

3. Manufactured Home

CLASSIFICATION

A manufactured home that is a multi-section (also known as a double-wide) 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 or the Uniform Building Code, as amended to the date of the unit's construction, and installed consistent with the Manufactured Housing Act and with the rules made pursuant thereto relating to permanent foundations.

STANDARDS

In accordance with NMSA 3-21A-3, multi-section (also known as double-wide) Manufactured Homes are permitted in any district that a site-built home is permitted, subject to the same requirements (e.g., parking, landscaping, lot dimensions). Manufactured Homes located in a Manufactured Home Park are subject to the requirements outlined in #4 Manufactured Home Park (MHP) below.

4. Manufactured Home Park (MHP)

CLASSIFICATION

A privately owned tract of land, at least five acres in size, used for the continuous accommodation of 12 or more occupied Manufactured Homes and operated for the pecuniary benefit of the owner of the parcel of land, the owner's agents, lessees, or assigns.

STANDARDS

1. Each Manufactured Home (MH) to be located in an MHP shall require a manufactured home installation permit (MHIP). The owner of an MH unit shall receive an MHIP prior to locating the MH unit in the MHP. All site-built structures (e.g., carport) are required to have a building permit.

2. Permitted uses in an MHP.

a. Manufactured Homes (including double- or single-wide homes) or site-built homes with complete hookup to utilities.

b. Accessory structures, swimming pools, home occupations, and recreation areas and buildings.

c. Convenience establishments of a commercial nature, including laundries, stores, beauty shops, and barbershops, may be permitted in MHPs, subject to the following restrictions:

i) Such establishments and their parking area shall not occupy more than seven percent of the area of the park;

ii) Shall be discontinued if the Manufactured Home Park is discontinued;

iii) Shall be located, designed, and intended to serve frequent trade or service needs of persons residing in the park only; and

iv) Shall present no visible evidence of their commercial character outside the park.

3. Individual Manufactured Home Spaces (MHS) within an MHP shall have a minimum area of 3,500 square feet, with a minimum width or depth dimension of 35 feet.

4. No structure within an MHP shall not exceed 35 feet in height.

5. Setbacks and spacing (minimum including awnings, canopies, decks, and any other structures attached to, adjacent to, or touching a manufactured home):

a. Dwelling unit front setback: 10′.

b. Dwelling unit side setback: 5′.

c. Dwelling unit rear setback: 10′.

d. MHP boundary to any dwelling unit within the MHP: 10′, except adjacent to public right-of-way.

e. MHP boundary to any dwelling unit within the MHP: 25′ adjacent to public right-of-way.

6. Development Standards

a. Other Applicable Regulations. All City requirements must be met unless specifically noted herein, including but not limited to landscaping, sidewalks, signs, streetlighting, and off-street parking. All federal, state, and local accessibility requirements shall be met.

b. Screening. All MHPs shall have opaque perimeter walls and/or fences at least five feet in height installed prior to the issuance of a certificate of occupancy for the MHP or each phase of the MHP. Each MHS shall have a wall and/or fence defining the MHS.

c. Utilities. Utility placement shall be approved by the Utilities Department Director.

d. Streets.

i) All MHPs shall have direct motor vehicle access from a collector or higher designated roadway. Each mobile home space shall have direct access to an internal street. Direct access to exterior public streets is prohibited.

ii) No internal street intersections shall be less than 125 feet from MHP entrances/exits or other internal street intersections. Each intersection, internal and external, shall be designed as close to 90 degrees as possible.

iii) All streets within an MHP shall meet the following minimum widths:

Figure 36-3-3. Required Pavement Width by Roadway Type

Parking Permitted*	Local, one way (Serving fewer than 20 MHS)	Local, two way (Serving 20 to 50 MHS)	Collector (Serving more than 50 MHS)
No	14′	18′	20′
One side	18′	27′	29′
Both sides	27′	36′	38′

* Parallel parking lanes are to be striped at nine feet in width.

e. Sidewalks. There shall be a network of sidewalks at least five feet in width connecting mobile home spaces with each other and with MHP facilities.

f. Drainage. All MHS and streets shall be designed to ensure proper drainage. A complete drainage plan including elevations and drainage calculations shall be approved by the Community Development Director. No on-lot retention ponds are to be incorporated within the drainage plan for MHPs.

g. Refuse. The management of a MHP 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.

h. Vehicle Storage Areas. MHP may have a storage yard for recreational and other vehicles. Such storage yards shall have a minimum of 60 square feet of storage area per MHS in the development and shall be located so as not to detract from surrounding properties. All recreational and other vehicles shall be parked in the storage yard while not in use.

i. Personal Storage Options. Each mobile home space may have a personal storage unit provided by the MHP owner or tenant. If provided by the MHP owner, such storage shall be at least six feet in height with a storage capacity of at least 300 cubic feet. Each storage unit shall be anchored permanently to the ground. The storage unit may be located on the mobile home space lot line. As an option to storage units being located on individual mobile home spaces by the MHP owner, storage units may be grouped into a mini-storage building arrangement. At least 300 cubic feet of storage space per MHS shall be provided.

5. Mixed-Use

CLASSIFICATION

A building developed with two or more different uses including, but not limited to, residential, office, retail, public, or entertainment uses connected above or adjacent to each other. Individual uses within the building are permitted in accordance with those allowed in the same district.

STANDARDS

1. Uses – At least 75% of the first story of the structure shall be used for nonresidential use. The remaining portion of the structure above the first story may be used for either residential or nonresidential uses, or a combination of both.

2. Amenities and Open Space – If 13 or more units are provided, the amenities and open space requirements in **Sec. 36-4.C.6. Additional Multi-Family Residential Amenities** shall also apply.

6. Mobile Home

CLASSIFICATION

A movable or portable housing structure 400 square feet or larger, designed for and occupied by no more than one family for living and sleeping purposes that is not constructed to the standards of the United States department of housing and urban development, the National Manufactured Housing Construction and Safety Standards Act of 1974 and the Housing and Urban Development Zone Code 2 or Uniform Building Code, as amended to the date of the unit's construction or built to the standards of the municipal building code.

STANDARDS

Mobile Homes are only allowed in certain cases (e.g., replacing an existing Mobile Home with a safer Mobile Home). See **Sec. 36-5.G. Nonconformities**.

7. Multi-Family Dwelling

CLASSIFICATION

A residential building designed for occupancy by tenants living independently of one another, excluding a hotel or motel.

STANDARDS

A courtyard, plaza, community garden, or other common greenspace is required (400 sqft minimum).

8. Single-Family Home

CLASSIFICATION

A detached dwelling unit designed and used exclusively for the residence by one family household or one group of lessees. This classification also includes multiple detached dwelling units located on a single property primarily occupied by a family unit.

9. Townhouse

CLASSIFICATION

A group of two (2) or more attached single-family units, each of which is on an individually platted lot, that share at least one common wall with another unit.

STANDARDS

No interior side yard is required and lot width/area is modified in accordance with **Sec. 36-4. Additional Dimensional and Building Design Standards**.

Congregate Living

10. Boarding House or Hostel

CLASSIFICATION

A dwelling with more than two rooms that are intended to be rented but which rooms, individually or collectively, do not constitute separate dwelling units, where for compensation and by pre-arrangement for more than two weeks, food and lodging are provided.

11. Fraternity or Sorority House

CLASSIFICATION

A dwelling with sleeping rooms or a dormitory used for occupancy by individuals in a recognized organization, and in which kitchen facilities are for the common use of all occupants.

Residential Care

12. Assisted Living

CLASSIFICATION

A facility providing residence, supervision, and daily assistance for individuals with common dining and recreational areas designed for the needs of the elderly or disabled. Services in these establishments include personal services such as assistance with dressing, grooming, bathing, and social and recreational services, such as meal services, transportation, housekeeping, linen and organized social activities and administration of medication by a person licensed or otherwise authorized in this state to administer the medication.

13. Community Residence (Licensed for Persons with Disabilities)

CLASSIFICATION

A State-licensed residence for persons who are physically disabled, developmentally disabled, psychiatrically disabled, or mentally ill. Per NMSA 3-21-1C, “All state-licensed or state-operated community residences for persons with a mental or developmental disability and serving ten or fewer persons may be considered a residential use of property for purposes of zoning and may be permitted use in all districts in which residential uses are permitted generally, including particularly residential zones for single-family dwellings.”

14. Community Residence (Other)

CLASSIFICATION

A community residence not elsewhere classified (e.g., homeless shelter or unlicensed group home).

15. Halfway House

CLASSIFICATION

The residents of halfway houses may be court mandated to live there, and a resident may be coming from a correctional facility rather than a substance use treatment program. As well as serving as a residence, halfway houses provide social, medical, psychiatric, educational, and other similar services. They are termed "halfway houses" due to their being halfway between completely independent living and in-patient or carceral facilities, where residents are highly restricted in their behavior and freedoms.

16. Independent Senior Living

CLASSIFICATION

An establishment providing dwelling units specifically designed for the needs of older people. In addition to housing, this type of facility provides convenience services, such as meals, housekeeping, and transportation, and community facilities, such as central dining rooms and activity rooms.

17. Nursing Home

CLASSIFICATION

A facility providing primarily in-patient health care, personal care, or rehabilitative services over a long period of time to persons who are chronically ill, aged, or disabled and who need ongoing health supervision but not hospitalization. Also referred to as Long-Term Care Facility or Skilled Nursing Facility.

18. Sober Living House

CLASSIFICATION

A sober living house is a peer-managed home designed to help people maintain sobriety. This is achieved through required sobriety, recovery group attendance, and household participation. Those who live in these houses rent rooms indefinitely and live a life in accordance with their responsibilities.

Accessory or Temporary Uses

Accessory Uses

19. Accessory Dwelling

CLASSIFICATION

A self-contained living quarter, including an independent kitchen facility, that is attached or detached to a single-family home located on the same lot.

STANDARDS

1. No more than one (1) Accessory Dwelling Unit shall be permitted on a lot.

2. No more than one (1) family unit shall occupy an Accessory Dwelling Unit at a time.

3. Accessory Dwelling Units must meet the setbacks established for Accessory Structures in **Sec. 36-4.B.2. Accessory Structures**.

4. An Accessory Dwelling Unit shall be limited in size to not more than 50% of the total floor area of the principal dwelling's living space.

5. Accessory Dwelling Units may be rented or occupied by a guest.

6. Accessory Dwelling Units may have a separate utility meter from the principal dwelling.

7. Accessory Dwelling Units shall have an assigned address.

20. Accessory Structures

CLASSIFICATION

A subordinate structure, the use of which is incidental to and customarily found in connection with a principal dwelling on the same property.

STANDARDS

See **Sec. 36-4.B.2. Accessory Structures**.

21. Animal Raising (Accessory)

CLASSIFICATION

The raising and breeding of animals or production of animal products, which is an accessory to a permitted principal use. Typical uses include grazing, ranching, dairy farming, poultry farming, and beekeeping in accordance with Chapter 7 of the Las Cruces Municipal Code. This use does not include slaughterhouses, feedlot operations, and any use included in #130 Animal Raising (Commercial Feed Lots).

STANDARDS

See Chapter 7 of the Las Cruces Municipal Code for additional requirements.

22. Drive-Thru

CLASSIFICATION

A window or similar access point added to a business (including a restaurant, bank, or financial institution, pharmacy, etc.) in which patrons receive service while remaining in their vehicles.

STANDARDS

See **Sec. 38-2.N.7. Loading and Stacking** for applicable requirements.

23. Home Occupation

CLASSIFICATION

An occupation carried on in the home by a member of the household, without the use of a sign to advertise the occupation, without structural alterations to the building or any of its rooms, that does not involve open storage, and that does not create a nuisance to abutting residential property such as emission of odor, increased traffic or generation of light and smoke.

STANDARDS

1. There shall be no change in the outside appearance of the building or premises, or other visible evidence of the conduct of such Home Occupation. No sign, advertisement or display may be used to indicate the presence of a Home Occupation in the structure.

2. The Home Occupation shall be clearly incidental and subordinate to the home's use for residential purposes. Not more than 30 percent of the square footage of the dwelling area shall be used in the conduct of the Home Occupation(s).

3. No equipment shall be used that creates offensive noises, vibration, sound, smoke, dust, odors, heat, glare, environmental concerns, x-rays, or electrical disturbances to radio or television instruments.

4. Delivery of materials to and from the premises shall not involve the use of vehicles over two-ton capacity, except parcel post, United Parcel Service, or similar delivery trucks.

5. No traffic shall be generated by a Home Occupation in greater volume than normally expected in a residential neighborhood, and any need for parking must be accommodated within the required off-street parking for the residence or along the street frontage for the lot.

6. No Outside Storage is permitted in conjunction with a Home Occupation.

7. Auto and vehicle repair are not permitted for home occupations due to oil, grease, and material discharge.

24. Outdoor Display (Permanent)

CLASSIFICATION

The permanent display of merchandise offered for sale external to a retail building which can be viewed and/or accessed by the customer for purchase.

25. Outdoor Storage

CLASSIFICATION

The keeping of materials, equipment, supplies, and merchandise external to a building that are not for sale and are not intended to be viewed by customers for purchase.

STANDARDS

See **Sec. 38-8. Fencing, Screening, and Buffering** for applicable screening requirements.

26. Pools and Recreational Courts

CLASSIFICATION

An area for active play and recreation that includes but is not limited to, open space, sports courts, play equipment, trails, restrooms, indoor or outdoor pools, and maintenance structures. The use may be either publicly or privately maintained.

Standards

See **Sec. 38-8.F.1. Swimming Pools, Whirlpools, Hot Tubs, and Other Similar Structures**.

27. Solar Energy System (Accessory)

CLASSIFICATION

A device accessory to a primary structure or use that relies upon the sun's rays as an energy source and is capable of collecting, distributing, and storing the sun's radiant energy.

STANDARDS

Solar energy system devices must be designed and located to avoid glare or reflection onto adjacent properties and adjacent roadways and shall not interfere with traffic or create a safety hazard, and must meet the following applicable requirements.

1. Ground-Mounted Solar Energy Systems

   a. Ground-mounted solar energy systems must meet applicable setbacks for the zoning district and shall be located in the rear yard.

   b. The solar panels and supporting framework cannot extend more than six feet above the existing grade.

   c. The surface area shall not exceed half the building footprint of the principal structure.

2. Roof-Mounted Solar Energy Systems

   a. Roof-mounted systems shall be mounted as flush as possible to the roof and not more than 12 inches above the existing roof surface.

   b. Roof-mounted systems must also be in compliance with the maximum building height for the applicable zoning district.

   c. Roof-mounted systems that are visible from the nearest edge of the street frontage Right-of-Way shall not have a highest finished pitch more than five percent steeper than the roof pitch on which the system is mounted, and shall be no higher than 16 inches above the roof.

28. Walk-Up Window

CLASSIFICATION

A window for service to patrons not in a vehicle (i.e., pedestrians or cyclists), typically in conjunction with a restaurant or other retail use.

STANDARDS

A walk-up window must face a sidewalk or other safe queuing area for pedestrians. A walk-up window queuing area shall not be located in a drive aisle.

29. Wind Energy System (Accessory)

CLASSIFICATION

A device accessory to a primary structure or use that relies upon wind as an energy source and is capable of collecting, distributing, and storing wind energy.

STANDARDS

1. General Standards

   a. Wind Energy Systems are permitted only in the rear yard.

   b. The minimum distance between the ground and any part of a rotor blade must be at least twenty (20) feet.

   c. Wind Energy Systems shall not be illuminated, nor may they bear any signs or advertising.

   d. Wind Energy Systems must have automatic braking, governing, or feathering system to prevent uncontrolled rotation, over-speeding, and excessive pressure on the support structure, rotor blades, and turbine components.

e. All wiring serving Wind Energy Systems must be underground.

f. Noise produced by Wind Energy Systems may not exceed 55 dBA measured at the property line.

h. Wind Energy Systems must not cause any interference with normal radio and television reception in the surrounding area, with any public safety agency or organization (including but not limited to police, fire, and ambulance) radio transmissions, or with any microwave communications link. The owner shall bear the cost to conduct a study to determine interference, and of immediately eliminating any such interference should any occur, or must immediately shut down the system or parts of the system causing the interference.

i. A finish (paint/surface) must be provided for the Wind Energy System that reduces the visibility of the facility, including the rotors. In most circumstances this condition may be satisfied by painting the support structure and rotors with flat light haze gray paint. If the support structure is unpainted it must be of a single color throughout its height. The owner must maintain the finish, painted or unpainted, so that no discoloration is allowed to occur.

j. The diameter of the area swept by the rotors may not exceed 12 feet.

2. Freestanding Systems – Additional Standards

a. Wind Energy Systems may be mounted on a tower detached from other structures on the lot.

b. The minimum setback from any property line, overhead utility line, or public right-of-way shall be a distance equal to the vertical distance from the ground to the tip of a wind generator blade when the tip is at its highest point unless the affected utility, property owner, or governmental entity grants written permission for a lesser setback. In addition to the system's structures, guy wires associated with towers shall meet applicable setbacks for the zoning district.

c. Freestanding systems measured from the top blade may not exceed 45 feet in height.

d. Support structures for freestanding systems must be unclimbable from the ground to a height of at least 15 feet.

e. A maximum of one freestanding Wind Energy System shall be allowed per lot.

3. Roof-Mounted Systems – Additional Standards

a. Wind Energy Systems may be mounted on the roof of a structure as an appurtenance.

b. Roof-mounted systems measured from the top blade may not be more than five feet over the maximum allowed height for the structure.

c. A maximum of one roof-mounted Wind Energy System shall be allowed per lot.

d. Before any roof-mounted system is mounted, the property owner must submit a report prepared by a licensed professional engineer attesting to the fact that the structure to which the system will be mounted is or will be sufficiently strong to support the system and to withstand the wind, vibratory, and other loads to which it would be subjected as a result of mounting the system on it. This report is subject to approval by the City Engineer prior to the mounting of the system.

Temporary Uses

30. Concrete Batch Plant (Temporary)

CLASSIFICATION

A temporary manufacturing facility for the production of concrete or asphalt during construction of a project, and to be removed when the project is completed.

31. Construction Building (Temporary)

CLASSIFICATION

A temporary building or structure used by a land developer to facilitate on-site operations and coordination of active construction.

STANDARDS

Such building(s), facilities, or other arrangement approved by the Community Development Director shall be removed upon completion of construction. Construction buildings or any other facilities shall be maintained in a neat and orderly fashion.

32. Construction Yard (Temporary)

CLASSIFICATION

A temporary outdoor storage facility used by a land developer or homebuilder to house materials and equipment for active on-site construction, including all necessary fencing, lighting, and surveillance measures.

STANDARDS

Such yard shall be removed upon completion of construction. Construction yards or any other facilities shall be maintained in a neat and orderly fashion. Open yards shall be enclosed by a fence at least five feet in height.

33. Outdoor Display (Temporary)

CLASSIFICATION

The temporary display of merchandise offered for sale external to a retail building in conjunction with seasonal or short-term events, which can be viewed and/or accessed by the customer for purchase. Display is considered "temporary" when brought inside nightly (e.g., sidewalk sale).

STANDARDS

These types of sales and displays shall be permitted for no more than 21 calendar days at a single location one time in a calendar year.

34. Real Estate Office (Temporary)

CLASSIFICATION

A model home or temporary structure used by a home builder to facilitate on-site sales and display within a subdivision where there are new homes available for purchase already built or to be built on lots located therein.

STANDARDS

A Real Estate Office (Temporary) is allowed in conjunction with a developing subdivision for a period of up to three years or when 85 percent of lots are sold, whichever occurs first. The Community Development Director may approve extensions up to two years. For model homes, a temporary Certificate of Occupancy will be issued until the above period ends, at which time a permanent Certificate of Occupancy is required.

35. Seasonal/Temporary Sales or Use

CLASSIFICATION

A business, sale, display, or event which is conducted for a limited time or on a cyclical annual or monthly basis. Uses may be conducted in tents, temporary or permanent buildings, vehicles, outside, or combination thereof.

STANDARDS

1. A temporary use permit from the City is required. The application submittal shall include the applicant's contact information, a description of the temporary use, a Site Plan (see **Sec. 36-5.B. Site Plans**), the date(s) of operation, and the property owners' written consent.

2. The temporary use may occupy up to 25 percent of the parking area if there are 20 spaces or less; 15 percent between 21 and 50 spaces; or 10 percent if there are more than 50 spaces. The temporary use shall not obstruct accessible parking spaces. There must still be adequate room for traffic circulation around the temporary use.

3. All uses proposed to be located in City parks shall comply with Chapter 20 Parks and Recreation of the Municipal Code.

4. Additional Restrictions:

a. Christmas Trees: Sales shall not occur before November 15 or after December 31.

b. Fireworks: Sales shall not occur before June 20 or after July 6. Sale of fireworks is also permitted three calendar days preceding and including New Year's Day, Chinese New Year and Cinco de Mayo of each year.

c. Other Temporary Stands: These uses are permitted for no more than three months for the sale of seasonal merchandise and for no more than 30 calendar days for nonseasonal merchandise.

d. Carnival or amusement park: Permitted for no more than 14 calendar days at a single location one time in a calendar year (not including the time required to set up and take down the structures associated with the use). Additional time requires a Special Use Permit.

e. Yard, garage or rummage sales, fund raising or celebration activities for nonprofit organization: These types of uses shall be conducted for no more than four calendar days, three times at one location in a calendar year. No permits are required for these uses when conducted from an individual's dwelling or an institution. If conducted from a business or other property not used mainly for residential or institutional purposes, all requirements for temporary uses must be met.

Public and Institutional Uses

Child Care

36. Child Care Center

CLASSIFICATION

A facility licensed by the State that provides care, services, and supervision for less than 24 hours a day to children, and is located in a nonresidential setting. (N.M. Code R. § 8.16.2.7(I))

37. Child Care Home (≤6)

CLASSIFICATION

A private dwelling licensed by the State that provides care, services and supervision for a period of less than 24 hours of any day for no more than 6 children, where the licensee resides in the home and serves as the primary educator. (N.M. Code R. § 8.16.2.7(AA))

STANDARDS

Licensee must reside in the home and serve as the primary educator. Subject to Home Occupation standards (see #23), except maximum number of patrons.

38. Group Child Care Home (7-12)

CLASSIFICATION

A private residence licensed by the State that provides care, services, and supervision for 7 but not more than 12 children, where the licensee resides in the home and serves as the primary educator. (N.M. Code R. § 8.16.2.7(CC))

STANDARDS

Licensee must reside in the home and serve as the primary educator. Subject to Home Occupation standards (see #23), except maximum number of patrons.

Schools

39. School (K-8)

CLASSIFICATION

A public or private institution approved by the State for the teaching of children between the grades of kindergarten and 8th grade, often referred to as primary, elementary, and/or middle school.

STANDARDS

All sites shall have a minimum of one acre. See **Sec. 38-2.N.7. Loading and Stacking** for applicable requirements.

40. School (9-12)

CLASSIFICATION

A public or private institution approved by the State for the teaching of children between the grades of 9th and 12th grade, often referred to as secondary and/or high school.

STANDARDS

This use shall be located on a collector or higher designated roadway. All sites shall have a minimum of one acre. See **Sec. 38-2.N.7. Loading and Stacking** for applicable requirements.

41. School (College or University)

CLASSIFICATION

An institution recognized by the State, other than a technical or trade school, that provides full-time or part-time secondary education beyond grades 9-12, and awards associate, baccalaureate or higher degrees of education.

STANDARDS

This use shall be located on a Collector or higher designated roadway. All sites shall have a minimum of one half-acre.

42. School (Commercial, Trade, or Technical)

CLASSIFICATION

An institution for the teaching and on-site instruction of industrial, clerical, managerial, or artistic skills.

Public/Semi-Public

43. Cemetery or Columbarium

CLASSIFICATION

A site, building, or structure used for the burial of the human dead, mausoleums, and mortuaries when operated in conjunction with and within the boundaries of such site, building, or structure.

STANDARDS

Any cemetery site shall contain at least five acres and shall be located on a major local or higher designated roadway. A columbarium shall be located on a major local or higher designated roadway with the lot size meeting the zoning district minimum lot size.

44. City Facility or Building

CLASSIFICATION

A building or structure owned by the municipality and used for the administration and operation of a City Department.

45. Community Building or Banquet Center

CLASSIFICATION

A building or complex of buildings that house cultural, recreational, athletic, food service and/or entertainment facilities owned and/or operated by a governmental agency or private nonprofit agency.

46. Community Garden

CLASSIFICATION

A facility operated by a public or semi-public entity for the cultivation of fruits, flowers, vegetables, or other plants for consumption or enjoyment by more than one person or family.

47. Convention Center or Exhibition Hall

CLASSIFICATION

A building or complex of buildings that are designed for the gathering of individuals and display of topic-specific goods, services, or information.

48. Correctional Facility

CLASSIFICATION

Publicly or privately operated facility housing persons awaiting trial or persons serving a sentence after being found guilty of a criminal offense.

49. Landfill

CLASSIFICATION

A lot or part thereof used for the disposal of garbage, sewage, trash, refuse, junk, discarded machinery, or nontoxic waste material by abandonment, dumping, burial, burning, or other means.

50. Library or Museum

CLASSIFICATION

A building or public facility serving as a repository for a collection of natural, scientific, artistic, or literary objects of interest, and designed to be used for viewing, with or without an admission charge. Uses may include the sale of goods and novelties, and the ability to check out materials including books, videos, and other literature.

51. Place of Worship

CLASSIFICATION

A building, structure, or site used for nonprofit purposes by a recognized and legally established group primarily for religious worship and related religious services, including an area for assembly, housing of clergy, and related incidental activities.

52. Public Park

CLASSIFICATION

An area developed for active play and recreation that includes, but is not limited to, open space, sports courts, play equipment, trails, restrooms, and maintenance structures. The park may be either publicly or privately maintained.

STANDARDS

All uses proposed to be located in City parks shall comply with Chapter 20 of the Municipal Code. Recreational events and activities may be permitted subject to Community Development Director approval.

Neighborhood Parks: Generally, these parks will be up to ten acres in size.

Community Parks: Generally, these parks will be up to 100 acres, but not less than ten acres in size, and should be located on a minor arterial or higher designated roadway.

Regional Parks: Generally, these parks will be more than 100 acres in size and should be located on a Principal Arterial.

53. Public Utilities (Major)

CLASSIFICATION

A building, complex of buildings, or facility owned by public or private entity used for the supply and distribution of utilities to the public including water, sanitary sewer, storm drainage, electricity, and gas services.

STANDARDS

The site shall be developed and maintained in conformance with the general character and appearance of the district, and such development shall include landscaping and suitable opaque screening in the form of a solid wall, fence or compact shrubbery around the entire perimeter of the lot or tract, or around the installation itself in cases such as transformers. A wall or fence may be up to ten feet high.

Wastewater treatment plants or transfer stations: Use shall be located at least 300 feet from any residential zoning district boundary.

54. Public Utilities (Minor)

CLASSIFICATION

The installation, alteration, or maintenance by a service provider or government agency of above- or below-ground utility structures, including gas, electrical, steam, or water transmission lines, or their distribution systems, including all necessary poles, wires, mains, drains, sewers, pipes, conduits, hydrants, and other similar equipment associated, but not including buildings. Such use is reasonably necessary for the provision of adequate service by such entity for the public.

STANDARDS

The site shall be developed and maintained in conformance with the general character and appearance of the district, and such development shall include landscaping and suitable opaque screening in the form of a solid wall, fence or compact shrubbery around the entire perimeter of the lot or tract, or around the installation itself in cases such as transformers. A wall or fence may be up to ten feet high.

55. Recycling Drop-Off Point

CLASSIFICATION

A facility for the collection of materials for recycling, excluding vehicles or vehicle parts.

56. Waste or Recycling Processing Facility

CLASSIFICATION

A building or structure used for the collection and processing of waste material, both recyclable or non-recyclable, including the preparation of materials for efficient shipment, compacting, flattening, grinding, crushing, or similar process.

Retail, Service, and Office Uses

Professional Office

57. Professional Office (Local)

CLASSIFICATION

An establishment for the conduct of a variety of businesses in an office setting completely enclosed within a structure less than or equal to 20,000 square feet in area.

58. Professional Office (Regional)

CLASSIFICATION

An establishment for the conduct of a variety of businesses in an office setting completely enclosed within a structure greater than 20,000 square feet in area.

Medical

59. Emergency Room (Standalone)

CLASSIFICATION

A standalone facility that provides immediate or emergent medical treatment as part of a hospital setting. Patients are treated on a walk-in basis and via emergency transport.

STANDARDS

This use shall be located on a Collector or higher designated roadway.

60. Hospital

CLASSIFICATION

An institution used or designed for the housing or treatment of sick or injured patients where they are given medical or surgical treatment intended to restore them to health, and that is licensed by the State. Includes customarily incidental uses, such as a gift shop or cafeteria.

STANDARDS

This use shall be located on a Minor Arterial or higher designated roadway.

61. Medical Clinic or Office

CLASSIFICATION

An institution for the examination and treatment of out-patients by an individual or group of doctors, including dentists, or other licensed members of a human healthcare profession.

62. Medical or Research Laboratory

CLASSIFICATION

An establishment engaged in research concerning biology, microbiology, biochemistry, other life sciences, and general healthcare such as agricultural research, food research, pharmaceutical research, oceanographers, biotechnical research, and other related life science and healthcare research.

63. Urgent Care

CLASSIFICATION

A stand-alone facility, outside of a hospital setting, that provides immediate or emergent medical treatment on a strictly outpatient basis. Patients are generally treated on a walk-in basis and services are not intended for long-term or overnight care.

Lodging

64. Bed and Breakfast

CLASSIFICATION

A commercial establishment within a detached dwelling unit containing dining and bathroom facilities with sleeping rooms for short-term guest lodging. The owner/operator shall live in the dwelling, in another dwelling on the property, or on property adjacent to the establishment.

STANDARDS

In the Rural Character Area, the number of rooms is limited to eight; in all other areas, the number of rooms is limited to 15. Overall design of buildings and/or site design shall be consistent with the residential neighborhood, architecturally compatible with existing buildings or be architecturally compatible with building types normally found in the zoning district in which it is located.

65. Campground

CLASSIFICATION

A lot or parcel used for transient occupancy by lodging in tents, camp trailers, travel trailers, motor homes, or similar movable and temporary sleeping quarters, excluding mobile homes.

66. Hotel or Motel

CLASSIFICATION

A commercial establishment providing sleeping accommodations and customary lodging services, including maid service, the furnishing and upkeep of furniture and linens, and telephone and desk service, in which rooms are accessed by a hallway internal to the building or externally via an exposed hallway, balcony, parking lot or sidewalk.

67. Recreational Vehicle Park

CLASSIFICATION

A lot or parcel used for the accommodation of recreational vehicles for recreational use or transient lodging, including associated uses such as laundry, restroom, and shower facilities.

STANDARDS

1. Recreational vehicle (RVs), when used for temporary or permanent living purposes, shall be located solely in a recreational vehicle park (RVP) except as approved by the Community Development Director as follows:

   a. Arrangements for temporary construction yards,

   b. One RV temporarily located on a single-family lot, or

   c. Other temporary arrangement (e.g., emergency shelter).

2. Permitted uses in an RVP.

   a. Recreational vehicle parking.

   b. One manufactured or site-built home for the RVP caretaker.

   c. Accessory structures, swimming pools, home occupations, and recreation areas and buildings.

   d. There shall be a community building or buildings that provide for the recreational and service needs of occupants of the RVP. It may include management offices, dumping stations, restrooms, showers, laundry/dry cleaning facilities and other uses and structures

customarily incidental to operation of an RVP. The area of the community building or buildings may not be calculated as part of the required recreational area.

e. Convenience establishments of a commercial nature, including laundries, stores, beauty shops, and barber shops, may be permitted in RVP subject to the following restrictions:

i) Such establishments and their parking area shall not occupy more than seven percent of the area of the park;

ii) Shall be discontinued if the RVP is discontinued.

iii) Shall be located, designed, and intended to serve frequent trade or service needs of persons residing in the park only; and

iv) Shall present no visible evidence of their commercial character outside the park.

2. The minimum RVP size is two acres and each RV space shall be a minimum of 1,200 square feet not including sidewalks or streets. The density of spaces in any RVP shall not exceed 20 spaces per acre.

3. No structure within an RVP shall exceed 35 feet in height.

4. Development Standards

a. Other Applicable Regulations. All City requirements must be met unless specifically noted herein, including but not limited to Landscaping, Sidewalks, Signs, Streetlighting, and Off-Street Parking. All federal, state, and local accessibility requirements shall be met.

b. Screening. All RVPs shall have opaque perimeter walls and/or fences at least five feet in height installed prior to the issuance of a certificate of occupancy for the RVP or each phase of the RVP. Each RV space shall have a wall and/or fence defining the RVS.

c. Utilities. Utility placement shall be approved by the Utilities Department Director. Water, sewer, electricity, telephone, and other necessary utilities shall be available at the RVP. A means for emptying sewage holding tanks shall be provided and approved by City and the State Environment Department.

d. Streets.

i) RVPs shall have direct motor vehicle access to or be located on a collector or higher designated roadway. No entrance to or exit from an RVP shall be permitted through a residential zoning district.

ii) Private access ways and individual space arrangements shall be designed to accommodate the frequent movement of recreational vehicles.

There shall be at least three parking spaces designated in the RVP for each two RV spaces. Parking may be provided in common parking areas, on individual RV spaces, and/or on RVP streets. All parking (including RV spaces) must be paved to meet City standards.

iv) All streets within an RVP shall meet the following minimum widths:

Figure 36-3-4. Required Pavement Width by Roadway Type

Parking Permitted*	Local, one way (Serving fewer than 20 RVs)	Local, two way (Serving 20 to 50 RVs)	Collector (Serving more than 50 RVs)
No	14’	18’	20’
One side	18’	27’	29’
Both sides	27’	36’	38’

* Parallel parking lanes are to be striped at nine feet in width.

e. Sidewalks. There shall be a network of sidewalks at least five feet in width connecting RV spaces with each other and with RVP facilities.

f. Recreation. There shall be an active, usable recreational area(s) for tenants, comprising at least five percent of the gross site area, which shall not include required setback areas or similar areas not usable for recreational activities.

g. Refuse. Adequate refuse collection facilities shall be provided, constructed, and maintained in accordance with all municipal health regulations, and shall be screened from view and designed to bar animals from access to refuse. Refuse shall be removed from collection sites at least once a week.

Recreational and Entertainment

68. Botanical Garden

CLASSIFICATION

A public or private facility for the demonstration and observation of the cultivation of flowers, fruits, vegetables, or ornamental plants.

69. Golf Course

CLASSIFICATION

A public or private amusement enterprise including nine or more holes of golfing, which may include an associated clubhouse. This use does not include mini-golf courses and driving ranges.

70. Indoor Entertainment

CLASSIFICATION

An amusement enterprise offering entertainment or games of skill to the general public for a fee or charge, wherein all portions of the activity takes place indoors, including, but not limited to, a bowling alley, billiard/pool hall, firing /archery range, skating rink, racquetball/handball club, batting cages, indoor tennis courts/club, indoor swimming pool, video game arcade, and indoor trampoline park.

71. Outdoor Entertainment

CLASSIFICATION

An amusement enterprise offering entertainment or games of skill to the general public for a fee or charge, wherein any portion of the activity takes place outdoors including, but not limited to, golf driving range, miniature golf course, temporary or permanent amusement park, firing/archery range, batting cages, automobile racetrack, go-cart tracks, swimming pool, sport arena/complex or track, or zoo.

STANDARDS

Parking and structures shall be located a minimum of 300 feet from any NH zoning district boundary. Swimming pools must meet requirements outlined in Chapter 30 Building Code and in **Sec. 38-8. Fencing, Screening, and Buffering**.

Retail Shops and Services

72. Adult Business

CLASSIFICATION

A sexually oriented business, including, but not limited to, an adult arcade; adult book or video store; adult cabaret; adult dancing establishment; adult novelty store; and adult theater.

STANDARDS

1. Such uses shall be located at a minimum of 1,000 feet from a property line of a:

   a. School;

   b. Church;

   c. Nursery/day care; or

   d. Public park or recreational facility.

2. These uses shall be permitted, provided such uses are located at a minimum of 500 feet from the property line of a liquor establishment. The distance shall be measured from the Adult Bookstore/Video Store or the Adult Amusement Establishment to the property line of the liquor establishment; and

3. The operator of an Adult Bookstore/Video Store or Adult Amusement Establishment shall affix a sign to the exterior wall nearest the primary entrance to the structure in which such enterprise is located. This sign does not count toward the requirements included in **Sec. 38-10. Signs**. Such signs shall be 36" × 18", shall have red lettering (letters shall be 2" in width and 3" in height) on a white background and it shall state as follows:

   WARNING: ADULT BOOKSTORE/VIDEO STORE

   THE BUSINESS WITHIN IS SEXUALLY ORIENTED

   or

   WARNING: ADULT AMUSEMENT ESTABLISHMENT

   THE BUSINESS WITHIN IS SEXUALLY ORIENTED.

4. Distance measurements shall include streets, alleys, channels, canals, other public rights-of-way and railroad right-of-way.

73. Art Studio or Instruction

CLASSIFICATION

An establishment that engages in the creation of artistic effects, or the instruction, for a fee, of artistic skills and lessons including, but not limited to, painting, floral design, dance, photography, glass blowing, illustration, and woodworking.

74. Bank or Financial Institution

CLASSIFICATION

An establishment for the deposit, custody, loan, exchange or issue of money, the extension of credit, and facilitating the transmission of funds excluding pawnshops, check cashing businesses, payday advance/loan businesses, car title loan businesses and bail bonds. A drive-thru may be permitted only as an accessory use (see #22 Drive-Thru).

75. Flea Market

CLASSIFICATION

An open-air market in which spaces are rented or leased for the purpose of selling second-hand articles and home crafts.

76. Gas Station

CLASSIFICATION

Any facility, equipment, or fixture, including a canopy, used for retail dispensing of motor vehicle fuels primarily to passenger vehicles.

STANDARDS

Where permitted within the NH districts, this use shall be located on a Collector or higher designated roadway.

See **Sec. 38-2.N.6.a)ii) Gas Pump Islands** for additional applicable requirements.

77. Grocery (Local)

CLASSIFICATION

A retail establishment primarily selling prepackaged and perishable food as well as other convenience and household goods that is 30,000 square feet or less.

78. Grocery (Regional)

CLASSIFICATION

A retail establishment primarily selling prepackaged and perishable food as well as other convenience and household goods that is greater than 30,000 square feet.

STANDARDS

Maximum Vehicular Parking Requirements:

1. For development that requires up to 20 spaces or less, new development shall not provide more than 50% more than the minimum number of off-street vehicular parking spaces in **Figure 36-3-2. Permitted Use Chart** based on the proposed uses(s).

2. For development that requires more than 20 spaces, new development shall not provide more than 20% percent more than the minimum number of off-street vehicular parking spaces in **Figure 36-3-2. Permitted Use Chart** based on the proposed uses(s).

79. Liquor or Package Store

CLASSIFICATION

A retail establishment primarily selling liquor, beer, wine, and/or other alcoholic beverages for off-site consumption.

STANDARDS

Alcohol sales for off-premises consumption is allowed, provided that the establishment complies with all New Mexico State law requirements, including but not limited to any required spacing from other uses or facilities.

80. Payday Loans, Check Cashing, or Bail Bonds

CLASSIFICATION

An establishment engaged in providing short-term loans, payouts of checks, or lump sums of money exclusive of a bank or financial institution.

81. Pawn Shop

CLASSIFICATION

An establishment that engages in the business of loaning money on the security of pledges, deposits, or conditional sales of personal property, or the purchase or sale of personal property.

82. Personal Services

CLASSIFICATION

An establishment primarily engaged in the provision of frequent or recurrent needed services of a personal nature. Uses include but are not limited to, beauty and barber shops, laundry and drycleaning pick-up/drop-off establishments, permanent cosmetics, and incidental retail sales of products related to the provided services.

83. Retail Store (Local)

CLASSIFICATION

A commercial establishment no greater than 25,000 square feet that provides goods and/or services directly to a consumer, where such goods are available for immediate purchase and removal from the premises by the purchaser. Common uses and stores include but are not limited to, specialty shops, pharmacies, new and packaged automobile parts, convenience stores, hardware supply, upholstery shops, sports equipment sales, and clothing sales.

STANDARDS

Stores shall not exceed 3,000 sqft in the NH-1 District to ensure compatibility with residential development.

84. Retail Store (Regional)

CLASSIFICATION

A commercial establishment greater than 25,000 square feet that provides goods and/or services directly to a consumer, where such goods are available for immediate purchase and removal from the premises by the purchaser. Common uses and stores include but are not limited to, pharmacies, new and packaged automobile parts, convenience stores, hardware supply, upholstery shops, sports equipment sales, and clothing sales.

STANDARDS

Maximum Vehicular Parking Requirements:

1. For development that requires up to 20 spaces or less, new development shall not provide more than 50% more than the minimum number of off-street vehicular parking spaces in **Figure 36-3-2. Permitted Use Chart** based on the proposed uses(s).

2. For development that requires more than 20 spaces, new development shall not provide more than 20% percent more than the minimum number of off-street vehicular parking spaces in **Figure 36-3-2. Permitted Use Chart** based on the proposed uses(s).

85. Retail Store (Sundry)

CLASSIFICATION

A commercial establishment that engages in the sale of various miscellaneous items that are usually of small value and insignificant enough to be mentioned individually including, but not limited to dry goods, toiletries, household supplies, and perishable and nonperishable foods.

STANDARDS

A minimum of 10 percent of the floor area of the Retail Store (Sundry) must be dedicated to fresh produce and designated as such within the Certificate of Occupancy.

Stores shall not exceed 3,000 sqft in the NH-1 District to ensure compatibility with residential development.

86. Shopping Center

CLASSIFICATION

One or more connected buildings or structures used for commercial entities which are planned, constructed, developed, owned or managed independently or as a total entity and share access, parking, drainage, landscaping, and signage.

STANDARDS

Maximum Vehicular Parking Requirements:

1. For development that requires up to 20 spaces or less, new development shall not provide more than 50% more than the minimum number of off-street vehicular parking spaces in **Figure 36-3-2. Permitted Use Chart** based on the proposed uses(s).

2. For development that requires more than 20 spaces, new development shall not provide more than 20% percent more than the minimum number of off-street vehicular parking spaces in **Figure 36-3-2. Permitted Use Chart** based on the proposed uses(s).

Food and Beverage

87. Bar

CLASSIFICATION

An establishment that is primarily engaged in the sale of alcoholic beverages to be consumed on the premises including, but not limited to, taverns, night clubs, private clubs, and similar facilities.

STANDARDS

Alcohol sales for on-premises consumption is allowed, provided that the establishment complies with all New Mexico State law requirements, including but not limited to any required spacing from other uses or facilities.

88. Cafe

CLASSIFICATION

A small-scale food and beverage establishment that provides a casual dining experience. The primary focus of a Cafe is to serve a variety of hot and cold beverages along with light meals and snacks such as pastries, sandwiches, and salads. Cafes often include limited retail sales.

STANDARDS

In the NH-1 district, Cafes shall not exceed 3,000 square feet in area and Drive-Thrus are not permitted.

89. Food Truck Park

CLASSIFICATION

A lot or parcel used for the temporary parking of vehicle mounted food service establishments designed to be readily movable, in which food and beverages are sold for on- or off-site consumption, and may also include other mobile vendors offering retail goods and services.

STANDARDS

1. Food truck parks are subject to all regulations and required certifications from the New Mexico Health Department.

2. Hours of operation shall be limited to 8 a.m. to 9 p.m.;

3. Signage for the park is allowed in accordance with **Sec. 38-10. Signs**. Within the park, signs are allowed on the vehicle itself and each truck is permitted one Sidewalk Sign;

4. A drive-thru is not permitted in conjunction with the food truck park;

5. Food truck vendors shall not operate in required parking spaces, driveways, or fire lanes; and

6. A waste receptacle is required for every food truck vending unit and waste shall be removed daily.

90. Private Club or Lodge

CLASSIFICATION

An organization operated solely for recreational, fraternal, social, patriotic, political, benevolent or athletic purposes, but not for pecuniary gain, and that only sells alcoholic beverages incidental to its operation.

91. Restaurant

CLASSIFICATION

An establishment that prepares and sells food and beverages for immediate or off-site consumption, in which customers order at a counter or in similar fashion prior to sitting within the building or on the premises.

92. Tap Room or Tasting Room

CLASSIFICATION

An establishment associated with a local brewery, winery, or distillery operating under an approved Small Brewer's License as governed by Section 60-6A-26.1 NMSA 1978, an approved Winegrower's License as governed by Section 60-6A-11 NMSA 1978, or an approved Craft Distiller's License as governed by Section 60-6A-6.1 NMSA 1978 where beer, wine, or spirits are available for consumption on-site.

Any production of alcohol as regulated by State law under one of these licenses is considered Artisan Manufacturing (see #122).

Such use may or may not include food sales.

STANDARDS

Alcohol sales for on- or off-premises consumption is allowed, provided that the establishment complies with all New Mexico State law requirements, including but not limited to any required spacing from other uses or facilities.

Commercial, Auto, and Industrial Uses

Commercial

93. Catering or Commercial Off-Site Kitchen

CLASSIFICATION

An establishment engaged in cooking, preparing, and delivering food or beverages for off-site consumption.

94. Contractors Yard or Building Material Sales

CLASSIFICATION

An establishment or structure used for the repair, maintenance, or storage of a contractor's vehicles and equipment, or sales of materials used in construction including, but not limited to, lumber, hardwood, stone, or brick.

STANDARDS

Gas tanks shall be permitted only when meeting Fire Code requirements as adopted by the City, when receiving approval from the Fire Department, or when receiving approval from the State of New Mexico LP Gas Bureau. Landscaping and suitable opaque screening in the form of a solid wall, fence or compact shrubbery is required to screen the tank from view from a public right-of-way.

95. Crematorium

CLASSIFICATION

A place used for the preparation and incineration of the human or animal deceased.

96. Dispatch Service

CLASSIFICATION

A business engaged in providing off-site services, where the business' primary offices, vehicles, and equipment are located on-site with little to no walk-in traffic. Services include, but are not limited to, cleaning and maid, plumbing, pest control, and locksmithing.

97. Dry Cleaning Plant

CLASSIFICATION

An establishment used for the cleaning of clothing, linen, and other textiles through a process involving the use of solvents. For drycleaning pick-up/drop-off service, see #82 Personal Services.

98. Equipment Rental, Sales, or Repairs

CLASSIFICATION

An establishment engaged in the repair, rental, and leasing of heavy construction equipment for off-site use.

99. Film Staging or Production Studios

CLASSIFICATION

An establishment engaged in the staging and/or recording of live, video, or audio productions including, but not limited to, music, commercials, motion pictures, and theatre performances.

100. Funeral Home

CLASSIFICATION

An establishment used for the storage of human bodies prior to their burial or cremation, which may also be used for the preparation of the deceased for burial and the display of the deceased and ceremonies and services connected with.

101. Industrial Printing or Distribution

CLASSIFICATION

An establishment engaged in the manufacturing and distribution of media to the public including, but not limited to, newspapers, books, and/or similar media.

102. Manufactured Housing or Building Sales

CLASSIFICATION

A building, structure, or lot used for the marketing, sales, and distribution of Manufactured Homes.

103. Postal or Printing Services

CLASSIFICATION

An establishment engaged in the retail sale of stationery products, and services related to packaging, mail, and printing media for walk-in consumers.

104. Repair Shop

CLASSIFICATION

An establishment engaged in the repair and service of small products including, but not limited to, watches, clocks, jewelry, small appliances and electronics, instruments, and cameras.

105. Self-Storage Warehouse

CLASSIFICATION

A structure or building with enclosed storage space, divided into separate compartments, that is provided for use by individuals or businesses in exchange for payment or rent.

106. Wireless Communication Facilities

CLASSIFICATION

Includes antenna, towers, communication structures, and other similar vertical structures.

STANDARDS

See **Sec. 38-11. Wireless Communication Facilities**.

Cannabis-Related

107. Cannabis Dispensary

CLASSIFICATION

A specialized retail store that sells cannabis and cannabis-related products for medicinal or recreational use.

STANDARDS

Cannabis dispensaries shall comply with all State of New Mexico regulatory and licensing requirements. Cannabis retailers shall not be located within 300 feet from a school or daycare center that was in existence at the time the cannabis establishment was licensed, excepting commercial schools and schools of higher learning serving those 18 years and older. No cannabis retailer shall be located within 300 feet of another cannabis retailer without an approved Special Use Permit. On-site consumption of cannabis is limited to indoors where licensed and in compliance with State law and access to the cannabis consumption area is restricted to persons 21 years of age and older.

108. Cannabis Production

CLASSIFICATION

The growing and harvesting of cannabis for commercial purposes that occurs entirely or primarily within an enclosed structure and/or any type of processing or manufacturing of cannabis-based products, which operation is licensed by the State.

109. Integrated Cannabis Business

CLASSIFICATION

A licensed Integrated Cannabis Business or Vertically Integrated Cannabis Establishment (VICE) as permitted and regulated by the State. Operations exceeding 10 percent of total floorspace in an Integrated Cannabis Business must be individually allowed by the Use Chart (for example, Cannabis Dispensary and Cannabis Production) and any standards for any individual uses must be followed.

STANDARDS

Integrated cannabis businesses shall comply with all State of New Mexico regulatory and licensing requirements. Cannabis retailers shall not be located within 300 feet from a school or daycare center that was in existence at the time the cannabis microbusiness was licensed, excepting commercial schools and schools of higher learning serving those 18 years and older. No cannabis retailer shall be located within 300 feet of another cannabis retailer without an approved Special Use Permit. On-site consumption of cannabis is limited to indoors where licensed and in compliance with State law.

Automotive and Transportation

110. Auto Sales or Rental

CLASSIFICATION

An establishment engaged in the sale, lease, or rental of new or used automobiles such as cars, motorcycles, and light-duty trucks, including ancillary uses such as minor vehicle repair and service, sales offices, and outdoor storage of vehicles.

STANDARDS

See **Sec. 38-8.E.5. Auto Storage and Salvage Yards** for screening requirements.

111. Auto Repair and Services (Major)

CLASSIFICATION

An establishment engaged in the general repair, rebuilding, or reconditioning of engines, motor vehicles, or trailers including, but not limited to, body work, framework, welding, overall painting, and tire replacement and disposal.

STANDARDS

See **Sec. 38-8.E.5. Auto Storage and Salvage Yards** for screening requirements.

112. Auto Repair and Services (Minor)

CLASSIFICATION

An establishment engaged in minor repairs of engines, motor vehicles, or trailers that does not require the removal of the engine head or pan, engine, transmission, or differential of a vehicle, including, but not limited to, minor repair or maintenance, oil changing, and minor interior upholstery work.

STANDARDS

See **Sec. 38-8.E.5. Auto Storage and Salvage Yards** for screening requirements.

113. Car Wash

CLASSIFICATION

An establishment engaged in the washing, waxing or cleaning of a standard passenger automobile, in which the owner of the vehicle washes the vehicle or waits while the facility washes the vehicle the vehicle for a fee.

STANDARDS

Where permitted within the NH districts, this use shall be located on a Collector or higher designated roadway

114. Commercial Parking Lot or Garage

CLASSIFICATION

A lot or structure used for the parking of passenger vehicles with or without an assessed fee.

STANDARDS

Parking lots or garages must be within 500 feet of any office, commercial, or industrial use or zoning district. The parking area shall be suitably landscaped, paved and drained, lighted, and maintained free of debris.

See **Sec. 38-8.E. Required Screening** for screening requirements for all parking structures.

115. Heliport/Helistop

CLASSIFICATION

A designated space for the takeoff and landing of aerial vehicles, including helicopters and drones. This can range from simple, temporary setups with minimal facilities (helistops and drone launchpads) to more complex, permanent installations with extensive support services such as fueling, maintenance, and passenger terminals (heliports).

STANDARDS

Uses shall be in accordance with federal Airspace Protection Regulations, including 14 CFR, Part 77.

116. Passenger Transportation Terminal

CLASSIFICATION

A building or complex of buildings, parking garages or lots, and associated structures which provide access, activities, and facilities of for the use, support, and convenience of the public traveling by, but not limited to, airplane, bus, cab, and rail.

STANDARDS

Airports:

1. Land uses at the Las Cruces International Airport (LCIA) property will be in accordance with current City-Federal (Federal Aviation Administration) agreements and the adopted LCIA Master Plan. Parking, drainage, landscaping and other development standards are determined by the City Council through Chapter 7.5 of the Municipal Code, as amended, and Resolution 98-371, as amended. The LCIA Master Plan substitutes for a Special Use Permit. No special use permit is required.

2. Properties within 20,000 feet of an active runway at any airport will not be allowed to conduct land uses that would violate Federal Airspace Protection Regulations, including 14 CFR (Code of Federal Regulations), Part 77.

3. All other airports shall comply with 14 CFR, Part 77. Development standards, e.g., parking requirements, required runway paving standards, land uses will be determined as part of the Special Use Permit (SUP) review process. A Noise Exposure Study shall be submitted with the SUP application.

117. Salvage or Wrecking Yard

CLASSIFICATION

A lot or portion thereof used for the dismantling, wrecking, storage, sale, or dumping of junk motor vehicles or trailers for their parts.

STANDARDS

See **Sec. 38-8.E.5. Auto Storage and Salvage Yards** for screening requirements.

118. Semi-Truck Wash

CLASSIFICATION

An establishment engaged in the washing, waxing, or cleaning of a heavy-duty truck or semi-truck, in which the owner of the vehicle washes the vehicle or waits while the facility washes the vehicle the vehicle for a fee.

119. Truck, Trailer, Boat, and RV Sales or Rental

CLASSIFICATION

An establishment engaged in the sale, lease, or rental of new or used semi-trucks, trailers, boats, or RVs, including ancillary uses such as minor vehicle repair and service, sales offices, and outdoor storage of vehicles.

Light Industrial

120. Animal Processing (Slaughterhouse)

CLASSIFICATION

A facility engaged in the slaughtering and processing of animals and the refining of their byproducts for sale or distribution.

121. Animal Processing (Taxidermy)

CLASSIFICATION

An establishment engaged in the preparing, stuffing, and mounting of the skins of animals.

122. Artisan Manufacturing

CLASSIFICATION

Small-scale manufacturing and related processes or activities conducted indoors – including but not limited to application, assembling, compounding, design, fabrication, growing, making, packaging, processing, sculpting, teaching, treating of crafts or products, or welding – often by an artist, artisan, or craftsperson working with ceramic, clay, electronics, metal, paper, plastic, stone, textiles, wood, or similar materials either by hand or with minimal automation or technology, including but not limited to 3D printing. This use includes incidental storage, wholesaling of products manufactured at the facility, and direct sales to consumers.

This use includes the production of beer, wine, or spirits associated with an approved Small Brewer's License as governed by Section 60-6A-26.1 NMSA 1978, an approved Winegrower's License as governed by Section 60-6A-11 NMSA 1978, or an approved Craft Distiller's License as governed by Section 60-6A-6.1 NMSA 1978. Annual production shall be limited by State statute. This use does not include alcohol sales. Alcohol sales associated with brewing on-site is regulated pursuant to the tap room or tasting room use. See #92 Tap Room or Tasting Room.

123. Data Center

CLASSIFICATION

A facility used to house and manage computer systems, servers, networking equipment, and other related components for the purpose of collecting, processing, storing, and disseminating large amounts of data.

STANDARDS

Noise attenuation measures are required to ensure noise levels do not exceed 55 dBA when measured at the property boundary adjacent to land zoned for an NH District.

124. Hazardous Chemical Manufacturing or Storage

CLASSIFICATION

A facility not elsewhere classified engaged in the manufacturing and development of chemical products by conducting a chemical process on organic or inorganic raw material whereby hazardous or toxic waste or byproducts are created and disposed of. This definition also includes the on-site storage of such products.

125. Manufacturing or Fabricating

CLASSIFICATION

An indoor facility, not elsewhere classified, engaged in the assembly, fabrication, production, packaging, or other industrial processing of products primarily from extracted or raw materials or the bulk storage and handling of such products and materials, or an industrial establishment having potential to produce limited smoke, noise, dust, glare, odors or vibration off-site. Such uses commonly include an office component. A warehouse or distribution center is not typically open to the public.

STANDARDS

In the LI District, Manufacturing or Fabricating uses shall not exceed 60,000 sqft of enclosed building area.

All operations must take place inside a building; however, outside storage is permitted as described in **Sec. 38-8.E.3. Outside Storage**.

126. Warehouse or Distribution Center

CLASSIFICATION

A building or structure used for the storage of goods or products for wholesale, distribution, or transfer to another location via freight, truck, or other similar transit method. Such uses commonly include an office component. A warehouse or distribution center is not typically open to the public.

Heavy Industrial

127. Above-Ground Storage Tanks for Hazardous Materials

CLASSIFICATION

A facility used for the above ground storage of flammable and combustible liquids, including compressed gases or liquified petroleum gas, for use, sale or wholesale, or distribution.

STANDARDS

Tanks shall be permitted only when meeting Uniform Fire Code requirements as adopted by the City of Las Cruces, when receiving approval from the Las Cruces Fire Department, or when receiving approval from the State of New Mexico LP Gas Bureau.

128. Energy Production or Refinement

CLASSIFICATION

A facility engaged in converting one or more energy sources, including, but not limited to water, fossil fuel, nuclear, or solar, into electrical energy for distribution and utilization.

129. Extraction of Raw Materials

CLASSIFICATION

A facility engaged in the excavation, storage, and distribution of raw resources from the Earth, such as sand, gravel, minerals, lumber, or similar resources.

STANDARDS

Such uses shall be a minimum of 400 feet from a residential district boundary or from an existing residential property.

Animals and Agriculture

130. Animal Raising (Commercial Feed Lots)

CLASSIFICATION

A lot or parcel used for feeding livestock, poultry, or small animals for commercial purposes usually in lots, pens, ponds, sheds, or buildings where food is supplied primarily by means other than grazing, foraging, or other natural means. These operations meet the U.S. Environmental Protection Agency's latest regulatory definition of a Concentrated Animal Feeding Operation (CAFO). The current definitions can be found at https://www3.epa.gov/npdes/pubs/sector_table.pdf.

STANDARDS

See Chapter 7 of the Las Cruces Municipal Code for additional requirements.

131. Animal Raising (General Agriculture)

CLASSIFICATION

The raising and breeding of animals or production of animal products as the principal use of the lot. Typical uses include grazing, ranching, dairy farming, poultry farming, and beekeeping in accordance with Chapter 7 of the Las Cruces Municipal Code. This use does not include slaughterhouses, feedlot operations, and any use included in #130 Animal Raising (Commercial Feed Lots).

STANDARDS

See Chapter 7 of the Las Cruces Municipal Code for additional requirements.

132. Animal Services (Indoor Only)

CLASSIFICATION

A facility engaged in the medical or surgical treatment, grooming, or overnight boarding or day care of animals within an enclosed building.

133. Animal Services (With Outdoor Pens)

CLASSIFICATION

A facility engaged in the medical or surgical treatment, grooming, or overnight boarding or day care of animals within enclosed indoor and outdoor spaces.

134. Commercial Crop Farming

CLASSIFICATION

An area used for the growing of farm products, vegetables, fruits, flowers, trees, and/or grain and including the necessary accessory structures or uses for raising, treating and storing products raised on the premises.

135. Indoor Agriculture

CLASSIFICATION

The commercial breeding, planting, nourishing, caring for, gathering, or processing of animals or plants, such as fruits, flowers, vegetables, or other similar plants, completely within an enclosed building or structure.

136. Plant Nursery

CLASSIFICATION

A facility for the growing, display, or sale of plant stock, seeds or other horticulture items, including the raising of plants outdoors or in greenhouses for sale either as food or for use in landscaping.

137. Stables or Training

CLASSIFICATION

A lot or portion thereof used for the commercial boarding and training of livestock, such as horses, mules, ponies, and donkeys, for hire by the public.

138. Wind or Solar Farm

CLASSIFICATION

A lot or parcel housing all necessary equipment, such as wind turbines and solar panels, to harness and convert solar and wind energies into electricity for sale or distribution.

Sec. 36-4. Additional Dimensional and Building Design Standards

A. All Development

1. Structures, Items, or Building Projections in Required Setbacks

   a) No structure, item, or building projection, whether a building permit is required or not, shall be permitted within the required setbacks except flagpoles, walls and fences, or decorative structures such as a bird bath.

      i) Flagpoles and similar freestanding vertical items exceeding 6 feet in height must be set back from the property line a distance at least equal to its height to ensure an adequate fall-zone.

   b) A maximum encroachment of six inches into the required side yard setback shall be permitted for the following items:

      i) Security lighting;

      ii) Decorative lighting fixtures;

      iii) Security bars around windows and doors;

      iv) Door hardware and required molding around doors;

      v) Canales and downspouts when canales are capped at the end, open along the top and drainage is directed through the downspouts to appropriate on-lot pond locations in either the front or rear of the property.

   c) The ordinary projection of, for example, porches, stoops, sills, scuppers, cornices, ornamental features, roof overhangs, fireplace chimneys, buttresses and wing walls shall not extend into the required setback area more than two feet.

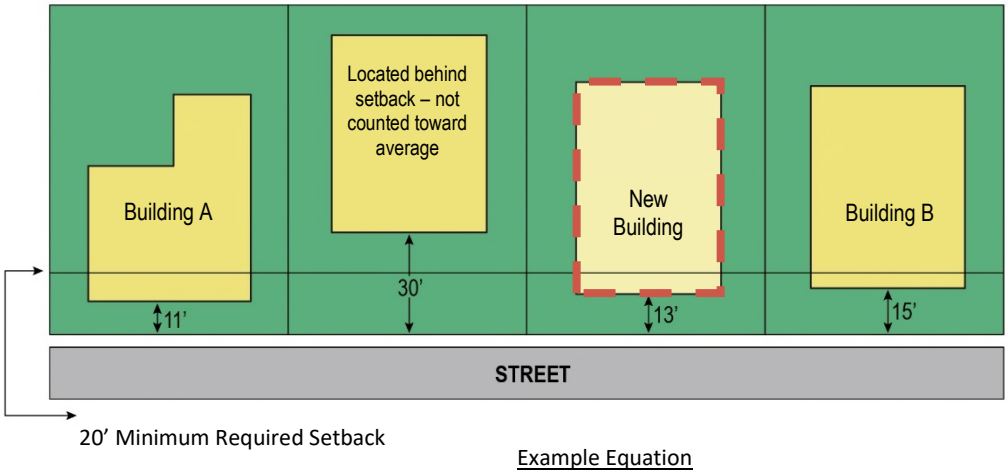
2. Right-of-Way/Easement Encroachments

   There shall be no permanent structures located on right-of-way or public or private easements without written approval of the governing agency.

3. Average Setbacks for Infill Areas

   When at least 40 percent of the lots on the same block face are developed, new buildings or additions to existing buildings may use the required front yard setback, or may extend into the front yard setback up to the average distance established by the existing buildings that are within the required setback.

Figure 36-4-1. Average Setbacks for Infill Development



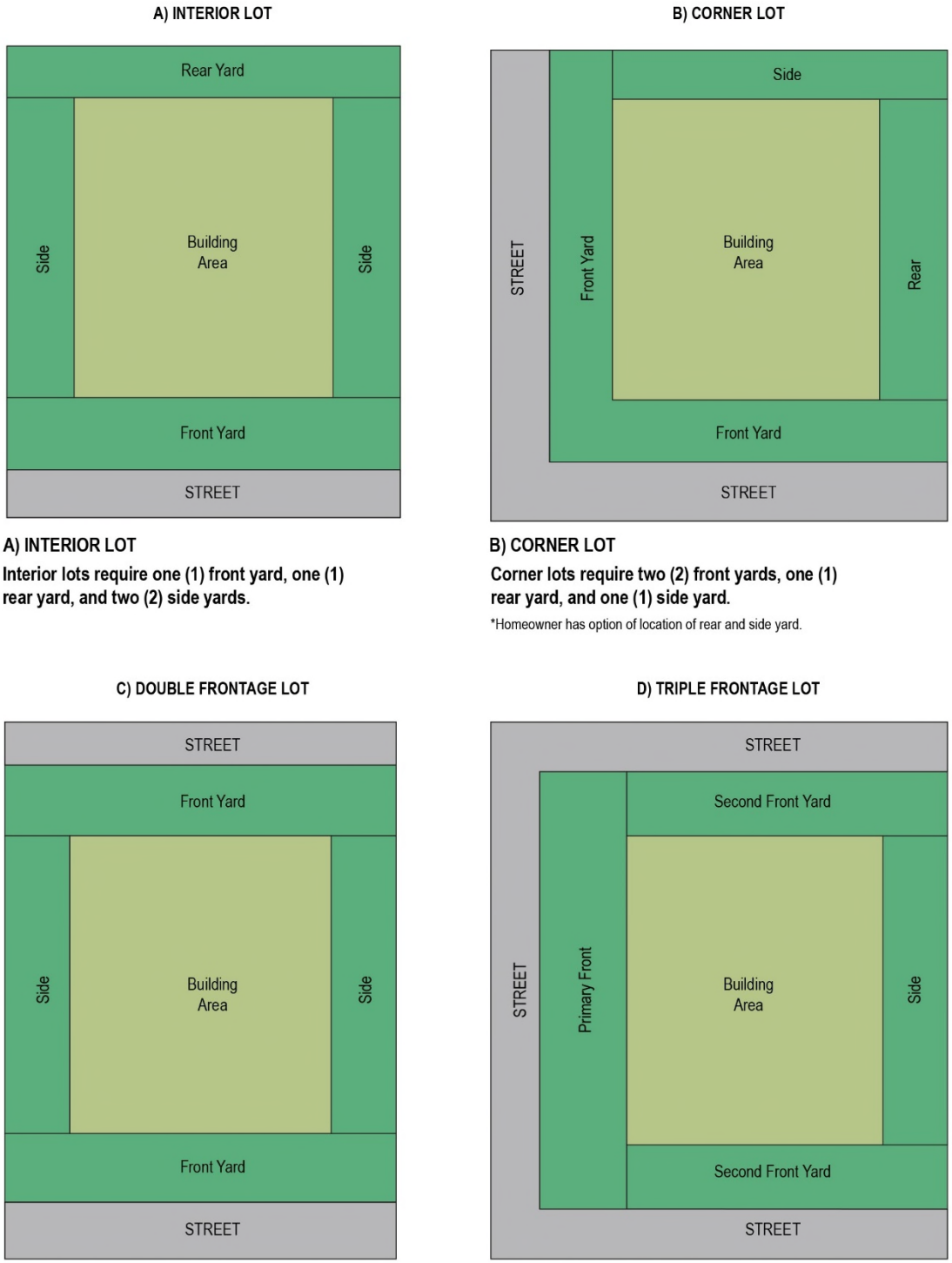
Example Equation

Building A 11' setback + Building B 15' setback = 26'

26' ÷ 2 = 13' setback is permitted for the New Building

4. Lot Requirements
    a) All side lines of lots shall be at approximately right angles to straight street lines and radial to curved street lines.
        i) The Development Review Committee may determine that a variation will provide a better street and lot layout (e.g., improved connectivity within a development, improved access to open space, lessened impact on adjacent properties).
    b) Every lot shall have direct access and at least 20 feet of frontage along a public street or other approved public access easement.
    c) As shown in **Figure 36-4-2. Yard Requirements** "B) Corner Lot", both frontages of a corner lot shall be considered a front yard.
5. Shipping Container Structures
    a) A shipping container structure is a large metal container originally designed for cargo transport and other intermodal freight containers that are reused for residential, retail, or other non-transportation purposes.
    b) Metal shipping containers are not allowed to be used as accessory structures in Zoning Districts, except in the case when the primary structure/dwelling is constructed using shipping containers.
    c) Said shipping containers used for storage purposes are permitted within the CR, Commercial/Retail District (Rural, Suburban, Urban), LI, Light Industrial District (Rural, Suburban, Urban), and HI, Heavy Industrial District (Rural, Suburban, Urban) provided they comply with all requirements of this **Sec. 36-4. Additional Dimensional and Building Design Standards**.
    d) Shipping containers are allowed on private property in all zones temporarily to store building materials and/or construction tools during construction pursuant to an active building permit on the same property or within a centralized location within a construction area. Said container(s) shall be removed upon completion of the project and/or issuance of a certificate of occupancy or completion.
    e) Shipping containers, PODS or similar "you pack" type moving containers are allowed within the front yard (driveway only) of residential uses for the purposes of packing/unpacking in preparation of or after a move to or from the subject property. Use of such containers shall be limited to 21 days (three weeks) after which the unit shall be removed from the property.

Figure 36-4-2. Yard Requirements



A) INTERIOR LOT

Interior lots require one (1) front yard, one (1) rear yard, and two (2) side yards.

B) CORNER LOT

Corner lots require two (2) front yards, one (1) rear yard, and one (1) side yard.

*Homeowner has option of location of rear and side yard.

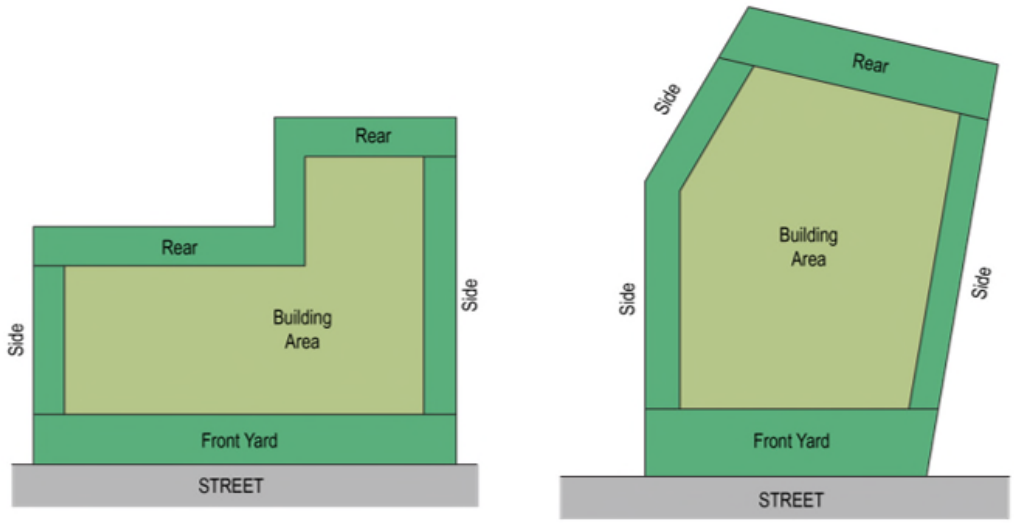
C) DOUBLE FRONTAGE LOT

Double frontage lots require two (2) front yards, and two (2) side yards.

D) TRIPLE FRONTAGE LOT

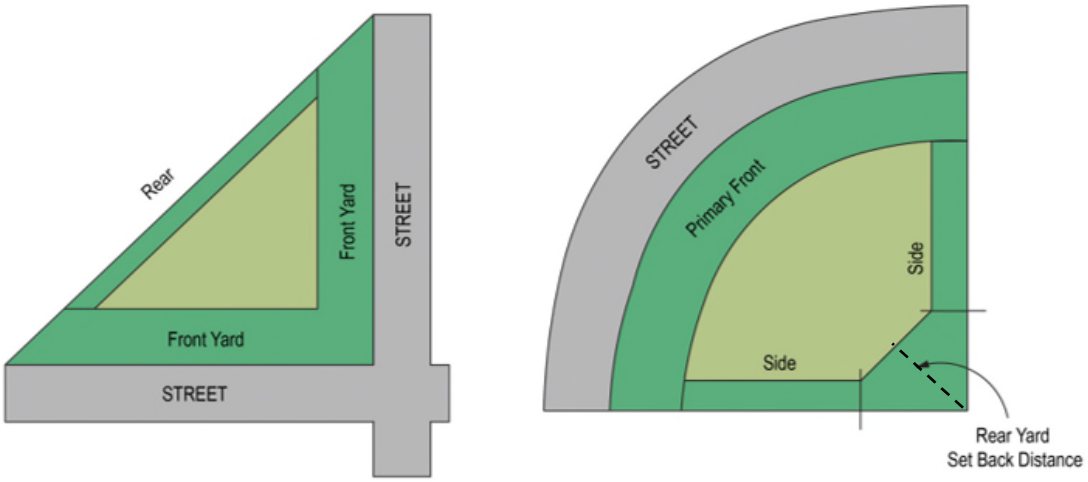
Triple lots require three (3) front yards, and one (1) side yard.

Figure 36-4-3. Yard Requirements for Odd Shaped Lots



A) ODD SHAPED LOTS

On odd shaped lots, the rear yard is determined by the rear line that is most parallel to the front. This pentagonal-shaped lot would require one (1) front yard, (1) rear yard, and three (3) side yards.



B) TRIANGULAR LOT

This triangular lot would require two (2) front yards, one (1) rear yard.

C) PIE SHAPED LOT

This pie shaped lot requires calculation of the rear yard at a line measured from the corner, a distance of the required rear yard, mid-point between the two side property lines.

B. Single-Family Home, Duplex, Triplex, or Quadplex, and Townhouse Residential Development

1. Applicability

   The following requirements apply to all new Single-Family Home, Duplex, Triplex, or Quadplex, and Townhouse residential developments.

2. Accessory Structures

   a) The dimensional regulations in **Figure 36-4-4. Accessory Structure Requirements** shall apply to all Accessory Structures, with the exception of Accessory Structures associated with agricultural, farm, or equestrian uses on residential lots.

Figure 36-4-4. Accessory Structure Requirements

Standard	Lots up to 19,999 sqft	Lots 20,000 sqft and greater
Maximum Floor Area of All Accessory Structures Combined	1,100 sqft	5% of the lot area
Maximum Height of Accessory Structures	Not to exceed the height of the Main Building	
Maximum Number of Accessory Structures	3	4 (excluding agricultural barns)
Maximum Building Area Coverage	Main Buildings and Accessory Structures shall not exceed the allowable coverage percentage of the zoning district in which they are located.	
Minimum Front Setback	Carports shall be set back at least 5 feet from the front property line and shall not encroach into a utility easement unless written approval from all affected utility companies is provided by property owner.	
	Carports for RVs shall be set back at least 20 feet from the front building facade	
Minimum Side Setback	5’	5’
Minimum Rear Setback	5’	5’

   b) An Accessory Structure shall not be utilized for human habitation except in the case of an Accessory Dwelling.

   c) No Accessory Structures may be permitted on a property without an associated primary residential use, except in the case of property used for agricultural, farm, or equestrian uses.

   d) No permit is required for Accessory Structures less than 120 square feet in floor area and less than 13 feet in height, unless it will be used as an Accessory Dwelling.

   e) Accessory Structures are prohibited within easements.

   f) Accessory Structures 120 square feet or larger shall be finished on the exterior with similar construction materials and similar coloring as the principal dwelling. Metal building material may be used, provided the accessory structure is of a same or compatible architectural style and colors as the principal dwelling.

   g) Any accessory structure in the front yard shall be outside of the front yard setback.

3. Carports

   a) For a carport visible from a public right-of-way, the carport design should be consistent with the main building.

   b) Carports in the front yard must be attached to the main building.

   c) A building permit is required for an attached carport, as it is an addition to the residence. If detached, then it is considered an accessory structure.

4. Dimensional Standards for Patio Homes and Townhouses

   No side yard setback is required for one side of Patio Homes or the interior side(s) of Townhouses, subject to the following:

   a) Lot widths for Patio Homes or Townhouses may be reduced to 20 feet. A zero-setback side shall not directly abut any other development or land use type.

   b) Exterior side yard setbacks (i.e., the side that is not the zero-setback side) must comply with the applicable zoning district requirements.

   c) Zero lot line development shall meet all adopted building and fire codes.

5. Cluster Development

   a) The purpose of cluster development is to provide open space in residential developments by allowing reductions in minimum lot areas or increases in densities. This approach allows the preservation of natural features, decreases impervious cover, supports housing variety, and creates unique neighborhoods.

   b) Cluster developments are allowed in any Suburban Character Area or Rural Character Area.

   c) The minimum size of a cluster development shall be five acres.

   d) Only uses permitted in the district may be used in the development.

   e) A minimum of 30 percent of the land must be preserved as either natural or Usable Open Space. This land must be in addition to any required park dedication. The preserved land must be accessible to all residents. The preserved area must be designated on the plat and remain open space indefinitely.

   f) There is no minimum lot area, width, or depth, but a minimum 20-foot street frontage is required for every lot.

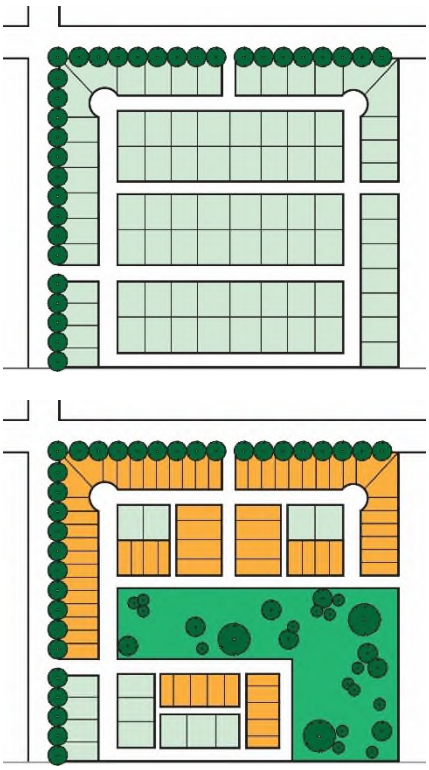
   g) Method of Calculation

      i) Calculate the number of dwelling units permitted on the site based on the zoning district under typical development practices.

      ii) If at least 30 percent of the site is conserved, then the number of dwelling units may be up to 50 percent more than the number of units that would have been permitted with traditional development.

      iii) If at least 50 percent of the site is conserved, then an increase of 100 percent in the number of units is permitted.

   Figure 36-4-5. Conventional (Top) and Cluster (Bottom) Development



   h) The City may agree to accept ownership and maintenance responsibilities of the conserved land if the area is at least 2 acres in contiguous area.

6. Residential Anti-Monotony Standards

   Adjacent single-family, duplex, or townhome housing facade designs must differ from one another by at least four of the following design options (exception: residential units that are attached by at least one common wall are not be considered adjacent units for purposes herein stated).

   a) Surface material;

   b) Color of house;

c) Reversed floor plans;

d) Roofing styles;

e) Variation in building heights;

f) Ornamental fixtures (e.g., vigas, portales, latias);

g) Location and shape of windows and doors;

h) Variation in front yard patios, walls, garages, etc.;

i) Variation in front yard setbacks. A minimum five-foot variation must be used to qualify for this item. All setback requirements as determined by zoning district still apply in this instance.

Figure 36-4-6. Residential Anti-Monotony Examples

Development on a Block

- Varying front yard setbacks
- Location of doors
- Reversed floor plans
- Variation in front yard patios, walls, garages

Elevations

- Roofing styles
- Ornamental fixtures
- Color of house
- Varying building heights

C. Nonresidential, Mixed-Use, and Multi-Family Development

1. Applicability

   The following requirements apply to all new nonresidential, mixed-use, and multi-family development.

   a) Exception: The requirements herein do not apply within the HI, Heavy Industrial District (Rural, Suburban, Urban).

2. Building Materials

   a) At least 80 percent of the collective walls of a building shall be finished in one or more of the following building materials:

      i) Stucco or plaster;

      ii) Brick, stone, cast stone, rock, marble, granite, glass block, or tile;

      iii) Glazing;

      iv) Split-face concrete block, poured-in-place concrete, and tilt-wall concrete.

         a. Any use of concrete products shall have an integrated color and be textured or patterned.

         b. Tilt-wall concrete structures shall include reveals, punch-outs, or other similar surface characteristics to enhance the wall on at least 10 percent of each wall;

      v) Exterior insulation and finish system (EIFS); and/or

      vi) Fiber cement siding (e.g., HardiePlank).

   b) Side and rear walls shall be finished in a similar color as the front of the building.

3. Front Facade Entry Requirements

   a) A front facade shall be articulated and designed to present a distinctive entry presence, emphasizing the building's entry point along the facade.

   b) Each building shall provide a sheltered or recessed entry.

   c) The primary entrance shall front a public street with a walkway connecting to a front sidewalk.

4. Building Articulation

   a) Facade Articulation

      i) Buildings with facades over one hundred feet in length shall incorporate wall projections or recesses, or changes in wall plane a minimum of two feet in depth a maximum of every seventy-five feet.

      ii) The offset(s) may be divided and distributed throughout the length of the wall if the applicant demonstrates, to the satisfaction of the Community Development Director, that the intent of this section has been met by providing an equal or better aesthetic result from the public right-of-way.

   b) Height Articulation

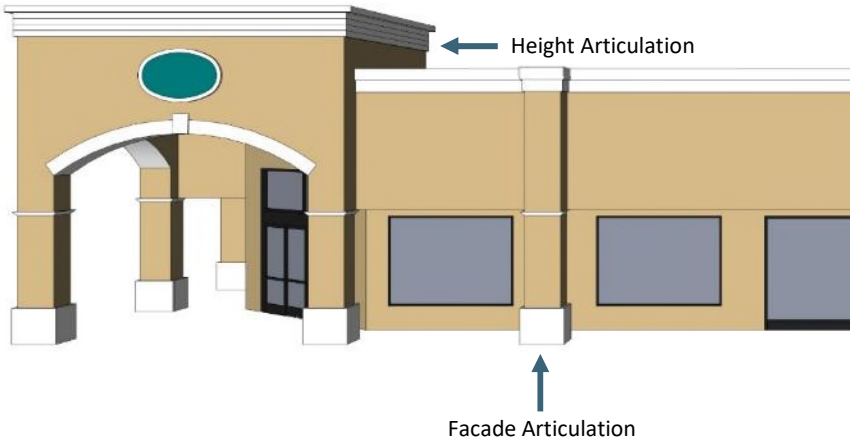
      i) Buildings with roofline adjacent to or visible from a public right-of-way shall not extend in a continuous plane for more than one hundred feet without offset of the roof plane. Rooflines must be visually broken up by providing articulations in the facade of buildings, change in the height of portions of roofs, or change in color, material, or forms.

      ii) The offset(s) may be divided and distributed throughout the length of the wall if the applicant demonstrates, to the satisfaction of the Community Development Director, that the intent of this section has been met by providing an equal or better aesthetic result from the public right-of-way.

      iii) Alternatively, vertical articulation requirements may be met with an enhanced decorative cornice along the entire length of the facade if the applicant demonstrates, to the satisfaction of the Community

Development Director, that the intent of this section has been met by providing an equal or better aesthetic result from the public right-of-way.

Figure 36-4-7. Example of Horizontal and Vertical Articulation



5. Architectural Features

   All building walls shall incorporate at least three of the architectural features listed in **a)** and/or **b**) below. Building walls greater than 100 feet in length or buildings greater than 30 feet in height shall incorporate an additional item from Subsection **b**) below.

   a) Awnings, canopies, canales, vigas, portales, latias, ornamental cornices, pillar posts, decorative light features, integrated planters or water features, or other similar building element features as approved by the Community Development Director.

   b) Arcades, covered porches, alcoves, porticos, varied wall surfaces, enhanced building wall materials, or other similar building elements as approved by the Community Development Director.

6. Additional Multi-Family Residential Amenities

   The following requirements also apply to all new multi-family and mixed-use development with 13 or more units. These requirements are in addition to recreational amenities included in **Sec. 38-5. Parks, Trails, and Open Space**.

   a) Amenities and open space must be provided in accordance with the following:

      i) 13-49 units: One balcony, patio, or roof terrace for at least 20 percent of all units; one courtyard or community garden; and one amenity from the list below.

      ii) 50-99 units: One balcony, patio, or roof terrace for at least 35 percent of all units; two courtyards and/or community gardens; and two amenities from the list below.

      iii) 100-199 units: One balcony, patio, or roof terrace for at least 50 percent of all units; three courtyards and/or community gardens; and three amenities from the list below.

      iv) 200+ units: One balcony, patio, or roof terrace for at least 65 percent of all units; four courtyards and/or community gardens; and four amenities from the list below.

   b) Potential Amenities

      i) Swimming pools (1,000 sqft minimum) with a cooling deck;

      ii) At least four grills with shaded seating areas;

iii) Shade structure covering at least 1,000 sqft of recreation space;

iv) Bike storage area (1,000 sqft minimum) and repair station;

v) Child play area (minimum 3,000 sqft with play structure or other similar facility);

vi) Splash pad (1,000 sqft minimum);

vii) Dog park (5,000 sqft minimum) with a vinyl-coated chain link fence at least 5 feet in height; grass, wood chips, or a combination of the two for groundcover; and at least one bag dispenser and waste bin along the perimeter for every 2,500 sqft of park;

viii) Regulation size volleyball, basketball, tennis, or other similarly related playing court;

ix) Golf putting green (1,000 sqft minimum);

x) Fitness center/weight room (500 sqft minimum);

xi) Business center (500 sqft minimum);

xii) Media room (500 sqft minimum); and/or

xiii) Other similar amenities determined to the comparable in providing quality of life benefits to residents, as determined by the Community Development Director.

Sec. 36-5. Zoning Procedures

A. Zoning Map Amendments

Figure 36-4-1. Zoning Map Amendment Process Summary

1. The Zoning Map may be amended (i.e., rezonings, boundary changes, or district changes) in accordance with NMSA 3-21-6, as amended.
2. Application Procedures

   Application submittal requirements for a zoning map amendment include, but are not limited to, the following:

   a) Official zoning application that meets the following conditions:

      i) The application shall be signed by all property owners of record (including all trustees of an estate or all persons that have a specific "power of attorney" for the subject property as recorded in the County Clerk's Office). Persons who have an equitable interest in the subject property, but no legal title, shall not be deemed the "owners of record" of said property for purposes of this Code. The Community Development Director may reject any application if the ownership of the subject property is not clearly established.

      ii) Any pending litigation or any Final Order entered by any Court of Law regarding the ownership of the subject property shall be disclosed by the applicant at the time the application is submitted.

      iii) The application shall include a copy of notification letter to the noticed area and copy of minutes (summary or verbatim) from meeting pursuant to **Sec. 34-3.H. Early Notification and Meeting Requirements** (if applicable).

      iv) The application shall include a development statement that describes the intended use and characteristics of the proposed development.

      v) The applicant may opt to provide a Site Plan for consideration.

   b) Submittal fee,

   c) Notarized affidavit,

   d) Copy of property's survey and legal description:

      i) An accurate and complete boundary survey shall be made of the land to be rezoned. Property lines shall be shown, giving the bearings in degrees, minutes, and seconds.

      ii) Distances shall be shown in feet and hundredths.

      iii) Curved boundaries or lines on the survey shall provide sufficient data to enable the re-establishment of curves on the property.

      iv) The location and description of all monuments set or found shall be included where applicable.

      v) The survey must indicate the area of the requested zoning district(s), including survey descriptions of the various district boundaries.

   e) Copy of site plan (if applicable),

   f) A drainage facilities plan, environmental impact statement and/or other items not listed above may be required by the Community Development Director, the Planning & Zoning Commission, or the City Council.

   g) Description and justification of requested variances (if applicable),

   h) Request and justification to waive submittal requirements (if applicable), and

i) For rezoning requests of areas 40 acres or larger, a Master Development Plan in accordance with **Sec. 37-3.A. Master Development Plan** shall be submitted in conjunction with the rezoning application.

j) Verification that the Future Development Map (FDM) is consistent with the proposed Zoning Map Amendment. If the FDM is not consistent with the proposed Zoning Map Amendment, then documentation showing the FDM changes with justification shall be provided.

3. Criteria for Review and Decisions

a) In considering all Zoning Map amendment requests, the decision-maker shall determine if the request is consistent with the goals of the Comprehensive Plan to enhance livability, prosperity, and environment for the shared benefit of current and future generations and the zoning code which allows flexibility and context sensitive design.

b) The decision-maker shall consider present and future needs and promote the health, safety, order, prosperity, and general welfare of the people. It shall also promote efficiency and economy in the process of development.

c) The decision-maker shall encourage the proper use and development of land, shall seek to create and maintain an aesthetic setting, and protect and preserve the quality of the water, air, and other environmental, natural, historical and cultural resources for the City.

4. Review and Recommendation – Community Development Director

The Community Development Director shall review the submittal and prepare a written staff report with recommendations, which shall be provided to the Planning & Zoning Commission and City Council along with the Zoning Map Amendment. The report shall recommend that the amendment be approved, conditionally approved, disapproved, or postponed.

5. Public Meeting and Notice Required

a) No zoning regulation, restriction or boundary shall become effective, amended, supplemented or repealed until after a public meeting at which all parties in interest and citizens shall have an opportunity to be heard.

b) Notice shall be provided in accordance with **Sec. 34-3.G. Notice for a Public Meeting**.

6. Public Meeting and Recommendation – Planning & Zoning Commission

a) Following a recommendation by the Community Development Director, the Planning & Zoning Commission shall hold a public meeting on the proposed amendment, then provide a report and recommendation to the City Council to approve or deny the proposed amendment.

b) The recommendation may be made by a simple majority vote of the Planning & Zoning Commission.

7. Public Meeting and Final Action – City Council

a) Following receipt of the report and recommendation from the Planning & Zoning Commission, the City Council shall hold a public meeting to approve or deny the proposed amendment.

b) Zoning Map Amendments may be approved by a simple majority vote of the City Council.

i) Exception: In accordance with NMSA 3-21-6.C, if the owners of 20 percent or more of the area of the lots and of land included in the area proposed to be changed by a zoning regulation or within 100 feet, excluding public right-of-way, of the area proposed to be changed by a zoning regulation, protest in writing the proposed change in the zoning regulation, the proposed change in zoning shall not become effective unless the change is approved by a majority vote of all the members of the City Council (as opposed to a majority of those in attendance with a quorum).

ii) Special Use Permits shall not be considered a zoning district change.

iii) A Zoning Variance may be approved as part of a zoning district change request.

iv) The City Council is also authorized to remand the request back to the Planning & Zoning Commission for further study and consideration.

8. Recordation of Zoning Map Amendment

When approved by the City Council and the 30-calendar day appeal period has expired, the zoning district change shall be recorded and shown on the Zoning Map.

B. Site Plans

1. Purpose

   The purpose of the Site Plan is to facilitate the review of proposed improvements to property. Through Site Plan review, the City and other jurisdictional agencies can effectively apply the standards of this Development Code and other applicable development standards to multi-family, mixed-use, and nonresidential development.

2. Applicable Regulations

   All Site Plans must conform to applicable requirements and regulations found in the following documents:

   a) This Development Code;

   b) Fire Code;

   c) Building Code; and

   d) The Technical Manual and resources outlined in **Sec. 34-1.F. Technical Manual and Other Technical Resources**.

3. Site Plan Applicability

   The following applications require Site Plan approval:

   a) A request for approval to construct or expand any building.

      i) Exception: A Site Plan is not required if a Building Permit is not required.

   b) A request for approval of a Planned Unit Development district (see **D. Planned Unit Developments (PUDs)**, unless otherwise exempted in this Development Code or in the ordinance adopting the Planned Unit Development district; or

   c) A request for approval of a Special Use Permit (see **C. Special Use Permits (SUPs)**).

4. Approval Process

   a) Administrative Site Plan

      i) The Community Development Director is responsible for approving a Site Plan with no associated Special Use Permit if it meets all the requirements of this Development Code.

      ii) The Community Development Director may authorize review and approval of a Site Plan simultaneously with review and approval of a Building Permit, Landscape Plan, Lighting Plan, or other plans required by this Development Code.

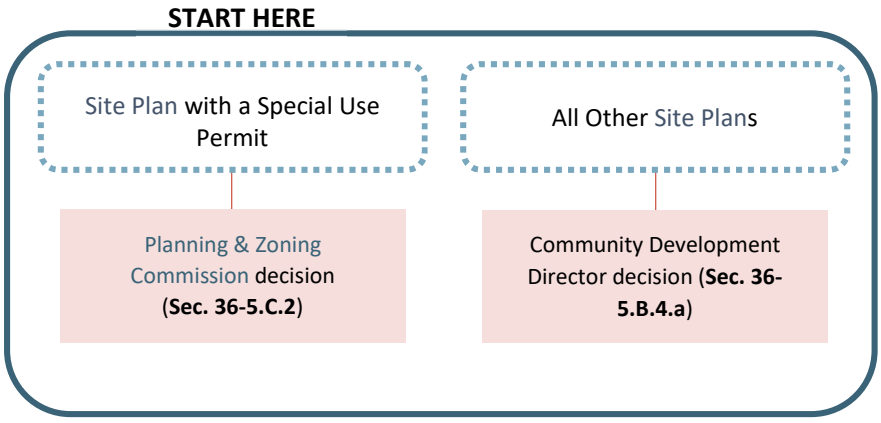
      iii) Community Development Director Action

         The Community Development Director will inform the applicant of their decision, identify any deficiencies, and provide instructions for the resubmittal of corrected plans, if applicable.

   b) Site Plan with a Special Use Permit (SUP)

      A Site Plan submitted as part of an SUP shall require a public meeting and decision by the Planning & Zoning Commission.

Figure 36-5-2. Site Plan Types and Processes Summary



5. Use of Existing Building

   a) If the Site Plan request involves the use or expansion of existing buildings or structures, the Building Official may conduct an inspection of buildings or structures to be utilized or expanded to determine the adequacy of the buildings or structures to support the proposed use and to make recommendations for improvements to the buildings or structures.

   b) The decision-maker may conditionally approve of the Site Plan subject to compliance with the Building Official's recommendations, and the Building Official may withhold a Certificate of Occupancy if the buildings or structures do not comply with the conditions.

6. Site Plan Effect of Approval

   a) By approving a Site Plan, the City authorizes the applicant to submit Construction Plans for approval of a Building Permit.

   b) During the time the Site Plan remains valid, the City will not apply additional requirements concerning development features shown on the Site Plan (e.g., building placement, streets, drives, parking, landscaping, or screening).

7. Amendments to Administratively Approved Site Plans

   The Community Development Director may approve changes requested by the applicant to a Site Plan that was originally approved administratively without requiring the applicant to submit a new Site Plan if the Director determines that the modified Site Plan substantially conforms to the previously applied Site Plan; otherwise, a new Site Plan submittal is required.

8. Amendments to SUP Site Plans

   For amendments to Site Plans approved as part of an SUP, see **Sec. 36-5.C.2.f) Revisions to an Approved SUP**.

9. Dormant Site Plans and Site Plan Expiration

   a) A Site Plan approval expires two years from the approval date unless an applicant or property owner demonstrates Progress Toward Completion within the same phase (if applicable) or a new Site Plan is approved for the property.

      i) A Site Plan associated with an SUP expires in conjunction with the SUP. See **Sec. 36-5.C.3. SUP Expiration**.

   b) If a Site Plan expires, all vesting claims shall also expire on the property, and the applicant must submit a new Site Plan subject to the regulations in place at the time.

10. Revocation of Site Plan Approval

    The City may revoke approval of a Site Plan if the City determines that the applicant has not met the conditions of approval or if the Site Plan contains, or is based upon, incorrect information or if approval was obtained using fraud or deceit.

11. Additional Development, Site Modifications, or Redevelopment

    Following the completion of improvements shown on an approved Site Plan, additional development, site modifications, or redevelopment of the site shall be permitted subject to the approval of a revised Site Plan, which shall be considered a new project and shall require submittal and approval of a revised Site Plan.

12. Site Plan Submittal Requirements

    The Site Plans shall be at a scale that adequately represents the information as determined by the Community Development Director. The plans shall be prepared electronically in PDF format or other approved format. Plans shall be legible and of a good quality, with no limit to the number of sheets used. The plans shall indicate the following:

    a) Title of Site Plan.

    b) Total acreage of site.

    c) Date of preparation, north arrow, written and graphic standard engineering scale.

    d) Identification of site by lot, block, subdivision, if applicable.

    e) A statement of ownership, signed by the property owner.

    f) Name and address of property owner.

    g) Name and address of applicant, if applicable.

    h) Name and address of consulting firm or representative, if applicable.

    i) Location and type of all land uses.

    j) All site improvements with all setbacks indicated.

    k) All easements of record.

    l) Dimensions of all buildings.

    m) 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.

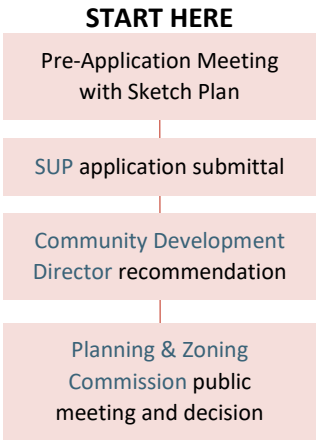
    n) A landscaping plan, to include the location, size, common name, and biological name of all landscaping materials.

    o) Pedestrian and bicycle circulation system and its relation to surrounding circulation.

    p) Where applicable, location and arrangement of all open space, common recreational space, and private open space.

C. Special Use Permits (SUPs)

Figure 36-5-3. SUP Process Summary



1. General Provisions

   a) A Special Use Permit (SUP) is required to allow a use that is not permitted by right in a zoning district and requires review and approval by the Planning & Zoning Commission to determine impacts on the surrounding area. Uses eligible for SUP approval are designated in **Figure 36-3-2. Permitted Use Chart**.

   b) Approval of an SUP is not a zoning district change.

2. Review Procedures

   The procedures for such approval are as follows:

   a) Pre-Application Meeting

   Any proposed SUP shall first be reviewed at a pre-application meeting scheduled and held by the Community Development Department. The submittal of a Sketch Plan is required for the pre-application meeting for an SUP. See **Sec. 34-3.B. Pre-Application Meeting** for more information.

   b) Application Procedures

      i) An official application for an SUP shall be obtained from the Community Development Department. Application requirements shall include, but not be limited to:

         a. A letter of intent stating the following:

            i. A statement of the purpose and use of the property,

            ii. All property improvements to be made, and

            iii. A development schedule indicating the approximate dates at which construction or phases of construction will begin and end.

         b. An accurate and complete boundary survey shall be made of the land to be developed. Property lines shall be shown, giving the bearings in degrees, minutes, and seconds. Distances shall be shown in feet and hundredths. Curved boundaries or lines on the survey shall provide sufficient data to enable the re-establishment of curves on the property. The location and description of all monuments set or found shall be included where applicable. If only part of the property is to be used for the Special Use, the limits or boundary of the Special Use shall be described in addition to the entire property.

         c. A Site Plan in accordance with **B.12. Site Plan Submittal Requirements**.

         d. Architectural renderings or artistic drawings. The drawings shall be provided electronically in PDF format. Drawings shall be legible and of a good quality, with no limit to the number of sheets used. The drawings shall illustrate the following:

            i. All new development illustrating all exterior building materials and colors.

            ii. All new development illustrating relationships to neighboring uses, including site lighting.

            iii. Sign location, materials, color, size, shape, and lighting.

         e. A drainage facilities plan, environmental impact statement and/or other items not listed above may be required by the Community Development Director, or the Planning & Zoning Commission.

         f. Copy of early notification letter to the defined noticed area and copy of minutes (summary or verbatim) from any required meeting pursuant to **Sec. 34-3.H. Early Notification and Meeting Requirements** (if applicable).

      ii) Application materials that are illegible and/or otherwise of a low quality will not be accepted.

iii) A portion of the submittal requirements may not be required in all cases. Upon receipt of a written request justifying the deletion of required information, the Community Development Director may waive any submittal requirement. The Planning & Zoning Commission may require additional items and resulting information in addition to the submittal requirements as per this section. Additional items and/or information requested by staff may include, but are not limited to, the need for early notification to a neighborhood group(s) and/or defined noticed area. Additional requests shall be justified in writing. The City Council may require additional information before acting on an appeal.

c) Community Development Director Recommendation

The Community Development Director shall review the submittal and prepare a written staff report with recommendations, which shall be provided to the Planning & Zoning Commission along with the SUP. The report shall recommend that the SUP be approved, conditionally approved, disapproved, or postponed.

d) Public Meeting and Notice

A public meeting shall be held by the Planning & Zoning Commission for all Special Use Permits with notice in accordance with the provisions of **Sec. 34-3.G. Notice for a Public Meeting**.

e) Review and Approval Procedures

The Planning & Zoning Commission may deny an SUP request or may grant final approval including the minimum conditions listed in **Sec. 36-3.B. Use Classifications and Use-Based Standards**. Also, approval may be granted with additional conditions imposed which are deemed necessary to implement the Comprehensive Plan, to ensure compatibility with surrounding development, and to ensure that the purpose and intent of this Code are met to protect and provide safeguards for persons and property in the vicinity. Any applicable development conditions in addition to those required by this Development Code shall be noted on the Certificate of Occupancy. Appeal of a Planning & Zoning Commission decision may be made in accordance with **Sec. 34-3.F. Appeals**.

f) Revisions to an Approved SUP

Any major revision proposed to the SUP and Site Plan shall require resubmittal of the SUP and Site Plan in their entirety. Minor revisions that do not affect the overall intent of the SUP and Site Plan may be approved by the Community Development Director. Major revisions to the Special Use Permit and Site Plan shall include, but are not limited to:

i) Any change in land use,

ii) A 15 percent cumulative increase in land use or building square footage,

iii) A 15 percent cumulative increase in vehicular traffic on any roadway segment or intersection,

iv) Any increase in size of the SUP area,

v) Any reduction in screening, screening buffer yards, and setbacks at the Special Use boundary line, and

vi) A 15 percent cumulative increase in the buildable area for structures including signs.

g) Recording of the SUP

After approval, the SUP shall be issued by the Community Development Director and shall include all information, conditions, reference to site plans, and other provisions of the SUP. The SUP shall be filed in the City Clerk's Office. The SUP shall not become effective until adequate evidence of filing in City records has been provided to the Community Development Director.

3. SUP Expiration

Unless otherwise specified by the Planning & Zoning Commission's approval, an SUP will expire if the applicant does not obtain a Certificate of Occupancy within 36 months of the Planning & Zoning Commission's approval.

D. Planned Unit Developments (PUDs)

1. General Provisions

   a) Planned Unit Developments (PUDs) are intended to promote development that is consistent with the comprehensive plan and that otherwise cannot be accommodated by the Development Code using existing mechanisms (e.g., Flexible Development Standards or Zoning Variances). The PUD process is not intended as a method to avoid the Code's standards.

   b) An applicant shall not be granted a deviation to the standards without providing a public benefit to the community that exceeds the standard of typical development and requirements. Examples of such benefits may include but are not limited to sustainable development, housing affordability/variety, enhanced open space and recreational amenities, public art, historic preservation, enhanced accessibility, public facilities (e.g., school site) or other development features that implement the vision of the Comprehensive Plan.

   c) All contiguous property owned or legally controlled by the applicant shall be included within the PUD.

2. Review Procedures

   a) Authorization

      A PUD is a zoning district change and is not permitted by-right in any zoning district. The procedures and requirements in this section shall govern the development of a PUD.

   b) Process

      Each PUD shall require the following steps:

      i) Step 1: Pre-Application Meeting with a Sketch Plan;

      ii) Step 2: Concept Plan with zoning action;

      iii) Step 3: Platting, if required; and

      iv) Step 4: Site Plan(s)

   c) Step 1: Pre-Application Meeting

      Any proposed PUD shall first be reviewed at a pre-application meeting scheduled and held by the Community Development staff. The submittal of a Sketch Plan is required for the pre-application meeting for a PUD. See **Sec. 34-3.B. Pre-Application Meeting** for more information.

   d) Step 2: Concept Plan

      i) Concept Plan Purpose

         The Concept Plan is intended to serve as a tool that can assist in identifying the appropriateness of a proposed development within the context of its surroundings. The Concept Plan forms the basis for approval of the PUD.

Figure 36-5-4. PUD Process Summary

ii) Concept Plan Application Submittal

The Concept Plan and supplemental application material shall be submitted to the Community Development Department no later than 60 calendar days prior to the date of the regular meeting of the Planning & Zoning Commission. The application is subject to a determination of completeness by City Staff (see **Sec. 34-3.C.4. Complete Application** for more information).

iii) Approval Criteria

The Concept Plan may be approved only if it includes the following findings:

a. The proposed construction and use of the PUD will not be detrimental to the health, safety, or welfare of the community or adjacent neighborhood;

b. There is or will be adequate sewage capacity, roadway capacity, bicycle and pedestrian connectivity and accommodations, energy supply, and potable water supply to serve the PUD at the time a certificate of occupancy or letter of acceptance, as applicable, is to be issued;

c. The PUD conforms to the intent, goals, objectives, policies, and standards of all City plans and codes (unless deviations are specifically noted);

d. The uses proposed, including their density and intensity, are appropriate to the character of the neighborhood and will have a positive aesthetic effect on the neighborhood in which the PUD will be located; and

e. The proposed uses will not subject surrounding properties and pedestrians to hazardous traffic conditions.

iv) Community Development Director Recommendation

The Community Development Director shall review the submittal and prepare a written staff report with recommendations, which shall be provided to the Planning & Zoning Commission along with the Concept Plan. The report shall recommend that the Concept Plan be approved, conditionally approved, disapproved, or postponed.

v) Concept Plan Public Meetings and Approval

The Planning & Zoning Commission and City Council shall act upon the Concept Plan application in accordance with **A. Zoning Map Amendments**. The applicant or applicant's representative shall be present at the public meetings for the proposal to be considered. If the applicant or representative is not at the public meetings, the Concept Plan shall be postponed until the next regular meeting. The decision-makers may impose additional conditions as part of the terms of approval.

vi) PUD Shown on Zoning Map at Concept Plan Approval

If the Concept Plan is approved or conditionally approved by the City Council, the PUD shall be shown on the Zoning Map as a PUD replacing the existing zoning districts.

vii) Concept Plan Effective Period

The approved Concept Plan shall be effective for a period of five years. If a Site Plan for all or part of the area has not been approved by the expiration of the five-year period, the Concept Plan shall expire and a new Concept Plan will be required. If the property owner desires to revert the property to its previous zoning (or any other zoning designation besides the approved PUD), a rezoning in accordance with **A. Zoning Map Amendments** is required.

viii) Concept Plan Submittal Requirements

A request for review of a Concept Plan shall include the following information:

a. Official Application and Development Statement, including the identification of the district upon which the PUD regulations are based unless otherwise stated in the PUD;

b. Submittal fee;

c. Waiver request and justification to delete submittal information, if applicable;

d. Descriptions of deviations to planning-related development standards and the public benefits to be provided;

e. Association by-laws (may be submitted with each Site Plan);

f. Concept Plan. The following information shall be provided on the Concept Plan and supporting maps and drawings:

i. Name of Concept Plan.

ii. Name, address, and telephone number(s) of property owner(s), developer(s), and consultant(s) preparing the Concept Plan.

iii. Detailed area map showing the surrounding area within one-half mile and the PUD in relationship to adjacent parcels, existing roadways, and natural or constructed features that may impact or be impacted by the PUD.

iv. North arrow, date of preparation, and written and graphic standard engineering scale.

v. Legal description.

vi. Boundary lines of Concept Plan area with approximate length of lines and boundary lines of phases.

vii. For each lot, parcel, or tract, list proposed land uses and acreage and show the building envelope within which each structure will be located:

(a) Maximum number of dwelling units and maximum density.

(b) Maximum square footage of nonresidential uses.

viii. Proposed screening, screening buffer yard, and setback distances along the PUD property line.

ix. Existing land uses and zoning on adjacent lots, parcels, or tracts.

x. Name of adjacent subdivisions (including the filing date, book, and page numbers), property owners, and zoning. If not subdivided, name of property owner.

xi. Twenty-foot contour intervals minimum or as appropriate.

xii. Proposed alignment of roadways and how they relate to the Comprehensive Plan and the Active Transportation Plan and the impacts created on the area road network, neighborhood, and other land uses. Impact data shall include the anticipated traffic volume generated by the proposed development, identification of the affected road network, and the additional traffic volumes associated for each road. If required, provide a Traffic Impact Study, including a roadway improvement schedule, consistent with the requirements of **Sec. 38-2.G. Traffic Impact Analysis**) and based on the latest recommendations from the Institute of Traffic Engineers.

xiii. Thoroughfare System: Identification of adjacent roadways and other transportation lines by functional classification; proposed location, length, width of all roadways, bikeways, trails, walkways, and any other transportation lines. Identify existing and proposed classification of roadways as per City of Las Cruces Design Standards, the Comprehensive Plan, and the Active Transportation Plan.

xiv. Proposed parks, trails, open spaces, and other amenities.

xv. Proposed public improvements.

xvi. Location and sizes of existing and proposed utilities.

xvii. Significant natural features, such as arroyos and 100-year floodplains.

xviii. All easements.

xix. Tabular Information:

(a) Land uses of each parcel and phase (if applicable).

(b) Total acreage of the PUD and acreage for each land use for the development and by phase (if applicable).

(c) Number of dwelling units and density for the development and by phase (if applicable).

(d) Total square footage of nonresidential uses for the development and by phase (if applicable).

(e) Total acreage for open space, private and public facilities, and right-of-way for the development and by phase (if applicable).

(f) Maximum height of proposed structures for each parcel and phase (if applicable).

xx. Phasing plan. If developing in phases, a phasing plan shall identify the phase in which (or date by which) public facilities (e.g., trails, amenity centers, recreational facilities, other improvements) will be provided.

xxi. Approval block signifying the final approved Concept Plan to be signed by the Community Development Director upon approval by the City Council and resolution of all outstanding staff comments.

g. Other Impact Studies, if determined by the Planning & Zoning Commission as necessary to present clear and compelling evidence regarding development impacts, are to be submitted prior to City Council consideration:

i. Impacts on any public facilities outside the PUD area. Impact data shall include expected population generated by the proposed development, identification of public facilities (e.g., utilities, parks, that are anticipated for use by said population and level of capacity of said utilized public facilities).

ii. Impacts on air quality, specifically solid particulates known as PM10. Impact data shall include identification of proposed uses that generate air pollution substances into the environment and the projected impact.

iii. Impacts on views and noise to adjacent property. Impact data shall include identification of proposed uses that generate excessive noise, anticipated maximum height for proposed structures, identification of existing physical features that are viewed from the PUD and adjacent properties, and how these views will be altered by the PUD. Proposals to mitigate impacts shall be provided.

iv. Geological and Soils Hazards. Report on the Geologic and Soils Hazards in relation to slope conditions, drainage problems and suitability for septic system use, if applicable, as identified by the Soil Survey of Doña Ana County Area, New Mexico. This report shall also include either an aerial photograph or a map with existing contours at an appropriate interval to establish accurate ground contour of the PUD area.

e) Step 3: Platting

If platting is required, all plats and plans must be submitted and approved in accordance with **Sec. 37-2. Subdivision Procedures**.

f) Step 4: Site Plan

i) Site Plan Purpose

The purpose of a Site Plan is to identify the detailed site layout and features for a PUD development or phase of PUD development.

ii) Site Plan Application Submittal and Review

a. Upon approval of the Concept Plan and completion of any required platting process, the applicant may submit a Site Plan in accordance with **B. Site Plans** for part or all of the land area covered by a Concept

Plan for Community Development Director consideration. The Director may defer the Site Plan to the Planning & Zoning Commission and City Council for any reason.

b. Alternatively, an applicant may choose to submit a Site Plan along with the Concept Plan, which may be approved by the Planning & Zoning Commission and City Council.

iii) Site Plan Deviations from an Approved Concept Plan

Any substantial change proposed on a Site Plan that would affect the approved Concept Plan shall require re-submittal of the Concept Plan in its entirety. Minor changes are those changes that are not substantial and do not affect the overall intent of the Concept Plan, which may be approved by the Community Development Director; however, the Director may determine that any proposed change should be heard at a public meeting before the Planning & Zoning Commission and City Council. Substantial changes to the Concept Plan are subject to the same requirements as the original application. Substantial changes shall include but are not limited to:

a. Any change that would increase the intensity of the land uses;

b. A 15 percent cumulative increase or decrease in residential density;

c. A 15 percent cumulative increase or decrease in nonresidential square footage;

d. Any change in private incentives and public benefits;

e. Increase in size of property;

f. Any reduction in screening, screening buffers, and setbacks at the PUD property line;

g. A 15 percent cumulative increase in the buildable area for structures, including signs; and

h. A 15 percent cumulative reduction in open space.

iv) Approval Criteria

No findings are required except that the Site Plan conforms to the Concept Plan and all standards established by this Development Code and the identified base zoning district unless specifically indicated otherwise within the PUD.

E. Building Permits and Certificates of Occupancy

1. No permit for the construction of a new building, fence, wall, sign, or any other structure that requires a Building Permit shall be issued until the lot is part of a plat of record, approved by the City and filed with the County. This requirement does not apply to additions or repairs.
2. No building or premises hereafter erected or structurally altered shall be used, occupied, or changed in use or occupant until a Certificate of Occupancy has been issued by the Building Official, stating that the building or proposed use of the building/premises complies with the City's adopted construction and safety codes and the provisions of this Development Code.

F. Zoning Variances

Figure 36-5-5. Zoning Variance Process Summary

1. General Provisions

   a) In accordance with NMSA 3-21-8 and this section, the Planning & Zoning Commission may authorize a Zoning Variance from this **Chapter 36. Zoning Regulations** as outlined herein.

   b) Zoning Variances may only be used to waive or modify dimensional requirements, such as setbacks, building heights, or lot coverage. Zoning Variances shall not modify permitted uses or use-based standards.

   c) The applicant bears the burden of proof in establishing the facts that may justify a Zoning Variance.

   d) The granting of a Zoning Variance does not establish precedence for future determinations.

2. Review Procedures

   The procedures for such approval are as follows:

   a) Any proposed Zoning Variance request shall first be reviewed at a pre-application meeting scheduled and held by the Community Development Department. See **Sec. 34-3.B. Pre-Application Meeting** for more information.

   b) Applications shall be submitted to the Community Development Director. The application is subject to a determination of completeness by City Staff (see **Sec. 34-3.C.4. Complete Application** for more information).

   c) The Community Development Director shall review the submittal and prepare a written staff report with recommendations, which shall be provided to the Planning & Zoning Commission along with the application. The report shall recommend that the application be approved, conditionally approved, disapproved, or postponed based on the criteria outlined below.

   d) A public meeting before the Planning & Zoning Commission is required. The Planning & Zoning Commission shall approve, conditionally approve, disapprove, or postpone the request.

   e) Approval Criteria

      i) The Planning & Zoning Commission shall consider the following criteria:

         a. The proposed Zoning Variance is not contrary to the public interest;

         b. Where, owing to special conditions, a literal enforcement of the zoning ordinance will result in unnecessary hardship;

         c. That the spirit of the zoning regulations is observed and substantial justice done; and

         d. That the goals and policies of the Comprehensive Plan are implemented.

      ii) No Zoning Variance may be granted that results in undue hardship upon another parcel of land.

      iii) A Zoning Variance shall not be granted to relieve a self-created hardship.

      iv) The relief granted shall be to the minimum degree required to alleviate such hardship.

      v) The Planning & Zoning Commission shall not grant a Zoning Variance unless it finds, based upon evidence, that each of the conditions and standards in this section have been met.

   f) The Planning & Zoning Commission may impose such conditions, limitations, and safeguards as it deems appropriate upon the granting of any Zoning Variance. Violation of any such condition, limitation or safeguard shall constitute a violation of this Development Code.

G. Nonconformities

1. Purpose

   The purpose of this section is to regulate land uses, lots, structures, and site features that were legally established at the time of their creation but that have been made nonconforming due to a change in the City's regulatory environment (i.e., legal nonconforming). The regulations herein are intended to reduce or eliminate these nonconformities over time.

2. Applicability

   These regulations apply to any land use, lot, structure, and/or site feature that was legally established but has since become nonconforming to the regulations in place.

3. Illegal Nonconformities

   Any land use, lot, structure, and/or site feature that was established in violation of the regulations at the time is prohibited and shall be considered a violation of this Development Code. The provisions included in this section do not apply to illegal nonconformities.

4. General Provisions

   a) Authority to Continue

      Any nonconformity that legally existed on or before the Effective Date of this Development Code that becomes nonconforming upon the adoption of this Development Code or past or future amendments may be continued, subject to the regulations of this section.

   b) Repairs and Maintenance

      Nothing in this Development Code shall prohibit the routine operation and maintenance of legal nonconformities in such a manner as to not exacerbate any existing nonconformity.

   c) Change in Ownership or Tenancy

      Nonconforming status runs with the land and is not affected by changes in tenancy, ownership, or management.

   d) Determination of Legal Nonconforming Status

      The burden of proving that a nonconformity legally exists is the responsibility of the subject owner. The Community Development Director is authorized to determine whether reliable evidence of nonconforming status has been provided by the subject owner. Resources for such evidence include but are not limited to recorded plats, aerial photography, or utility billing records.

   e) Nonconformity Legalization

      The Planning & Zoning Commission may use the Zoning Variance process to bring any nonconformity into compliance, subject to the requirements of **F. Zoning Variances**.

5. Nonconforming Lots

   A nonconforming lot is a lot that does not meet the current dimensional requirements established in **Sec. 36-2. Zoning Districts**. Any platted lot is deemed a conforming lot. Any variations to the dimensional requirements may be modified through the Flexible Development Standards.

6. Nonconforming Uses

   a) A nonconforming use is a land use that is not permitted in the zoning district in which it is located, or that does not meet the use-based standards outlined in **Sec. 36-3.B. Use Classifications and Use-Based Standards**.

   b) If a nonconforming use is discontinued for a period of at least 24 months, the use shall not resume except in full conformance with this Development Code. For the purpose of this paragraph, to "discontinue" shall mean to intentionally terminate operations of the nonconforming use.

c) Any nonconforming use that does not involve a permanent type of structure or operation that is moved from the premises shall be considered to have been discontinued, regardless of intent.

d) A nonconforming use shall not be expanded, except that the Community Development Director may authorize the expansion of a nonconforming use within an existing structure.

7. Nonconforming Structures

a) A nonconforming structure is a building or other construction that does not meet the building height, setbacks, design, or other structural requirements.

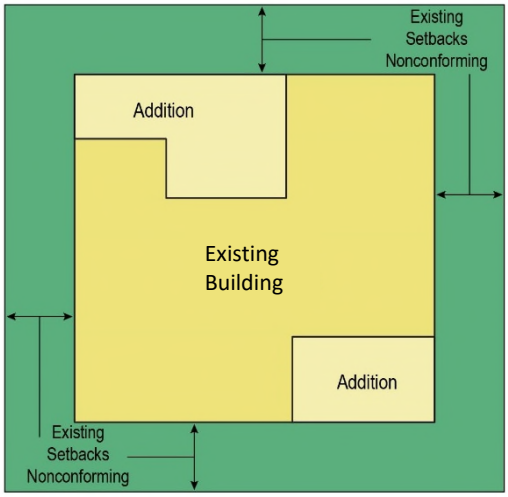
b) A structure or portion thereof may be altered to decrease its nonconformity as determined by the Community Development Director.

i) A mobile home or recreational vehicle (RV) used as a residence may be replaced if the unit is being replaced by a manufactured house, site-built house, or safer mobile home. If the replacement residence is a mobile home, for safety reasons, the replacement mobile home shall have accessible bedroom windows, the appropriate number of properly located and working smoke detectors, and an effective residential fire extinguisher. Furthermore, the replacement dwelling unit shall not be located on the property to create a nonconformity that did not previously exist.

c) A nonconforming structure may be expanded; however, the expansion must conform to the Development Code standards in place at that time and shall not result in increased or additional nonconformities.

i) A building with nonconforming setbacks shall be permitted additions within the extension of existing building lines. Such additions may not be larger than 50 percent of the building. See **Figure 36-5-6. Nonconforming Setbacks and Additions**.

Figure 36-5-6. Nonconforming Setbacks and Additions



d) Reconstruction of nonconforming structures or portions amounting to less than 50 percent of the existing square footage is permitted if the nonconformity is not enlarged in volume, area, or footprint.

e) Voluntary removal or destruction of a nonconforming structure or portion amounting to 50 percent or more of the existing square footage shall require either complete removal of the structure or its reconstruction in conformance with existing regulations.

f) Involuntary damage to or destruction of a nonconforming structure (e.g., fire, winds, or other calamity) may be rebuilt, reconstructed, or restored on the same footprint of the original structure plus any addition or expansion that is allowed by and conforming to the applicable zoning district. Such reconstruction is permitted as long as it begins within 24 months of the loss and complies with all other applicable zoning, development, and building codes.

g) A nonconforming structure may be moved to another location on the lot, provided that the moving will make it nonconforming to an equal or a lesser extent. A nonconforming structure shall not be moved to an off-site location unless the nonconformity is eliminated through the relocation.

8. Nonconforming Site Features

a) A nonconforming site feature is an improvement to a site, such as landscaping, screening, or parking, that no longer meets the current requirements.

b) Each section within this Development Code includes applicability provisions to indicate when compliance is required, typically upon an expansion or change in use.

Chapter 37. Subdivision Regulations

Sec. 37-1. General Provisions

A. Title

This chapter shall be known and shall be cited as the "Subdivision Regulations" of the City of Las Cruces, New Mexico.

B. Purpose

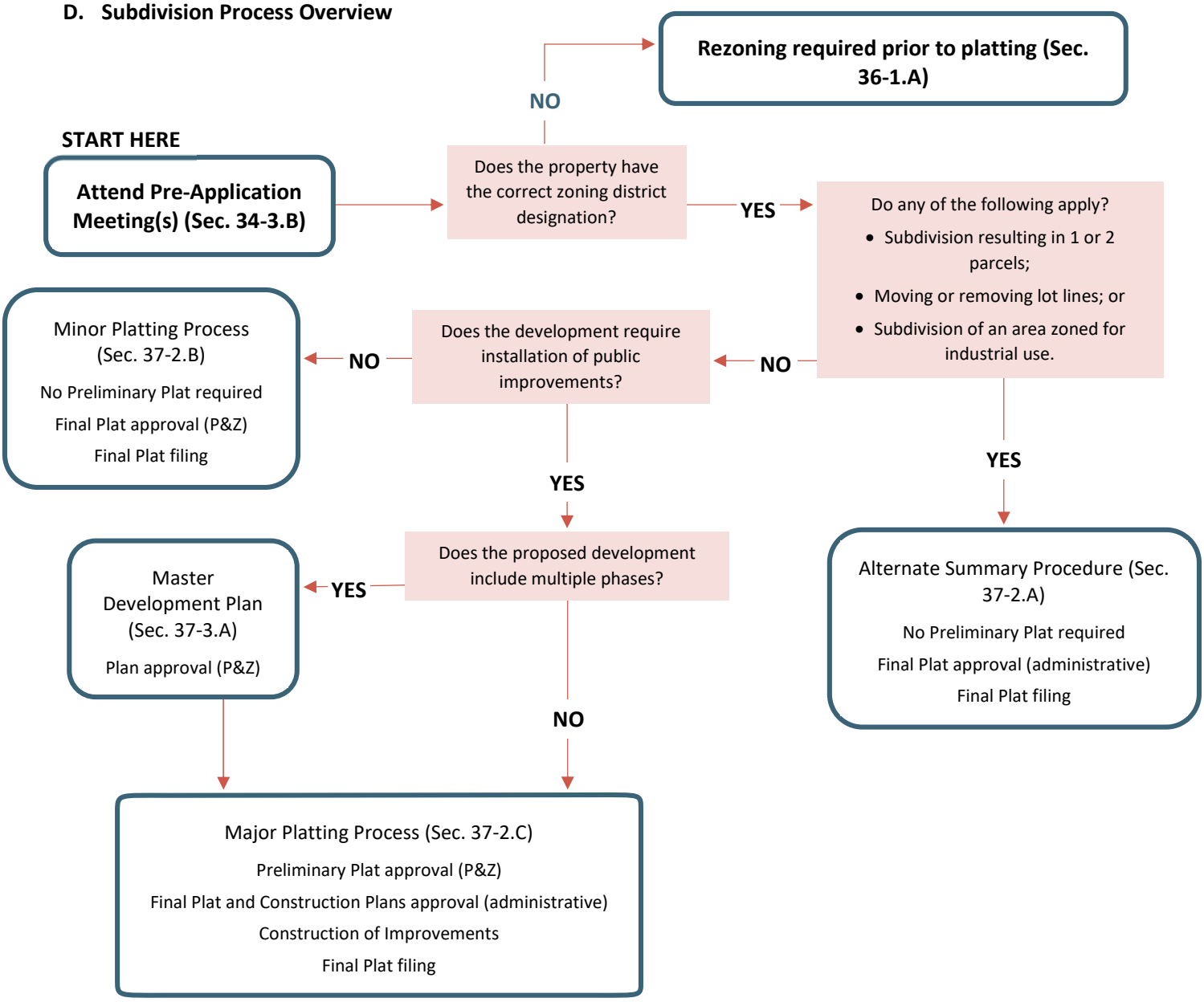
The purpose of this section is to promote the health, safety, convenience, and general welfare of the residents of the City through the implementation of a readable and understandable set of subdivision regulations outlining the processing of subdivision applications. More specifically, provisions of this section are designed to achieve the following objectives in newly subdivided areas:

1. Ensure orderly, efficient, and integrated growth and development within the City pursuant to guidelines established by the elements of the Comprehensive Plan and all other applicable City policies, rules, and regulations;
2. Promote proper street location, width, and design to facilitate multi-modal circulation and to minimize adverse growth impacts in accordance with the Comprehensive Plan, Active Transportation Plan, and City design standards;
3. Provide for proper right-of-way dedication and vacation practices;
4. Provide for the protection and preservation of natural resources and the promotion of natural beauty within the City;
5. Uphold the interests of public safety and quality of life;
6. Ensure that the proposed development is suitable for a given parcel of land, based on its location and environmental characteristics; and
7. Strive for a customer service approach to subdivision application processing.

C. Applicability

1. This chapter applies to anyone wishing to:
   a) Divide a parcel of land into two or more parts; or
   b) Eliminate or adjust lot lines between two or more existing parcels; or
   c) Dedicate or vacate right-of-way; or
   d) Annex an unplatted parcel into the City limits.
2. Failure to comply with these regulations, including the transfer or sale of such land prior to approval and recording of a necessary plat with the County Clerk's Office, or the improper recording of a plat in violation of this chapter, shall be subject to the penalties outlined in **Sec. 34-1.H. Violations and Enforcement**.

D. Subdivision Process Overview



Sec. 37-2. Subdivision Procedures

A. Alternate Summary Procedure

1. Purpose

   The purpose of the Alternate Summary Procedure is to allow an expedited administrative review of certain applications in accordance with NMSA 3-20-8.

2. Applicability

   a) The Community Development Director is hereby authorized to consider approval of the following:

      i) Subdivisions of not more than two parcels of land;

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

      iii) Subdivisions of two or more parcels of land in areas zoned for industrial use (i.e., the LI, Light Industrial District (Rural, Suburban, Urban) or the HI, Heavy Industrial District (Rural, Suburban, Urban)).

   b) Such submittals may include the dedication of public right-of-way but shall not include the vacation of dedicated rights-of-way.

   c) Submittals must be in substantial conformity with these Subdivision Regulations, demonstrating compliance with the Code and any approved Flexible Development Standards and Zoning Variances.

3. Submittal and Consideration

   a) If the Alternate Summary Process will be used more than once during the platting process, applicants must first submit a Master Development Plan for Planning & Zoning Commission approval (see **Sec. 37-3.A. Master Development Plan**).

   b) Applicants shall submit a Final Plat (see **Sec. 37-3.D. Final Plat**) for consideration and approval.

   c) Where two or more contiguous ASPs are located, public improvements must be installed prior to the filing of the Final Plat.

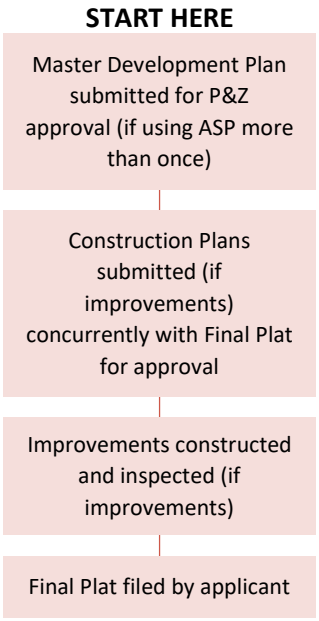
   d) If public improvements will be installed, the applicant shall submit Construction Plans concurrent with the submittal of a Final Plat. Upon approval of Construction Plans and the Final Plat, improvements shall be constructed and inspected.

      i) All improvements must be installed throughout the area included in the Master Development Plan prior to the filing of the Final Plat (unless Performance Security is provided for all remaining improvements in accordance with **Sec. 37-4.C.1.a**) or Substantial Completion of the development in accordance with **Sec. 37-4.D**).

   e) Approval by this Alternate Summary Procedure shall be endorsed on the plat or the instrument of conveyance.

   f) Any application without any formal submission within one year of the last submission will automatically expire.

Figure 37-2-1. Alternate Summary Procedure Summary



B. Minor Platting Process

1. Purpose

   The purpose of the Minor Platting Process is to allow an expedited review of plats that do not require the installation of any public improvements.

2. Applicability

   The Minor Platting Process may be utilized for any plat that meets all of the following requirements:

   a) Does not meet the requirements for the Alternate Summary Procedure, and

   b) Does not require the installation of public improvements.

3. Submittal and Consideration

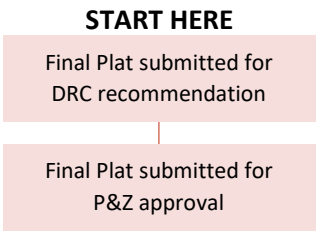
   a) Applicants shall submit a Final Plat (see **Sec. 37-3.D. Final Plat**) for consideration and approval.

   b) The Planning & Zoning Commission shall conduct a public meeting (unless the public meeting is waived by the applicant in accordance with NMSA 3-20-7) and provide notice in accordance with **Sec. 34-3.G. Notice for a Public Meeting**. The Commission shall approve or disapprove the plat within 35 calendar days of the Official Submittal Date.

   c) Following approval of the Final Plat, the plat shall be filed and recorded with the County Clerk's Office.

   d) Any application without any formal submission within one year of the last submission will automatically expire.

Figure 37-2-2. Minor Platting Process Summary



C. Major Platting Process

1. Purpose

   The purpose of the Major Platting Process is to accommodate more substantial subdivisions that include the installation of public improvements.

2. Applicability

   The Major Platting Process shall be used for any plat that does not meet the requirements for the Alternate Summary Procedure or the Minor Platting Process.

3. Submittal and Consideration

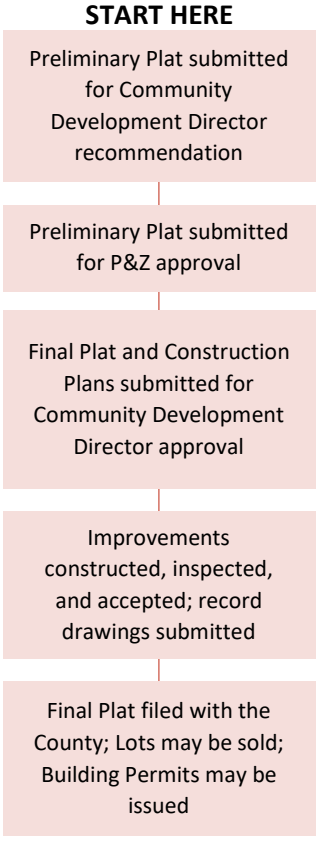
   a) The applicant shall submit a Preliminary Plat for consideration in accordance with **Sec. 37-3.B. Preliminary Plat**.

   b) Following Preliminary Plat approval, the applicant shall submit a Final Plat for consideration in accordance with **Sec. 37-3.D. Final Plat** and Construction Plans for consideration in accordance with **Sec. 37-3.C. Construction Plans**.

   c) Following approval of the Construction Plans, the applicant may begin site grading and installation of public improvements. Improvements shall be inspected in accordance with **Sec. 37-4.C. Installation and Acceptance of Public Improvements**.

   d) Following completion and inspection of the public improvements (or the provision of Performance Security and other requirements outlined in **Sec. 37-4.C.1.a)**), applicants may file the Final Plat and Building Permits may be issued.

Figure 37-2-3. Major Platting Process Summary



i) Final Plats may be filed and Building Permits may be issued prior to completion of all required improvements upon determination of substantial completion (see **Sec. 37-4.D. Substantial Completion**).

e) Any application without any formal submission within one year of the last submission will automatically expire.

D. Plat Vacations

1. The Planning & Zoning Commission may vote to vacate or partially vacate any filed plat upon the owners' request, in accordance with NMSA 3-20-12.
2. The Planning & Zoning Commission may require that streets dedicated to the City in the original plat shall continue to be dedicated to the City; alternatively, the rights-of-way may be vacated as outlined in **E. Right-of-Way Abandonment**.

E. Right-of-Way Abandonment

1. Initiation

   Right-of-way abandonments may be initiated by the adjacent property owner(s) or by the Planning & Zoning Commission if the Commission determines that the right-of-way abandonment will not interfere with the interest of public health, safety, and welfare.

2. Submittal

   Right-of-way abandonments shall be prepared as a Final Plat for the right-of-way to be vacated and the affected adjacent lots in accordance with **Sec. 37-3.D. Final Plat**.

3. Division of the Land to be Abandoned

   Generally, the abandoned land will be divided in equal proportions and joined via plat with the adjacent properties. The Community Development Director shall review the plat that originally dedicated the right-of-way, access considerations, and adjacent property owners' requests to determine the final division.

4. Utility Easements

   If there are utility lines in rights-of-way that are to be abandoned, a utility easement will be required in lieu of right-of-way or relocation. In accordance with NMSA 3-20-13, the rights of any utility already existing shall not be affected by any full or partial abandonment.

5. Right-of-Way Abandonment Approval Process

   a) Administrative Review and Recommendation

      Right-of-way abandonment requests shall be reviewed and recommended by City Staff in accordance with **Sec. 37-3.D. Final Plat**.

   b) Dual Planning & Zoning Commission and City Council Decision

      i) The Planning & Zoning Commission shall conduct a public meeting to review the abandonment request, recommendations from City Staff, the presentation from the petitioner or the petitioner's representative, and from any interested citizens. Action shall be in the form of approval, denial, or modification.

      ii) The same public meeting process shall be followed by the City Council. Approval by both entities is required for right-of-way abandonment.

   c) Any necessary zoning map amendments (i.e., rezonings to align with new lot lines) shall be processed in conjunction with the abandonment.

6. Right-of-Way Dedications

   For standalone right-of-way dedications, see **Sec. 38-2.D. Private Streets**.

Sec. 37-3. Plat and Plan Types

A. Master Development Plan

1. Master Development Plan Purpose

   a) The purpose of the Master Development Plan process is to advance the goals and objectives of the City's Comprehensive Plan and to address a variety of environmental and social issues in an area being proposed for future development.

   b) A Master Development Plan is considered part of the planning process in which the proposal is viewed as a conceptual tool reflecting the ideas and thoughts for future development. Approved Master Development Plans shall be used as a general guide to land development with successive steps established for specific plans that shall be consistent with the adopted Master Development Plan.

   c) The Master Development Plan process is designed to guide future land development and transportation patterns.

2. Master Development Plan Required

   a) A Master Development Plan shall be required when any of the following criteria apply:

      i) A development is to be divided into various phases.

      ii) A request for annexation is made (see **Sec. 34-4. Annexation Process**).

      iii) When an applicant proposes to utilize the Alternate Summary Procedure more than once.

   b) A Master Development Plan may be omitted at the discretion of the Community Development Director for residential developments consisting of no more than two phases on ten or fewer acres, with 30 or fewer lots.

   c) A Preliminary Plat may be submitted simultaneously with the Master Development Plan. A Final Plat shall not be submitted at the same time as the Master Development Plan or the Preliminary Plat.

   d) Said Master Development Plan shall be prepared by, and have the seal of, a Professional Engineer, Surveyor, or Registered Landscape Architect licensed in the State of New Mexico. The survey shall be prepared using the City Coordinate System or approved coordinate system as outlined in the Minimum Standards for Surveying in New Mexico.

   e) The Master Development Plan must include the entire planned development. Future phases for adjacent properties may be identified on the Master Development Plan.

3. Submittal of a Master Development Plan Application

   a) Following a pre-application meeting (**Sec. 34-3.B**) and any required early notification (**Sec. 34-3.H**), an applicant may submit the Master Development Plan application.

   b) The Master Development Plan and supplemental material shall be submitted to the Community Development Department no later than 45 calendar days prior to the day of the next regular meeting of the Planning & Zoning Commission for approval consideration.

   c) Applications shall be subject to a Determination of Completeness (**Sec. 34-3.C.4**).

   d) Any application without any formal submission within one year of the last submission will automatically expire.

4. Consideration of a Master Development Plan Application

   a) Administrative Review and Recommendation

      The DRC shall review and recommend the application in accordance with **Sec. 34-3.C. Application Processing**.

   b) Planning & Zoning Commission Action

i) Agendas shall be posted and public notice provided prior to a public meeting before the Planning & Zoning Commission in accordance with **Sec. 34-3.G. Notice for a Public Meeting.**

ii) The Planning & Zoning Commission shall review the Master Development Plan, comments received from the DRC, and presentations from the applicant or the applicant's representative and from any interested citizens.

iii) Action from the Planning & Zoning Commission shall be in the form of approval, conditional approval, postponement, or disapproval. Action from the Planning & Zoning Commission shall be recorded and published in accordance with **Sec. 34-3.D. Notice of Decision**.

iv) It is the requirement of the Planning & Zoning Commission that no Master Development Plan shall be reviewed unless either the applicant or the applicant's representative is present at the Planning & Zoning Commission public meeting. If neither party is present at the public meeting, the Master Development Plan will be postponed until the next regular Planning & Zoning Commission meeting.

c) Effect of Master Development Plan Approval

Upon approval of the Master Development Plan, the developer may submit to the Community Development Department any zoning applications, Preliminary Plats, Construction Plans, or Final Plats as necessary and applicable, that reflect the objectives of the approved Master Development Plan.

d) Effective Term and Expiration

i) The approval of the Master Development Plan shall be effective for a period of five years. The Master Development Plan shall expire five years from the date of approval unless one of the following applications has been approved, in accordance with the Master Development Plan for all or part of the master-planned area:

a. Preliminary Plat or Final Plat

b. Building Permit

c. Other development application

ii) Prior to the expiration date, the applicant may submit a request for extension of approval for up to one year, if desired. The request will require review by the Community Development Director based on current requirements and approval by the Planning & Zoning Commission. The Community Development Director or Planning & Zoning Commission may revise requirements based on projected needs or growth around the master-planned area, including infrastructure improvements related to signals, road network, streetlighting, etc.

iii) If no subdivision is approved and constructed within 10 years, then the subdivision will follow current standards for development.

e) Revisions to an Approved Master Development Plan

Any substantial change to the Master Development Plan will require resubmittal of the plan in its entirety and may trigger the need for a noticed area meeting at the discretion of the Community Development Director. Minor modifications shall be reviewed and considered by the Community Development Director. Substantial changes to the Master Development Plan shall require a new application in accordance with the standards at the time of application. Substantial changes shall include, but are not limited to:

i) Any major change in land use or use intensity (e.g., shifting or increasing drainage areas, adding a trail easement);

ii) Modifications of vehicular traffic circulation on public streets or roadway network changes;

iii) Increase in residential density; or

iv) Any change in the Master Development Plan that is determined by the Community Development Director to be substantial.

f) Appeals

Any appeals shall be processed in accordance with **Sec. 34-3.F. Appeals**.

5. Master Development Plan Submittal Requirements

The Master Development Plan shall be provided electronically in PDF format on 18-inch x 24-inch sized pages at a scale that legibly and adequately represents the information. If more than one sheet is used, all sheets must be indexed and contain an index map showing the relationship of the sheet to the whole. The following information shall be shown, unless specifically added or waived in accordance with **Sec. 34-3.C.3. Modification, Addition, or Waiver of Required Submittal Materials**.

Master Development Plan Submittal Requirements
Application, 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 County Clerk's Office.
Application submittal fee.
Name of Master Development Plan.
Detailed area/vicinity map clearly showing the surrounding area and the proposal's relationship to existing road networks, and existing natural and/or constructed 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.
A separate sheet identifying the limits of any adjacent property owned, legally controlled by, or of any development and/or financial interest to said subdivider.
North arrow, date of preparation, written and graphic standard engineering scale.
A general legal description that shall include approximate survey ties and approximate acreage
Name and address of the consultant preparing the Master Development Plan.
Name and address of the developer.
Boundary lines of the Master Development Plan, with approximate lengths of lines.
Proposed land use, by parcel or phase. Residential parcels shall provide gross density range.
Present zoning and proposed zoning (if applicable).
Contours—20-foot intervals. In instances whereby 20-foot intervals are not appropriate or applicable, contours may be provided at an appropriate interval that adequately presents the elevation differences of the land as determined by the Community Development Director.
Adjacent land use and zoning district identification.
Thoroughfare system: • Proposed approximate location, length, width and point of intersection of all major transportation systems, which may include: o Bikeways, trails, and any other transportation lines; o Existing and proposed points of ingress and egress;

Master Development Plan Submittal Requirements
○ Existing and proposed transit stops and transit service as per the RoadRUNNER Transit Plans; and ○ Location and phasing of signalized intersections. • Identify existing and proposed classification of roads as per City design standards and based on the Comprehensive Plan and Active Transportation Plan.
Significant natural features, such as arroyos and approximate 100-year floodplains.
Easements, with all public easements labeled as “easement for public use.”
Tabular information. • Land use of each parcel and phase (if applicable). • Approximate acreage for each parcel and phase (if applicable). • Number of residential dwelling units, minimum and maximum range, for the development and by phase (if applicable). • Number of dwelling units by type. • Dwelling Units Per Acre (DUA) for each parcel and phase (if applicable). • Approximate square footage of nonresidential uses for the development and by phase (if applicable) • Approximate acreage proposed for open space, private and public facilities, and right-of-way for the development and by phase (if applicable). • Approximate additional population to be generated by development, based on U.S. Census data. • Approximate additional traffic estimated to be generated by development, utilizing ITE trip generation information, as amended.
Approval block signifying the final approved Master Development Plan to be signed by the Community Development Director upon approval by the Planning & Zoning Commission and compliance with all conditions.
Phasing plan. If developing in phases, a phasing plan shall identify the phase (or date by which) public facilities (e.g., trails, amenity centers, recreational facilities, other improvements) will be provided.
Conceptual utilities plan. The conceptual utilities plan shall contain enough information to provide a general outline of the proposed utility-routing plans for the development, including locations and sizes of existing and proposed utilities to be provided to the development to meet Las Cruces Utilities standards.
Conceptual drainage plan. The conceptual drainage plan shall contain enough information to provide a general understanding of how drainage issues will be addressed by the development.
Conceptual traffic-related improvements plan. The conceptual traffic related improvement plan shall contain enough information to provide a general understanding of how any increase in traffic on adjacent and internal public streets will be addressed by the development.
Copy of early notification letter (**Sec. 34-3.H. Early Notification and Meeting Requirements**) to noticed area and copy of minutes (summary or verbatim) from any subsequent noticed area meeting as may have been required.

B. Preliminary Plat

1. Preliminary Plat Purpose

   The purpose of the Preliminary Plat is to determine the general layout of the subdivision, the adequacy of public facilities needed to serve the intended development, and the overall compliance of the land division with applicable requirements of all adopted City plans, rules and regulations, and the development Master Development Plan, if applicable.

2. Preliminary Plat Required

   a) A Preliminary Plat conforming to this section shall be required for all subdivisions that follow the Major Platting Process (**Sec. 37-2.C**).

   b) A Preliminary Plat may be submitted simultaneously with a Master Development Plan.

   c) Requests for zoning variances or exceptions may be considered in conjunction with the plat request.

3. Submittal of a Preliminary Plat Application

   a) Following a pre-application meeting (**Sec. 34-3.B**) and any required early notification (**Sec. 34-3.H**), an applicant may submit the Preliminary Plat application.

   b) Applications shall be subject to a Determination of Completeness (**Sec. 34-3.C.4**).

   c) Any application without any formal submission within one year of the last submission will automatically expire.

4. Consideration of a Preliminary Plat Application

   a) Administrative Review and Recommendation

      The DRC shall review and recommend the application in accordance with **Sec. 34-3.C. Application Processing**.

   b) Planning & Zoning Commission Action

      i) In accordance with NMSA 3-20-7, the Planning & Zoning Commission shall take action to either approve or disapprove the Preliminary Plat within 35 days of the plat's Official Submittal Date. Upon agreement that a delay is appropriate, the applicant may be required to submit a statement waiving the right to action within this timeframe.

      ii) Agendas shall be posted and public notice provided prior to a public meeting before the Planning & Zoning Commission in accordance with **Sec. 34-3.G. Notice for a Public Meeting**. In accordance with NMSA 3-20-7, an applicant may waive the requirement for a public meeting.

      iii) The Planning & Zoning Commission shall review the Preliminary Plat application, comments from the DRC, the presentation from the subdivider or the subdivider's representative and from any interested citizens at a public meeting (if applicable).

      iv) Action from the Planning & Zoning Commission shall be recorded in the minutes of the meeting.

   c) Effect of Preliminary Plat Approval

      Approval of a Preliminary Plat shall not constitute approval of the Final Plat, but shall signify the general acceptability of the proposed subdivision. Preliminary Plat approval shall constitute permission to prepare and submit the Construction Plans for all improvements for the proposed subdivision. Construction Plans shall not be considered until Preliminary Plat approval is complete.

   d) Effective Term and Expiration

      i) Preliminary Plat approval shall be effective for no more than three years from the date of approval. If Construction Plans or a Final Plat application has not been submitted, the Preliminary Plat shall expire, and a new Preliminary Plat application must be submitted for approval.

ii) If the approved Preliminary Plat contains more than one phase, a Final Plat must be submitted within every three years thereafter (for a Preliminary Plat with more than one phase) until all phases are complete; otherwise, the Preliminary Plat shall expire.

iii) If an approved Final Plat is allowed to expire, the Preliminary Plat shall also expire.

iv) The applicant may submit a request for a one-year extension of approval, prior to the expiration date, if desired. The request will be reviewed by the Community Development Director. All plat extensions shall be automatically conditioned to require compliance with all City codes, regulations, and specifications in place at the time of development of the plat in question.

e) Deviations from an Approved Preliminary Plat

i) Any Final Plat submittal that results in a substantial change to an approved Preliminary Plat will require resubmittal of the Preliminary Plat in its entirety and may trigger the need for a noticed area meeting at the discretion of the Community Development Director. Minor modifications shall be considered by the Community Development Director.

ii) Substantial changes will be subject to a Planning & Zoning Commission public meeting, with the same requirements as an original application. Substantial changes shall include but are not limited to:

a. Any major change in land use or use intensity (e.g., shifting or increasing drainage areas, adding a trail easement);

b. Modifications of vehicular traffic circulation on arterials, collectors and/or major local designated streets;

c. Roadway network changes;

d. An anticipated increase in residential density;

e. Any change in the Preliminary Plat that is determined by the Community Development Director to be substantial.

f) Appeals

Any appeals shall be processed in accordance with **Sec. 34-3.F. Appeals**.

5. Preliminary Plat Submittal Requirements

The Preliminary Plat shall be provided electronically in PDF format on 18-inch x 24-inch sized pages at a scale that legibly and adequately represents the information. If more than one sheet is used, all sheets must be indexed and contain an index map showing the relationship of the sheet to the whole. The following information shall be shown, unless specifically added or waived in accordance with **Sec. 34-3.C.3. Modification, Addition, or Waiver of Required Submittal Materials**.

Preliminary Plat Submittal Requirements
Application.
Application submittal fee.
Name of proposed subdivision.
Total acreage of subdivision, to nearest one-hundredth of an acre.
Date of preparation, north arrow, written and graphic standard engineering scale.

Preliminary Plat Submittal Requirements
Detailed area/vicinity map showing existing road networks to include a minimum of two major thoroughfares, outline of surrounding parcels, and existing natural and/or constructed features that may impact the development. Detail must be sufficient for the subject property to be located in the field using the map.
Name and address of subdivider.
Name and address of the person, corporation or organization preparing the Preliminary Plat.
An accurate and complete boundary survey of the land to be subdivided that meets or exceeds the Minimum Standards for Surveying NMAC 12.8.2. • The name of the surveyor who performed and is responsible for the survey shall be provided. • Boundary survey will include all monuments found accepted/rejected and monuments to be set. • Boundary lines shall be given in bearings (degrees, minutes, and seconds). • Distances will be shown in feet to the nearest hundredth. • Curved boundary lines will provide sufficient data to be reestablished on the ground and will include central angle, radius, arc length, chord bearing and distance.
A statement of ownership, signed by the legal owner, and the equitable owner if applicable, on the final approved Preliminary Plat.
A separate sheet identifying the limits of any adjacent property owned, legally controlled by, or of any development and/or financial interest to said subdivider.
Zoning or proposed zoning shall be shown with boundaries given as streets, highways, or property lines. Special Use Permit or Planned Unit Development information and any Zoning Variance requests shall be included if applicable.
Uniquely identify each lot-by-lot number and block when applicable, tracts to be identified by alphabetically. Acreage for each lot and tract will be included.
Proposed lot lines and public rights-of-way lines; rights-of-way and street widths; rights-of-way for public services or utilities with identification of any limitations thereof.
When using a private water provider, provide a current engineered water system analysis, in accordance with LCFD guidelines.
Proof that all lots in any subdivision meet the requirements of **Chapter 36. Zoning Regulations** and that each lot shall be dimensioned in such a manner that setbacks, as required by the code, shall be met for any structure or building that may be on or will be constructed on the lot. No platted lot within a subdivision shall contain less square footage than that required by **Chapter 36. Zoning Regulations**.
Additional setbacks and any restrictions needed to accommodate required clear sight triangles at intersections;
Approximate locations, dimensions, areas, and purposes of tracts proposed to be reserved for the public;
Sites and approximate area(s) for any multi-family dwellings or nonresidential uses;
Existing conditions: • Present site designation or subdivision name; • Easements on-site: Location, width, and purpose of each, with all public easements labeled as “easement for public use”, and existing filed information of said easement; • Public rights-of-way on and within 150 feet of the site: name, width, and classification of each, and filed information of public right-of-way, to include right-of-way document establishing width, owner, maintenance, etc.; • Utilities on and adjacent to the site: Locations and size of each water line, sanitary and storm drain; locations of all irrigation channels and drains; locations of sewer mains, gas mains, gas lines, fire hydrants, electric and telephone poles, and street

Preliminary Plat Submittal Requirements

lights. If water mains and sewers are not on or adjacent to the tract, indicate the directions, distances, and sizes of the nearest lines;
• Existing topography.
  o For land with average slopes of less than five percent, show contour lines at intervals of not more than two feet;
  o For land with average slopes exceeding five percent, show contour lines at intervals of not more than five feet;
• Floodplain shall be clearly graphically delineated and noted;
• Existing storm drainage facilities on and adjacent to the site;
• Walkshed analysis of existing and proposed parks within a ¼-mile radius;
• Conditions on adjacent land significantly affecting design of the subdivision: approximate directions and gradients of ground slopes, character and location of development, and access points from adjacent points.

Approval block signifying the final approved Preliminary Plat, to be signed by the Community Development Director upon approval by the Planning & Zoning Commission and resolution of all outstanding staff comments;
Conceptual utilities plan. The conceptual utilities plan shall contain enough information to provide a general outline of the proposed utility-routing plans for the development, including locations and sizes of existing and proposed utilities to be provided to the development to meet Las Cruces Utilities standards.
Master Traffic Impact Analysis. Refer to **Sec. 38-2.G. Traffic Impact Analysis**, ITE Traffic Impact Analysis guidelines, and other requirements as approved in consultation with the Public Works Director. For Preliminary Plats that are submitted without a preceding Master Development Plan, the applicant may opt to delay the Master TIA until after Preliminary Plat approval and before or with Construction Plan submittal; however, applicants should be aware that Preliminary Plat resubmittal may be required based on outcomes of the Master TIA.

Master Drainage Study. The purpose of the master drainage study is to identify major drainage ways, ponding areas, locations of culverts, bridges, open channels and drainage basins that are contributory to the proposed study area. In addition, the ability of downstream drainage facilities to pass the developed runoff from the proposed development must be analyzed in the master drainage study. The master drainage study shall contain a general outline of the proposed drainage routing plans for the development. The digital format of the report contents must be provided (e.g., AutoCAD, HEC-RAS, etc.).
 	
For Preliminary Plats that are submitted without a preceding Master Development Plan, the applicant may opt to delay the Master Drainage Study until after Preliminary Plat approval and before or with Construction Plan submittal; however, applicants should be aware that Preliminary Plat resubmittal may be required based on outcomes of the Master Drainage Study.
 	
• The report shall include, but not be limited to, the following information and calculations:
  o Calculation for peak flow from all offsite tributary drainage areas.
  o Calculations for peak flow within the proposed development for all drainage basins larger than 20 acres.
  o Preliminary analysis of 100-year floodplain and major drainage ways.
  o Closed sub-basin analysis of 100-year floodplain and major drainage ways.
  o Discussion and analysis of downstream drainage facilities.
  o Discussion of anticipated drainage problems within the proposed development and possible solutions.
  o Report shall be typed on 8½-inch x 11-inch pages.
• Drawings for the master drainage study shall include, but not be limited to, the following:
  o Any and all floodplains and flood ways must be identified. A copy of applicable FEMA floodplain map is required indicating limits of current study.
  o Existing topography.
  – For land that slopes less than approximately five percent, show contour lines at intervals of not more than two feet.
  – For land that slopes more than five percent, show contour lines at intervals of not more than five feet.
  – Location and size of existing and proposed open channels, storm drains, retention/detention areas, and other drainage structures.
  – Identification of all drainage basins in the development.
  – Location of all streets in/adjacent to the proposed development.
  – Identification of all drainage basins tributary to the proposed development.
  – Basin maps may be scaled as small as 1 inch = 2,000 feet. Orthophoto maps at a scale of 1 inch = 200 feet are preferred. (Use the most appropriate scale available)
• Inlet and storm drain size calculations are not required with the master drainage study; therefore, the number of sub-basins analyzed in the report shall be held to the smallest practical amount.

C. Construction Plans

1. Construction Plans Purpose

   Construction Plans ensure that public improvements are installed to serve a development in accordance with all applicable regulations.

2. Construction Plans Required

   Construction Plans shall be required prior to the installation of public improvements (e.g., those improvements that are intended for dedication to the City) or private improvements as determined by the reviewing department.

3. Submittal of Construction Plans

   Construction Plans shall be submitted simultaneously with the Final Plat.

4. Consideration of Construction Plans

   a) The Community Development Department shall review the submittal for completeness in accordance with **Sec. 34-3.C.4. Complete Application**.

   b) Construction Plans and supplemental material will be processed by the applicable City departments and other governmental agencies for review, comments, and recommendations and forwarded to the Community Development Director.

   c) The Community Development Director shall forward any comments to the applicant for completion. Construction Plans and supplemental material that receive comments shall be resubmitted and reviewed until the provisions set forth in this section are met. At that time, the Construction Plans shall be approved, the construction approval block signed by the appropriate authorities and a construction permit issued (if the Final Plat has received approval from the appropriate authority).

   d) Whenever comments received by the City departments are in conflict, the Community Development Director will determine the appropriate procedure to be followed, utilizing the DRC where appropriate, in order to resolve said conflict or disagreement.

   e) Appeals

      Any appeals shall be processed in accordance with **Sec. 34-3.F. Appeals**.

5. Engineer of Record Responsibility

   Review and approval of the construction plans does not preclude the Engineer of Record from responsibility for adherence to all applicable local, state and federal codes, regulations and requirements. Errors and omissions when discovered are the responsibility of the developer to resolve prior to final acceptance.

6. Construction Plans Submittal Requirements

   The Construction Plans shall be provided electronically in PDF format on 18-inch x 24-inch sized pages at a scale that legibly and adequately represents the information. If more than one sheet is used, all sheets must be indexed and contain an index map showing the relationship of the sheet to the whole. The following information shall be shown, unless specifically added or waived in accordance with **Sec. 34-3.C.3. Modification, Addition, or Waiver of Required Submittal Materials**:

Construction Plans Submittal Requirements
Application.
Application submittal fee.

Construction Plans Submittal Requirements
A Final Plat conforming to **Sec. 37-3.D. Final Plat** (unless the installation of public improvements is delayed in accordance with **Sec. 37-4.C.1.a)**.
Updated clear sight triangle based on actual horizontal and vertical geometry of roadway design conforming to **Sec. 38-2.H. Clear Sight Triangle**.

Geotechnical soils investigation report. A complete geotechnical soils investigation and corresponding report may be required if the soil conditions are unknown, unreliable, or otherwise unusual. This requirement must be met when working in soils that are graded “expansive” or “very fine.”
 	
Any geotechnical soils investigation must include, at a minimum, representative sampling and testing for:
 	
• Soil classification (NRCS);
• Sieve analysis;
• Structural design factors (R value and/or CBR value); and
• Other parameters may be required, including but not limited to:
  o Soil percolation tests (permeability);
  o Soil boring logs; and
  o Water table elevations.

Pavement design. A complete pavement design shall be based on a TIA where applicable and may be required for collectors, arterials, industrial parks/developments, or other areas subject to unusual traffic loadings. This requirement must be met whenever the soil to be worked in has been graded as “expansive” or “very fine.” Pavement designs must include, at a minimum: • Depth and type of subgrade preparation; • Depth and type of base course needed; and • Depth and type of asphalt pavement needed (Note: Asphalt mix formula to be required from contractors).
Final drainage study. The final drainage study shall be a detailed report and analysis of the drainage in the proposed development. It shall include detailed calculations for all potential runoff within the proposed development, and detailed calculations supporting the design of all drainage structures within the development. Construction plans for all drainage structures, and grading plans for all street grades where applicable, shall also be considered as part of the final drainage study. All drawings shall be formatted for 24-inch x 36-inch sheets. Drawings and calculations comprising the final drainage study shall include, but not be limited to, the following information: • Existing and proposed contours for proposed development. (Contour interval based on City Coordinate System or approved coordinate system as outlined in the Minimum Standards for Surveying in New Mexico – two-foot contour interval minimum). Proposed development with relatively flat surfaces (e.g., river valley subdivisions) shall contain spot elevations or one-foot contour intervals. • Location(s) and elevation(s) of City or U.S.G.S benchmark(s). All elevations shall be based on City of Las Cruces Low Distortion Projection or a datum approved by the City Surveyor. • Property lines. • Streets, R.O.W. limits, names and grades. • Existing drainage facilities and structures, including existing irrigation ditches, roadside ditches, drainage ways, gutter flow directions, and culverts. All pertinent information such as size, slope, elevations and locations of existing drainage ways shall be included in order to facilitate review and approval of drainage plans. • Overall drainage area boundaries and drainage sub-area boundaries. • Proposed types of curbs and gutters and gutter flow directions, including crosspans (intersections). • Proposed storm drains, open drainage ways and right-of-way requirements, including proposed inlets, manholes, culverts, erosion control and energy dissipation devices, and any other appurtenances necessary for drainage control. • Proposed inflow and outfall point(s) for runoff from the study area. • Routing and accumulative flows at various critical points for the initial (10-year) and major (100-year) storm runoff. • Minimum finished-floor elevation and ground-site elevations at all critical building locations for protection from major storm runoff. • A 1-inch = 100-foot (preferable) scale map of the proposed development that shows the following information: o Locations and sizes of all drainage structures;

Construction Plans Submittal Requirements
o General flow patterns within the development; o Minimum finished-floor or building-pad elevation of each building site; o 100-year flood level in all streets in which the curb would be overtopped during the 100-year storm; o All drainage basins within the development (Note: The number of basins should be limited to the smallest practical number.) • All floodplains and arroyos within the proposed development. A copy of the current FEMA Floodplain Map is required showing project limits. • Plan details. The following details shall be indicated on the drainage plans. o Title block (lower right-hand corner preferred); o Scale; o Date and revisions; o Name and address of professional engineer (and firm); o Professional engineer's seal; o Drawing number (sheet n/n); o Legend; o Approval block for appropriate reviewing departments and agencies.
Construction drawings. Construction drawings shall be prepared by a registered professional engineer licensed in the state. All drawings shall be formatted for 24-inch x 36-inch sheets and shall show the following information: • Plan. • North arrow; • Property lines; • Street names and easements (with locations and width dimensions); • Existing utility lines, locations, and depths (or heights): o Water; o Gas; o Storm drains; o Irrigation canals; o Sanitary sewers; o All existing and proposed public and private utilities. • Profile. o Vertical and horizontal grids with scales identified; o Ground surface grade (dashed line) and proposed grade (solid line); o Existing utility lines where crossed; o Benchmarks (N.G.S. Datum). • Proposed construction. o Pipes and culverts. – Plan showing stationing; – Profile showing elevations at even stationing (at 50-foot intervals) – Size and length pipe, pipe composition (if applicable), and distances between manholes; – Slope of pipe; – Size and type of valves and fittings – Radius of curved utility line – Inlet and outlet details of all manholes and inlets, and connections to existing drainage systems (if applicable); – Manhole details, including station numbers, and invert and top elevations; – Typical bedding details for pipe for all bedding situations encountered on project; o Open channels: – Plan showing stationing; – Profile indicating elevations of invert of channel, top of lining (if any), and adjacent ground grade; – Profile showing elevations at even stationing (at 50-foot intervals); – Typical cross sections; – Construction notes; – Lining details; – Rip-rap and bedding details, with graduation requirements for same; – Details of all inflow and outflow structures and drop structures (includes subgrade and foundation design details);

Construction Plans Submittal Requirements
o Technical specifications shall be included on any drainage project permitted for construction within the City. Specifications shall meet the minimum guidelines for construction as outlined in the City standard specifications for roadway construction and design standards as amended. o Parks, trails, other recreation improvements; streetscape and irrigation improvements; details and technical specifications related to these improvements.
Final TIA report and required infrastructure improvements shall be included as part of the construction drawing submittal with requirements as noted in **Sec. 38-2.G. Traffic Impact Analysis**, ITE guidelines, and approved in consultation with the Public Works Director.
Street plan and profiles. The plan and profiles shall be formatted for 24-inch x 36-inch sheets by a registered professional engineer, licensed in the state. The scale of all plans and profiles shall be 1:5 vertical, 1:50 horizontal unless a grid break would result. In such cases, the scale may be 1:10 vertical, 1:100 horizontal. A grid shall be required in all cases. • Plan: o Title block (lower right-hand corner preferred); o Horizontal/vertical scale; o Date and revisions; o Name of professional engineer (and firm); o Professional engineer's seal; o Drawing number (sheet n/n); o Legend; o Construction approval block for appropriate reviewing departments and agencies; o Street name; o North arrow; o Match lines with stationing and "see sheets" called out; o Limits of construction; o Centerline stationing; o Stations at street intersections, curb returns, and property lines; o Sizes and locations of all utilities (existing and proposed) (stub-outs not required); o Rights-of-way widths; o Adjacent block and lot numbers; o Fire hydrant locations; o Water and gas lines and valve locations, sizes, materials, and radius for curved lines, with all fittings (e.g., elbows, caps) called out; o Sidewalk and wheelchair ramp locations; o Curve centerline data; o Proposed street lighting system, signage, and markings; o Stationing and locations or crown transition; o Back-of-curb radius (P.C., P.T., and midpoint stations), or sidewalk if no curbing is required, if applicable; o Curb/gutter locations, if applicable; o Top-of-curb elevations, or of sidewalk if no curbing is required, and stations at each front lot corner; o Drainage flow arrows at crosspans and nontypical intersections; o Driveway locations and stations (if applicable); o Proposed top-of-pavement spot elevations at and across from all intersections (at flowline extensions); o A local benchmark based on N.G.S. datum, with description, location and elevation; o Sewer lines with flow directions and manhole locations, sewer line size, materials, manhole numbers, and radius for curved lines; o "No parking" sign locations (if applicable); and o Bike lane stripes, bike lane symbols, buffered bike lanes, protected bike lanes, bike lane or share the road signs, and bike sharrow lane symbols (if applicable). • Profiles: o Proposed and existing grades 100 feet beyond limits of construction; o Even stationing (at 50-foot intervals) and elevations on all profiles of top-of-curb, right and left, street centerline required if in a nontypical section; o Stationing and elevation of the vertical point of intersection on all vertical curves, including PVT, PVI, PVC, and K value; o Top-of-curb elevations (or top-of-sidewalk elevations if no curbing is required at each lot corner);

Construction Plans Submittal Requirements
○ Sanitary and storm sewer pipe invert elevations; ○ Slopes and lengths of sewer lines; ○ Stationing, size, and material of manholes; elevation for manhole rim, invert in and invert out; ○ Water and gas lines shown on profile with depths per Las Cruces Utilities standards and any necessary line lowering; ○ Limits of construction; and ○ Grid at scale of 1:5 Vertical and 1:50 horizontal; scale can be 1:10 vertical and 1:100 horizontal if size will require a page break.
Grading plans. The plans shall be prepared by a registered professional engineer licensed in the state. All grading, including lot grading, shall be done at time of roadway construction and to be maintained by subdivider. The grading plans shall be provided separately from the utility master plan. The following information shall be required: • Street names; • Block and lot numbers; • North arrow; • Written and graphic standard engineering scales; • Existing contours based on project "as-builts," not plans, at 2-foot intervals (100 feet beyond project boundary if adjacent land is undeveloped and the property line of the adjacent land is developed). Proposed development with relatively flat surfaces (e.g., river valley subdivisions) shall provide spot elevations, or one-foot contour intervals; • Retaining wall locations (and note if walls will be built at time of roadway construction); • Top-of-curb elevations, or sidewalk if no curbing is required at each lot corner • Pad elevations or finished floor elevations (for each lot); • Spot elevations showing high points and low points or a typical lot detail if the proposed development has a relatively flat surface (e.g., River Valley subdivision); • Pond elevations: Top, bottom and dimension from property lines (if applicable); • Barrow ditch elevations (if applicable); • Drainage channel elevations (if applicable); • Drainage flow arrows (and note if roof area will drain to ponding area); • Retention/detention, basin, location and elevation; • A project benchmark based on N.G.S. datum with description, location, and elevation; • General notes for grading and construction, etc.; • Off-site grading or slope grading limits (if applicable); • All grading must comply with Chapter 70 Grading, Excavations, and Fills of the International Building Code. Alternative design may only be approved by the Public Works Director. ○ If grading will be performed on the land of an adjacent property owner(s), or construction vehicles may need to access the property, a copy of a letter must be provided to the City, signed by the adjacent property owner(s), stating that they understand the nature of the work and do not oppose the modification to their property and/or that they will allow temporary access to their property by the contractor; • Existing utilities.
Utility master plan. The Utility master plan shall include all phases of development and be prepared by a registered professional engineer, licensed in the state. If utilities are not in the standard location, i.e., street right-of-way, then preapproval is required by the utilities department. The utility master plan shall be provided separately from the grading plans. The following information shall be required: • Lot and block numbers; • Street names; • North arrow, written and graphic standard engineering scale; • Utility stub-outs; • Street light pad and conduit locations; • Wire utility boxes; • Fire hydrant locations; • Water and gas valve locations and fittings; • A local benchmark based on N.G.S. datum, with description, location, and elevation; and • Sewer lines with flow directions and manhole locations.

Construction Plans Submittal Requirements
Detail sheet, to be prepared by a registered professional engineer licensed in the state. The following information shall be required, if applicable: • Roadway construction notes and general notes; • Utility construction notes; • Manhole details; • Radius of curved utility line; • Typical utility stub-out to lot detail; • Street intersection detail (if applicable); • Typical street cross-section(s) (including paving composition); • Curb and gutter detail; • Wheelchair ramp detail; • Retaining wall detail, cut-off wall detail, and all fencing details (if applicable); • Drainage structure details; • Light base details; • Typical lot layout; • Foundation detail for signage; • Signage face detail; • Street lighting system details; • Any other construction detail that may be needed for clarification purposes; and • Water and gas valve and line detail.

D. Final Plat

1. Final Plat Purpose

   The Final Plat is the subdivision instrument that is prepared for recording in the County Clerk's Office. The Final Plat process ensures that the recordable plat is in complete compliance with plans approved earlier in the Preliminary Plat process.

2. Replats

   A replat (i.e., resubdivision) that makes changes to a previously approved Final Plat requires the filing of a new Final Plat. A replat follows the same procedures outlined in this **D. Final Plat**.

3. Final Plat Required

   a) A Final Plat shall not be submitted until Preliminary Plat approval, if applicable, is complete.

   b) Said Final Plat shall be prepared by, and have the seal of, a professional surveyor. The survey shall be prepared using the City Coordinate System or approved coordinate system as outlined in the Minimum Standards for Surveying in New Mexico.

4. Submittal of a Final Plat Application

   a) Following a pre-application meeting (**Sec. 34-3.B**), any required early notification (**Sec. 34-3.H**), and any required Preliminary Plat approval, an applicant may submit the Final Plat application in conjunction with Construction Plans (if applicable).

   b) Applications shall be subject to a Determination of Completeness as outlined in **Sec. 34-3.C.4. Complete Application**.

5. Consideration of a Final Plat Application

   a) In accordance with NMSA 3-20-7, the City shall take action to either approve or disapprove the Final Plat within 35 days of the plat's Official Submittal Date. Upon agreement that a delay is appropriate, the applicant may be required to submit a statement waiving the right to action within this timeframe.

   b) Administrative Approval of Final Plats

      i) For Final Plats following an approved Preliminary Plat, the Community Development Director shall review and approve the application in accordance with **Sec. 34-3.C. Application Processing**.

      ii) For Final Plats that do not follow an approved Preliminary Plat, the DRC shall provide a recommendation and the Planning & Zoning Commission shall approve the application in accordance with **Sec. 34-3.C. Application Processing**.

   c) Effect of Final Plat Approval

      The Final Plat shall not be filed until all improvements have been constructed, inspected, and ready for approval and maintenance acceptance by the City. Upon approval and filing of the Final Plat, the applicant may sell lots and apply for Building Permits.

      i) If the construction of public improvements will be delayed in accordance with **Sec. 37-4.C.1.a)**, Performance Security shall be submitted with the Final Plat and Construction Plans.

      ii) If the construction of public improvements is substantially complete, the City shall authorize the applicant to file the Final Plat and may issue building permits. See **Sec. 37-4.D. Substantial Completion** for more information.

   d) Revisions to an Approved Final Plat

      i) No changes, revisions, erasures, or modifications shall be made on the Final Plat.

      ii) No Final Plat shall be filed and recorded prior to the satisfaction of all requirements and conditions.

e) Expiration

If the applicant has not filed a Final Plat within three years of the date of approval, the Final Plat shall expire.

f) Appeals

Any appeals shall be processed in accordance with **Sec. 34-3.F. Appeals**.

6. Final Plat Submittal Requirements

The Final Plat shall be provided electronically in PDF format on 18-inch x 24-inch sized pages at a scale that legibly and adequately represents the information. Once approved, the Final Plat shall be prepared for filing on 18-inch x 24-inch Mylar sheets at a scale that adequately represents the information. Copies provided shall be legible. If more than one sheet is used, all sheets must be indexed and contain an index map showing the relationship of the sheet to the whole. The following materials shall be submitted for a Final Plat unless specifically added or waived in accordance with **Sec. 34-3.C.3. Modification, Addition, or Waiver of Required Submittal Materials**.

Final Plat Submittal Requirements
Application.
Application submittal fee.
Name of subdivision.
Total acreage of subdivision to nearest one-hundredth of an acre.
Date of preparation, north arrow, written and graphic standard engineering scale.
Detailed area/vicinity map showing existing road networks to include a minimum of two major thoroughfares, outline of surrounding parcels and existing natural and/or constructed features that may impact the development. Detail must be sufficient for the subject property to be located in the field using the map.
A separate sheet identifying any adjacent property owned, legally controlled by, or of any development and/or financial interest to said subdivider.
Signed statements by the subdivider dedicating public rights-of-way and granting all required easements for public use. Also include a statement that the subdivision is planned with the free consent of and in accordance with the desire of the undersigned owner of the land, acknowledged in a manner required for acknowledgment of deeds. For consistency on all plats, the dedication statement shall read as follows: DEDICATION THE TRACT HEREON IS TO BE KNOWN AS _____ SUBDIVISION. ALL RIGHTS OF WAY AND PUBLIC AREAS SHOWN HEREON ARE DEDICATED TO THE CITY OF LAS CRUCES. UTILITY EASEMENTS ARE GRANTED FOR THE USE OF THE UTILITY COMPANIES THAT ARE SIGNATORY TO THIS PLAT AND TO THE CITY OF LAS CRUCES. ALL RULES AND REGULATIONS OF THE CITY OF LAS CRUCES AND SAID UTILITIES WILL APPLY TO THESE EASEMENTS. ALL OTHER EASEMENTS SHOWN HEREON ARE GRANTED FOR THE USE INDICATED. NO ENCROACHMENT THAT WILL INTERFERE WITH THE USE OF EASEMENTS AS SHOWN ON THIS PLAT IS ALLOWED. THE SUBDIVISION HAS BEEN DEDICATED IN ACCORDANCE WITH THE WISHES OF THE UNDERSIGNED OWNER(S) OF THE LAND SHOWN HEREON.
Name and address of subdivider.
Name and address of the person, corporation or organization preparing the Final Plat.

Final Plat Submittal Requirements
Certification block for Planning & Zoning Commission chair and secretary.
Certification block(s) by authorized representatives from respective utility companies (cable, telephone company and electric company, etc.).
Certification and seal by a Professional Surveyor in accordance with the laws of the state, certifying the accuracy of the survey and the plat, and that the surveyor prepared or supervised preparation of the plat.
An accurate and complete boundary survey of the land to be subdivided that meets or exceeds the Minimum Standards for Surveying NMAC 12.8.2. • The name of the surveyor who performed the survey shall be provided. • Boundary survey will include all monuments found accepted/rejected and set. • Boundary lines shall be given in bearings (degrees, minutes, and seconds). • Distances will be shown in feet to the nearest hundredth. • Curved boundary lines will provide sufficient data to be reestablished on the ground and will include central angle, radius, arc length, chord bearing and distance.
Subdivision shall be tied to an existing established monument. Subdivision will use the City Coordinate System or approved coordinate system as outlined in the Minimum Standards for Surveying in New Mexico.
Bearings and lengths for all lot lines and rights-of-way lines existing or proposed. Lines to be eliminated shall be designated and identified by dashed lines.
Names of streets, rights-of-way widths of all streets, commercial alleys, green ways, bikeways, trails, and other transportation links shall be so designated.
Provide record information (book and page or plat) dedicating existing rights-of-way.
Number to identify each lot; Acreage of each lot; Letter to identify each block.
Location, dimensions, and purpose of all easements, existing or proposed, and any limitations thereof. For existing easements, provide recording information book and page. All easements shall indicate its purpose and intended user. Any easement dedicated to the City shall state “the easement is intended for public use and shall be dedicated to the City of Las Cruces upon the filing of this plat”.
Adjacent land ownership within 100 feet as of the date drafted for submittal. Note subdivision and/or owner’s names and filing information: book, page and date.
Outlots or tracts designated by letter, with disposition indicated in the Note section. Location of land intended to be converted or reserved for public use or reserved in the deeds for the use of all property owners in the proposed subdivision shall be so identified. The purpose of each outlot and the responsibility for maintenance of all tracts shall be noted. All outlot or tracts shall indicate its purpose and intended user. Any outlot or tract dedicated to the City shall state “the outlot or tract is intended for public use and shall be dedicated to the City of Las Cruces upon the filing of this plat”.
Floodplain shall be clearly graphically delineated and noted.
Necessary easements for EBID or community ditches in relation to irrigation.
Ponding icon. For lots utilizing on-lot ponding, an icon shall be placed on the lot in the approximate location of the proposed ponding area. A note referencing the ponding icon shall also be present on the plat and reflect the purpose and the lot owner’s responsibility for maintaining the ponding area.

Final Plat Submittal Requirements
A note placed on the plat stating: "Subdivider responsible for utility stub-outs and for providing any and all easements necessary to provide utility service to lots contained herein."
Appropriate documentation shall be submitted to show proof of water service and approval of sewage disposal. (Applicable if the subdivision will not be utilizing City services.)
Address plat. The address plat shall be submitted as a PDF sized for 18-inch x 24-inch sheets at a scale that adequately represents the information. The following information shall be required: • Title of subdivision; • Approved lot layout; • Lot and block numbers; • Street name; • Street address for each lot (Community Development Department will provide the addresses); and • Neighborhood delivery and collection box unit location (NDCBU), if applicable.
A traverse closure sheet (computer printout) for the exterior boundaries of the entire tract and for each parcel within the tract, except any parcels that are true rectangles.
Master Traffic Impact Analysis (unless already provided with a Preliminary Plat). Refer to **Sec. 38-2.G. Traffic Impact Analysis**, ITE Traffic Impact Analysis guidelines, and other requirements as approved in consultation with the Public Works Director.
Master Drainage Study (unless already provided with a Preliminary Plat). The purpose of the master drainage study is to identify major drainage ways, ponding areas, locations of culverts, bridges, open channels and drainage basins that are contributory to the proposed study area. In addition, the ability of downstream drainage facilities to pass the developed runoff from the proposed development must be analyzed in the master drainage study. The master drainage study shall contain a general outline of the proposed drainage routing plans for the development. The digital format of the report contents must be provided (e.g., AutoCAD, HEC-RAS, etc.). • The report shall include, but not be limited to, the following information and calculations: o Calculation for peak flow from all offsite tributary drainage areas. o Calculations for peak flow within the proposed development for all drainage basins larger than 20 acres. o Preliminary analysis of 100-year floodplain and major drainage ways. o Closed sub-basin analysis of 100-year floodplain and major drainage ways. o Discussion and analysis of downstream drainage facilities. o Discussion of anticipated drainage problems within the proposed development and possible solutions. o Report shall be typed on 8½-inch x 11-inch pages. • Drawings for the master drainage study shall include, but not be limited to, the following: o Any and all floodplains and flood ways must be identified. A copy of applicable FEMA floodplain map is required indicating limits of current study. o Existing topography. – For land that slopes less than approximately five percent, show contour lines at intervals of not more than two feet. – For land that slopes more than five percent, show contour lines at intervals of not more than five feet. – Location and size of existing and proposed open channels, storm drains, retention/detention areas, and other drainage structures. – Identification of all drainage basins in the development. – Location of all streets in/adjacent to the proposed development. – Identification of all drainage basins tributary to the proposed development. – Basin maps may be scaled as small as 1 inch = 2,000 feet. Orthophoto maps at a scale of 1 inch = 200 feet are preferred. (Use the most appropriate scale available) Inlet and storm drain size calculations are not required with the master drainage study; therefore, the number of sub-basins analyzed in the report shall be held to the smallest practical amount.

Sec. 37-4. Adequate Public Facilities

A. Subdivider Responsibility

1. The subdivider of any approved subdivision shall be responsible for all on- and off-site infrastructure and utility improvements necessary for filing the Final Plat.
2. The subdivider shall be responsible for any necessary off-site utility extensions required to provide service, unless such extensions are already part of the utility capital improvement program.

B. Adequate Public Facilities Required

1. Land proposed for development must be adequately served by essential public facilities and services, including but not limited to water, wastewater, roadway facilities (e.g., street lighting, traffic signals, parking, and traffic control devices), bicycle, pedestrian, drainage, and park facilities. Requirements for such facilities are outlined in **Chapter 38. Development Standards** and Volume I of the Code of Ordinances.
2. Land shall not be approved for platting or site development until adequate public facilities necessary to serve the development exist or provision has been made for the facilities.
3. A public facility is considered sufficient when it is demonstrated to have available capacity to meet the demand generated by the proposed development, other adopted master plans for public facilities, and applicable capital improvement plans.

C. Installation and Acceptance of Public Improvements

1. Public Improvements Required for Final Plat

   Public improvements shall be constructed, installed, inspected, and ready for approval and maintenance acceptance by the Public Works Department prior to the filing of an approved Final Plat.

   a) Exception: The Public Works Director may authorize a delay in the installation of public improvements for up to 24 months following Final Plat approval.

      i) A form of Performance Security and a bid from the contractor shall be filed with the City, along with a development agreement outlining the improvements to be completed, any cost sharing agreements (e.g., oversizing), and other terms as required by the Public Works Director.

         a. The amount of such Performance Security must cover 125 percent of the projected cost of all required improvements agreed to by the Public Works Director. The amount shall be based on the projected costs that the City – not a private developer – would incur at the time improvements are scheduled for completion.

      ii) Any of the following types of security shall be filed with the Community Development Director:

         a. Performance bond. A surety bond acceptable to the City to cover estimated costs of improvements.

         b. Escrow account. An account established with a financial institution in the amount of the projected costs of improvements.

         c. Irrevocable stand-by letter of credit. Irrevocable authority to draw a draft for the projected cost of improvements.

         d. Cashiers' check. An amount of security acceptable to the City to cover estimated costs of improvements.

         e. Any other form of security approved by the Community Development Director, Finance Director, and legal staff.

      iii) The City shall not issue any building permits within the subdivision until all improvements have been installed and inspected or are otherwise in compliance with **D. Substantial Completion**, unless Performance Security is provided.

iv) If the City determines that the subdivider will not construct any or all of the improvements in accordance with the specifications, the City may withdraw and employ from the deposit of collateral such funds as necessary to construct the improvements in accordance with the specifications.

2. Acceptance of Improvements

a) Following completion (or Substantial Completion in accordance with **Sec. 37-4.D** below) of all public improvements, the subdivider may request the City to conduct an inspection and consider acceptance of the improvements.

i) For acceptance of utility improvements, and prior to connection to the City's utility system, the subdivider shall submit utility Record Drawings for review and approval in accordance with the Public Works Department's and Utility Department's established record drawing submittal requirements.

ii) For acceptance of park improvements, the subdivider shall submit park construction document plans for review and approval by Parks & Recreation Department Director. Such plans shall be submitted to the Parks & Recreation Department through the Community Development Department.

b) The subdivider shall make a written request to the Community Development Director for final acceptance of all subdivision improvements. Along with the written request, the City shall require the submission of Record Drawings in accordance with **3. Record Drawings Submittal Requirements** and a detailed material listing. The City shall inspect said improvements to determine whether the infrastructure is acceptable and whether it conforms to the approved Final Plat and construction drawings.

c) The Community Development Director may formally accept said public improvements for City maintenance upon receipt of a written report of recommendation for acceptance and from the Public Works Director, Utilities Director, and Parks & Recreation Director that all applicable facilities have been fully installed in accordance with the plans, as approved, and that they are in conformance with the requirements of this Code.

d) The Community Development Director will notify the subdivider via letter (mailed or electronically mailed) as to whether the improvements will be accepted for City maintenance. The improvements will be accepted only with the concurrence of the Community Development Director, Public Works Director, Utilities Director, and Parks & Recreation Director.

3. Record Drawings Submittal Requirements

a) Record Drawings shall be submitted to the Public Works Director and Utilities Director for review and approval.

b) The computer-aided drawing file to be submitted shall be labeled with the contractor's name, the engineer's name, the subdivision name, the subdivision location, and the final inspection date. The computer-aided drawing file shall be the file used to generate the final Record Drawings (hard copy). The computer-aided drawing file shall depict the final as-builts with the rights-of-way and the subdivision tied to an existing established monument and using the City Coordinate System or approved coordinate system as outlined in the Minimum Standards for Surveying in New Mexico. The computer file drawing shall be in one of the latest two versions of AutoCAD, or in a similar 100 percent compatible and transferable file. Prior to submittal of the digital Record Drawings, the project engineer shall enter into a digital file agreement with the City. The purpose of the digital file agreement is to protect the project engineer from liability in the event that the drawings become altered in any manner not approved by the City and the project engineer.

c) Said drawings shall be signed and sealed by a registered engineer of the state. The drawings made from the design drawings based on the contractors' as-builts and the computer-aided drawing file shall provide the following information for City review:

i) Grade changes. Reflect all changes in grading from the approved plan and profile sheets, including but not limited to curb elevations, property line elevations, drop inlets, curb return elevations, tops of manholes, and inverts.

ii) Street alignment changes. Designate any alignment change within a street right-of-way that deviates from that shown on the approved plan and the profile sheets.

iii) Detail sheet changes. Reflect any change in street cross sections, retaining walls or other general details that have been altered from the approved construction drawings.

iv) Utility changes. Designate all utility changes that deviate from the approved plan and profile sheets.

v) Park changes. Reflect any changes in park features that deviate from the approved plan.

d) Additionally, a detailed material listing shall be required. The materials listing must be a tabular listing that includes, wherever appropriate, mains (sewer mains must include depth), valves, manholes, fire hydrants, number of service lines, and number of drainage inlets. These materials must be represented in the listing by the standard measure or by the unit installed (e.g., linear foot, number of each). The listing must be separated by utility function for potable water, wastewater, storm drainage, and energy/gas. The listing must include:

i) Developer's name;

ii) Subdivision name and location;

iii) Date of final inspection;

iv) Quantity and unit of materials installed (e.g., 250 linear feet, eight each);

v) Cost of improvements; and

vi) Material description, including size or dimensions (e.g., 4-inch PVC main).

D. Substantial Completion

In order to ensure the health, safety, and welfare of City residents and the ability of City departments to deliver required services, Final Plat will not be filed and Building Permits will not be issued until a subdivision has reached substantial completion as defined herein.

1. Infrastructure Required

a) Installation of the following systems, in their entirety, shall be completed prior to issuance of a building permit(s) (if applicable to the development):

i) Complete roadway sections (subgrade, base course, asphalt paving, curb and gutter, sidewalks/multi-use paths for Arterial and Collector Streets);

ii) Complete and electrified streetlighting system (or proof is provided that electrical work is in progress);

iii) Complete water, wastewater, energy/gas, and drainage systems as shown and authorized on the permitted construction drawings;

iv) Electrical and gas utility connections (or proof is provided that electrical and gas utility connection work is in progress);

v) Dedicated parks and trails (unless an agreement with the Parks Department has been established for improvements to be installed at a later date);

vi) Retaining structures and retaining walls;

vii) Any off-site infrastructure improvements; and

viii) Installation of mailbox clusters or other USPS-approved mail delivery systems.

b) Minor punch list items may remain, as determined by the City's project manager. Examples of such items may include signage (excluding traffic control), park equipment, landscaping, and screening walls.

2. Administrative Approval

The Community Development Director shall confer with the Public Works Director, Utilities Director, and Parks & Recreation Directors, along with any other reviewing agency affected by the delayed public improvements, for

their approval. When Substantial Completion has been confirmed, the Community Development Director shall approve the filing of a Final Plat and issuance of Building Permits.

3. Effect of Approval

   a) Upon Community Development Director approval, a Final Plat may be filed and a Building Permit may be issued.

   b) All other proposed construction or activities that require the Building Permit must be determined to comply with applicable standards and regulations.

   c) No final inspection of buildings or structures may occur, no Certificate of Occupancy may be issued, no public potable water service may be provided, and no building may be occupied until all items are completed.

4. Completion of Other Required Improvements

   a) Any delayed improvements shall be guaranteed in accordance with **Sec. 37-4.C.1** above.

   b) If required improvements have not been installed within the 2-year period, the Community Development Director may approve one extension of no longer than 6 months.

   c) Any further extension of time for completion of required improvements shall require approval of the Planning & Zoning Commission.

   d) Updated improvement cost estimates and additional performance security may be considered as a condition of any approved extension.

5. Plat Note

   The following note shall be included on all Final Plats filed using the Substantial Completion provisions contained herein: “Substantial completion of the subdivision’s public improvements must be obtained prior to City issuance of building permits for lots contained within this subdivision.”

Chapter 38. Development Standards

Sec. 38-1. Development Standards General Provisions

A. Title

This chapter shall be known and shall be cited as the "Development Standards" of the City of Las Cruces, New Mexico.

B. Purpose

Each section contained herein specifies the purpose of the regulations.

C. Applicability

Each section contained herein specifies the applicability of the regulations.

D. Adequate Public Facilities Required

Adequate public facilities are required in accordance with **Sec. 37-4. Adequate Public Facilities**. A public facility is considered sufficient when it is demonstrated to have available capacity to meet the demand generated by the proposed development, the Comprehensive Plan, other adopted master plans for public facilities, and applicable capital improvement plans.

E. Lot Type and Dimensional Standards

Lot design shall meet the lot type and configuration requirements and provide adequate width, depth, and shape in accordance with the standards outlined in **Chapter 36. Zoning Regulations**.

Sec. 38-2. Roads, Rights-of-Way, and Parking

A. Purpose

The purpose of this section is to regulate various transportation-related issues associated with public and private development, such as street design criteria, street layout, access management, installation of streetlighting, and preparation of traffic impact studies. In all transportation decisions, safety shall be prioritized to ensure the well-being and protection of every individual traveling within the City. These regulations are intended to provide a transportation network that accommodates pedestrian, bicycle, mass transit, vehicular traffic, and emergency services. Development shall be supported by a connected street network having adequate capacity, ingress/egress, traffic circulation, low traffic speeds, safe pedestrian and bicycle facilities, and mitigation of urban heat impacts.

The applicant shall ensure that the subdivision plat is served by an adequate roadway network, including local streets, collectors, and arterials, and shall be responsible for the costs of rights-of-way and street improvements in accordance with the following requirements and standards. The location and design of the transportation network shall be guided by the Active Transportation Plan, the Comprehensive Plan, and requirements of this section.

B. Applicability

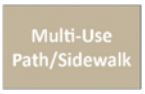
1. All new and reconstructed roadways shall meet the requirements contained herein. Other best practices resources that may be referenced and enforced by the City include, but are not limited to, publications developed by organizations such as NMDOT, AASHTO, FHWA, ITE, and NACTO, and federal requirements such as ADA and PROWAG. The most current version of these publications may be used along with engineering judgement to justify waivers from the criteria outlined in this document, if needed, in support of the vision and goals of the City of Las Cruces.
2. Designation of a particular street shall be determined by the following classification in accordance with the Comprehensive Plan Future Thoroughfare Map, Mesilla Valley MPO Future Thoroughfare Map, Active Transportation Plan, and Long-Range Transit Plan, any location- or corridor-specific plans, and other City Council adopted plans.
3. These regulations are intended to promote a hierarchy of connected streets where arterials connect to collectors and collectors connect to local streets to provide a multimodal connectivity that is conducive to pedestrians and bicyclists.

C. Street Design Criteria

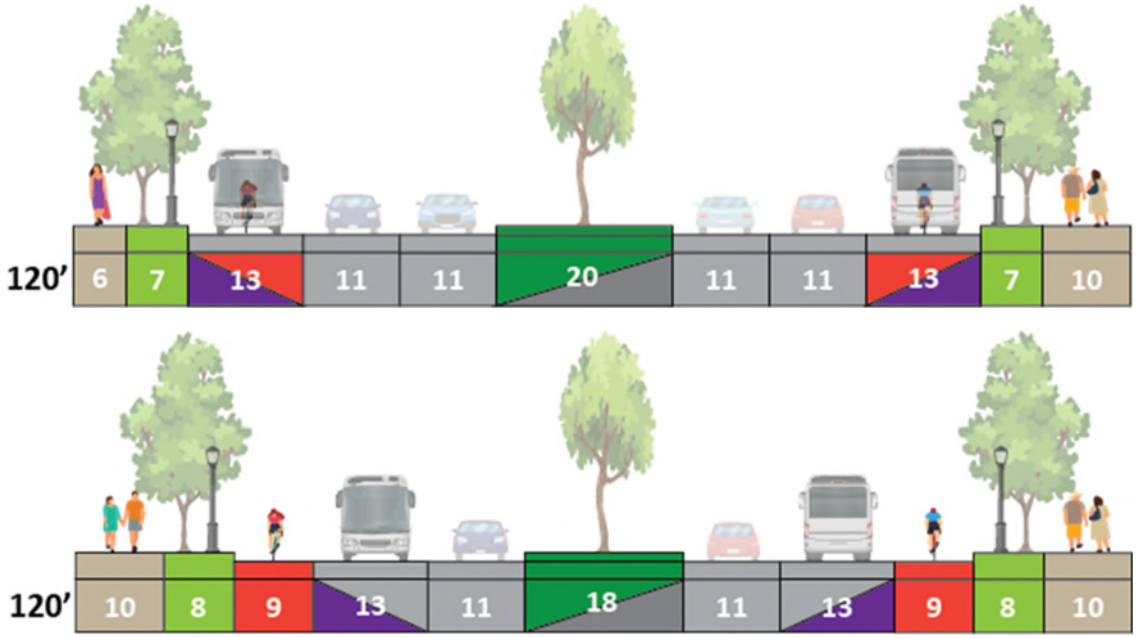
1. This section provides requirements for new construction of a roadway network that provides safe transportation for all modes, along with possible infill alternatives to accommodate reconstruction within limited rights-of-way.
    a) If more than one cross-section configuration is shown below, the applicant shall have the option to select the configuration appropriate for the proposed development with consideration of the surrounding neighborhood or area. If there are proposed modifications to the cross-sections outlined within this Code, then the Development Review Committee may approve alternative cross-sections.
    b) The following cross-sections are minimums and the Development Review Committee reserves the right to require additional or reduced improvements and/or right-of-way as necessary to meet City goals and plans.
2. The subdivider shall dedicate all rights-of-way in accordance with this section.
    a) Requirements for dedication of rights-of-way and improvement of approach roads, signalization, median breaks, additional lanes, and other traffic mitigation or safety improvements may be increased depending upon the size or density of the proposed development, if the need is demonstrated by a Traffic Impact Analysis, or to accommodate drainage and/or sustainable practices.
3. The roadway network for new subdivisions shall also meet the requirements of any required traffic impact analysis (see **Sec. 38-2.G. Traffic Impact Analysis**).

4. All arterial, collector, and local streets shall include curb and gutter drainage systems. Modifications to the curb and gutter drainage systems are permitted for stormwater harvesting if approved by the Development Review Committee. In the roadway cross-sections contained herein, the curb is included in the parkway and median widths shown herein, while the gutter width is included in the travel lanes.
5. Where required by the City or proposed by the subdivider, any alleys shall be constructed based on the requirements of this section.
6. Facilities for pedestrians and bicyclists must consider urban heat mitigation measures, including but not limited to shade and cooling surfaces, in accordance with the City's Urban Heat Study.
7. Green infrastructure and low-impact development is encouraged whenever possible. See **Sec. 38-4. Low-Impact Development and Green Infrastructure** for more information. The recommendations provided by the National Association of City Transportation Officials (NACTO) in the Urban Street Design Guide Stormwater Management section may be utilized as a reference for the development of green infrastructure along roadways within the City limits.
8. For intersection design, no fire apparatus shall encroach into oncoming traffic without specific approval of the Fire Marshal. An auto turn truck radius diagram shall be required to show a fire apparatus can meet intersection design requirements.
9. The capacity of on-site intersections and facilities shall be sufficient to prevent traffic entering the site from backing up on to the adjacent street.
10. The roadway network shall incorporate any required ADA paratransit (Dial-a-Ride) improvements (e.g., signage, accessible station design) required by the City.
11. All streets, including curb and gutter improvements, sidewalks, multi-purpose paths, streetlighting and all associated costs (subject to the City's adopted cost-sharing policy described in **Sec. 38-2.I.9.b) Developer Responsibility**), and other required infrastructure shall be provided by and at the expense of the subdivider. The subdivider shall dedicate all rights-of-way in accordance with this section and install all improvements in accordance with the standards required by this section. See **Sec. 37-4.D. Substantial Completion** for more information regarding the timing of infrastructure installation.
12. If an arterial or collector is bordering subdivision boundaries with another property owner, the subdivider shall dedicate half the required rights-of-way in accordance with this section and install all required improvements within this area in accordance with the standards required by this section. The limits of the required improvements are not limited to the frontage of the subdivision boundary and may extend beyond the limits of the subdivision to meet the City's safety and street network connectivity goals (e.g., when required by a Traffic Impact Analysis, tapering to align with connecting roadways, etc.).

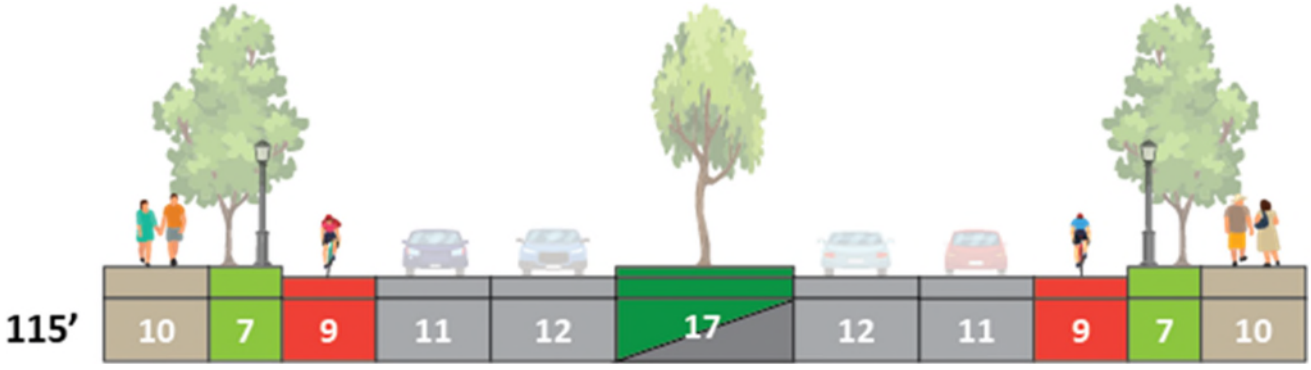
Figure 38-2-1. Roadway Cross-Sections

Element	Description
	Travel lanes shall meet the roadway cross-sections widths of this section. The DRC may modify lane widths based on Character Areas, neighborhood characteristics, adjacent land uses, and other factors. For roadways with low travel speeds, the roadway design should include elements that provide for a safe and comfortable roadway for cyclists sharing the road.
	A parking lane may be required for new development in Urban Character Areas and Suburban Character Areas. When parking is placed adjacent to a bikeway, the bikeway shall be placed on the street side of the parking lane unless an alternative design is approved by the DRC.
	Bikeways shall meet the roadway cross-sections of this section. A bikeway facility shall be a buffered or protected bike lane with at least a three-foot buffer and six-foot lane for principal and minor arterials unless modified by the DRC. The DRC may also require physical barriers within the buffer, such as delineators or curbing to provide further protection to bicyclists.
	For Urban Character Areas and Suburban Character Area, the DRC may determine that a dedicated transit lane is required for new development to provide continuous use for transit vehicles. Since bus usage is typically infrequent, the lane can also provide access to bicyclists. Appropriate markings and signage shall be utilized for shared lanes and transit lanes as required by the DRC.
	For Local Streets, the DRC may determine that sharrow marking and appropriate signage be installed for these lanes.
	For Urban Character Areas and Suburban Character Area, the DRC may determine that a dedicated transit lane is required for new development to provide continuous use for transit vehicles. Appropriate markings and signage shall be utilized for transit lanes as required by the DRC.
	A multi-use path is a shared path that serves both pedestrians and bicyclists and is the default bicycle facility for new development. Multi-use paths shall have a minimum width of 10 feet, unless modified by the DRC to accommodate infill constraints. Paths narrower than 10 feet are considered sidewalks. At the DRC's discretion, a multi-use path and parkway may be modified in Urban Character Areas to create a wide sidewalk with tree wells exclusively for pedestrian use where the mixing of pedestrian and bicycle traffic may not be appropriate.
	Parkways are an important street design element that provides a buffer between pedestrians/bicyclists and vehicles and supports a zone for street tree installation. At the DRC's discretion, parkway widths may be reduced to accommodate infill constraints. In Urban Character Areas, the DRC may also require tree wells within the parkway to increase the width of the sidewalk zone.
	A median shall be installed based on the cross-sections in this section to serve as a vertical barrier between directions of vehicular travel. The median can also accommodate a left turn lane in certain locations while maintaining an area for a pedestrian refuge. A continuous median is required with no median openings at the time of development unless median opening criteria is met. At the DRC's discretion, a two-way left turn lane may be installed in place of the median for Collectors with four travel lanes or less that have lower traffic speeds and volumes.
	A two-way left turn lane may be installed in place of the median for Collectors with four travel lanes or less that have lower traffic speeds and volumes. A two-way left turn lane must be approved by the DRC.

Principal Arterial

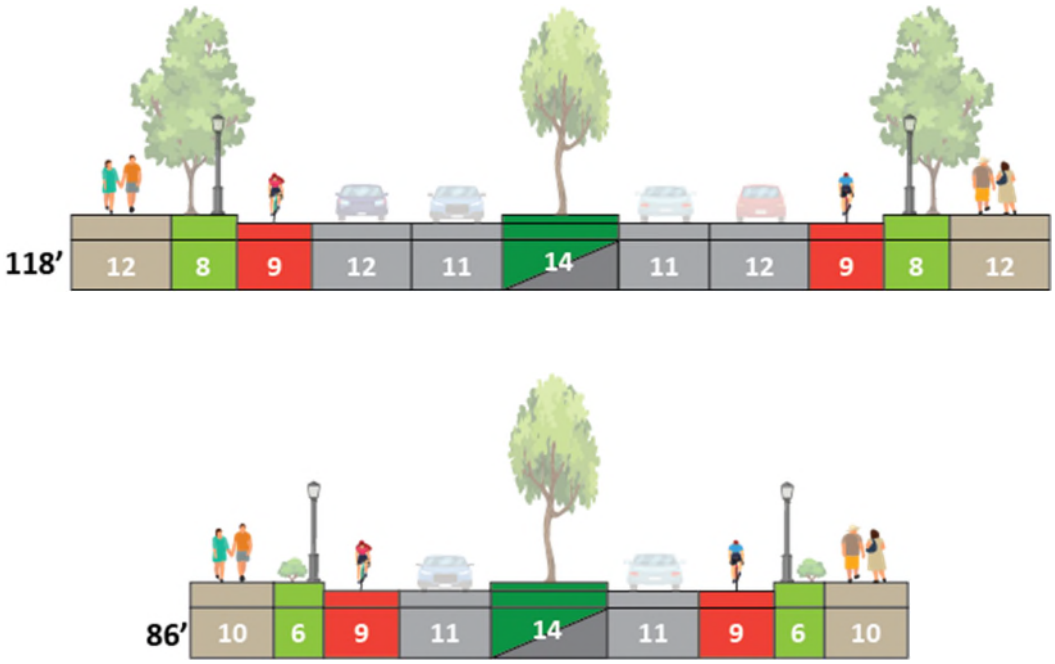


Minor Arterial



Travel Lane | Parking | Bikeway | Bike + Transit | Bike + Travel | Travel Lane + Transit | Median/ Turn Lane | Multi-Use Path/Sidewalk | Parkway

Collector


118'
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86'
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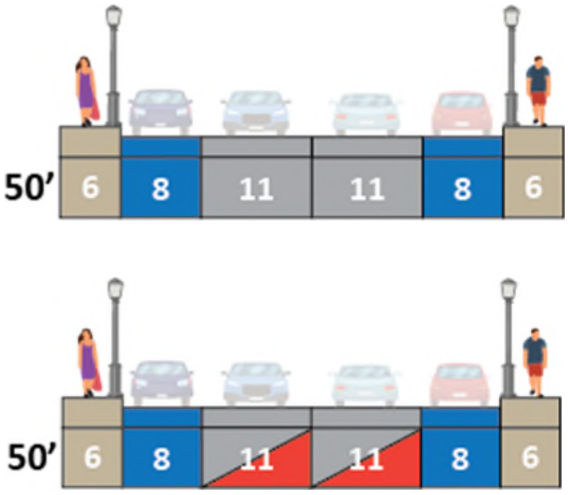
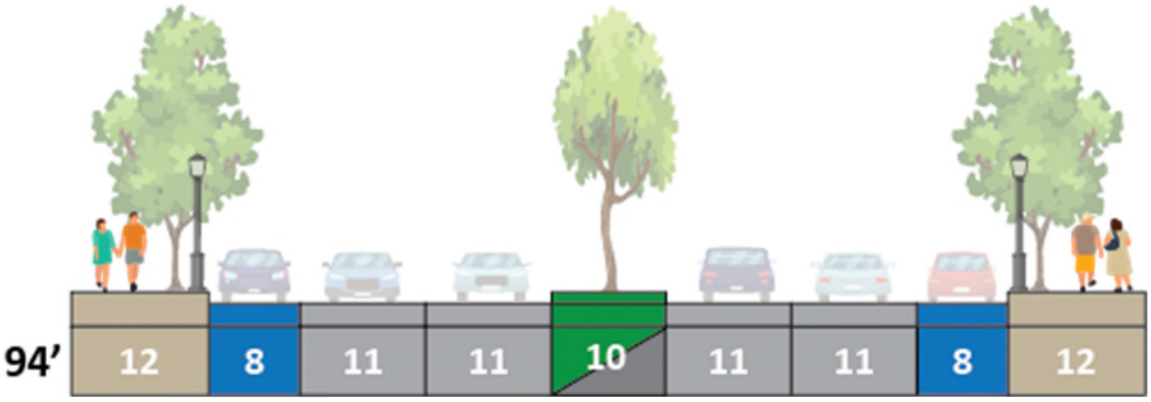
Travel Lane
Parking
Bikeway
Bike + Transit
Bike + Travel
Travel Lane + Transit
Median/ Turn Lane
Multi-Use Path/Sidewalk
Parkway

Local Street

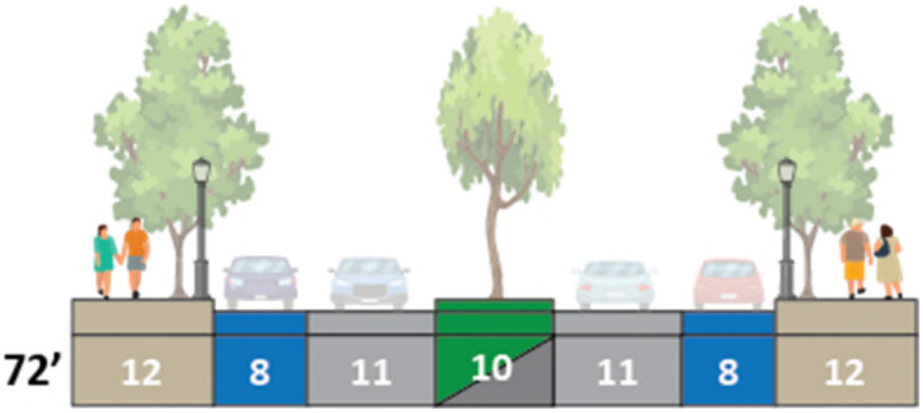


Boulevard



Travel Lane | Parking | Bikeway | Bike + Transit | Bike + Travel | Travel Lane + Transit | Median/ Turn Lane | Multi-Use Path/Sidewalk | Parkway

Avenue



Alley

*Asterisk indicates variable right-of-way width based on fire safety or utility needs, as determined by the Fire Marshal or Public Works Director.

Any structures that have alley-only access shall have a 20’ clear paved width alley. The Fire Marshal may require that any structures with alley-only access be fire sprinklered.

D. Private Streets

1. Standards

   a) No collectors or arterials as designated by the Comprehensive Plan Future Thoroughfare Map may be a private street.

   b) Construction and development of private streets shall meet the standards for right-of-way width and improvement as applied to public streets. All private streets shall be designed, constructed, and maintained to meet City standards. Property owners are responsible for ensuring ongoing maintenance for private streets, including streetlighting, traffic controls, and other related features.

   c) All traffic control devices and regulatory signs on private streets shall conform to those required on public streets.

   d) Streetlighting shall meet the requirements for public streets and shall be entirely at the expense of the subdivider and subsequent property owners.

2. Waiver of City Services

   The subdivider shall note any waiver of services on the subdivision plat. Certain City services may not be provided for private street subdivisions, including emergency services, street maintenance, law enforcement patrols, enforcement of traffic and parking regulations, preparation of accident reports, and payment of costs for street lighting.

3. Homeowners' Association (HOA) Requirements

   a) The subdivider shall provide for the establishment of a homeowners' association (HOA) to assume the obligation of perpetual maintenance of private streets and other improvements held privately, including a mandatory assessment for such private streets, drainage structures, and any other improvements to be placed on all property owners within the subdivision, allowance for City staff to inspect the streets to ensure they are being maintained to City standards, hold harmless provisions as required in this section, and providing for notice to the City of any amendments to these relevant sections.

   b) The HOA shall clearly mark entrances to all private streets with a sign placed in a prominent and visible location indicating that the streets within the subdivision are private, and not maintained nor regularly patrolled by the City.

   c) All restricted access entrances shall be staffed 24 hours every day, or they shall provide a reliable, alternative means of ensuring access into the subdivision by the City, by emergency service providers, and by other utility or public service providers, such as postal carriers and utility companies, with appropriate identification.

   d) Gates on fire apparatus access roads shall open not less than 20 feet of clear-width for two-way gates and 15 feet of clear-width for one-way gates. The method used to ensure City and emergency access into the subdivision shall be approved by the Fire Department and by any other applicable emergency service providers during the Final Platting process. Gates on private streets shall provide a traffic queue analysis and provide adequate on-street storage in advance of the gate.

      i) If the HOA fails to maintain reliable access, the City may enter the private street subdivision and remove any gate or device that is a barrier to access and bill the expense to the association. If the bill is not paid, the City may file a lien for the expense against any property owned by the association.

   e) The HOA, as owner of the private streets and appurtenances, shall release, indemnify, defend and hold harmless the City, any other governmental entity, and any public utility entity for damages to the private streets that may be occasioned by the reasonable use of the private streets by same, and for damages and injury or death arising from the condition of the private streets, out of any use of access gates or cross arms, damages arising from emergency response, or out of any use of the subdivision by the City or governmental or utility entity.

4. Consideration of City Acceptance of Private Streets

a) Requirements and Conditions

i) The City shall not be required to accept any private streets for public dedication and maintenance.

ii) Such streets must meet the City's current standards or be brought up to the current standards prior to acceptance.

iii) As a condition of accepting the dedication and maintenance of private streets, the City may impose a requirement for repairs and improvements at private expense prior to acceptance, enter into an agreement for an assessment or pro-rata sharing of costs for repairs or improvements prior to acceptance, or other legal or equitable options to ensure that the streets being accepted are not a liability to the City. The City shall be the sole judge of the nature and extent of repairs or improvements needed.

iv) The City may also require, at the sole expense of the association's or property owner's expense, the removal of any guard houses, access control devices, landscaping, or other amenities located within the streets or common areas prior to City acceptance.

b) Consideration Process

i) The HOA may petition the City to accept private streets and any associated property as public streets and right-of-way upon written notice to all association members, and the favorable vote of a majority of the membership.

ii) The HOA shall supply documentation that the roadways were originally built to the City's Construction Standards or have been brought into compliance in accordance with **a)ii)** above.

iii) A Final Plat shall be submitted to the DRC for review and recommendation, then submitted to the City Attorney for review and approval prior to submission of this request to the Planning & Zoning Commission and City Council. City Attorney approval is required prior to review by the Planning & Zoning Commission and City Council.

iv) The Planning & Zoning Commission shall consider the request and forward a recommendation to City Council. The City Council shall make their decision based on the public health, safety, and welfare considerations of the community.

E. Street Layout

1. Applicability

New subdivisions shall be supported by a connected street layout that provides for enhanced traffic circulation, interconnectivity, and low traffic speeds. The roadway network for new subdivisions shall meet the International Fire Code and the following requirements in this section.

2. Street Hierarchy

Higher classification roadways will connect to lower classification roadways to promote safer traffic speeds and multimodal connectivity.

a) Arterials may connect to Arterials and Collectors.

b) Collectors may connect to Arterials, Collectors, and Local Streets.

c) Local Streets may intersect/connect as necessary to improve neighborhood/activity center access, connectivity, and public safety.

3. Roundabouts and Traffic Circles

a) Roundabouts or traffic circles shall be the standard form of traffic control provided at all new and reconstructed intersections that meet MUTCD warrants for the installation of all-way stop control or a traffic signal.

i) Exception: The Public Works Director may determine that another configuration is preferable in certain situations.

b) The design of all roundabouts and traffic circles shall be reviewed and approved by the Public Works Director and Fire Marshal.

4. Cul-de-Sacs and Dead-End Streets

a) Cul-de-sac streets are discouraged unless necessary to preserve natural and/or environmentally sensitive features (e.g., drainageways, protected trees) as determined by the Community Development Director.

b) No cul-de-sac shall exceed the length as in **Figure 38-2-3**.

c) No cul-de-sac in any unsprinklered single-family subdivision shall serve more than 25 single-family dwelling units.

i) For purposes of this paragraph, cul-de-sac length shall be measured along the centerline of the cul-de-sac from a point beginning at the intersection of the cul-de-sac street with the centerline of the street from which it extends to the center of the turnaround at the end of such cul-de-sac. For the purposes of measurement, either a full four-way intersection or a three-way intersection shall be considered an intersection.

Figure 38-2-2. Cul-de-Sac Length Measurement

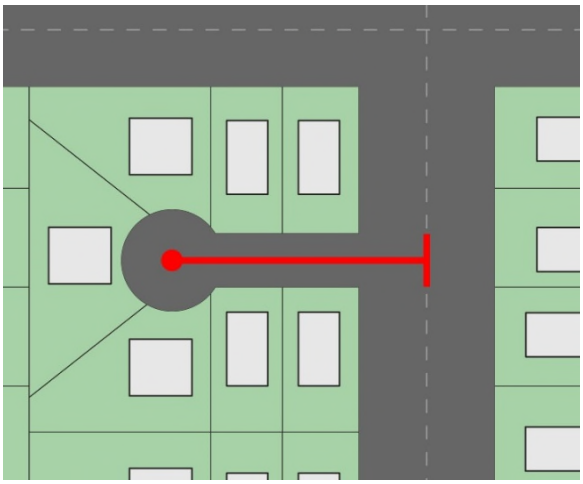


Figure 38-2-3. Width for Cul-de-sac Streets for Certain Activities

Activity Served	Cul-de-Sac Paving Width*	Cul-de-Sac Right-of-Way Width	Cul-de-Sac Maximum Length	Turnaround Paving Width*	Turnaround Right-of-Way Width
1—25 residential dwellings	38’	56’	600’	90’ diameter	110’ diameter or 100’ with 12’ sidewalk and utility easement**
All Other Development	38’	54’	600’	90’ diameter	110’ diameter or 100’ with 12’ sidewalk and utility easement**
LI, Light Industrial District (Rural, Suburban, Urban) or HI, Heavy Industrial District (Rural, Suburban, Urban)	40’	62’	600’	100’ diameter	120’ diameter

*Measured to lip of curb

**Shall be a minimum of 12’ of right-of-way or right-of-way/easement combination behind curb

d) A cul-de-sac is only permitted if pedestrian and bicycle access is provided to an adjacent or nearby park, roadway, trail, or City-dedicated open space (see example in **Figure 38-2-4**). A minimum ten-foot paved path shall be dedicated and improved to provide pedestrian and bicycle access between the cul-de-sac and adjacent or nearby park, roadway, trail, or City-dedicated open space.

Figure 38-2-4. Cul-de-Sac with Pedestrian Connection

e) No dead-end streets will be approved unless the streets are provided to connect with existing streets or future platted streets on adjacent land. In the case of dead-end streets that will eventually be extended into the adjacent property, no more than one lot (per side) can front onto the dead-end street stub unless a temporary turnaround bulb is provided. A temporary dead-end street shall not exceed the maximum allowed length of a normal cul-de-sac, and the temporary turnaround bulb must be constructed based on the standards of a cul-de-sac. Signage shall be provided at the street stub identifying the stub as a future connection.

5. Block Length and Perimeter

a) Measurements shall be calculated along the centerline of the street from the centerline or center point of one intersection to the centerline or center point of the next intersection to include knuckles and/or turns and curves, including a three- or four-way intersection or a curve that exceeds 75 degrees, as shown in **Figure 38-2-5**.

b) The maximum length of any block or street segment shall be as shown in **Figure 38-2-6**, based on the location's Character Area. These requirements do not apply to frontages along arterial streets.

Figure 38-2-5. Measurement of Block Lengths and Perimeters

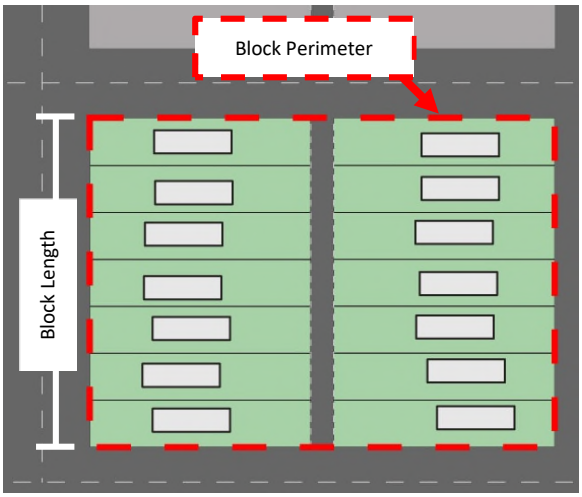


Figure 38-2-6. Maximum Block Lengths and Perimeters

Character Area	Max. Block Length	Max. Block Length with Traffic Calming Measures approved by the DRC*	Max. Block Perimeter
Urban Character Area	400'	600'	2,200'
Suburban Character Area	660'	800'	3,000'
Rural Character Area	900'	900'	N/A

*The Development Review Committee may require additional traffic calming measures based on the design of the blocks and roadway network of the subdivision. Continuous streets with no traffic control may require traffic calming.

6. Traffic Calming

   a) New development shall implement traffic calming measures as required in the Traffic Calming section of the Technical Manual and the Speed Management Policy for Arterials and Non-Residential Collectors.

   b) Arterial, collector, and local street traffic calming implementation, such as roundabouts, shall be installed at the time of roadway development and as approved by the Public Works Director and Fire Marshal based on FHWA guidelines and City requirements.

7. Alleys

   a) Alleys are permitted in all new development and redevelopment projects.

      i) If alley access is provided, then the Development Review Committee may modify the required street cross-section to reduce the right-of-way and/or pavement width accordingly.

   b) Where the average lot width along a block face averages 20 feet or less, the lots shall be rear-loaded with alley access.

      i) Exception: Townhouse lots may be narrower than 20 feet and front-loaded.

   c) The following general requirements apply to alleys:

      i) Alleys shall be as nearly parallel to the street frontage as reasonably possible.

      ii) Alley intersections with streets shall be at right angles.

      iii) Alleys shall not be platted to intersect with arterial or collector streets.

      iv) Dead-end alleys shall not be permitted unless a permanent or temporary turnaround is provided.

      v) Alleys forming the boundary of a subdivision, and adjacent to unplatted property, shall be dedicated and improved the same as if situated in the interior of a subdivision.

8. Alignment, Offsets, and Spacing

   a) Arterials and collectors shall be spaced and aligned in a continuous network that is in a rectilinear pattern. Intersections shall be square, both vertically and horizontally. Street approaches shall be at a 90-degree angle for a length = Intersection Sight Distance (see **H. Clear Sight Triangle**) * 1.5 measured from the center of the intersection.

   b) Offsets for local streets shall be limited to a minimum spacing of 200 feet from centerline to centerline. Offsets between streets may be addressed by roundabouts if approved by the Public Works Director.

   c) Principal arterials shall be spaced at least two miles apart, minor arterials at least one mile apart, and collectors at least one-quarter mile apart.

F. Access Management

1. Applicability

   a) All new development shall comply with the access management provisions of this section, including roadway network connectivity and driveways. All driveways shall be installed on public and private streets in accordance with this section, which defines access widths, spacing and offsets. No person shall construct a driveway without first obtaining a permit from the City.

   b) Where multi-use paths are utilized, driveway access will be limited to minimize conflicts between vehicles and pedestrians/bicyclists.

2. Purpose

   This section provides controls for access management and driveways for residential and nonresidential areas. The purpose of access management controls is to ensure safe ingress/egress, promote convenient access between adjacent sites, and lessen congestion on roadways.

3. Generally

a) Access point design should be compatible with the function of the roadway since the number, spacing, type and location of access points has a significant effect on capacity, speed, and safety.

b) Consolidated access points, including the requirement of a dedicated access point via roadway (public or private) or alley to serve all subdivided lots, shall be required for large parcels (e.g., shopping centers or other multi-tenant developments) to reduce conflict points between pedestrians, cyclists, and vehicles.

c) Construction of all access points, regardless of existing curbs or curb cuts, requires a site plan, which shall be provided to the Community Development Department and Public Works Department if applicable for approval prior to building permit issuance.

d) The approval of access permits may be granted if both the design and the construction of driveways and median openings are compatible with the intended function of the roadway facility, as defined in this section.

e) Access management shall meet the following requirements:

i) Appropriate Throat Lengths

Appropriate throat lengths (both unobstructed and with cross traffic permitted) for ingress and egress points, stacking and queuing lanes, pedestrian accommodations, bicycles facilities, and any facilities or accommodations which could impact traffic operations along the adjacent roadways or overall traffic safety. The internal circulation system should be designed to preclude stacking or queuing in the travel lanes of adjacent roadways.

ii) Internal Vehicle Circulation (Internal Roadway Network)

Internal circulation is the means by which vehicular traffic is delivered between entry points and parking areas, pick-up/drop-off points, and service areas. Internal circulation roadways should permit access between all areas. These roads should be designed to safely and efficiently deliver vehicles and pedestrians to their respective destinations.

iii) Service and Delivery Vehicles and Access to Waste Containers

Service and delivery vehicles require separate criteria for movement to and from the site and loading docks – location, size, number, turning movement exhibits, ease of access from street/alley/internal road/parking lot, loading areas. Of particular interest is that adequate turning paths are provided for large service vehicles to allow entry and exit without encroaching upon opposing lanes or curbed areas.

There should be sufficient separation between external and internal circulation roads so large vehicles can be queued on entry or exit without blocking access to parking spaces or internal roadway circulation systems and include swept path analysis for designated driveway from the public roadways (both ingress and egress and both directions) and loading docks and/or dumpster(s). The number of loading berths provided should be sufficient to accommodate anticipated service and delivery activity.

iv) Emergency Vehicles Access

Emergency vehicle access shall comply with the requirements for the most recently adopted International Fire Code Section 503. Fire Apparatus Access Roads.

v) Queuing Analysis

Adequate internal and external vehicle queuing storage is crucial for safe and efficient access and circulation.

For any development, appropriate vehicular queuing should be provided at all access drives. In small developments, parking areas and access points should be designed to allow vehicles waiting to exit to align perpendicular to the off-site roadway system. In large developments, queuing areas should be spacious enough to prevent stored vehicles from obstructing internal circulation and to enable drivers to enter a signalized intersection with minimum headways for maximum flow rates. Queue storage within parking

facilities or parking areas should allow vehicles to enter and come to a stop without blocking internal circulation or causing traffic backups on the off-site roadway. Drive-through establishments like banks, car washes, and fast-food restaurants should have sufficient capacity to accommodate normal peak queues. Since many of these businesses have major daily or seasonal variations in activity, peaking characteristics should be carefully evaluated.

vi) Parking Requirements

The parking provided by the project must be adequate to meet the anticipated use of the site. Off-street parking shall be provided in accordance with **Sec. 38-2.N. Off-Street Parking**. In some cases, special parking demand studies may be provided to assess the adequacy of the parking per ITE guidelines or data from at least three similar sites. Proper parking layout shall not affect traffic flow and operations on the external street systems and internal circulation.

vii) Pedestrian, Transit, Bicycles, and Handicapped Facilities

The overall site plan should also consider public transportation, pedestrians, bicyclists and those with disabilities. Adequate facilities for parking bicycles should be included. Transit facilities, carpool parking, and shuttle bus staging areas should be provided as appropriate for the development. Where provided, these facilities should be located adjacent to service drive and entrance locations, at key locations along circulation drives, or at major pedestrian focal points along the external roadway system. Pedestrian connections between these facilities and the site's buildings must be integrated into the overall project design, and provide maximum accessibility through the use of sidewalk ramps, etc. These connections must also be provided to the public sidewalk, path, or trail systems surrounding the site.

4. Residential Lot Access and Frontage

a) Within the Urban Character Area, where a subdivision abuts or contains an existing or proposed Arterial Street or Collector Street, lots, including residential lots, shall front onto the Arterial Street or Collector Street with the following requirements:

i) Lots shall be accessed from an alley at the rear of the property.

ii) Lots shall not have driveway access to the arterial or collector street.

iii) There shall be a multi-use path along the entire face of the block with lots facing the arterial or collector street.

The Development Review Committee may waive the requirement for frontage onto existing arterial or collector streets where it is determined that, due to existing development or other unique situation, frontage onto an arterial would be overly burdensome to the landowner, result in double frontage lots, or jeopardize the public's health, welfare, and safety.

b) In all areas, residential driveways serving four or fewer units shall not have direct roadway access to an Arterial Street or Collector Street.

5. Subdivision Access Points

   a) All subdivisions shall provide vehicular access to principal arterials, minor arterials, collectors, and/or local streets to provide safe and efficient operations for pedestrians and bicyclists.

   b) The minimum number of access points shall be determined by a Traffic Impact Analysis and/or the Fire Code from the residential subdivision to the arterial or collector streets. The minimum number of access points shall be as identified in **Figure 38-2-7** or as required by the Fire Code, whichever is greater.

   c) Street stubs shall be credited as access points when ingress or egress to a development is available only from a single road on which the subdivision has less than 250 feet of frontage.

Figure 38-2-7. Minimum Access Points

Development Type and Size	Min. Number of Access Points
Primarily Residential Uses	
Less than 30 units	1
Between 30 and 80 units	2
More than 80 units	3
All Other Uses	
Less than 5 acres	1
Between 5 and 20 acres	2
More than 20 acres	3

      i) The provision of additional access points is not possible due to existing lot configurations, the absence of connecting streets, or environmental or topographic constraints;

      ii) The New Mexico Department of Transportation will not authorize additional access points;

      iii) Alternative access can be provided in a manner acceptable to the City that is supported by a Traffic Impact Analysis; or

      iv) All structures are equipped with fire sprinkler systems.

6. Connection to Adjoining Platted Right-of-Way

   The arrangement of streets in a development shall provide for the alignment and continuation of existing or proposed streets into adjoining lands where the adjoining lands are developed and have right-of-way platted for such connections.

7. Connection to Adjoining Undeveloped Lands

   The arrangement of streets in a development shall provide for the alignment and continuation of existing and proposed streets into adjoining lands where the adjoining lands are undeveloped and/or deemed appropriate for future development. Streets providing connection into such adjoining lands shall comply with the following:

   a) The arrangement of streets and blocks on the periphery of the development shall reasonably accommodate future development on the adjoining lands that complies with the standards in **E.5. Block Length**,

   b) Dead-end streets shall provide a temporary turnaround constructed to City standards (see **Sec. 38-2.E.4.e)**),

   c) The platting of partial width rights-of-way is prohibited except where the remainder of the necessary right-of-way has already been platted, dedicated, or established by other means, and

   d) The Final Plat shall identify all such streets (street stubs) and include a notation that all street stubs are intended for connection with future streets on adjoining lands.

8. Cross-Access Between Adjoining Multifamily, Nonresidential, and Mixed-Use Developments

   a) General

      i) New development shall be served by a system of sidewalks, paths, greenways, roadways, accessways, and other facilities designed to provide for multiple travel modes (motor vehicle, transit, bicycle, and pedestrian), based on the development's size and character, zoning district, and relationship to

development and development patterns in surrounding areas, and existing and planned community transportation systems.

a. The Development Review Committee may waive certain facilities for smaller developments.

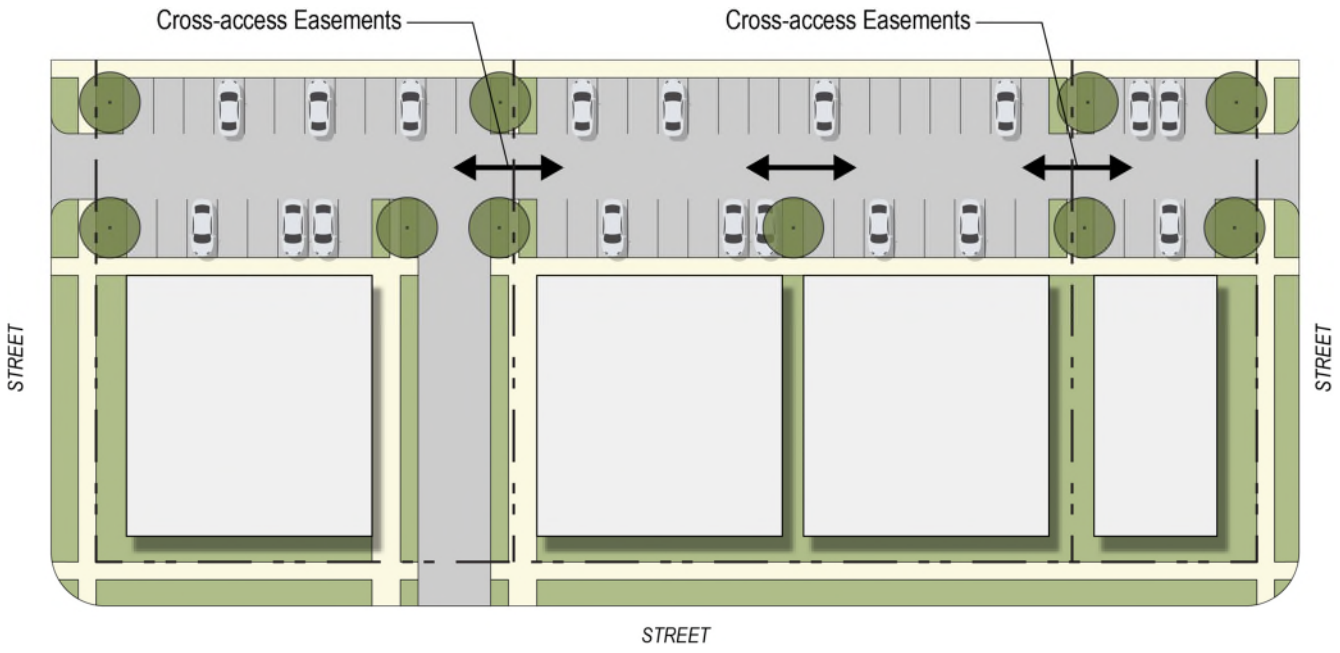
ii) Motor vehicle, transit, bicycle, and pedestrian access and circulation systems shall be coordinated and integrated to provide the development's occupants and visitors transportation options and to enhance safe and efficient mobility throughout the development and the community.

b) Pedestrian and Bicycle Cross-Access

i) Each internal pedestrian and bicycle circulation system in new multifamily, mixed-use, or nonresidential development, shall be designed and maintained to allow for pedestrian and bicycle walkway cross-access between the development's buildings and parking areas and those on adjoining lots containing multifamily, nonresidential, or mixed-use development and to vacant lands.

a. The Development Review Committee may modify the pedestrian and bicycle cross-access requirements upon determining that such cross-access is impractical or infeasible due to the presence of topographic conditions or built or natural features.

Figure 38-2-8. Example of Cross-Access



c) Parking Lots Cross-Access

i) Each internal vehicular circulation system in new nonresidential and mixed-use development shall be designed and constructed to provide vehicular cross-access between any parking lots within the development and any parking lots on adjoining parcels containing nonresidential or mixed-use development, and to the boundary of adjoining vacant land. The cross-access shall consist of a driveway or drive aisle(s) at least 27 feet wide or otherwise designed to accommodate a fire apparatus.

ii) Easements allowing cross-access to and from lands served by a vehicular cross-access, along with agreements defining maintenance responsibilities of landowners pertaining to the vehicular cross-access, shall be recorded by the landowner with the Doña Ana County Clerk's Office.

iii) The Development Review Committee may modify the parking lots cross-access requirements upon determining that such cross–access is impractical or undesirable due to the presence of topographic conditions, natural features, or vehicular safety factors.

9. Driveways

a) Driveway Design Elements

Required design criteria are presented in this section to define access widths, spacing, and offsets.

i) All Driveways

a. Driveway design shall comply with the NCHRP Report 659 – Guide for the Geometric Design of Driveways.

b. Driveways shall align with opposing streets and driveways if no raised center median exists on the cross street. However, if it is not technically feasible to align with existing driveways and intersections, proposed driveways shall meet the minimum distance requirements from adjacent street intersections and driveways as specified in **Figure 38-2-11. Minimum Commercial Driveway Spacing by Intersection Type**. The distance from adjacent driveways and intersection shall be sufficient to minimize driveway blockage from queue over-flow from adjacent intersections.

c. Driveways shall intersect at 90-degree approach angles to the primary direction of the abutting roadway, where applicable.

d. The number of driveways should be sufficient to provide adequate driveway capacity for the site yet kept to a minimum to reduce traffic conflicts. Access driveways shall intercept traffic approaching the site as efficiently as possible while providing adequate inbound and outbound access capacity.

e. Abutting properties shall share driveways and driving aisles. A written agreement shall establish the conditions of joint use, of maintenance requirements and of ingress/egress requirements. These agreements shall be approved as to form and content by the City Attorney and Community Development Director and must be referenced on the Final Plat, Site Plan, and/or Certificate of Occupancy. The agreement shall be properly executed by the owners of all affected properties, filed by the owners, and provided to the City once completed.

f. The design of driveways shall ensure that the minimum recommended horizontal and vertical intersection sight distance is adequately provided as defined in the latest edition of AASHTO's A Policy on Geometric Design of Highways and Streets. Adequate sight distances at driveways may include the addition of safety-related improvements including but not limited to right turn lanes, pork chop islands on the side street, slotted left turn lanes on the mainline or other traffic control devices.

g. Acceleration and deceleration lanes may be required on the City street for the access driveway as determined by the New Mexico State Access Management Manual.

h. If a driveway is proposed to be signalized, it should be located to facilitate traffic progression past the site. A signal progression analysis may be required for signalized driveways. Curb re-turn type access is allowed for signalized driveways. The Public Works Director may require additional analysis or improvements for signalized driveways.

i. Minimum throat length based on the type of control and number of lanes in the NCHRP Report 659 Exhibit 5-55 shall be met.

j. All access or driveway locations are subject to Public Works Director approval.

k. The Development Review Committee may modify any provision within this section upon determination that an alternative configuration would produce a more desirable outcome based on topographic conditions or other site-specific features.

ii) Residential Driveways

a. A residential driveway is an entrance to and/or exit from a residential dwelling or dwelling adjacent to a dedicated street, for the exclusive use and benefit of the residents. For driveways serving more than one dwelling on a lot (e.g., duplexes), a shared driveway is encouraged to minimize curb cuts.

b. Driveway widths shall be measured on the property line and no apron shall be closer than six feet from side property lines, except when serving adjacent properties. Driveways shall not be permitted in the taper area of any right-turn lane or any part of a right-turn lane.

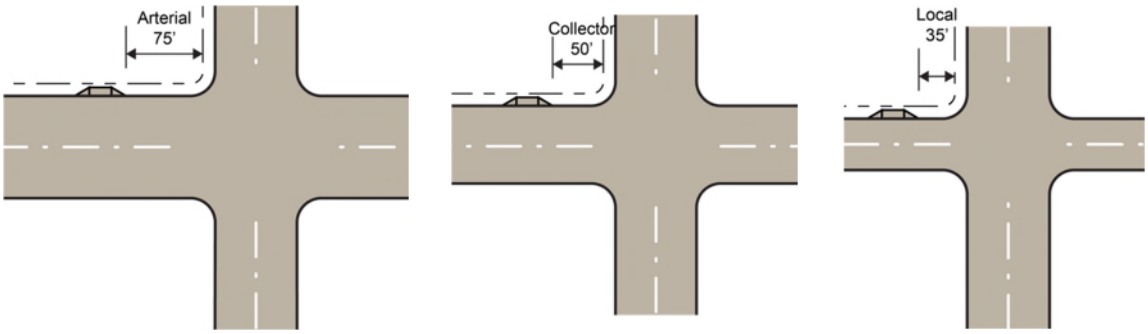
c. The minimum width of a driveway apron shall be 12 feet and the maximum width shall be 27 feet.

d. A minimum of 22 feet of standing curb must remain between any two driveways located on the same lot or single parcel of land.

e. No double or circle driveways shall be installed for lots that are 58 feet or less in width.

f. A corner property driveway apron shall be no closer than 35 feet from the property line at the intersecting local street, 50 feet to the property line along collector streets, and 75 feet to the property line along arterial streets (see **Figure 38-2-9. Minimum Residential Driveway Spacing by Street Type**). Under no condition shall driveways encroach on corner curb returns of intersections or within five feet from handicap access ramps.

Figure 38-2-9. Minimum Residential Driveway Spacing by Street Type



g. All driveways shall extend from any street, alley, or curbline to any garage, carport, or parking space. The slope of a driveway from the face of the curb at the gutter to any garage, carport or parking space shall be no greater than 10 percent for the first 12 feet, and not greater than fourteen percent for any distance thereafter. The vertical transition of the driveway shall be designed to prevent contact of any vehicle undercarriage or bumper with the surface. No vehicle may overhang into or block any portion of a sidewalk.

iii) Commercial Driveways

a. A commercial driveway is an entrance to and/or exit from any commercial/industrial/institutional/office business, or similar type of establishment providing access by employees and/or the public adjacent to a dedicated street. For the purposes of this section, commercial driveways also apply to multifamily buildings with five or more units.

b. Driveway widths shall be measured on the property line.

Figure 38-2-10. Driveway Apron Width

Street Accessed	Minimum	Maximum
Arterials	30 feet	40 feet
Collectors	30 feet	40 feet
Local Streets	25 feet	35 feet

c. The width of two-way driveway aprons shall be based on the classification of the roadway that is being accessed (see **Figure 38-2-10**).

d. The width of one-way driveway aprons shall be a minimum of 15 feet per access lane. Gates on fire apparatus access roads shall open not less than 20 feet of clear-width for two-way gates and 15 feet of clear-width for one-way gates.

e. A minimum of five feet of standing curb must remain between one-way curb cuts.

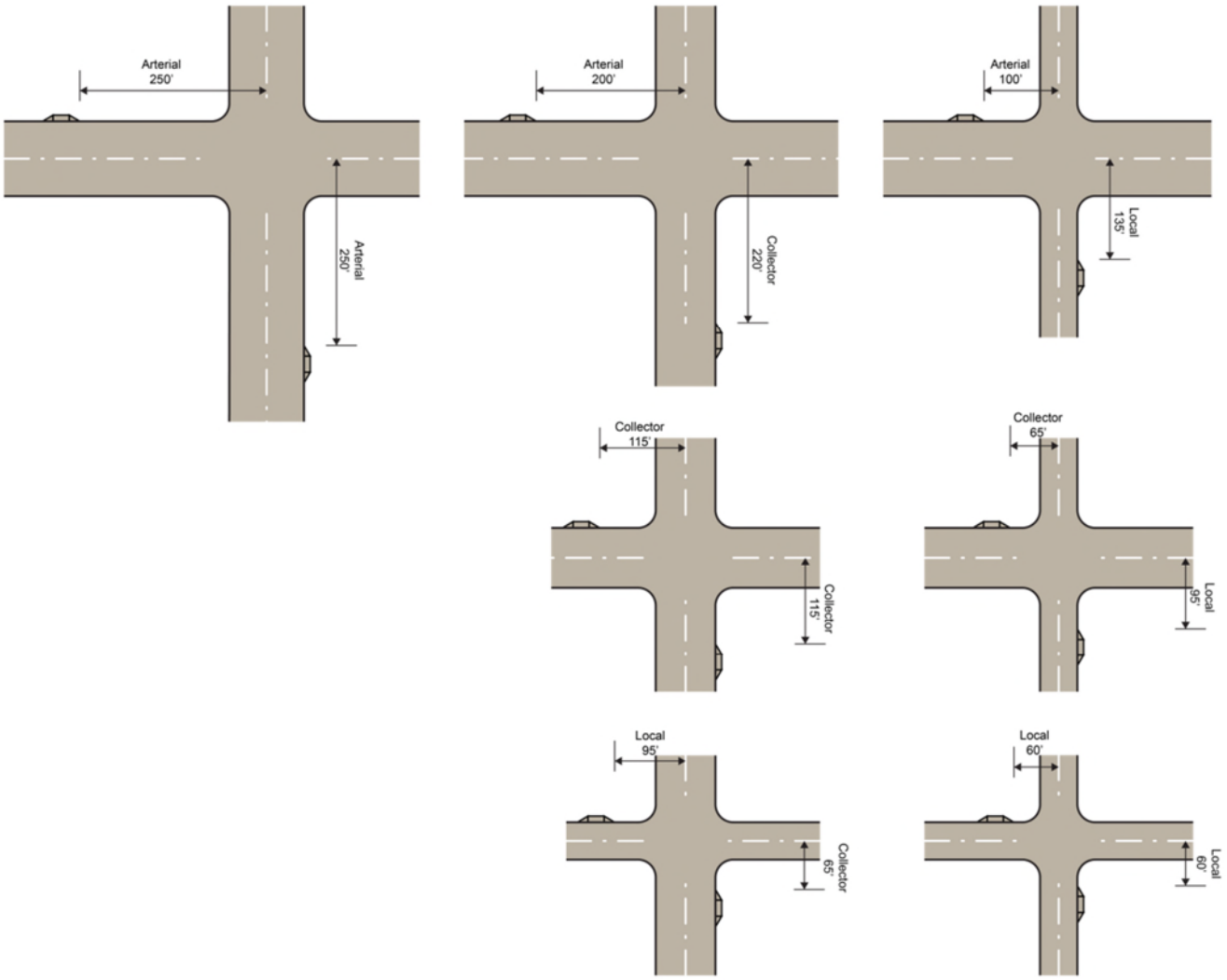
f. Driveway distances to adjacent intersections shall meet the minimum requirements, measured in feet, as shown in **Figure 38-2-11** based on classification of both intersecting streets. The distance is measured from the center of the intersection to the edge of the driveway apron closest to that intersection. These should be considered minimum values whereby longer distances may be required if justified by an engineering study and queuing analysis. Note that if access is along a highway under the authority of the New Mexico State Transportation Department, criteria in accordance with the State Access Management Manual, shall apply. In addition, minimum driveway spacing shall meet corner clearances and Intersection Sight Distance (see **Sec. 38-2.H. Clear Sight Triangle**).

g. Distances shall be measured from the inside edge of the pavement of each driveway or the edge of the intersecting street travel lanes.

h. No driveway shall be closer than ten feet from side property lines, except when serving adjacent properties.

i. When a property is at the corner of two streets, access shall be provided along the intersecting street with the lower classification. For example, if the property is at the intersection of a principle arterial and local street, access shall be from the local street unless access is approved by the Public Works Director on the street with the higher classification.

Figure 38-2-11. Minimum Commercial Driveway Spacing by Intersection Type



j. The location of driveways serving adjacent properties will be reviewed to ensure that they do not create conflicting traffic movements or pose sight distance problems for turning traffic. Where feasible, driveways that serve adjacent properties should be combined into one driveway. Developer must show, in plans, all existing or planned driveways on adjacent properties.

k. The access turning radii shall accommodate the turning radius of the largest design vehicle to routinely use the access. Pedestrian safety across the curb cut also needs to be considered for significantly wide access points. Coordination shall occur with Dial-a-Ride vehicles and other transit related functions to ensure that there is sufficient turning radii to support transit vehicles.

l. A 50-foot minimum turning radius shall be used for an access when combination trucks or single unit vehicles exceeding 30 feet in length are intended to use the access on a daily basis.

m. Construction of all driveways shall comply with the Design Standards and Standard Specifications for Road Construction within the Technical Manual as well as accessibility standards in place at time of building permit issuance.

n. The permittee is responsible for all costs associated with placement and/or removal of driveways accessing public right-of-way. This is to include restoration of existing landscaping, road surfacing, and sidewalk area.

o. Warrants for deceleration and acceleration lanes along with the associated design dimensions at driveway locations shall be in conformance with criteria from the New Mexico Department of Transportation's State Access Management Manual, current edition. The location and dimensions of such shared driveways shall be determined by the Public Works Director. The Public Works Director may require a study to demonstrate that a shared mutual access easement is required for the driveway based on the location and dimension of the proposed shared driveway.

b) Abandonment, Removal, and Restoration Requirements

i) Abandoned Driveways and Median Openings

If any vehicular crossing, other sidewalk crossing, or median opening is clearly abandoned as a crossing, or is no longer used for its intended purpose, any permit previously or hereafter granted for said crossing or median opening as such shall be subject to revocation by the Public Works Director with written justification, only after 60 calendar days written notice of such proposed revocation has been given to the owner of the property to which the crossing or median opening is appurtenant. The owner's name and address will be determined from the Assessor's Office of Doña Ana County. Written notice also will be given to the occupant of said premises, if any, if such occupant is other than the owner. It shall be sufficient notice under the provisions of this and the following section to mail said notices by certified mail with return receipt requested. In the event the name and address of the owner cannot be reasonably ascertained from the assessor's office, and the premises are unoccupied, it shall be sufficient notice to publish said notice in a newspaper of general circulation in the City of Las Cruces, once a week for four consecutive weeks.

a. For the purpose of this paragraph, a crossing or median opening is "clearly abandoned" if there has been no vehicular use of the driveway, crossing, or median opening for a period of at least 24 months.

ii) Removal and Restoration Requirements

In the event the Public Works Director has revoked any permit for a driveway, use of a sidewalk crossing or median opening under the provisions of **i)** above, due to changes taking place within said property, crossing or median opening shall be removed at the expense of the owner of the property. The written notice of revocation shall also set forth requirements for the removal and proper restoration of the curb, sidewalk or median opening. The time allowed for removal and restoration by the owner or occupant shall be 60 days after notice in the cases provided for in **i)** above; provided, however, that upon resolution duly passed by the City Council, that a traffic hazard exists at a nonconforming driveway or median opening which causes imminent danger to life and safety of property, then conformance may be required within a lesser period of time as set by the City Council, but in no event less than 30 days. Each day's delay of the owner in complying with such notice, after the expiration of the time specified, shall constitute a separate violation of this article. If conformance is not attained within the time allotted, the City may make the necessary removal and restoration and the cost thereof shall constitute a lien on said property in the amount of the cost of the required improvements.

10. Median Openings

The location of openings in a median, to allow left-turn ingress and egress movements at a driveway or local street, will be based on the type and operating speed of the roadway, the volume of traffic expected to make the left-turn movements, and the location relative to other intersecting streets, driveways, and median openings. All requests for median cuts or alterations shall be made at the time of request for a building permit, and shall be included on the construction plans.

a) Median Opening Priority

All median openings for City street intersections shall take priority over commercial access in determining location of median openings.

b) Analysis of Median Opening

i) To justify a new median opening, a traffic impact study that defines the ability of the roadway and the driveway to accommodate the opening shall be prepared by a professional engineer in the State of New Mexico, retained by the firm or individual requesting the median opening. The analysis shall include, but not be limited to, the following information:

a. The impact(s) to the operation of adjacent signalized and un-signalized intersections within 500 feet of the proposed opening shall be considered in the analysis.

b. Adequate sight distance requirements for intersections, based on AASHTO criteria.

c. Analysis of potential conflicting vehicular, pedestrian, and bicycle movements with recommendations for eliminating those conflicts.

ii) Shared access points for two or more adjacent individual parcels are required. Future development of adjacent parcels must be considered in determining the opening location.

c) Minimum Median Opening Design Standards

i) Minimum Spacing

A minimum median spacing of 300 feet from adjacent openings shall be required on all collector streets. On arterial streets, spacing shall be as shown in **Figure 38-2-12** if approved by the Public Works Director based on the Traffic Impact Analysis (TIA) Guidelines within the Technical Manual. The Public Works Director may require a study or Traffic Impact Analysis justifying the need. This distance shall be measured from face of curb to face to curb.

Figure 38-2-12. Median Opening Spacing

Street Type	Min. Spacing
From Intersection with Arterial or Collector	500 feet
All Other Openings	300 feet

a. The Public Works Director may reduce the 500-foot required spacing to allow openings as close as 300 feet to arterial or collectors, if justified.

ii) Taper Length

A minimum deceleration taper of 100 feet shall be required on all median openings.

iii) Storage Length

A minimum storage length of 60 feet shall be required on all median openings on City streets, unless the Public Works Director or findings from a prepared Traffic Impact Analysis require additional storage length.

iv) Commercial Access Requirements

For median openings to be considered for commercial access, the median opening must generate traffic, as demonstrated by a projected trip generation, of not less than 25 left-turn ingress or 25 egress vehicles during the peak hour.

d) Median Opening Approval

i) New median openings and associated left-turn storage may be approved by the Public Works Director upon receipt of a traffic impact study justifying the need for the median opening.

ii) Widening, relocating, or other alterations proposed to change or modify an existing median opening, for any reason, must be approved by the Public Works Director, and must meet the requirements outlined in

this section. All future median installations shall conform to this policy and shall be approved by the Public Works Director.

e) Construction Costs for Median Openings

i) The cost of constructing any of the following, for any reason, shall be paid by the party requesting the opening.

a. Constructing a new median opening for private access.

b. Widening, relocating or otherwise changing or altering an existing opening.

c. Constructing a new median opening for access to dedicated public right-of-way.

d. Constructing a new median opening for access to a new subdivision.

ii) All design, demolition, and construction costs are the responsibility of the party requesting the median opening.

f) Landscaping Consideration for Medians

Medians shall be landscaped in accordance with in **Sec. 38-7.D.2. Median and Public Area Landscaping**.

g) Construction Specifications

All construction of driveways or median openings permitted under this article shall be done in a manner as defined herein, and as per the Standard Specifications for Road Construction in the Technical Manual, as amended. All construction of driveways shall be at the expense of the owner of the abutting property, unless such construction is a part of a major City-funded capital improvement project and/or ADA/sidewalk maintenance program.

h) Abandonment, Removal, or Restoration

For abandonment, removal, or restoration, see **Sec. 38-2.F.9.b)** above.

G. Traffic Impact Analysis

1. Purpose

   The purpose of a Traffic Impact Analysis (TIA) is to assess the effects of specific development activity on the existing and planned thoroughfare system of the City. The following addresses the requirements of the TIA relative to the proposed site.

2. Responsibility of TIA Preparation

   When required, the applicant shall submit at the applicant's expense a traffic study that assesses the traffic impacts associated with a proposed development. The TIA must be prepared under the direction of a Professional Engineer (P.E.) licensed in the State of New Mexico with experience in traffic engineering sufficient to assess traffic impacts. The TIA report shall be signed and sealed by the Professional Engineer.

3. Applicability/Determination of Need

   A TIA (or a Specific Traffic Study) shall be required for any development that meets the specific thresholds/ triggers or special situations identified in the table below. The table also lists specific scope requirements such as the minimum study area, issue(s) to be addressed and analysis years based on the type of study/TIA. Generally, a traffic study shall be required for any development expected to generate traffic volumes that will significantly impact the capacity or safety of the street system.

Figure 38-2-13. Required TIA Type

		Specific Traffic Study	Tier I TIA	Tier II TIA
Thresholds/Triggers and Special Situations[1]	Peak hour trips[2]	N/A	50 – 99 Trips	100 or more Trips
	Daily trips[2]	N/A	500 -749 Trips	750 or more Trips
	Special Situations	Refer to **Sec. 38-2.G.3.d) Special Circumstances**	Refer to **Sec. 38-2.G.3.d) Special Circumstances**	Refer to **Sec. 38-2.G.3.d) Special Circumstances**
Minimum Study Area/Issue(s)		Specific issue(s)/concern(s) Identified during a TIA scoping meeting or required by the Public Works Director	Site access driveways	Site access driveways
			All Major intersections and/or roadways within affected areas (signalized or unsignalized)	All Major intersections and/or roadways within affected areas (signalized or unsignalized)
			All driveways/intersections where traffic movements could be affected by new driveway traffic movements	All driveways/intersections where traffic movements could be affected by new driveway traffic movements
			All signalized intersections and major unsignalized intersections within 1/4 mile	All signalized intersections and major unsignalized intersections within 1/2 mile
Analysis Years		As determined during a TIA scoping meeting or required by the Public Works Director	Existing Year	Existing Year
			Opening Year, +5 yrs, +20 yrs[3]	Opening Year, +10 yrs, +20 yrs[3,4]
			Intermediate Year (Multi-phased development)	Intermediate Year (Multi-phased development)

[1.] TIA is required if a development/project meets any of the thresholds or triggers.

[2.] Unadjusted total trip generation anticipated by the development/project per the latest editions of the ITE Trip Generation Manual. Phased projects must be evaluated as a whole assuming full build-out conditions for the purpose of determining the need for a TIA.

[3.] In case of fair share needed

[4.] Regional development

The following provides specific situations where a TIA shall be required:

a) Platting

   A TIA shall be required prior to approval of a Final Plat for a platting proposal when the expected vehicle trip generation exceeds the trip thresholds.

b) Annexation

A TIA shall be required when an annexation is requested by a private entity, and the trip generation of the fully developed land use scenario of the annexed land exceeds the peak hour trip thresholds. This requirement will be waived if the Thoroughfare Development Plan has adequately considered this traffic generation or if the City has initiated the annexation.

c) Building Permit, Driveway Permit, or Development Plan

A TIA shall be required for any building permit, driveway permit, or development plan if the project meets the requirements of **Figure 38-2-13. Required TIA Type**. This requirement includes permits for sites with existing driveways.

d) Special Circumstances

A TIA may be required for a development if the Public Works Director determines that one or more of the following conditions exist:

i) Any project that is located in the vicinity (within a 1/2-mile radius from the project site/limit) of any intersections that operates at a level of service (LOS) D or worse OR located on the congested corridors (LOS D or worse) OR the next major intersection after the adjacent roads and intersections operates at a LOS D or worse.

ii) Traffic generated from a non-residential development has a clear and obvious ingress or egress path-through adjacent residential neighborhoods.

iii) Traffic operational impacts are anticipated by the Public Works Director with a clear connection to the proposed development and identified in writing, such as problems with driveways, left or right turns, signal timing, median openings, or sight distance.

iv) Development requires a new median opening (refer to **Sec. 38-2.F.10.b) Analysis of Median Opening**).

v) The traffic generated by a new development will impact existing traffic problems on adjacent streets that have been documented by the Public Works Director.

vi) The internal street or access system is not anticipated to accommodate the expected traffic generation. This also applies to inadequate internal circulation for developments that create queuing of vehicles such as drive thru or long vehicles such as semi-tractor trailers.

vii) The Public Works Director may require an applicant to conduct a TIA if there is a reasonable expectation that the project may adversely affect pedestrian and/or cyclist safety within the study area.

e) Waiver

A request for waiver of the traffic study may be submitted to the City. The waiver letter must include sufficient information documenting the justification for the waiver. The Public Works Director will review the request and decide whether a waiver can be granted. If a waiver is granted, the applicant may still be required to mitigate impacts as determined by the Public Works Director.

f) TIA Update

Any previous TIA relating to a development shall be updated if the TIA was approved more than three years ago, changes to the development proposal have been made that affect trip generation or traffic patterns, and/or changes in background traffic conditions as determined by the Public Works Director. If an updated TIA is necessary, additional information will be required to:

i) Update changes in the proposed development,

ii) Update or refine assumptions made in a prior submittal,

iii) Provide specific information not available at the time of the previous submittal, and

iv) Provide any new mitigation measures needed and any previously identified mitigation measures that will need to be changed.

If an updated TIA is requested, the applicant may demonstrate the currency of the existing TIA using these four criteria.

4. TIA Mandatory Scoping Requirements

   a) Prior to beginning any study, the applicant and/or their transportation consultant shall contact the Public Works Director and/or other appropriate representatives from the affected agencies when interjurisdictional impacts are anticipated. This meeting is a mandatory pre-scoping meeting. The purpose of the mandatory pre-scoping meeting is to establish assumptions and the process of preparing the study.

   b) The Pre-Scoping Meeting Information Sheet in the Technical Manual for TIA shall be prepared and submitted to the Public Works Director at least ten (10) business working days prior to the pre-scoping meeting.

   c) Based on the agreements reached at the pre-scoping meeting, a scope of work shall be prepared by the applicant's transportation consultant and approved by the Public Works Director prior to commencement of the study.

5. Coordination With Other Public Agencies

   In situations where several agencies must approve a development/project or are responsible for affected roadways, the applicant must contact all agencies to determine issues to be addressed, scope of the study, etc.

6. TIA Requirements

   All TIAs and related studies shall be prepared as per the technical criteria set forth in the Technical Manual. The guidelines in the Technical Manual may be modified by the Public Works Director when unusual conditions indicate that such modification will provide an adequate and safe street network.

H. Clear Sight Triangle

1. Applicability

   Roadways, including intersections, site entrances, and driveways shall comply with the latest AASHTO and NACTO standards and have sufficient visibility to allow motorists to easily travel and enter or exit safely, as well as protect pedestrians and bicyclists.

2. Clear Sight Triangle Required

   At any intersection of two roadways, a Clear Sight Triangle shall be provided for an unobstructed path of sight.

3. Prohibited and Permitted Objects

   a) This area shall be kept clear of any development, landscaping, signage, storage, fencing, or any other object that could impair a driver's view based on the latest AASHTO standards. Certain objects low enough to avoid impairing a driver's view may be permitted if in accordance with the latest AASHTO standards.

   b) An intersecting street or driveway may not be appropriate along a vertical curve when required sight distance from a side street or driveway is not attainable. If the Public Works Director determines that it is essential that a side street or driveway intersect an Arterial or Collector along a vertical curve, then it may be necessary to reduce the vertical curve so that the necessary sight distance is available.

   c) Objects that may be located in the Clear Sight Triangle include, but are not limited to, hydrants, utility poles, utility junction boxes, and traffic control devices, provided that these objects are located to minimize visual obstruction. Objects not exceeding 12 inches wide may be permitted by the Public Works Director.

   d) Any existing trees located within the Clear Sight Triangle will be allowed to remain if all branches are trimmed to a height of ten feet above the point where the pavement meets the edge of the gutter pan on the street immediately adjacent to the tree(s) in question.

   e) No single post or column or combination of obstructions to view within the designated triangle shall exceed 12 inches in thickness at its greatest cross-section dimension.

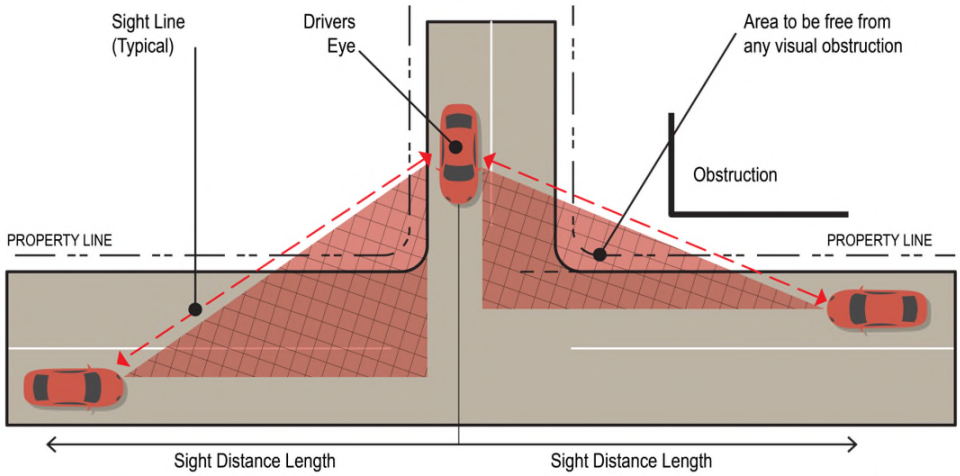
4. Required Dimensions

   a) The Clear Sight Triangle shall be in accordance with the most current AASHTO Green Book guidelines.

   b) The Public Works Director may require larger Clear Sight Triangles than those based on AASHTO Standards in certain cases (e.g., unique intersections, steep grades) by documenting in writing the specific problems being mitigated.

   c) The Development Review Committee may allow an alternative configuration that remains compliant with AASHTO Green Book requirements for Clear Sight Triangle or other safety concern.

Figure 38-2-14. Example of Clear Sight Triangle Application



5. Required Site Plan Note

   The following note is required on all site plans/plats: “Landscaping, signage, walls, fences, trees, and shrubbery between two feet and ten feet tall (as measured from the gutter pan) are not allowed within the clear sight triangle. Unique street and lot grades may require additional limitations within the clear sight triangle.”

I. Streetlighting

1. Applicability

   All subdivisions and developments that significantly alter the street cross-section shall comply with the streetlighting provisions of this section. Streetlighting is necessary to provide illumination and other safety benefits for roadway users during nighttime hours. The City shall designate priority corridors and infill development areas to install streetlights in conformance with this section.

2. Purpose

   The purpose of streetlights is to provide drivers with quick, accurate, and comfortable visibility at night. Residents should realize that the streetlights are provided for traffic safety, not property or personal security. It is true that streetlights do provide some amount of security. This, however, is not their primary intent and streetlights shall not be installed for security reason alone. The following standards apply to all streetlighting to provide adequate illumination for development, minimize light pollution, and promote energy conservation.

3. General

   a) The subdivider/developer shall install streetlighting on all public and private streets.

b) All new streetlighting or any modification to existing street lighting shall meet the most current version of IES RP-8 requirements, as amended, or other prior approved standard. The following statement shall be added to all street lighting plans "This is to certify that the proposed street lighting system for (enter Project Name) complies with the street lighting standards and requirements set forth in the most current version of the Roadway Lighting ANSI/IES RP-8 standards as recommended by the Illuminating Engineering Society (IES)."

c) Streetlighting shall be installed at the locations listed below. Meters shall also be installed to accommodate the streetlighting and to accommodate for any proposed future phases or development.

d) The City will not maintain streetlighting for private development.

e) All streetlighting fixtures, pole types, and hardware shall be selected from the City's Traffic Signal and Street Lightings Approved Product List.

f) All development should include an IES or other prior approved standard submittal to include digital submission of calculations including in the software format used.

4. Required Placement

a) Spacing for streetlights shall be determined by the requirements of IES. Mounting heights shall typically be 25 feet on residential streets and 35 feet arterials and nonresidential streets; however, additional lighting infrastructure may be required based on IES study.

b) The subdivider/developer shall install streetlights at all intersections, including three- and four-way intersections. The streetlight shall be as close to the corner as possible. The location of streetlights shall be based on the geometry of the roadways to include pedestrian crosswalks and sidewalk locations. For roundabouts, lighting is required and shall be approved by the Public Works Director.

c) A streetlight shall also be required at the beginning of turnarounds of cul-de-sacs based on IES RP-8 or other prior approved standard requirements.

d) The Public Works Director may waive or modify streetlight installation, placement, and spacing upon determination that an alternative configuration would be more desirable given the surrounding context (e.g., preservation areas, open spaces) or other site-specific features.

5. Installation and Maintenance Responsibility

a) The subdivider/developer shall install all service connections and streetlight poles for a subdivision/development. All wiring for streetlights shall be underground unless overhead wiring is approved by the City.

b) The subdivider/developer shall be responsible for the maintenance and cost of electricity to power the streetlights until such lights are accepted by the City.

c) Easements shall be shown on the subdivision plat for all electrical service.

d) Limited Access Facilities

i) The City shall be responsible for lighting major streets going over or under a freeway that has been approved by the City. The City shall pay the monthly power bill for these lights.

ii) The City is not responsible for the necessary lighting of structures or interchanges intersecting with local streets.

iii) The City may install streetlights at the intersection of local streets with frontage roads. The freeway frontage road is deemed to terminate at its approach to an off-ramp and begin at its connection to an on-ramp.

6. Streetlighting Requests

a) All streetlighting shall comply with IES RP-8 or other prior approved standard requirements.

b) Any request to relocate an existing City-owned streetlight must be pre-approved by the Public Works Director prior to construction and will be relocated at the requesters' expense. All electrical work shall be performed by an electrician licensed in the State of New Mexico working under a New Mexico licensed electrical contractor. All work shall comply with the City standards, NEC and MUTCD, and shall be coordinated with the City of Las Cruces Traffic Engineering section.

c) Subdivisions that were approved/planned to be exempted from lighting installation shall be reviewed at time of full street reconstruction only, or at the cost of the requestors/area being affected.

d) All lighting designs, pole designs, luminaire designs, and location of poles for all street lighting shall be approved by the Public Works Director.

e) When considering streetlighting requests, the Public Works Director will consider the following factors and thresholds:

i) Adjacent Land Uses

a. Proximity to schools, parks, large community centers, places of worship, and other civic facilities;

b. Upon petition of local residents and/or property owners; and

c. Other locations where a study demonstrates a need.

ii) Coordination of Activities

a. Coordination of street lighting installation with full reconstruction activities.

iii) Arterial Streets

a. Street lighting may be installed along arterial streets when traffic volumes, nighttime crashes, nighttime pedestrian use, and/or roadway hazards show a need for improved lighting.

b. Minimum warrant considerations for arterial streets would be an average daily traffic in excess of 10,000 vehicles, and an 85th percentile speed of 40 miles per hour, or greater based on an engineering study.

iv) Collector Streets

a. Street lighting may be installed along collector streets when traffic volumes, nighttime crashes, nighttime pedestrian use, and/or roadway hazards show a need for improved lighting.

b. Minimum warrant considerations for collector streets would be an average daily traffic in excess of 5,000 vehicles, and an 85th percentile speed of 35 miles per hour or greater, based on an engineering study.

v) Local Streets

a. Street lighting may be installed along local streets when traffic volumes, nighttime crashes, nighttime pedestrian use, and/or roadway hazards show a need for improved lighting.

7. Underground Light Circuits for Subdivisions and Other Developments

a) In existing subdivisions/developments where all utilities are presently placed underground and no streetlights exist, the City is responsible for the installation of underground streetlight circuits.

b) In new subdivisions/developments, all street lighting shall be installed by the subdivider concurrently with other associated infrastructure improvements.

c) In subdivisions/developments where utilities exist overhead and the property owners choose to place these overhead utilities underground, the property owners will be responsible for underground streetlight circuit installation.

d) In new subdivisions/developments, all streetlight circuits are to be placed underground.

e) All new streetlights and associated components shall meet City lighting specifications.

f) Any existing street lighting systems annexed into the City shall be subject to review for compliance with applicable electrical standards. Failure to meet the requirements of those standards could result in possible condemnation; and lighting that does not meet the standards may be scheduled to be replaced with City standard streetlights as funds become available.

8. Street Lighting Location

a) Improved Streets

i) Consideration must be given to the effect pole placements have on abutting properties. In view of this, the City will make a reasonable concession in a lighting pattern to avoid placing a pole at a point where it would have a detrimental effect on the abutting property. The City's intent is to focus such concessions primarily on residential properties. In most cases, the pole should be located adjacent to the property line, but more importantly lateral placement should conform to the specifications of both streetlight pole and light head design without hindering the safety impacts of lighting based on IES requirements.

ii) Once the permit to use the right-of-way is issued, adherence to approved pole locations is expected.

iii) Street lighting shall be installed on a cul-de-sac street/local street intersection based on IES RP-8 requirements.

iv) Streetlight placement shall not obstruct the visibility of new or existing street signs and shall not interfere with pedestrian use of the ADA ramps, sidewalks, driveways, multi-use paths, or utility infrastructure. Sidewalks shall remain free of obstructions in compliance with the Americans with Disabilities Act.

b) New Street Construction

i) A set of drawings of proposed street construction shall be submitted to the Community Development Department for the purpose of locating streetlights. One set of drawings, showing streetlight locations and power sources, shall be submitted to El Paso Electric Company by subdivision developer, along with installation information and instructions, if the City is permitting a connection to an existing flat-rate circuit. All efforts will be made to avoid conflicts and duplications, and to coordinate construction efforts.

ii) Preliminary plans for local and collector streets will show an accurate survey tie to all poles (i.e., stationing and offsets) and plans for new construction should show utility easements.

iii) All plans will be reviewed by the City for proposed paving width and alignment, prior to submittal to the individual utility companies.

9. Streetlight Procedures for New Subdivisions

a) Preliminary Review

The developer, or a representative, shall submit to the Public Works Department section a master utility plan of a proposed subdivision, showing the electrical utility location runs and service points, either underground or above ground. The master utility plan shall contain location of all utility lines (gas, water, sewer, fire hydrants, street lighting, etc.), and location, botanical and common name, and mature size of trees and shrubs in the parkways and medians to be retained as part of the final parkway and median landscape plan. The Public Works Department shall review the plan for streetlight locations, and connecting conduit runs to electrical service points. The plan shall be returned to the developer with any comments, for review by the developer's registered New Mexico professional engineer. Upon satisfactory acceptance of the changes by City staff, said changes then shall be incorporated into the construction plans.

b) Developer Responsibility

The developer shall be required to construct the entire streetlight system within the Arterial, Collector, and Local street system at the time of roadway construction. This includes, but is not limited to, all underground connecting conduits, wires, concrete foundations, poles, luminaries, fuses, fuse holders, ground rods, pull boxes, electrical service and controls, and lighting control systems. Costs associated with installing light

standards/luminaires, wiring, and service meters associated with lighting on designated collectors or arterials as part of the new development will be shared equally between developer and the City of Las Cruces. All streetlights and associated components shall comply with the City traffic standards and applicable electrical codes. All electrical work shall be performed by a journeyman electrician licensed in the State of New Mexico working under a New Mexico licensed electrical contractor. All lighting shall be metered and planned to serve a large area of land to be developed to the extent possible.

c) City Responsibility

Upon request from the developer, the Public Works Director shall provide the bolt circle template for streetlight foundations, as shown on the approved construction drawings.

d) Contractor/Developer Information Contact

For information concerning the below items, the contractor is to contact the designated Public Works project manager, who will consult with Transportation Department/Streets/Traffic Operations personnel, as needed:

i) Information concerning design specifications.

ii) Any conflict of streetlight locations, requiring relocation as a solution.

iii) Any changes or rerouting of conduit runs.

iv) Request for additional streetlights, within the scope of **6. Streetlighting Requests** above.

v) Request to omit a streetlight, as shown on the plans.

vi) All other items concerning streetlights that are not shown above.

J. Traffic Signals, Traffic Control Signs, Street Lights, and/or Roadways

1. All new or modified traffic control devices within City right-of-way or any off-street parking areas shall meet MUTCD requirements and receive approval by the Public Works Director.
2. Relocation of City Streetlight, Signal, or Sign

a) Any request to relocate an existing City-owned streetlight, traffic signal, or traffic control sign must be approved by the Public Works Director prior to construction, and will be relocated, upon receipt of permission, at the requesters' expense. At the City's option, the City may move the streetlight, traffic signal, or traffic control sign and be reimbursed by the requestor.

b) All sign work shall be performed by a qualified signs and markings technician holding an International Municipal Signal Association (IMSA) level one or better certification or a pre-approved certification equivalent to IMSA.

c) All signal work shall be performed by a qualified traffic signal technician holding an IMSA level two or better certification or a pre-approved certification equivalent to IMSA.

d) All electrical work shall be performed by a journeyman electrician, licensed in the State of New Mexico, working under a New Mexico licensed electrical contractor.

e) All work shall comply with the City standards and specifications, National Electrical Code and Manual on Uniform Traffic Control Devices and shall be coordinated with the Public Works Department.

3. When new development increases the traffic volumes on an existing signalized or non-signalized intersection, the following actions may be required:

a) A non-signalized intersection may have to be signalized.

b) An existing signalized intersection may have to be modified.

c) A signalized or non-signalized intersection's geometry may have to be modified.

d) The intersection may have to be reconstructed.

4. The signal maintenance shall be the responsibility of the City.
5. When new development or increased land use density increases the traffic volumes on an existing roadway, the following actions may be required:
   a) The roadway may need to be reconstructed.
   b) The roadway may need to be widened.
   c) Additional turn lanes may need to be constructed.
   d) Additional roadways for ingress/egress may need to be constructed.
6. If a modification to an intersection or roadway is required, the permittee will be required to provide all or a portion of the funding for the improvements. The funding requirements shall be determined by the Public Works Director and will generally be a pro-rata share based on additional traffic loading being proposed.
7. Acceptable construction of all roadway or intersection modifications must be constructed before the development's acceptance by the City.
8. A traffic signal warrant study per the Manual of Uniform on Traffic Control Devices (MUTCD) performed by a New Mexico registered professional engineer shall be required when the traffic impact analysis shows a drop in level of service below "B" on an intersection and/or intersections.
9. The City shall review the traffic impact analysis and the traffic signal warrant study to determine if a signal and/or modification to the roadway system is required.

K. Audible Pedestrian Traffic Signals

Audible pedestrian signals shall be installed based on MUTCD requirements, ADAAG, and FHWA as part of the traffic signal equipment.

L. Placement of Traffic Control Devices

1. The most current edition of the MUTCD shall govern the use and placement of traffic control devices, whether temporary or permanent, within the right-of-way.
2. All traffic control devices shall be installed complete and in place before any street or road is opened to public access. All traffic control devices shall be installed by a qualified signs and markings technician holding an IMSA Sign Level I or better certification (or a pre-approved certification equivalent to IMSA).
3. An approved traffic control plan for establishing temporary traffic control is required for any agency or qualified persons working within or next to any driving lane, sidewalk, multi-use path or at any other place that would impede the movement of other pedestrians or vehicles within the right-of-way. This includes but not limited to, any work that requires the use of any kind of traffic control devices such as cones, barrels, channeling devices, barricades, etc., being placed within the right-of-way.
4. All temporary traffic control devices shall be furnished, erected, and maintained by the contractor or qualified responsible party. All traffic control devices shall only be erected and maintained by a qualified person certified in work zone safety (or a pre-approved certification equivalent to IMSA).
5. A traffic control plan shall be submitted to the Public Works Department through the formal plan review process prior to placement on any street under City jurisdiction. All plans shall comply with the most current edition of the MUTCD indicating dates, times and duration of work, traffic devices to be used, placement of devices, and the order that devices are to be placed and removed. Traffic control devices shall maintain ADA accessibility and ensure that pedestrian and bicycle safety and access is maintained per MUTCD and federal guidelines. An approved traffic control plan is required before any part of the public right-of-way is blocked or any traffic control device is placed within the right-of-way (this includes all traffic, vehicular, pedestrian, bikes, etc.) The approved traffic control plan must remain on-site or be immediately available and presented to Public Works staff for review to ensure the work zone is set up per plan. An emergency contact number for the contractor must also be

provided. Failure to comply with this requirement may result in work stoppage, removal of traffic devices at the violators' expense, and citations per **Sec. 34-1.H. Violations and Enforcement** and applicable Las Cruces Municipal Code.

6. Any request to install or relocate an existing City traffic control device must be pre-approved by the Public Works Director prior to construction and will be at the requesters' expense. All sign work shall be performed by a qualified signs and markings technician holding an IMSA Level I certification or better (or a pre-approved certification equivalent to IMSA).

   a) Temporary Traffic Control Devices: All traffic control plans for placement of temporary traffic control devices within City right-of-way are required to be submitted to the Public Works Department for approval. Traffic control plans shall include, but not be limited to, the following information:

      i) Spacing of appropriate signage shown in feet.

      ii) Calculation of taper lengths per the MUTCD.

      iii) Sign code references per the MUTCD.

      iv) Phasing of traffic control placement, as necessary.

      v) Dates and times of day for short-duration lane closures of ten working days or less.

      Contractors are required to adhere to the approved traffic control plan regarding setup and duration of lane closure(s).

   b) Permanent Traffic Control Devices: In private developments, placement of all new signage and/or markings shall be the responsibility of the developer or owner. Placement shall be in accordance with the submitted sign plan as approved by the Public Works Director. Maintenance of signage in private developments open to the public shall be maintained by the property owner. Property owners are responsible for ensuring ongoing maintenance of private streets, including streetlighting, traffic controls, and other related features.

M. Sidewalks and Multi-Use Paths

1. Applicability

   Sidewalks or multi-use paths shall be installed on all public and private streets for new development and shall include curb and gutter infrastructure. Sidewalks or multi-use paths shall also be installed on property on which a Building Permit is being issued that requires a Certificate of Occupancy.

2. Purpose

   The purpose of this section is to improve the safety of residents by providing a separation between vehicles and sidewalk users, such as pedestrians or people with disabilities. In addition, sidewalks and multi-use paths promote physical activity for residents, especially when constructed with a parkway that includes street trees. Sidewalks and multi-use paths are an important mode of transportation for commuting and for recreational use.

3. General

   The following standards and requirements shall apply to sidewalks and multi-use paths in the City.

   a) Sidewalks or multi-use paths shall be provided along all new roadways in accordance with **Figure 38-2-1. Roadway Cross-Sections** and shall comply with the Construction Standards within the Technical Manual and the latest ADAAG standards.

   b) Site development shall provide for multimodal access between the right-of-way and the development.

   c) All sidewalks and multi-use paths shall provide a minimum clear path width in accordance with the following:

      i) Sidewalks shall have a minimum clear path width of a minimum of 5 feet on all streets.

ii) For multi-use paths, there shall be a minimum clear path of 8 feet for all streets. For any transit or bus stops, there shall be a minimum clear path of 8 feet that is perpendicular to the curb to allow for ADA accessibility.

iii) If a bus shelter is located at a stop, there should be a minimum of 20 feet along the length of the sidewalk that is a minimum of 8 feet wide.

d) Multi-use paths shall be concrete for the portion where any driveways are located.

e) Curb ramps shall be provided within a street right-of-way wherever an accessible route for pedestrians (sidewalk or pedestrian way) is required. The design and construction of curb ramps shall be in accordance with federal and state accessibility standards.

4. The Development Review Committee may require sidewalks or multi-use paths to be wider than required by **Figure 38-2-1. Roadway Cross-Sections** for developments with higher densities, pedestrian-oriented developments, or other areas with high pedestrian traffic.

5. The Development Review Committee may modify the requirements for sidewalks on individual streets or within subdivisions based on the following criteria.

a) Limited, confined infill in existing, developed single-family residential neighborhoods where sidewalks or multi-use paths are not present and have not historically been provided.

b) On local streets within an approved subdivision where all the lots provide a minimum one-half acre lot area, and the adjoining properties have no sidewalks.

c) On local streets where pedestrian access is provided within the approved subdivision through an alternative sidewalk design not installed within the street right-of-way; provided, however, that an easement may be required to provide for the installation of traffic signage and signalization, utility services, or other similar facilities.

6. Timing for Sidewalk and Multi-Use Path Construction

The timing of sidewalk and multi-use path construction shall be as required by this section unless a development agreement between the property owner and the City provides for alternative timing for construction and security has been provided in accordance with this section and **Sec. 37-4.C.1.a)**.

a) New Subdivisions

i) For new arterials or collectors, sidewalks, multi-use paths, hike and bike trails, and curb ramps shall be installed by the subdivider at the time of road construction.

a. In no case will a Building Permit be issued until sidewalks and multi-use paths are completed along arterial and collector streets, in accordance with **Sec. 37-4.D. Substantial Completion**.

ii) For new Local streets, sidewalks, multi-use paths, hike and bike trails, and curb ramps must be installed by the builder at the time of Building Permit construction. Sidewalks must be installed prior to issuance of a Certificate of Occupancy. If the lot is not developed within three years, then the current property owner is required to install the sidewalk on the property to eliminate sidewalk gaps. Sidewalk behind rollover curb to be installed by developer at the time of subdivision.

b) Existing Developments

i) For existing developments, sidewalks or multi-use paths must be installed prior to issuance of a Certificate of Occupancy.

a. Existing sidewalks may be utilized if they are at least four feet in width, ADA-compliant, in good condition, and connect to other existing sidewalks of the same width.

b. New sidewalks must be installed if existing sidewalks are in disrepair and no longer safe for usage by pedestrians or people with disabilities.

ii) When a new sidewalk is installed crossing a driveway that is no longer in use, the unused driveway shall also be removed. See **Sec. 38-2.F.9.b) Abandonment, Removal, and Restoration Requirements**.

N. Off-Street Parking

1. Applicability

a) New Development

All new development shall provide off-street vehicular parking, bicycle parking, and loading areas in accordance with the standards of this section unless exempted by **N.4.a)i)** below.

b) Addition or Expansion

i) If an existing structure or use is expanded or enlarged (in terms of the number of dwelling units, floor area, number of employees, or seating capacity), any additional off-street vehicular parking and loading spaces that may be required for the expanded or enlarged part of the structure or use shall be provided in accordance with the requirements of this section.

ii) If an existing structure or use is expanded or enlarged (in terms of the number of dwelling units, floor area, number of employees, or seating capacity), any required bicycle parking for the entire structure or use shall be provided in accordance with the requirements of this section.

c) Change in Use

Any change in use of an existing structure or land shall be accompanied by the provision of any additional off-street vehicular parking, bicycle parking, and loading spaces required for the new use unless accommodated by **4.c) Off-Street Parking Alternatives and Reductions** below or another mechanism within this Development Code.

2. Purpose

The purpose of this section is to:

a) Ensure that off-street vehicle parking, bicycle parking, loading, and access demands associated with new development are met within the context of surrounding land uses and neighborhoods;

b) Allow flexibility in addressing vehicle parking, loading, and access issues by presenting a menu of strategies to address parking issues rather than only parking space requirements;

c) Ensure that off-street parking, loading, and access demands associated with new development are met without adversely impacting surrounding land uses and neighborhoods;

d) Accommodate safe and convenient movement of vehicles, bicycles, pedestrians, and transit.

3. Parking Plan Required

a) Applications for development shall include a parking plan, which shall accurately designate the number and location of required parking spaces, access aisles, and driveways, and the relation of the vehicular off-street parking facilities and bicycle parking facilities (if applicable) to the development they are designed to serve, including how the parking facilities coordinate with the vehicular, pedestrian, and bicycle circulation systems for the development.

i) The Community Development Director may waive this submittal requirement if the Director determines that a parking plan is not necessary to demonstrate the proposed development's compliance with the standards in this section based on the size and configuration of existing parking and loading areas on the site. Multimodal circulation and impacts and infrastructure improvements will need to be addressed via a TIA at the discretion of the Public Works Director.

b) Site plans shall specify the proposed land uses before a building permit will be issued. A revised site plan will be required if revised land uses require additional parking that cannot be accommodated through **4.c) Off-Street Parking Alternatives and Reductions** below.

4. Minimum Off-Street Vehicular Parking Requirements

a) Required Off-Street Parking Spaces

Development shall provide at least the number of off-street vehicular parking spaces required by **Figure 36-3-2. Permitted Use Chart**, based on the proposed use(s), subject to **c) Off-Street Parking Alternatives and Reductions**.

i) Exception: No off-street vehicle parking is required in the following areas due to the reduced automobile use associated with pedestrian-oriented, mixed-use developments:

a. DDC, Downtown Development Code

b. MXCO, Mixed Use Corridor Overlay District

c. TCO, Town Center Overlay District

d. NCO, Neighborhood Center Overlay District

e. Urban Character Area

b) Calculation of Requirements

i) Fractions

When calculation of the number of required spaces results in a fractional number, any fraction of 0.5 or greater shall be rounded up to the next higher whole number and any fraction of less than 0.5 shall be rounded down to the lower whole number.

ii) Area Measurements

All square-footage-based parking and loading requirements shall be computed on the basis of gross floor area of the subject use. For the purposes of parking calculations, the gross area of any parking garage within a building shall not be included within the gross floor area of the building.

iii) Parking and Loading for Multiple Uses

Lots containing more than one use shall provide parking and loading in an amount equal to the total of the requirements for all uses unless reduced through a shared parking agreement or other provision within this Code.

a. Note that some combined uses (e.g., Shopping Center or Mixed-Use) are defined uses in **Figure 36-3-2. Permitted Use Chart** and include established parking ratios or other methods of calculation.

iv) Parking and Loading for Unlisted Uses

For uses not expressly listed in **Figure 36-3-2. Permitted Use Chart**, the Community Development Director is authorized to:

a. Apply the off-street parking space requirement specified for the listed use that is deemed most similar to the proposed use (based on operating characteristics, the most similar related occupancy classification, or other factors determined by the Director);

b. Establish the off-street parking space requirement by reference to parking resources published by the Institute of Traffic Engineers (ITE) or another acceptable source of parking demand data; or

c. Establish the off-street parking space and loading requirements based on a parking and loading demand study prepared by the applicant according to **v)** below.

v) Discretionary Requirement Based on Demand Study

Uses that reference this subsection in **Figure 36-3-2. Permitted Use Chart** have widely varying parking and loading demand characteristics, making it difficult to specify a single off-street parking or loading standard. Upon receiving an application for a use subject to this subsection, the Community Development Director

shall apply the off-street parking and loading standards on the basis of a parking and loading demand study prepared by the applicant. Such a study shall estimate parking demand for the proposed use based on the recommendations of the Institute of Traffic Engineers (ITE), Urban Land Institute, the International Council of Shopping Centers, the American Planning Association, or other acceptable source of parking demand data for uses and/or combinations of uses of comparable activities, scale, bulk, area, and location.

c) Off-Street Parking Alternatives and Reductions

i) Approval of Parking Alternatives

The following provisions are methods to reduce the number, size, and/or square footage of area required for on-site vehicle parking. Bicycle parking must be provided as required by **Figure 36-3-2. Permitted Use Chart**. These methods cannot be applied to any provision regarding parking for persons with disabilities, unless no off-street parking is provided.

The Community Development Director may approve parking alternatives to the off-street parking spaces required by **Figure 36-3-2. Permitted Use Chart** in accordance with one or more of the standards in this section.

ii) Shared and Joint Use of Parking Areas

When a mix of uses are located on one site or adjacent properties, applicants shall seek shared parking agreements to reduce the amount of required parking.

a. These agreements shall be approved as to form and content by the City Attorney and Community Development Director and must be referenced on the Final Plat, Site Plan, and/or Certificate of Occupancy.

b. Agreements may be made with adjoining property owners regardless of the hours of operation of the adjoining uses.

c. In combining parking requirements, a minimum of 75 percent of the required off-street parking for all uses shall be met.

d. Adequate and safe pedestrian access by a walkway protected by a landscape buffer or a curb separation and elevation from the street grade shall be provided between the shared parking areas and the primary pedestrian entrances to the uses served by the shared parking.

e. Signage shall be provided to direct the public to the shared parking spaces.

f. An agreement for shared and joint use of parking areas shall become null and void if there is a change in the land uses that are covered by the agreement, platting, or re-platting of the land. In these instances, a new agreement shall be required.

iii) Off-Site Parking

a. Up to 40 percent of the required parking spaces may be provided on property separate from the property served, provided all of the separate parking is within 500 feet from the property served, as measured along the pedestrian path.

i. Required accessible spaces must be provided off-street and on-site.

b. Adequate, safe, and well-lit pedestrian access shall be provided between the off-site vehicular parking area and the primary pedestrian entrances to the use served by the off-site parking.

c. A parking agreement ensuring that the allowed off-street parking is required for the life of the land use shall be properly executed by all the separate property owners, approved as to content and form by the City Attorney and the Community Development Director, referenced on the Final Plat, Site Plan, and/or Certificate of Occupancy, and submitted to the Community Development Director.

iv) On-Street Parking

In areas where on-street parking is permissible and verified by the Public Works Director, this parking can be used for up to 25 percent of the required parking of a use provided that the on-street parking is within the area of the property on which the use is located. Required accessible spaces must be provided off-street and on-site.

v) Parking Structure

A 20 percent reduction in the total number of required parking spaces will be granted if the required parking is provided in a parking structure that is two stories or more.

vi) Bicycle Parking Spaces

a. Bicycle parking facilities shall meet the design standards found in the Technical Manual and **Sec. 38-2.N.5** below.

b. Bicycle Racks: One motor vehicle parking space can be replaced with four bicycle rack spaces or other approved bicycle parking facilities. This option can be used for not more than 50 percent of the vehicular parking spaces.

c. Bicycle Lockers: One motor vehicle parking space can be replaced with two bicycle locker spaces. This option can be used for up to seven vehicle spaces or not more than 15 percent of the vehicular parking spaces, whichever is less.

5. Bicycle Parking Standards

a) Minimum Required Bicycle Parking

i) Bicycle parking spaces are required in all zoning and overlay districts for the following:

a. New development; and

b. Any individual expansion or alteration of a building existing prior to the effective date of this ordinance if the expansion increases the building's gross floor area by 50 percent or more, or the alteration involves 50 percent or more of the building's gross floor area (including interior alterations).

ii) The amount of parking shall be provided in accordance with **Figure 36-3-2. Permitted Use Chart**, based on the development's principal use(s).

b) General Bicycle Parking Standards

Required off-street bicycle parking spaces shall be provided with bike racks, bike lockers, or similar parking facilities that comply with the following standards:

i) Located on the property in a way that provides the optimum security for the bicycles;

ii) Located on a paved or similar hard, all-weather surface, having a slope not greater than three percent;

iii) Well-lit and accessible to the public or bicyclists after dark;

iv) Does not interfere with pedestrian or bicycle traffic;

v) Identified with adequate signs and striping;

vi) Protected from conflicts with vehicular traffic;

vii) Located as near as practicable to the main entrance of the building they are intended to serve; however, directional signage shall be provided where a bicycle parking space is not visible from a main entrance to the building for which the bicycle parking space is required; and

viii) Designed in accordance with the Technical Manual.

6. General Standards for Off-Street Vehicular Parking and Loading Areas

a) Size of Parking Spaces and Driving Aisles

The minimum dimensional requirements for parking stalls and driving aisles are shown in **Figure 38-2-15. Minimum Dimensional Requirements for Parking Stalls and Driving Aisles**. Twenty-seven feet is the minimum two-way driving aisle width, including non-dedicated streets or private drives, when there is no parking on both sides of the driving aisle. Twelve feet is the minimum width for a one-way driving aisle. The City Fire Department may require wider driving aisles whenever necessary to address fire and safety concerns as addressed in the International Fire Code, as amended.

Figure 38-2-15. Minimum Dimensional Requirements for Parking Stalls and Driving Aisles

Parking Angle	Stall Width	Stall Length	Stall Base	Stall Depth	Width of One-Way Aisle	Width of Two-Way Aisle
30 degrees	9′	19′	18′	17.3′	12′	27′
45 degrees	9′	19′	12.7′	19.8′	13′	27′
60 degrees	9′	19′	10.4′	21′	18′	27′
90 degrees	9′	19′	9′	19′	27′	27′
0 degrees (parallel)	9′	22′	22′	9′	12′	27′

NOTES:

Driving/back-up aisles are not required for one single-family dwelling per lot or one duplex per lot. All other land uses shall provide driving aisles when parking stalls are required.

All angle parking, except 90 degree and parallel parking shall have aisles designed for one-way traffic flow only, except that two-way traffic is permitted in designs approved by the Community Development Director.

All parking lot designs shall have primary ingress and egress to a public street or access easement. Secondary access only may be to an alley. However, access to or from an alley and parking lot is permitted if 1 to 4 dwelling units are located on property that abuts the alley. Primary ingress/egress to an alley is permitted for properties with 1 to 4 dwelling units.

Except for single-family or two-family dwelling units, parking and loading areas shall be arranged so that vehicles will not be required to back out of parking or loading spaces directly into a public way. Circulation within a parking lot shall be designed to minimize aisles with one inlet/outlet. Aisles with only one inlet/outlet shall provide “back outs” for end spaces.

Land uses that involve the servicing of motor vehicles shall not service vehicles in the required parking stalls.

i) Compact Vehicle Parking

a. Up to 10 percent of the total number of required parking spaces may be used for compact vehicle parking; provided, that the total number of required off-street parking spaces is provided on site.

b. Compact parking spaces shall be 8 feet wide by 18 feet long for 90-degree parking or the equivalent dimensions required for an angle space to maintain the 8-foot by 18-foot rectangle.

c. Compact spaces shall be clearly signed and marked “Compact Only.”

ii) Gas Pump Islands

a. Gas pump islands designed to accommodate two or more vehicles on each side: A minimum of 24 feet (perpendicular) shall be provided between gas pump islands, islands and buildings, curbs, other types of driving aisle obstructions, and between the back of parking spaces and the end of the gas pump vehicle space. (Distance may be reduced to 18 feet between parking spaces and pump vehicle spaces if one-way and angle parking.)

b. Gas pump islands designed for one vehicle on each side: A minimum of 18 feet (perpendicular) shall be provided. (24 feet required between parking spaces and pump vehicle spaces unless one-way and angle parking.)

c. Diesel pump islands for tractor-trailer trucks only; no automobiles or recreational vehicles will use these pumps. A site plan shall show diesel pumps spaced at least 17 feet, center-to-center distance, with a minimum of 14 feet of one-way driving clearance between pump islands.

iii) Electric Vehicle Charging Stations

Electric Vehicle (EV) charging stations may be located beyond the wheelstop, in landscape areas, or in another location that does not block a pedestrian, bicycle, or vehicular accessway.

b) Parking Spaces for Persons with Disabilities

Parking spaces for persons with physical disabilities shall comply with federal and state requirements, and the Technical Manual. Such a place shall be designated by a conspicuously posted sign bearing the international sign of accessibility.

c) Landscaping

For parking lot landscaping requirements, see **Sec. 38-7.D.5. Parking Lot Landscaping**.

d) Construction and Maintenance of Parking Areas

i) Single-Family Homes, Townhouses, and Duplex, Triplex, or Quadplex Developments

Crushed stone or crusher fines is the minimum surface that may be used for driveways or parking areas for single-structure Single-Family Homes, Townhouses, and Duplex, Triplex, or Quadplex developments on one lot.

ii) All Other Developments

a. Surfacing Requirements

All vehicular use areas must be surfaced with one of the following materials:

i. Pervious and impervious asphaltic concrete;

ii. Pervious and impervious cement concrete;

iii. A penetration treatment of bituminous material and seal coat of bituminous binder and mineral aggregate; or,

iv. Alternative surfacing as determined appropriate by the Fire Marshal and Public Works Director.

The surface must be maintained in a smooth, durable, and well-drained condition and be kept clear of debris or other accumulated refuse.

b. Striping

Parking spaces, back-up aisle, loading areas, entrances, exits, and clear sight triangles shall be appropriately marked to indicate their location.

c. Landscaping and Irrigation

Landscaping and an irrigation system in compliance with **Sec. 38-7. Landscaping** will be required with the installation of a parking area.

d. Drainage

Drainage shall comply with **Sec. 38-3. Drainage and Flood Control** and all other City regulations. Excess flow and volume shall be detained or retained on site. The installation of a parking area may require a drainage facility.

e) Requirements for Lots with More than 50 Parking Spaces

i) Parking Location

No more than 50 percent of off-street parking may be located between the front facade and a public street unless outlots are present.

ii) Sub-Lots and Pedestrianways

a. Large surface parking lots shall be visually and functionally segmented into several smaller sub-lots by landscaped areas. Each sub-lot shall contain a maximum of 50 parking spaces. An additional 50 parking spaces are allowed per sub-lot if the landscaped area and associated plantings exceeds the minimum established in **Sec. 38-7.D.5. Parking Lot Landscaping** by at least 20 percent.

b. For every parking sub-lot, a landscaped median/divider at least 15 feet wide shall be installed to break up the sub-lots. These medians shall contain pedestrian accessways to offer safe, marked routes between parking spaces and building entries.

iii) Pedestrian Circulation

An internal pedestrian accessway, at least six feet in width and ADA accessible, must be provided from the perimeter sidewalk to the primary public entrance. Internal pedestrian walkways must be distinguished from driving surfaces by textured, painted, and/or raised surface.

iv) Additional Landscaping

Up to a 10 percent reduction in the required number of parking spaces will be allowed if additional shade trees are provided beyond the requirements of **Sec. 38-7.D.5. Parking Lot Landscaping**. Each parking space eliminated through this option shall be replaced with a minimum of two trees.

f) Tandem Parking Spaces

Tandem parking provides for two or more parking spaces, one behind the other, where access to one parked vehicle can only be gained through the abutting space. Tandem parking can be utilized for no more than 50 percent of all required parking spaces. Tandem parking shall only be utilized for specific, property owner-/manager-controlled cases such as:

i) Residential parking, when both spaces are designated for a single dwelling unit;

ii) Employee parking;

iii) Company-owned vehicles; or

iv) Controlled parking situations (funeral homes, sporting events, car rental or truck agencies).

g) Parking and Storage of Large Motor Vehicles

Subsections **g)i)** through **g)vi)** below apply to all areas other than the Rural Character Area.

i) Parking and storage areas for any motor vehicle or its appurtenances, including the necessary driveways to get to and from the parking and storage areas, shall not cover more than one-half of any open area between the front, including the secondary front, of the main dwelling and the front property line in a single-family or duplex property,

a. Exception: In the case of a lot on a cul-de-sac, up to two-thirds of any open area between the front of the main dwelling and the front property line may be used.

ii) Townhouse lots may use up to three-fourths of any open area between the front, including the secondary front, of a building or structure and the front property line.

iii) No motor vehicle or its appurtenances shall be parked or stored on any sidewalk within any public right-of-way or protrude onto any public right-of-way.

iv) Recreational vehicles and motor vehicle appurtenances (e.g., RVs, camper shells, boats, trailers, boat on trailer, camper shell on truck) shall be limited to a maximum of one per main dwelling unit within any open area between the front and side of the main dwelling and the front and side property lines with no limit in the rear open areas.

v) The land area in front of or to the side of the main dwelling on which the recreational vehicle or motor vehicle appurtenance is parked or stored shall be graveled or paved. No parking or storage of recreational vehicles and motor vehicle appurtenances shall be permitted on graveled areas considered to be part of the property's landscaping.

vi) No parking or storage of recreational vehicles and motor vehicle appurtenances shall be located within the clear sight triangle (**H. Clear Sight Triangle**) on corner lots.

h) Wheelstop Provisions

i) Wheelstops are required for all parking spaces except those serving residential developments of four or fewer units.

ii) Size Requirements: Six feet in length, six inches in height.

iii) Horizontal in Placement: Two feet from the base of the parking space, securely anchored to the parking surface.

iv) Materials: Wheel stop material shall be compatible and appropriate to the site. Materials such as concrete, railroad ties, landscape timbers, or molded steel may be used.

v) Alternative Wheelstop Methods:

a. Adjacent to sidewalk: When the parking space base is adjacent to a six-foot required sidewalk, the sidewalk may be widened to eight feet, essentially making two feet of the sidewalk the wheelstop.

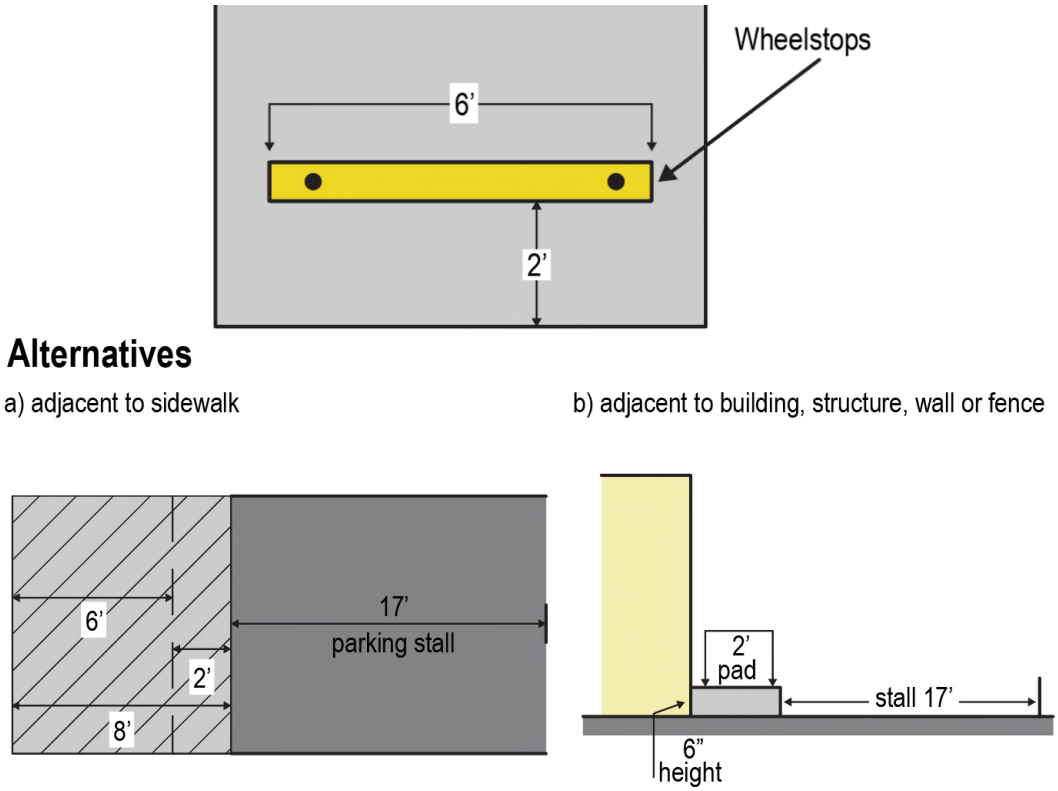
b. Adjacent to building, structure, wall or fence: When a parking space base is adjacent to a building structure or wall, a two-foot pad or landing may be constructed adjacent to the structure or wall. The pad or landing's construction must be of a minimum asphalt standard. The pad or landing cannot take the place of a required sidewalk.

c. Adjacent to landscaping/aggregate: Low lying (no taller than three inches and below the top of the curbing) landscape may be placed within the two-foot area where the pad or landing would be present. The landscaping shall be enclosed by a six-inch curb and be properly irrigated.

vi) Parking Space Measurement: When utilizing one of the alternative wheelstop methods, the parking space length will be measured two feet less or 17 feet.

vii) Exceptions: One and two-family dwellings are not required to provide wheel stops.

Figure 38-2-16. Wheelstop Placement and Design



7. Loading and Stacking

   a) New development involving routine vehicular delivery or shipping of goods, supplies, or equipment to or from the development shall provide a sufficient number of off-street loading berths to accommodate the delivery and shipping operations of the development’s uses in a safe and convenient manner.

   b) Loading and stacking areas must not conflict with emergency, vehicular, bicycle, or pedestrian access. All loading and stacking areas shall be shown on a site plan.

   c) Number and Size of Loading Berths Required

      i) Each loading berth shall be of sufficient size to accommodate the types of vehicles likely to use the loading area, at the discretion of the Community Development Director.

ii) A minimum stacking distance of 40 feet shall be provided at all ingress/egress access drives intersecting with a street. Other distances may be approved by the Director if warranted by lot size and configuration.

iii) **Figure 38-2-17** sets forth the minimum number of loading berths.

a. The Public Works Director may reduce the required loading space by up to 100 percent if warranted by the building's use.

Figure 38-2-17. Required Off-Street Loading Berths

Gross Floor Area (sqft)	Number of Loading Berths	Size of Each Loading Berth
Less than 10,000	None	N/A
10,000 to 29,999	1	10 feet x 25 feet
30,000 to 100,000	2	12 feet x 50 feet
More than 100,000	2, plus 1 additional loading berth for every 100,000 square feet beyond the first 100,000 square feet	14 feet wide x 50 feet long x 14 feet high

d) Location, Screening, and Arrangement of Loading Areas

i) Off-street loading berths shall be located and arranged so that vehicles can maneuver for loading and unloading entirely within the property lines of the site and are not required to back onto or from a public street.

ii) Required off-street loading spaces shall not be permitted in any front setback area or in any required street side setback area.

iii) Off-street loading spaces may occupy all or any part of a required rear setback area where visibility from public streets and windows of neighboring buildings will be minimized.

iv) Loading areas shall not interfere with parking lot maneuvering areas.

v) State and City streets or rights-of-way shall not be used for loading and unloading purposes.

vi) Off-street loading berths shall be located and/or screened so they are not visible from any thoroughfare or collector street right-of-way or from adjacent lands that are classified in a residential zoning district or developed with a residential use.

e) Vehicle Stacking Areas

The minimum stacking lane requirements are as follows:

i) Length required: 60 feet for non-drive-thru situations. The minimum length for drive-thru shall be determined by a Traffic Impact Analysis or other type of analysis approved by the Public Works Director.

ii) Width required: Ten feet, except nine feet of drivable area at the point of service.

iii) The measurement of the length of the stacking lane begins at the middle of the last point of service and ends at the point of entry of the lane.

iv) A stacking lane shall be designed in a manner that permits appropriate traffic circulation and avoids congestion in the parking area.

v) The minimum radius of a stacking lane shall be 25 feet.

vi) Vehicles shall not overflow into the access easements or driving aisles.

f) Where traffic flow is controlled by an entry gate, guard house, or drive-through service facility, an adequate stacking lane, approved by the Public Works Director, shall be provided in a manner that does not interfere with maneuvering into parking spaces or traffic flow of aisles, streets, bike paths, or sidewalks.

Sec. 38-3. Drainage and Flood Control

A. Purpose

1. This section contains guidelines for drainage system design and establishes a standard practice for recognized and established engineering design of storm drain facilities to protect the health, safety, welfare, and property of the general public. This section also includes requirements for the submittal of drainage plans and associated documents related to development. Specific design criteria for drainage systems are included in the City of Las Cruces Drainage Technical Manual.
2. Methods and processes included in this section are the minimum standards. Recognized and established engineering practices and principles shall be followed in all engineering projects within the City limits. The Public Works Director shall determine the required parameters of any particular project or technical analysis and may require additional criteria should such be deemed to be in the best interest of the general public. If any of these requirements conflict with existing standards or guidelines, the more stringent shall apply.
3. Authority to Issue Administrative Warnings

   The Public Works Director, Community Development Director, and personnel under their supervision, as well as the City building and project inspectors shall be authorized to issue verbal or written administrative warnings to any person, operator or owner who allegedly violates any provision of this Section.

B. Applicability

This Section applies to all new development, expansions that increase impervious surface, and or development that otherwise changes pervious surfaces (e.g., adds vegetation, changes slopes, etc.) as determined by the Public Works Director.

C. Drainage Reports and Construction Plans for Drainage Facilities

1. Requirements for Drainage Reports and Construction Plans

   All drainage reports and construction plans shall be prepared by a professional engineer registered in the State of New Mexico and shall comply with the minimum requirements and specifications set forth in this section.

   Review schedules will be as outlined in the subdivision and building codes. However, reports involving large developments and complex structures will require more review time. If the development is phased, the final drainage report must also address how the intermediate runoff of each phase will be mitigated.

   The engineer should be aware that whenever unusual or serious drainage problems are anticipated in conjunction with a proposed development, additional analysis and information beyond the minimum requirements outlined in this section may be required by the Public Works Director.

   The following specifications and criteria shall be used for Drainage Reports:

   a) Master Drainage Study

      i) A master drainage study shall be required prior to approval for any annexation, Planned Unit Development, or Preliminary Plat. The purpose of the master drainage study is to identify major drainage facilities, ponding areas, locations of culverts, bridges, open channels, and drainage basins that are contributory to the proposed study area. In addition, the ability of downstream drainage facilities to pass the developed runoff from the proposed development must be analyzed in the master drainage study. The master drainage study shall contain a general outline of the proposed drainage routing plans for the development. The report shall include but not be limited to the following information and calculations:

         a. Calculations for peak flow for the 1-percent probability storm event from all upstream off-site tributary drainage areas.

b. Calculations for peak flow for the 1-percent probability storm event within the proposed development for all drainage basins larger than 20 acres.

c. Preliminary analysis of the floodplain and major drainage ways for the 1-percent and 10-percent probability storm event.

d. Closed subbasin analysis including identification of water into or out of subbasin.

e. Discussion and analysis of adverse impact anticipated to downstream drainage facilities.

f. Discussion of drainage problems and solutions that are anticipated within the proposed development.

g. The report shall be submitted electronically and formatted to an 8½-inch by 11-inch paper.

h. All drainage studies/reports must include a table of pertinent values in the body of the report. The values shall include, at a minimum, flow depth for all flow paths, peak velocity, Tc, freeboard for channels (not including streets), flow (Q), CN numbers, and volumes of runoff for basins. Drainage studies shall include maps showing both flow and volume into and out of basin(s) and proposed development.

i. Flows may need to be routed to a historic point of convergence for both the pre- and post-development/construction condition.

j. If a hydrologic model is required, the model should be included as an Appendix or Exhibit to the Drainage Report.

ii) Drawings for the master drainage study shall include but not be limited to the following:

a. Any and all floodplains and floodways must be identified. A copy of the applicable FEMA floodplain map is required indicating limits of current study.

b. Existing topography, one- or two-foot contour intervals.

c. Location and size of existing and proposed open channels, storm drains, and all other drainage structures.

d. NRCS soils map with area of interest indicated.

e. Identification of all contributing existing and affected drainage basins upstream and within the development.

f. Location of all streets larger than local classification.

g. Basin maps may be scaled as small as 1" = 600' (1:7200). Orthophoto maps at a scale of 1" = 200' are preferred. Basin maps shall have each basin name, area (acres), 10-percent and 1-percent peak flows (CFS) into and out of the basin (shown at the location of concentration) and, clearly indicated flow paths. Maps of a scale 1" = 2,000' may be used for undeveloped, offsite basins greater than one square mile.

h. All drainage maps shall be formatted to a minimum of 24" × 36" and shall be included in the electronic submittal. Pre-printed maps, such as USGS maps, are acceptable. Maps of a smaller size may be accepted at the reviewer's discretion.

iii) Inlet and storm drain size calculations are not required with the master drainage study; therefore, the number of subbasins analyzed in the report shall be held to the smallest practical number.

iv) Required Outline

The following is a sample outline for a typical master drainage report. Each of these headings should be addressed in the report body with supporting information and calculations in the appendices. Information provided at this stage of the review process is reviewed for only the phase submitted for and only for the requirements above. Post-development items are considered conceptual during this review phase.

a. Introduction and purpose
b. Methodology
c. Scope of investigation
d. Meteorological and geological
    i. Climate
    ii. Rainfall
    iii. Soil investigation
        (a) Hydrologic soil classification
        (b) Runoff curve number
        (c) Soil description
e. Basins
    i. Basin parameters – Existing and Proposed
        (a) Offsite
        (b) Onsite
f. Hydrology
    i. Pre-development
        (a) Direct runoff
        (b) Runoff volume computation
        (c) Peak flow computations
    ii. Post-development
        (a) Direct runoff
        (b) Runoff volume computation
        (c) Peak flow computations
    iii. Comparison of ponding volumes pre- and post-development
g. Hydraulics
    i. Natural and constructed channels
    ii. Streets
h. Conclusion section
    i. Discussion of final drainage management strategy, including upstream and downstream impact
    ii. Detailed description of hydraulic and hydrologic interaction
    iii. Formal statement by the developer certifying that the development will not have an adverse impact on properties and structures adjacent to or downstream of the new development. The statement must identify how standards are satisfied.
i. Appendices
    i. All required maps and drawings in electronic format
    ii. All calculations in electronic format

iii. Input and output from any modeling and routing software in electronic format

b) Final Drainage Study and Construction Plans for Drainage Facilities and Structures:

The final drainage study shall be a detailed study and analysis of the drainage in the proposed development for both predevelopment and post-development conditions. Developments include but are not limited to subdivisions, commercial developments, or planned unit developments. It shall include detailed calculations for all runoff within the proposed development, and detailed calculations for all runoff exterior to the site, with detailed calculations supporting the design of all drainage structures within the development. Final drainage studies shall use the approved methods as outlined in the Runoff Analysis Methods and shall incorporate green infrastructure as per the City of Las Cruces Standards. Construction plans for all drainage structures, grading plans, and street grades, where applicable, shall also be considered part of the final drainage study. Drawings and calculations comprising the final drainage study shall include but not be limited to the following information:

i) Clearly labeled existing and proposed contours for proposed development. (Contour interval based on USGS datum, one-foot contour interval minimum.)

ii) Location and elevations of City or USGS benchmarks. All elevations shall be based on USGS datum.

iii) Property lines.

iv) Streets, right-of-way limits, names and grades.

v) Existing drainage facilities and structures, including existing irrigation ditches, roadside ditches, drainage ways, gutter flow directions, and culverts. All pertinent information such as size, slope, and location of existing drainage ways shall be included to facilitate review and approval of drainage plans.

vi) Overall drainage area boundaries and drainage sub area boundaries.

vii) Proposed type of curb and gutter (vertical, combination, rollover, or flat) and gutter flow directions including cross-spans (intersections).

viii) Proposed storm drains, open drainage ways, and right-of-way requirements, including proposed inlets, manholes, culverts, erosion control and energy dissipation devices, and any other required appurtenances necessary for drainage control.

ix) Proposed inflow and outfall points for runoff from the study area.

x) Routing and combining all flows at various critical points for the initial 10-percent probability (10-year) and major (1-percent probability, 100-year) storm runoff.

xi) Minimum finished floor elevation and ground site elevations at all critical building locations for protection from major storm runoff.

xii) Predevelopment and post-development basin maps, with a scale of 1” = 100’ (1:100) of the proposed development, which shall show the following information:

a. Location and size of all drainage structures.

b. General flow patterns and flow paths within the development also to include offsite basins affecting the development.

c. Finished floor and ground site elevations of all buildings and adjacent sites and structures.

d. The 1-percent probability storm event flood level in all streets in which the curb is overtopped.

e. All drainage basins within, and affecting, the development shown in a table listing basin names, basin area (acre), 10-percent and 1-percent flood event peak flows into and out of each basin shown at the flow path location. The number of basins should be limited to the smallest practical number.

xiii) All floodplains and floodways within the proposed development. A copy of the current FEMA floodplain map is required, showing project limits.

xiv) All electronic or printed drawings shall be on 24” by 36” sheets. Maps of a smaller size may be accepted at the reviewer’s discretion.

xv) NRCS soils map showing project location.

xvi) Final drainage study shall incorporate master drainage study.

xvii) Recommended outline. The following is a sample outline for a typical final drainage report. Each of these headings should be addressed in the report body with supporting information and calculations in the appendices. Information provided at this stage of the review process is reviewed for only the phase submitted for and only for the requirements above.

a. Introduction and purpose

b. Methodology

c. Scope of investigation

d. Meteorological and geological

i. Climate

ii. Rainfall

iii. Investigation

(a) Hydrologic soil classification

(b) Runoff curve number

(c) Soil description

e. Basins

i. Basin parameters

f. Hydrology

i. Pre-development

(a) Direct runoff

(b) Runoff volume computation

(c) Peak flow computations

ii. Post-development

(a) Direct runoff

(b) Runoff volume computation

(c) Peak flow computations

iii. Comparison and ponding of pre- and post-development

g. Hydraulics

i. Natural and constructed channels

ii. Streets

iii. Culverts and storm drains

h. Conclusion section

i. Discussion of the final drainage approach

ii. Detailed description of hydraulic and hydrologic interaction.

i. Appendices

i. All required maps and drawings

ii. All calculations

iii. Input and output from any modeling and routing software

c) Plan Details

The following details shall be indicated on the drainage plans:

i) Title block (lower right-hand corner preferred)

ii) Scale

iii) Date and revisions

iv) Name of professional engineer and firm

v) Professional engineer's seal

vi) Drawing number (sheet n/n)

vii) Legend

viii) Approval blocks for various City departments

d) Construction Plans

Construction plans shall show the following information:

i) Plan

a. North arrow

b. Property lines, adjacent properties, ownership thereof, and subdivision information

c. Street names and easements with width dimensions and location

d. Existing utility lines, location and depth, or height, as follows:

i. Water

ii. Gas

iii. Telephone

iv. Storm drains

v. Irrigation canals

vi. Sanitary sewers

vii. Other utilities

ii) Profile

a. Vertical and horizontal grids with scales

b. Ground surface grade (dashed) and proposed grade (solid)

c. Existing utility lines where crossed

d. Benchmarks (USGS datum)

iii) Proposed construction

a. Pipes and culverts

i. Plan showing stationing

ii. Profile

iii. Size, length between manholes, and pipe composition

iv. Grades of pipe

v. Inlet and outlet details of all manholes and inlets and connections to existing drainage systems

vi. Manhole details, including station numbers and invert and top elevations

vii. Typical bedding details for pipe for all bedding situations encountered on the project

b. Open channels

i. Plan showing stationing

ii. Profile indicating the grade of invert of channel, top of lining if any, and adjacent ground grade

iii. Typical cross-sections

iv. Construction notes

v. Lining details

vi. Riprap and bedding details and gradation requirements for same

vii. Structure details of all inflow, outflow, and drop structures. Including sub grade and foundation design details

2. Construction Approval

Record drawings of improvements shall be provided for all subdivision or public right-of-way construction projects. The design engineer and the City must review and approve any changes to the original design of a project. Record drawings will be made by the design engineer from information provided by job-site contractors or field surveys. Upon obtaining the record drawings, final inspection, Letter of Map Revision (when applicable), and approval by the Public Works Director, the project can be issued a letter of acceptance, or the improvement can be accepted by the City in the case of a subdivision or planned development.

D. Flood Hazard Prevention and Flood Control

1. In General

a) Statutory Authorization

The Legislature of the State of New Mexico has in New Mexico Statutes Annotated 1978, § 3-18-7 delegated the responsibility to local governmental units to adopt regulations designed to minimize flood losses, and it is determined to be in the public interest for the City to establish the flood control damage prevention regulations in this section.

b) Findings of Fact

i) The flood hazard areas of the City are subject to periodic inundation, which could result 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.

ii) 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.

c) Statement of Purpose

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

i) Protect human life and health;

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

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

iv) Minimize prolonged business interruptions associated with flooding;

v) Minimize damage to public facilities and utilities such as water, sewer, and gas mains; electric, telephone, and communication lines; and streets and bridges located in flood-prone areas;

vi) 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

vii) Ensure that potential buyers are notified that the property is in a flood zone or a flood-prone area.

d) Methods of Reducing Flood Losses

In order to accomplish its purposes, this section is intended to introduce methods designed to reduce flood losses, including the following:

i) Restrict or prohibit uses that are dangerous to health, safety, or property in times of flood, or that cause excessive increases in flood heights or velocities.

ii) Require that land and buildings vulnerable to floods, including facilities which serve such development, be protected against flood damage at the time of initial construction. Control the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of floodwaters.

iii) Control filling, grading, dredging and other development which may increase flood damage.

iv) Prevent or regulate the construction of flood barriers that will unnaturally divert floodwaters, or which may increase flood hazards to other lands.

e) Applicability of Section

This section shall apply to all areas of special flood hazard within the jurisdiction of the City.

f) Basis for Establishing the Areas of Special Flood Hazard

The areas of special flood hazard identified by the Federal Emergency Management Agency in the current scientific and engineering report entitled, “The Flood Insurance Study (FIS) for the City of Las Cruces, Doña Ana County, NM, dated July 6, 2016, with accompanying Flood Insurance Rate Maps (FIRM) dated July 6, 2016, and any revisions thereto are hereby adopted by reference and declared to be a part of this ordinance.

g) Establishment of Development Permit

A development permit shall be required to ensure conformance with the provisions of this Code prior to the commencement of any development activities.

h) Compliance

No structure or land shall hereafter be located, altered, or have its use changed without full compliance with the terms of this Code and other applicable regulations.

i) Abrogation and Greater Restrictions

This section is not intended to repeal, abrogate, or impair any existing regulations, ordinances, easements, covenants, or deed restrictions. However, where this Code and the provisions of other regulations or ordinances conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

j) Interpretation

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

i) Considered as minimum requirements;

ii) Liberally construed in favor of the City of Las Cruces; and

iii) Deemed neither to limit nor repeal any other powers granted under State Statutes.

k) Warning and Disclaimer of Liability

The degree of flood protection required by this section is considered reasonable for regulatory purposes and is based on scientific and engineering considerations applicable at the time of authorship. On rare occasions, greater floods can and will occur, and flood levels may be increased by manmade or natural causes. This section 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 section shall not create liability on the part of the City or any officer or employee thereof for any flood damages that result from reliance on this section, or any administrative decision lawfully made thereunder.

l) Lands to which this Section Applies

The section shall apply to all areas of special flood hazard within the jurisdiction of the City of Las Cruces, New Mexico.

m) Determination of Substantially Improved or Substantially Damaged Existing Buildings and Structures in Flood Hazard Areas

For applications for reconstruction, rehabilitation, repair, alteration, addition, or other improvement of existing buildings or structures located in flood hazard areas, the Floodplain Administrator shall determine if the proposed work constitutes substantial improvement or repair of substantial damage. Where the Floodplain Administrator determines that the proposed work constitutes substantial improvement or repair of substantial damage, and where required by this Code, the Building Official shall require the building to meet the requirements. The cost used in the substantial improvement determination shall be the cumulative costs of all previous improvements for a specific building or structure occurring during the immediate past five-year period.

2. Administration

a) Designation of the Floodplain Administrator

The Community Development Director hereby appoints a Floodplain Administrator who is certified to administer and implement the provisions of this ordinance and other appropriate sections of 44 CFR (National Flood Insurance Regulations) pertaining to floodplain management.

b) Duties and Responsibilities of the Certified Floodplain Administrator

Duties and responsibilities of the certified Floodplain Administrator under this section shall include but not be limited to:

i) Maintaining and holding open for public inspection all records pertaining to this section;

ii) Reviewing permit applications to determine whether a proposed building site, including the placement of manufactured homes, will be reasonably safe from flooding;

iii) Reviewing and then approving or denying all applications for development permits required under the Code;

iv) Reviewing permits for proposed development to ensure 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 USC 1334) from which prior approval is required);;

v) Making the necessary interpretation 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);

vi) In riverine conditions, notifying adjacent communities and the New Mexico Department of Homeland Security and Emergency Management (NMDHSEM), prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency;

vii) Assuring that the stormwater capacity within the altered or relocated portion of any watercourse is maintained;

viii) Obtaining, reviewing, and reasonably utilizing any base flood elevation data and floodways data available from a federal, state, local, or other source in order to administer the provisions of **Sec. 38-3.D.3.a)** through **Sec. 38-3.D.3.e)** below When base flood elevation data has not been provided, in accordance with **Sec. 38-3.D.1.f) Basis for Establishing the Areas of Special Flood Hazard**;

ix) Requiring that, when a regulatory floodway has not been designated, 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; and

x) Assuring that, under the provisions of 44 CFR Chapter 1, Section 65-12, of the National Flood Insurance Program regulations, the City of Las Cruces may approve certain development in Zones A1-30, AE, AH, on the community's FIRM which increases the water surface elevations of the base flood by more than one foot, provided that the community first applies for a conditional FIRM revision through FEMA (Conditional Letter of Map Revision).

c) Permit Procedures

i) Application for a development permit required under this Code shall be presented to the floodplain administrator on forms furnished by the property owner or the property owner's representative and may include, but is not limited to, plans in duplicate drawn to scale showing the location, dimensions, and elevation of proposed landscape alterations, existing and proposed structures, including the placement of manufactured homes, and the location of the development in relation to areas of special flood hazard. Additionally, the following information is required:

a. Where base flood elevations have not been provided by the Federal Emergency Management Agency, a drainage study prepared and certified by a professional engineer registered in the state. The drainage study shall include:

i. An aerial photo of the area to be developed and contributing watershed;

ii. An up-to-date contour map of the site to be developed at a scale of 1" = 100' and contour lines at intervals of no more than one foot and spot elevations at all breaks in grade along all drainage channels or swales and at selected points not more than 100 feet apart in all directions;

iii. A contour map identifying the site to be developed and the entire watershed that contributes storm runoff to the development site;

iv. Calculations showing the peak discharge and volume of runoff that will pond or pass through the development site from a 1-percent probability storm; and

v. Calculations showing the 1-percent probability storm base flood elevation in relation to mean sea level on the site to be developed.

b. Elevation in relation to mean sea level of the lowest floor, including any basement, of all new and substantially improved structures;

c. Elevation in relation to mean sea level to which any nonresidential structure shall be floodproofed;

d. A certificate from a professional engineer or architect registered in the state of New Mexico that the nonresidential floodproofed structure shall meet the floodproofing criteria of **Sec. 38-3.D.3.b)ii)** below;

e. A description of the extent to which any watercourse or natural drainage will be altered or relocated as a result of proposed development; and

f. Maintenance of a record of all such information in accordance with **Sec. 38-3.D.2.b)i)** above.

ii) Approval or denial of a development permit by the Floodplain Administrator shall be based on all of the sections of this ordinance and the following relevant factors:

a. The danger to life and property due to flooding or erosion damage;

b. The susceptibility of the proposed structure 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; and

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

d) Variance Procedures

i) The City Council shall hear and render judgment on request for variances from the requirements of this ordinance.

ii) The City Council 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.

iii) Any person aggrieved by the decision of the City Council may appeal such decision to the District Court within 30 days of the rendering of the decision.

iv) Floodplain Administrator shall maintain a record of all actions involving an appeal and shall report variances to the Federal Emergency Management Agency upon request.

v) 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 ordinance.

vi) Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below, the base flood level, providing the relevant factors in **Sec. 38-3.D.2.c)ii)** have been fully considered. As the lot size increases beyond one-half acre, the technical justification required for issuing the variance increases.

vii) Upon consideration of the factors noted in this ordinance and the intent of this ordinance, the City Council may attach such conditions to the granting of variances as it deems necessary to further the purpose and objectives of this article stated in **Sec. 38-3.D.1.c)** and **Sec. 38-3.D.1.d)**.

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

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

x) Prerequisites for granting variances shall be as follows:

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:

i. Showing a good and sufficient cause;

ii. A determination that failure to grant the variance would result in exceptional hardship to the applicant; and

iii. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, and extraordinary public expense, and 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 of the permitted elevation of the lowest floor of the structure to be built, which shall not be more than two feet below the base flood elevation. The cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

xi) Variances may be issued by the City of Las Cruces 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 i) through x) 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.

e) Substantial Improvement and Substantial Damage Determinations

For applications for building permits to improve buildings and structures, including alterations, movement, repair, additions, rehabilitations, renovations, substantial improvements, repairs of substantial damage, and any other improvement of or work on such buildings and structures, the Floodplain Administrator, in coordination with the Building Official, shall:

i) Estimate the market value, or require the applicant to obtain a professional appraisal prepared by a qualified independent appraiser, of the market value of the building or structure before the start of construction of the proposed work; in the case of repair, the market value of the building or structure shall be the market value before the damage occurred and before any repairs are made.

ii) Compare the cost to perform the improvement, the cost to repair the damaged building to its pre-damaged condition, or the combined costs of improvements and repairs, where applicable, to the market value of the building or structure.

iii) Determine and document whether the proposed work constitutes substantial improvement or repair of substantial damage.

iv) Notify the applicant when it is determined that the work constitutes substantial improvement or repair of substantial damage and that compliance with the flood-resistant construction requirements of the building code is required and notify the applicant when it is determined that work does not constitute substantial improvement or repair of substantial damage.

3. Flood Hazard Reduction

a) General Standards

In all areas of special flood hazards, the following are required for all new construction and substantial improvements:

i) 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.

ii) All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damage.

iii) All new construction or substantial improvements shall be constructed with materials resistant to flood damage.

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

v) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system.

vi) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the system and discharge from the systems into flood waters.

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

viii) Floodplain development shall follow the Federal Emergency Management Agency's Letter of Map Change (LOMC) process (e.g., LOMA, LOMR, LOMR-F, CLOMR, CLOMR-F) as specified in 44 CFR. Upon the submittal of any preliminary and final drainage drawings for review, floodplain information shall be required along with a Conditional Letter of Map Revision (CLOMR and CLOMR-F) and a Letter of Map Revision (LOMR and LOMR-F) for 1-percent probability storm event for storm flows of greater than 250 cubic feet per second, developments of five acres and larger, developments with 50 or more lots, and/or developments with any changes to the existing flow path in flood hazard zones AE, A, AH, AO, and D. Information shall include peak discharges for the 10-percent, 2-percent, 1-percent, and 0.2-percent probability storms for the floodplain inundation area and anticipated depth of floodwaters one foot and deeper. Standard step backwater models shall be used for flood depth determination. The Hydrologic Engineering Centers HEC-2 analysis method may be required. Improvements and subdivisions will not be accepted by the City until the flood study has been approved by the Federal Emergency Management Agency.

a. A CLOMR will be submitted for review by the City and submitted to the Federal Emergency Management Agency prior to plan and/or Final Plat approval.

b. A LOMR will be submitted for review by the City and submitted to the Federal Emergency Management Agency before acceptance by the City and before the issuance of any Certificate of Occupancy. Costs incurred for the preparation of materials and fees paid to the Federal Emergency Management Agency will be borne by the developer.

b) Specific Standards

In all areas of special flood hazards where base flood elevation data has been provided as set forth in **Sec. 38-3.D.1.f) Basis for Establishing the Areas of Special Flood Hazard**, **Sec. 38-3.D.2.b)viii)**, or **Sec. 38-3.D.3.c)iii)** below), the following are required:

i) Residential Construction

New construction and substantial improvement of any residential structure shall have the lowest floor, including any basement, elevated to at least one foot above the base flood elevation. A registered professional engineer, architect, or land surveyor shall submit a certification to the Floodplain

Administrator that the standard of this subsection as proposed in **Sec. 38-3.D.2.c)i)a** above is satisfied. When Base Flood elevation data has not been established, the City shall obtain, review, and reasonably utilize any Base Flood elevation data and regulatory data available from federal, state, or other source, in order to administer the provisions of this Section.

ii) 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 at least one foot above the base flood level or, together with attendant utility and sanitary facilities, be designed so that below the base flood level plus one foot of freeboard, the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. A registered professional engineer or architect shall develop and/or review structural design, specifications, and plans for the construction and shall certify that 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 issued by the certifying professional to the Floodplain Administrator and be maintained by the Floodplain Administrator.

iii) Enclosures

New construction and substantial improvements, with fully enclosed areas below the lowest floor that are useable solely for the parking of vehicles, building access, or storage in an area other than a basement and that are subject to flooding, shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed all of 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; and

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.

iv) Manufactured Homes

Manufactured homes are subject to the following regulations.

a. All manufactured homes to be placed within Zone A on a community's FIRM shall be installed using methods and practices that minimize flood damage. For the purpose of this subsection, 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 frame ties to ground anchors. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces.

b. Manufactured homes in the following categories that are placed or substantially improved within Zones A1-30, AH, and AE on the community's FIRM must be elevated on a permanent foundation such that the lowest floor of the manufactured home is at least one foot above the base flood elevation and shall be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movements in accordance with paragraph **d** below:

   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.

c. Manufactured homes to be placed or substantially improved on sites in an existing manufactured home park or subdivision with Zone A1-30, AH, and AE on the community's FIRM that are not subject to the provision of paragraph **b** above must be elevated so that it meets the greater of either:

i. The lowest floor of the manufactured home is elevated at least one foot 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, whichever is higher.

d. Ground anchoring systems shall meet the requirements outlined in the City manufactured housing installation code. Anchors and anchoring systems that do not meet these requirements shall be designed by a professional engineer registered in the state of New Mexico and approved by the Floodplain Administrator.

v) Recreational Vehicles

Recreational vehicles placed on sites within Zones A1-30, AH, and AE on the community's FIRM either:

a. Be on the site for fewer than 180 consecutive days,

b. Be fully licensed and ready for highway use, or

c. Meet the permit requirements of **Sec. 38-3.D.2.c)i)b** above, and the elevation and anchoring requirements for "manufactured homes" in **Sec. 38-3.D.3.b)iv)** above. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions.

c) Standards for Subdivision Proposals

i) All subdivision proposals, including the placement of manufactured home parks and subdivisions, shall be consistent with **Sec. 38-3.D.1.b). Findings of Fact** through **Sec. 38-3.D.1.d). Methods of Reducing Flood Losses**.

ii) All proposals for the development of subdivisions, including the placement of manufactured home parks and subdivisions, shall meet the development permit requirements of **Sec. 38-3.D.1.g). Establishment of Development Permit** and **Sec. 38-3.D.2.b)ix)**.

iii) Base flood elevation data shall be generated for subdivision proposals and other proposed development, including the placement of manufactured home parks and subdivisions, which is greater than 50 lots or five acres, whichever is less, if not otherwise provided pursuant to **Sec. 38-3.D.1.f). Basis for Establishing the Areas of Special Flood Hazard** or **Sec. 38-3.D.2.b)viii)** above.

iv) All subdivision proposals, including the placement of manufactured home parks and subdivisions, shall have adequate drainage provided to reduce exposure to flood hazards.

v) All subdivision proposals, including the placement of 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. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system. New and replacement sanitary sewer systems shall be designed to minimize or eliminate infiltration of flood waters into the system and discharge from the systems into flood waters. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during a flood event.

vi) All proposals for the development of subdivisions shall meet development permit requirements of **Sec. 38-3.D.1.g) Establishment of Development Permit** and **Sec. 38-3.D.2.b)ix)**, this section, as well as the requirements of **Chapter 37. Subdivision Regulations**.

vii) All preliminary and final plats submitted for approval must have any floodplain clearly graphically delineated and noted.

viii) When developing property that extends into the City's regulatory floodplain, the floodplain shall be dedicated to the City in fee, as a flood water conservation easement, or as open space, as appropriate under the circumstances as determined by the Community Development Director. This area shall be shown on the subdivision map.

d) Standards for Areas of Shallow Flooding (AO/AH Zones)

Areas designated as shallow flooding are located within the area of special flood hazard as established in **Sec. 38-3.D.1.f) Basis for Establishing the Areas of Special Flood Hazard**. These areas have flood hazards associated with base flood depths of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where higher velocity flow may be evident. Such flooding is characterized by ponding or sheet flow; therefore, the following apply to AO and AH zones:

i) All new construction and substantial improvements of residential structures shall have the lowest floor, including basement, elevated above the highest adjacent grade at least as high as the depth number specified in feet on the community's FIRM plus one foot of freeboard (at least three feet if no depth number is specified).

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

a. Have the lowest floor, including any basement, elevated above the highest adjacent grade at least as high as the depth number specified in feet on the community's FIRM plus one foot of freeboard (at least three feet if no depth number is specified); or

b. Together with attendant utility and sanitary facilities, be designed so that below the base flood level plus one foot of freeboard, 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.

iii) A registered professional engineer or architect shall submit a certification to the Floodplain Administrator that the standards of this section, as proposed in **Sec. 38-3.D.2.c)i)a** above, are satisfied.

iv) Adequate drainage paths around structures on slopes shall be required to guide floodwaters around and away from proposed structures.

e) Floodways

Floodways located within areas of special flood hazard established in **Sec. 38-3.D.1.f) Basis for Establishing the Areas of Special Flood Hazard** are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles and erosion potential, the following provisions shall apply to the floodway:

i) Encroachments are prohibited, including fill, new construction, substantial improvements, and other development within the adopted regulatory floodway, unless it has been demonstrated through hydrologic and hydraulic analyses, performed in accordance with standard engineering practice, that the proposed encroachment would not result in any increase in flood levels within the community during the occurrence of the base flood discharge.

ii) If subsection **i)** above is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of **Sec. 38-3.D.3.a) General Standards** through **Sec. 38-3.D.3.d) Standards for Areas of Shallow Flooding (AO/AH Zones)**.

iii) Under the provisions of 44 CFR Chapter 1, Section 65.12, of the National Flood Insurance Regulations, the City of Las Cruces may permit encroachments within the adopted regulatory floodway that would result in an increase in base flood elevations, provided that the community first applies for a conditional FIRM and floodway revision through the Federal Emergency Management Agency.

f) Severability

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

g) Penalties for Non-Compliance

No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this ordinance and other applicable regulations. Violation of the provisions of this ordinance by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions) shall constitute a misdemeanor. Any person who violates this ordinance or fails to comply with any of its requirements shall upon conviction thereof be fined not more than $10,000.00 for each violation, and in addition shall pay all costs and expenses involved in the case. Nothing herein contained shall prevent the Las Cruces City Council from taking such other lawful action as is necessary to prevent or remedy any violation.

E. Development In or Adjacent to Areas Prone to Erosion

1. Scope of Division

Construction of slope protection within the City shall require an approved building permit and shall conform to the minimum design standards as specified within this Code and in accordance with the latest City-adopted edition of the International Building Code (IBC), City construction specifications, and design standards for all drainage facilities that will be dedicated to the City. All development in the special flood hazard area (SFHA) – also known as the flood zone – must comply with the Code of Federal Regulations (44 CFR 60.3).

2. Slope Protection for Drainage Ponds and Embankments

The following shall be applied to slope protection design and construction of slopes greater than 3:1:

a) Construction permit applications, if applicable, shall include all structural calculations, investigative reports, and design documentation.

b) All slope protection within the City shall be designed and constructed per City Design Standards and in accordance with the latest City-adopted edition of the International Building Code for both private and public construction, as applicable.

c) For any facilities dedicated to the City, a site-specific geotechnical investigation will be required.

d) City of Las Cruces Pond requirements, revised June 20, 2023, or latest version are included in the Drainage Technical Manual.

3. Erosion Control and Mitigation

The following shall apply to development:

a) A draft Stormwater Pollution Prevention Plan (SWPPP) and a Notice of Intent (NOI) must be included as part of the initial project design plan submissions for a construction permit.

b) All Best Management Practices (BMPs) shall be listed in the SWPPP.

c) All grading shall limit and control surface soil disturbance and removal of vegetation. All grading shall have controls in place to prevent surface runoff and sediment transport off-site.

d) A draft wind erosion plan (WECP) shall also be submitted, per WECP standards and requirements.

e) Storm runoff discharging to floodways adjacent to residential properties must be designed to prevent erosion of adjacent private property.

f) Requirements for erosion and wind control are located within the Technical Manual.

4. Geotechnical Soils Investigation

a) A geotechnical soils report is required for any facilities that will be dedicated to the City. A geotechnical soils investigation may be required if the soil conditions are unknown or otherwise unusual as determined by the Public Works Department. This requirement must also be met for soils that are classified as expansive, very fine, loose structure, have a history of instability, have a potential for future instability, or will have a designed or natural slope steeper than 3:1. Any soils report, or addendum, for a project/development shall be part of the building permit application and shall be presented as part of the construction permit drawing submittal.

b) Geotechnical investigations shall meet the requirements of ASTM D-420 “Investigation and Sampling Soils and Rocks for Engineering Purposes”.

c) Each boring log shall note the ground surface elevation at the location of each boring.

d) Ponds: Subsurface exploration depth below the designed bottom-of-pond (BOP) elevation to define the infiltration zone shall be:

i) Private ponds. Exploration of ten feet (minimum) below the designed bottom-of-pond (BOP) elevation for at least 20 percent of ponds in a development. Exploration points shall be equally spaced across proposed pond locations.

ii) City drainage ponds, ponds dedicated to the City, and dual-use facilities. One exploratory hole of 20 feet below BOP (minimum) for each pond.

5. General Slope Protection

The following applies to all slope protection related to drainage structures, including pond embankments and slope stabilization to prevent erosion and sediment transport due to storm events:

a) All slope protection designs 3:1 or steeper shall be designed by a Professional Engineer licensed in the State of New Mexico and reviewed by the City prior to issuance of a construction permit.

b) All slopes that do not have natural vegetation or ground cover shall be stabilized.

c) Slope stabilization methods shall follow guidelines and standards included in the Technical Design Manual and the latest edition of the New Mexico Department of Transportation (NMDOT) Standard Specifications for Highway and Bridge Construction.

d) Slope protection using planted vegetation is required for slopes 4:1 or less. Design shall be in accordance with **Sec. 38-7. Landscaping** and the following specifications:

i) Planted slope protection shall not be used for slopes steeper than 4:1.

ii) United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) practice standards shall be met for slope protection planting.

F. Stormwater Quality/Pollution Reduction Development

1. Purpose

In order to meet the requirements included in federal and state regulations, including the Municipal Separate Storm System (MS4) permit and National Pollution Discharge System (NPDES), this section outlines the City guidelines for improving the quality of stormwater runoff by controlling pollutants and sediment, and improving the air quality by controlling dust from unstable soil.

Industrial, commercial, and residential construction shall conform to the latest applicable permit requirements and will submit a Stormwater Pollution Prevention Plan (SWPPP) and Wind Erosion Control Plan (WECP) for any site that may release dust, sediment, or contaminated runoff to natural waters, including floodways and the Rio Grande.

National Pollutant Discharge Elimination System (NPDES) applies to persons obtaining construction permits clearing more than one acre of more under the federal Environmental Protection Agency (EPA) Construction General Permit. This section shall apply to any stormwater discharge associated with commercial, industrial,

residential, roadway, and other activities, including construction, in strict accordance with the current MS4 permit for the City of Las Cruces.

It shall also be the purpose of this section to:

a) Maintain and improve the quality of surface water and groundwater within the City limits;

b) Promote public awareness of the hazards involved in the improper discharge of hazardous substances, petroleum products, household hazardous waste, industrial waste, sediment from construction sites, pesticides, herbicides, fertilizers, pet waste, and other contaminants into the City's storm drains, natural waters, and water courses;

c) Encourage recycling of used motor oil and safe disposal of other hazardous consumer products;

d) Respect, protect, maintain, and restore arroyos, wetlands, bosques, floodplains, steep slopes, riparian vegetation, and wildlife habitat areas that are within the City's jurisdiction;

e) Treat stormwater runoff as a valuable natural resource of the City of Las Cruces, which is prone to drought, by encouraging water collection and infiltration on site;

f) Control the adverse impacts associated with increased and high-velocity stormwater runoff on natural drainage ways and stormwater structures due to increased development and its creation of new impervious surfaces;

g) Integrate stormwater management measures into the landscape and site planning process;

h) Provide aesthetically pleasing solutions to stormwater management and erosion control measures by integrating permanent measures into the overall landscape and site design;

i) Facilitate compliance with state and federal standards and permits by owners and operators of construction sites within the City; and

j) Assist the City in compliance with all federal and state laws, regulations, and permits applicable to stormwater discharge.

2. Administration

The Public Works Director shall administer and coordinate the implementation and enforcement of the provisions of this section.

3. Duties and Responsibilities of Public Works Director

Duties and responsibilities of the Public Works Director shall include, but are not limited to, the following:

a) Be the guardian of the MS4, including all dams, detention and retention basins, storm drains, outlet working channels, and pumping stations;

b) Maintain and hold open for public inspection all records pertaining to the provisions of this section;

c) Review permit applications to determine whether proposed developments will eliminate or reduce the pollutants entering the MS4;

d) Review, approve, or deny all applications for development permits required by the adoption of this section;

e) Maintain supervision over the operation and maintenance condition of the MS4 to ensure its safe and effective functioning and notify the streets systems administrator of any required maintenance and/or repair work;

f) Conduct an annual inspection of the MS4 and provide a written inspection report, including an assessment of the operational condition, safety, effectiveness, and maintenance condition of the system, and a line item list of required special maintenance or repairs to the streets systems administrator;

g) Establish and implement a program to locate and eliminate illicit discharges and improper disposals to the MS4;

h) Establish and implement a program to prevent, contain, and respond to spills that may discharge into MS4. This program shall be in conjunction with the fire department's hazardous materials division;

i) Establish and implement a program to identify and control pollutants in stormwater discharges from any construction or commercial facility that the Public Works Director determines is contributing a substantial pollutant loading to the MS4.

4. General Prohibitions

a) No person shall introduce or cause to be introduced into the MS4 or waters within the jurisdiction of the City any discharge that is not composed entirely of stormwater other than those that are identified in the following section.

b) It is an affirmative defense to any enforcement action for violation of subsection **a)** above that the discharge was composed entirely of one or more of the following categories of discharges:

i) A discharge authorized by and in full compliance with an NPDES permit (other than the NPDES permit for discharges from the MS4);

ii) A discharge resulting from firefighting;

iii) Agricultural stormwater runoff;

iv) A discharge from water line flushing, but not including discharge from water line disinfected by super chlorination or other means unless it contains no harmful quantity of chlorine or any other chemical used in line disinfection;

v) A discharge from residential lawn watering, residential landscape irrigation, or crop irrigation, water;

vi) A discharge from a diverted stream flow or natural spring;

vii) A discharge from uncontaminated pumped groundwater or rising groundwater;

viii) Uncontaminated groundwater infiltration to the MS4;

ix) Uncontaminated discharge from a foundation drain, crawl space pump, footing drain, or sump pump;

x) A discharge from a potable water source not containing any harmful substance or material from the cleaning or draining of a storage tank or other container;

xi) A discharge from air conditioning condensation that is unmixed with water from a cooling tower, emissions scrubber, emissions filter, or any other source of pollutant;

xii) A discharge from individual residential vehicle washing;

xiii) Uncontaminated discharge from riparian habitat or wetland; and/or

xiv) Discharge from water used in street washing provided that the water is not contaminated with any harmful cleaning substance.

c) No affirmative defense shall be available under subsection **b)** above if the discharge or flow in question has been determined by the City to be a source of a pollutant or pollutants to the waters of the United States or to the MS4, and written notice of such determination has been provided to the discharger.

5. Specific Prohibitions and Requirements

a) The specific prohibitions and requirements in this section are within but do not limit the general prohibition of all the discharges prohibited by **Sec. 38-3.F.4. General Prohibitions**.

b) No person shall introduce or cause to be introduced into the MS4 any discharge that causes or contributes to causing the City to violate a water quality standard, the City's NPDES permit, or any state- or federal-issued discharge permit for discharges from its MS4.

c) Additional Requirements

Additional requirements which may be requested from operator could include:

i) Location of all easements and rights-of-way;

ii) The delineation, if applicable, of the 100-year floodplain, floodway, if applicable, and any on-site or adjacent wetlands;

iii) Percolation test results for all areas with retention ponds or other facilities designed for infiltration and a description of techniques to be used to prevent the clogging of soil pores by fine sediment;

iv) A description of the approximate area of the watershed above the site, including the vegetative coverage and impervious surfaces;

v) SWPPP;

vi) The NOI.

d) Denial and Review

The Community Development Director may deny approval of any building permit, grading permit, subdivision plat, site development plan, or any other City approval necessary to commence or continue construction, or to assume occupancy, on the grounds that the management practices described in the plans, or observed upon a site inspection by City personnel, are determined not to control and reduce the discharge of sediment, silt, earth, soil, and other materials associated with clearing, grading, excavation, and other construction activities to the maximum extent practicable. Together with written notification to the applicant that the approval sought is denied, the Public Works Director shall provide the applicant a written explanation of the reasons for the denial. The applicant may request review of the decision made by the Community Development Director or by the Development Review Committee. Any such request for review shall be made within ten days of the date the applicant receives notification of the decision by the Community Development Director. The decision whether or not to review the decision shall be within the sole discretion of the Committee and may be limited to written materials considered by the Committee to be relevant.

e) Inspections and Corrective Action by the City

The City of Las Cruces, through its designated agent(s), shall inspect sites throughout construction activities and either shall approve that portion of the work completed or shall notify the permittee that the work fails to comply with the provisions of this Code, State Administrative Code and/or federal NPDES regulations. Corrective action for non-compliance issues shall begin immediately. Completion of corrections shall not exceed seven days. Failure to comply will result in an immediate stop work order of construction on the site.

f) Increase in Minimum Standards

The Public Works Director and/or the Community Development Director may require implementation of more than the minimum stormwater standards if arroyos on site, or immediately downstream of a site, show evidence of increased flooding, accelerated erosion (erosion caused by development activities that exceeds the natural processes by which the surface of the land is worn away), channel erosion or sedimentation. Increased requirements shall be limited to the following on-site measures:

i) Erosion control measures extended to a broader area of the site than the development area;

ii) Revegetation of highly eroded areas;

iii) Arroyo restoration or other erosion control measures within highly eroded channels; or

iv) A combination of the above measures.

g) Variance from Stormwater Quality Management On Site

i) The Public Works Director may authorize alternative methods if the following conditions are met:

a. Stormwater quality can effectively be controlled through private off-site mitigation or through an arrangement to use an existing regional stormwater management facility.

b. Any of the following conditions apply:

i. The soil is not stable as demonstrated by a geotechnical report certified by a professional engineer licensed in the State of New Mexico.

ii. A licensed professional can clearly demonstrate and provide technical basis to support that the site use is not consistent with the capture and reuse of stormwater.

iii. Other physical conditions exist that do not leave sufficient area for on-site stormwater quality control.

iv. The developer constructs a project in accordance with drainage design standards to replenish regional groundwater supplies at an off-site location that is located in the same drainage basin within the boundaries of the development site.

v. Acquisition of surface water rights may be required in order to implement management off site.

ii) The basis for requesting private off-site mitigation or a variance request is clearly demonstrated in the Drainage Plan or negotiated during the PUD process (see **Sec. 36-5.D. Planned Unit Developments (PUDs)**).

h) Notification or Permitting by Other Agencies

Activities permitted by this section may also require notification or permitting by other agencies, including but not limited to written approval from the Elephant Butte Irrigation District or other official watercourse related organization, the federal Environmental Protection Agency, the United States Army Corps of Engineers, the Federal Emergency Management Agency (FEMA) and the New Mexico Environment Department (NMED).

G. Low-Impact Development and Green Infrastructure

1. LID strategies shall be considered and developed as part of the development drainage plan in order to minimize required stormwater detention or retention volumes. LID strategies shall be considered for both commercial and residential development and should demonstrate consideration of the local climate and soil types and availability of water for maintenance of trees and vegetation. The City's Landscape Architect shall maintain a list of approved plant materials.
2. The Technical Manual and **Sec. 38-4. Low-Impact Development and Green Infrastructure** include approved LID methods to improve stormwater quality. Such LID methods must be shown on the final Drainage Report.

H. Drainage System Operation and Maintenance

1. The actual effectiveness of any storm drainage system compared to that determined through modeling and other engineering computation procedures may differ greatly. The intake capacity of a storm drain inlet can be reduced by more than 75 percent due to debris accumulation. Trash collecting on a pier of a bridge over a flood control channel may actually direct water out of the channel although the discharge is well below the channel design capacity. Sand and silt accumulations within a storm sewer may completely block the line. Pump stations that have not been regularly exercised may not operate when called upon.
2. In order to increase system efficiency and improve the City drainage systems, the following maintenance guidelines shall apply to operators of private drainage systems:

Figure 38-3-1. Private Drainage System Maintenance Guidelines

Facility	Maintenance	Inspection
Channels	Monthly June-October	Semiannual
Pump stations	Monthly June-October	Semiannual
Detention/Retention facilities	As necessary, monthly June-October	After any major storm (one inch or greater)
Storm sewer systems	Annual	Biannual

Storm sewer inlets	After rainfall events or biweekly during rainy periods	Semiannual

3. Proper operations and maintenance of storm drainage and flood control facilities includes both cleaning and minor repair to the facilities as well as completely rebuilding some facilities which have, through weathering or lack of maintenance, been rendered useless or present a threat to public safety. The purpose of the operation and maintenance is to maintain the design capacity and the use of the facility.
4. Community Ditches and Parkways

   The maintenance, cleaning, weed and grass removal, upkeep and repair of community ditches and parkways within the City shall be the responsibility of the owners of the abutting property, whether or not such persons are users of water in the community ditch.
5. Maintenance Responsibilities for Stormwater Systems

   a) Every person owning property through which a watercourse passes, or such person's lessee, shall keep and maintain that part of the watercourse within the property free of trash, debris, excessive vegetation, and other obstacles that would pollute, contaminate, or significantly retard the flow of water through the watercourse. In addition, the owner or lessee shall maintain existing privately-owned structures within or adjacent to the watercourse, so that such structures will not become a hazard to the use, function or physical integrity of the watercourse.

   b) The stormwater management system shall be maintained in good condition and promptly repaired. Maintenance shall include the repair and restoration of all grade surfaces, walls, swales, drains, dams, ponds, basins, site restoration measures, associated vegetation, and any other stormwater measure constructed on site. Such maintenance shall be in accordance with the National Pollutant Discharge Elimination System Manual "Storm Water Management Guidelines for Construction and Industrial Activities", latest version.

   c) All stormwater management measures and facilities shall be maintained by the fee simple owner of the property, a homeowners association that can demonstrate that it not be disbanded during the life of the facility or a regional entity specifically dedicated to the maintenance of a regional pond, unless a dedication of the stormwater management system has been required or accepted by the City, in which case, the City shall be responsible for maintenance. Maintenance agreements shall be recorded at the County Clerk's Office and the rights and responsibilities for the maintenance of the drainage structures will be associated with the property in the event of a transfer of ownership, unless and until the drainage structures are modified or removed. Any and all changes to the maintenance agreement will be required to be recorded at the County.

   d) Owner(s) of drainage structures, including ponds, that discharge or connect to the City of Las Cruces stormwater utility (MS4) or discharge into the Waters of the United States within the City of Las Cruces city limits must conduct, at a minimum, an inspection of each drainage structure every three years following a passing inspection beginning when the property owner assumes ownership of the property and files the maintenance agreement.

      i) Privately maintained infrastructure shall be inspected by City personnel on a routine basis. Inspection shall include, but not be limited to:

         a. Inspection and maintenance records; review of design and technical specifications of infrastructure; physical inspection of the facility; and review of the required maintenance agreement.

         b. Erosion will be noted in physical inspection with corrective actions required.

         c. Sediment accumulation will be noted by required engineered controls including sediment gauges, staffs, or designed elevation of pond depth, to determine if sediment removal is required.

      ii) The City may choose to provide a pre-formatted inspection report to be used for each inspection. Any maintenance and repair deficiency identified in the inspection report must be adequately addressed to

ensure compliance with the requirements of the City. Upon completion of all necessary maintenance, repair or deficiency identified in the inspection report, the drainage structure shall be re-inspected at the Owner's expense. The re-inspection report shall be filed and approved by the City confirming that all corrective measures have been completed.

iii) If the Owner(s) responsible for maintaining the drainage structure(s) fails to properly maintain the structures or submit certified inspection reports, the City will send a written notice to the owner(s) to correct the problem within 30 days from the Owner(s) receipt of the notice. If the owner(s) fail to comply with the notice, the City may initiate action as outlined in the subsequent section, Maintenance Agreement.

e) Prior to project construction plan approval by the City, applicants must ensure implementation and maintenance of the Best Management Practices (BMPs). Applicants shall be required to submit a maintenance agreement and operation and maintenance plan prior to issuance assuring that all permanent BMPs will be maintained throughout the use of the project site.

6. Maintenance Agreement

The maintenance agreement shall include the following:

a) Operation and Maintenance (O&M) Plan

The applicant shall include an operation and maintenance (O&M) plan, prepared satisfactory to the City, with the approved maintenance agreement, which describes the designated responsible party to manage the stormwater BMP(s), including maintenance frequency specific maintenance activities (including maintenance of storm drain inlet markers), copies of agency permits and any other necessary activities. At a minimum, maintenance agreements shall require the applicant to provide inspection and servicing of all permanent BMPs on an annual basis. The project proponent shall complete and maintain O&M forms to document all maintenance requirements. Parties responsible for the O&M plan shall retain records for at least five years following the date that the maintenance occurred. These documents shall be made available to the City for inspection upon request at any time. O&M plan shall require engineered controls, including staffs or gauges, to facilitate inspection of sediment accumulation in retention and detention facilities.

b) Access Easement/Agreement

Unless the applicant accepts permanent maintenance responsibilities, the applicant shall execute an access easement, if needed, to the official maintenance entity that shall be binding on the land throughout the life of the project.

c) Maintenance Violations

If, after notice by the City to correct a violation requiring maintenance work, satisfactory corrections are not made by the owner(s) or responsible party within 30 days, the City may perform or contract all necessary work to place the facility in proper working condition. The owner(s) or responsible party of the facility shall be assessed the associated costs of the work and shall reimburse the costs for said work. In the event of non-payment of work, a lien will be placed on the property associated with the repair, maintenance or corrections of deficiencies identified by the City.

7. Citizen Participation

a) All citizens are encouraged to report to the City any spills, releases, illicit connections, other instances of anyone discharging pollutants into the MS4 or waters of the United States, and any other violation of this section of which they become aware.

b) The Public Works Director or City Codes Enforcement Department shall receive all such citizen reports by email or web reporting (Ask 311), telephone, in writing, and in person. A written record of each citizen report will be prepared and kept on file for a period of three years, and a copy of the City's record of the report will be furnished to the reporting citizen upon request. Also upon request, the City will inform the reporting citizen of any action undertaken by the City in response to the citizen's report.

Sec. 38-4. Low-Impact Development and Green Infrastructure

A. Purpose

1. Beneficial alternative and innovative solutions to stormwater management should be included in projects during the design process, with the primary intent of reducing the volume of stormwater runoff from a site and increasing water quality. This is accomplished by using a combination of strategic site design, stormwater control measures, and landscape elements to capture and treat water closer to the source (the site upon which the water initially falls). This approach can help prevent localized flooding, provide an array of multi-benefits for the community, and reduce the need for or impact on traditional stormwater infrastructure and facilities.
2. Low Impact Development (LID) is an approach to site planning that seeks to protect natural water processes on a site by avoiding impacts of development to the extent possible via protecting undisturbed open space and existing vegetation, minimizing land disturbance, and minimizing impervious cover. LID may also include strategies that restore predevelopment hydrological conditions on a site.
3. Green Infrastructure (GI) includes techniques that utilize plants, soils and other natural elements and processes to store, slow, and/or filter water on-site through functional landscape elements. GI is appropriate for use in both greenfield and urban developments.

B. Applicability

1. LID and GI techniques should be utilized on all new developments or redevelopments.
2. A menu of elements outlined in the Technical Manual allows for the application of LID and GI elements in a variety of contexts, from low-density single-family neighborhoods to urban mixed-use developments.
3. Projects that are not otherwise required to meet the GI/LID requirements may participate in an incentive program, as outlined in the Technical Manual.

C. General Requirements

1. All LID and GI elements shall be regionally and contextually appropriate.
2. LID and GI elements shall seek to maximize the provision of multi-benefits as applicable and appropriate.
3. With approval of the Public Works Director, the City may accept maintenance duties of GI elements constructed in the right-of-way.
4. See the Technical Manual for a menu of approved LID and GI elements.

D. LID and GI Incentive Program

In addition to achieving the minimum requirements, the Technical Manual outlines a series of credits that projects may achieve, with higher levels of credit given based on the quality or quantity of the LID/GI elements used and more credits offered to sites with higher allowable levels of impervious cover (IC) where installation of elements is more demanding (e.g., high-density urban projects get higher levels of credits than low-density suburban projects).

1. Other City Requirements

   Projects must comply with all City code requirements, including landscape provisions and maintenance requirements. Elements shall not be double counted with other City requirements (e.g., landscape elements) already required by code. LID/GI elements used towards this incentive program must be beyond minimum code requirements, except as outlined in the Technical Manual. Enhancement of landscape elements required by code may count for partial incentive credit, for example, using low-maintenance, drought-resistant native plant species in landscape areas otherwise required by code.

2. MS4 and Other Requirements

Projects must comply with the requirements of the latest active MS4 permit and any other applicable U.S. Environmental Protection Agency or state-level requirements regarding water quality and stormwater. GI and LID elements used to meet these requirements may count towards the LID/GI elements credits required per this Code.

3. Alternative Compliance

   Credit may be granted if the project obtains certification under a third-party sustainability certification, as noted in the Technical Manual. If credits are provided under the expectation of a third-party certification but the project ends up not achieving those credentials, the project must achieve equivalent credit via provision of LID/GI elements outlined in the Technical Manual or pay a fee-in-lieu.

4. Fee in Lieu

   Credit may be granted for the payment of a fee in lieu of providing on-site LID/GI elements, as approved by the Community Development Director and Public Works Director, and in consultation with the City's Landscape Architect and Forester/Arborist. Fees paid through this program shall go into the Green Infrastructure Fund which allows the City to install or maintain GI elements elsewhere in the City, at their discretion. Fee calculation amounts are provided in the Technical Manual.

5. The City reserves the right to inspect GI elements installed under the incentive program on private property for proper installation, maintenance, and ongoing performance. If the City deems the element to be not installed, maintained, or performing properly the owner must rectify the issue in a reasonable timeframe or be subject to penalty as applicable for not delivering on approved development agreements.

6. Credit may be granted to GI elements constructed within the right-of-way, per **C. General Requirements**.

7. Additional requirements can be found in the Technical Manual.

Sec. 38-5. Parks, Trails, and Open Space

A. Purpose

The purpose of this section is to ensure that new master plan or subdivision development allocates resources for accessible and useable parks and trails in accordance with the adopted Parks and Recreation Master Plan, the Comprehensive Plan, the Active Transportation Plan and any applicable adopted City plan.

B. Applicability

1. Single-family Residential Development. The requirements of this section for park land and trail dedication shall apply to all developments resulting in the creation of new residential dwelling units.
   a) Exceptions:
      i) Replats of property if no increase in dwelling units will occur.
      ii) Property in the Rural Character Area or zoned OS-1, Open Space-Preserve and Recreational District (Rural, Suburban, Urban) or OS-2, Open Space-Drainage District (Rural, Suburban, Urban).
2. Multi-family Residential Development. The requirements of this section for park land and trail dedication shall apply to all developments resulting in the creation of new multi-family residential units.
3. Non-Residential Development. The requirements of this section for open space and trail dedications shall apply to non-residential developments.
   a) Mixed-use developments may propose park land, trails, or open space dedication or a combination to satisfy the requirements of this section.
   b) Exceptions:
      i) Single-lot commercial developments containing less than 5 acres; and
      ii) Property zoned Industrial is not required to dedicate open space, however shall provide connections and dedicate trail easements if adjacent to an existing or proposed trail corridor in accordance with **Sec. 38-5.D. Trails**.
      iii) Projects with approved Master Development Plans or Development Agreements that provide parks and trails in accordance with the Active Transportation Plan.
      iv) Approved Planned Unit Developments (PUDs) that provide parks and trails in accordance with applicable adopted plans.
4. Park Impact Fees will be assessed at the time of building permit for other park facilities as outlined in Section 33-32 of the LCMC.

C. Park Land

1. Park Land Dedication

   Dedication of park land and installation of park improvements within new developments and redevelopments is required to provide shared space and amenities for the enjoyment of neighborhood residents.

2. The amount of park land required to be dedicated (or fee in lieu of dedication) is as follows:

   (3 acres x number of dwellings *x* people per unit) / 1,000 people = Acres to be dedicated

   *Multi-family and single-family persons per unit shall be based on adopted land use assumptions.

3. Density shall be determined by the units specified on a master development plan or site plan or, in cases where not specified the maximum density per applicable zoning district should be used.

4. Parkland Standards

   Land may be dedicated for neighborhood parks to serve new development. Dedicated acreage may also be combined with existing parkland to accommodate larger community park facilities. At a minimum, parkland shall comply with the following area and location standards:

   a) Land dedicated for a neighborhood park shall be a minimum of three contiguous acres in size. Land may be considered contiguous if it abuts both sides of a street with a Local classification and the separate areas are joined by a marked pedestrian crossing; and

   b) The land must provide a minimum of 200 feet of continuous street frontage; and

   c) Walkshed. Dedicated parkland shall accommodate neighborhood walksheds of ¼ mile by providing a safe, accessible sidewalk or trail connections from the outside edge of the park property to the adjacent neighborhoods; and

   d) The land must be situated to allow convenient pedestrian and bicycle access; and

   e) Park area must be visible from adjacent homes or buildings and public streets; and

   f) Drainage areas or areas with undulating topography or slopes exceeding five percent are acceptable if the areas are to remain in their natural state and will preserve one or more significant features such as creeks, watersheds, viewsheds, native clusters of trees, or habitat for native or migratory species; and

   g) At the discretion of Parks and Recreation and in cases of specialized facilities, no more than half the area of the park land dedication may be located as follows:

      i) On a slope of 20 percent or greater; or

      ii) Within an arroyo; or

      iii) Within the 100-year floodplain.

   h) The location of dedicated park land shall also address the following, with specific consideration where service gaps are identified within the Parks and Recreation Master Plan:

      i) Proximity to existing or planned transit routes; and

      ii) Concentrations of multi-family housing and affordable developments; and

      iii) Population density; and

      iv) Areas of low household income.

5. Parkland Improvements

   Installation of required improvements shall defer to the Parks and Recreation Facility Standards Manual and be coordinated with and approved by the Parks Director or their designee.

6. Fee in Lieu of Required Park Improvements

   When a fee is paid in lieu of parkland dedication in accordance with **Sec. 38-5.I**, the applicant shall provide an estimate of the cost of required park improvements. The applicant shall pay the amount of the approved estimate to the City in lieu of construction of required improvements to comply with this Section.

D. Trails

1. Trail Dedication and Construction

When a trail or trail extension is proposed on the subject property, the decision-making body is authorized to require that an easement be provided for the trail. Sufficient land shall be dedicated and improved to provide trails in conformance with the Active Transportation Plan and the Parks and Recreation Master Plan.

a) Extensions of the public trail network shall be included in the calculation of the amount of dedicated park land when the trail and amenities, including street trees and landscaping, street furnishings, or other improvements outlined by the Parks and Recreation Facility Standards Manual or applicable plan are installed.

b) Connections to existing and proposed trail corridors are dedicated and built when the trail corridor is adjacent to or connects to a proposed development that meets **Sec. 38-5.B. Applicability**.

c) Minor alignment adjustments may be appropriate to accommodate site-specific characteristics to achieve the ideal trail alignment.

d) Trails shall be located and constructed as set out in applicable adopted plans.

e) Connections to adjacent land shall be provided when:

i) The adjacent land is publicly owned or otherwise open to the public, or

ii) The adjacent land is under common ownership with the parcel proposed for development.

2. Trail Standards

Unless otherwise specified, all trails shall be constructed to adopted City standards and criteria from the Parks and Recreation Master Plan or any other applicable adopted City plan, and the Parks and Recreation Facility Standards Manual and shall conform to the requirements of the Americans with Disabilities Act, where applicable and as may be amended. Universal design should be incorporated whenever practical.

Extensions of the public trail network may be included in the calculation of the amount of dedicated park land upon the approval of the Parks and Recreation Director or designee and when the trail and amenities are installed.

Connections to existing and proposed trail corridors are dedicated and built when the trail corridor is adjacent to or connects to a proposed development that meet **Sec. 38-5.B. Applicability**.

E. Open Space

1. Open Space Dedication

Open space dedication may be considered to preserve natural or environmentally sensitive areas or provide public gathering places such as plazas within a development or when outlined in any applicable adopted City plan.

2. Public open space may be dedicated in lieu of or in combination with park land to meet the minimum requirements of this section with review and approval by the Parks and Recreation Director or designee.

a) Amenities and improvements for a dedicated public open space shall comply with the Parks and Recreation Facility Standards Manual. Open Space improvements shall be determined during the development review process and shown on the Preliminary Plat or Site Plan for the proposed development.

3. Private open space may be included to address part of the required dedication in accordance with **Sec. 38-5.I.3**.

F. Dedication Procedures

1. Proposed Development

a) The developer shall provide an area or areas for public parks, trails, or open space, or a combination, in accordance with the Las Cruces Parks and Recreation Master Plan and any other applicable adopted City plan.

b) The developer shall dedicate easements or deed property for trails and trail connections in accordance with applicable adopted plans.

2. Planning & Zoning Commission. The developer and the DRC, in consultation with the Parks and Recreation Advisory Board, as appropriate, shall make a joint recommendation to the Planning & Zoning Commission as to the land dedication or fee in lieu of dedication. If they are unable to agree, the developer and the DRC shall make separate recommendations to the Planning & Zoning Commission who shall determine the issue.

G. Criteria for Dedication

1. Land shown as dedicated on a Final Plat shall be free from any of the following:
   a) Human inhabitants;
   b) Hazards, including scrap material, junk, vehicles or equipment, above-ground or below-ground environmental contaminants or holding tanks;
   c) Encumbrances of any kind, including deed restrictions, liens, or easements, unless they confer to the benefit of the City or will not interfere with the use of the property as a park;
   d) Other undesirable objects or features that may accrue to the liability of the City based upon an inspection the City conducts at its discretion prior to accepting the land for dedication.
2. Land dedicated for open space or for unimproved parkland or trails must be preserved in its pre-developed state and may not be used for construction activities or storage of materials or equipment during construction of the subdivision or development, unless otherwise specified in a development agreement.

H. Zoning Requirements

1. Lots created for the purpose of park land or trail dedication shall not be required to meet the standards for lot size or area within any zoning district.
2. Lots created for the purpose of park land dedication to serve the residents of the surrounding area shall not be subject to POA/HOA dues or other fees established for maintenance or other purposes within the neighborhood.

I. Alternatives to Park Land Dedication

If suitable land for park land dedication is not available, the subdivider or developer may propose one or more of the following in lieu of dedication:

1. Fee in Lieu

   A fee set by the City Council based on the market value of the required acreage.

   a) The City shall determine the amount of the fee at the time of Preliminary Plat or Site Plan approval and the developer or subdivider must pay all fees before recording a Final Plat or obtaining a Building Permit.
   b) The City will reserve the contributed fees for the purpose of purchasing and/or improving public park and recreational land in the City in a manner that is consistent with the service level and proximity criteria in the Las Cruces Parks and Recreation Master Plan.
   c) If the City fails to expend all the contributed funds on parks or improvements to parks in accordance with NMSA 5-8-11, the original property owner, subdivider, or developer or their successors and assigns in chain of title, may request in writing that the City refund any remaining funds in accordance with NMSA 5-8-17.
   d) Park Fund Established
      i) Establishment

      A separate fund to be deposited at the highest interest rate permitted by law to be entitled “Park Fund” shall be and is hereby created. The money paid into the fund shall be held in said fund in trust to be used solely and exclusively for the purpose of purchasing and/or improving public park and recreational land within the City.

ii) Purchases and Use of Funds

The principal and interest deposited and kept in the Park Fund shall be used solely for the purpose of purchasing and/or improving land for public park and recreation uses.

2. Improvements to Existing Parks

Improvements the developer or subdivider pledges to perform or provide in existing City parks in accordance with a recommendation from the City and consistent with adopted City standards.

3. Private Park or Open Space Development

Providing private parkland or open space shall account for up to 50 percent of the required public park land dedication, provided that the private park conforms to the following:

a) The property is deed-restricted for use as a park or reserved open space;

b) The property is shown on the Final Plat as park land or common area;

c) Parks are built to the standards of a public park and conform to the intent of the Parks and Recreation Master Plan and the Comprehensive Plan; and

d) The park or open space is owned and maintained by a homeowners' or property owner's association.

J. Dedication Prior to Development Application

If a developer wishes to dedicate land that exceeds the requirement of this section, the developer shall make a written request to the Planning & Zoning Commission who may grant the developer a credit equivalent to said excess.

1. The proposed dedication shall be included in the review and recommendation by the DRC prior to consideration by the Planning & Zoning Commission.
2. The approved credit shall be applied toward the developer's obligation under this section for any subsequent development by the same developer/owner within a one-half (½) mile walkshed of the original development site or as recommended by the DRC and approved by the Planning & Zoning Commission.

K. Timing of Dedication or Fee in Lieu

1. Timing of Land Dedications

a) Dedication of park land shall occur through the filing of a Final Plat that has been approved by the City. Completion of construction of park improvements to the satisfaction of the City shall be a precondition of the filing of a Final Plat unless either a Performance Security acceptable to the City has been submitted or the Director of the Parks & Recreation Department agrees to waive this precondition. When not dedicating with a Final Plat, a separate instrument addressing the items in **K.1.a)ii)** below is required.

i) The proposed dedication shall be shown on the Preliminary and Final Plat or Site Plan and shall be reviewed as an element for final approval of an application for development.

ii) Submission of dedication documents is required for final approval. Dedication documents include, but are not limited to:

a. A metes and bounds description of the land to be dedicated,

b. A survey of the property,

c. A copy of the fee simple deed and title policy for the property,

d. An environmental statement (ESA Phase 1) that indicates the site is free of environmental contamination or hazards, and identifies critical environmental features, and

e. Documents conveying ownership to the City by warranty deed, transferring the property in fee simple to the City, and ensuring that the property is free and clear of any mortgages or liens at the time of such conveyance.

iii) The park land shall be labeled on the Final Plat or Site Plan as "Public Park, Trail or Open Space (as applicable)land dedicated to the City of Las Cruces" with the acreage of land labeled on the Plat or Site Plan.

iv) Any disturbed land shall be restored, and the soil stabilized by vegetative cover by the developer.

b) Deeded land is dedicated public property and not subject to any right of reversion or refund.

2. Timing of Fees in Lieu

a) A cash contribution in lieu of required land development shall be payable before the City signing the Final Plat, or issuance of building permits for a Site Plan.

b) With the approval of the Planning & Zoning Commission, a developer may pay such contribution in three equal installments to be paid in full within one year of Final Plat approval.

3. Multi-phase developments shall dedicate sufficient park land and trail easements to meet or exceed the proportionate total requirement for the phase being recorded on the Final Plat.

4. Timing of Improvements

a) Subject to Adequate Facilities and Substantial Completion.

b) Improvements must be completed no later than 50% build-out or 2 years after the subdivision plat is recorded, whichever comes first.

c) If required park improvements are not installed at the time of subdivision construction a form of Performance Security and a bid from the contractor shall be filed with the City, along with a development agreement outlining the improvements to be completed, any cost sharing agreements (e.g., oversizing), and other terms as required by the Parks and Recreation Director.

i) The amount of such Performance Security must cover 125 percent of the projected cost of all required improvements agreed to by the Parks and Recreation Director. The amount shall be based on the projected costs that the City – not a private developer – would incur at the time improvements are scheduled for completion.

ii) Any of the following types of security shall be filed with the Community Development Director:

a. Performance bond. A surety bond acceptable to the City.

b. Escrow account. An account established with a financial institution.

c. Irrevocable stand-by letter of credit. The City shall have irrevocable authority to draw a draft for the projected cost of improvements.

d. Cashiers' check. An amount of security acceptable to the City.

e. Any other form of security approved by the Community Development Director, Finance Director, and legal staff.

d) The City shall not issue any building permits within the subdivision until all improvements have been installed and inspected, unless Performance Security is provided.

e) Any further extension of time for completion of required improvements shall require approval of the Planning & Zoning Commission.

f) Updated improvement cost estimates and additional performance security may be considered as a condition of any approved extension.

Sec. 38-6. Tree Preservation

A. Purpose

The purpose of this section is to support the following objectives from the Comprehensive Plan:

1. Maximize tree cover;
2. Improve air quality;
3. Manage stormwater runoff;
4. Reduce the community's overall carbon footprint;
5. Preserve natural amenities; and
6. Enhancement of social and economic benefits.

B. Applicability

The regulations herein apply to all new development and any redevelopment or modifications that affect a Protected Tree.

C. Exempted Trees

The regulations herein do not apply to the following trees:

1. Trees smaller than 6 inches DBH;
2. A dead or diseased tree, which is deemed beyond the point of recovery and at risk of spreading disease;
3. Trees that cause a safety hazard (e.g., blocking the clear sight triangle as required by **Sec. 38-2.H**);
4. Trees planted and growing on the premises for sale at a nursery or tree farm; or
5. Plants classified as a noxious species by the New Mexico Department of Agriculture.

D. Protected Trees

1. Trees that are not exempt from preservation are considered Protected Trees and shall require a Tree Removal Permit from the Community Development Director, upon a determination that there are no feasible alternatives for site development. A Tree Removal Permit may be requested in conjunction with the Site Plan.
2. Protected Trees may be credited toward the landscaping requirements in **Sec. 38-7.D. Required Landscaping**, with each counting as three trees.
3. Protected Trees must be protected during construction activities in accordance with **Sec. 38-7.E. Critical Root Zone Protection**.
4. Any Protected Tree that is damaged resulting in death of the tree or removed without a Tree Removal Permit, including those damaged during construction or within two years following issuance of a Certificate of Occupancy, shall be subject to a fine in accordance with **Sec. 34-1.H. Violations and Enforcement**, which shall be assessed until the removed tree is mitigated in accordance with **Sec. 38-6.E** below.

E. Replacement of Existing Trees and Tree Mitigation Plans

1. Any Protected Tree that is removed from a site must be replaced with a new or transplanted tree meeting the minimum size requirements in **Sec. 38-7.C.3.c)**.
2. Any applicant proposing to remove a Protected Tree must submit a Tree Mitigation Plan. The Tree Mitigation Plan shall be submitted to the Community Development Director for approval and may be prepared as part of a Landscape Plan, if applicable (see **Sec. 38-7.F. Landscape Plan**). The Tree Mitigation Plan shall show the following:
   a) Existing/proposed topography
   b) Location of property lines, easement, rights of ways, setbacks, parking areas, and sidewalks
   c) Location, species, size (in DBH inches), and Critical Root Zone (see **Sec. 38-7.E**) of each Protected Tree.
   d) A tree inventory that summarizes the following:
      i) Total number of DBH inches on the site (for trees two inches DBH and larger);
      ii) Total number of inches DBH to be removed;
      iii) Total number of inches DBH to be preserved;
      iv) Location of proposed new or transplanted trees to mitigate any removed Protected Tree;
      v) Any proposed landscaping credits for preserved Protected Trees; and
      vi) A summary of the tree protection methods to be utilized.

Sec. 38-7. Landscaping

A. Purpose

The City wishes to promote and preserve visually attractive and pleasing surroundings, reduce erosion and runoff, and improve the quality of the environment. The City desires to have development in an attractive and high-quality manner. Therefore, landscaping shall be provided and maintained as set forth in this section and in accordance with the Comprehensive Plan and the Parks and Recreation Master Plan.

B. Applicability

The requirements herein apply to all new construction, additions, or structural modifications unless otherwise noted herein.

C. General Requirements

1. Clear Sight Triangle

   Any landscaping in the Clear Sight Triangle must comply with **Sec. 38-2.H. Clear Sight Triangle**.

2. Irrigation System

   The irrigation system and the landscaping shall be installed before the issuance of a Certificate of Occupancy unless a written agreement has been made with the City to extend the time of installation (e.g., in the event of a drought). Such agreements will be for a maximum period of nine months. Irrigation systems must comply with the Technical Manual.

   a) Exemptions: In particular situations, the Community Development Director, following consultation with the City's Landscape Architect, may allow an irrigation system to be omitted or a temporary irrigation system installed to establish the plantings and then removed once plant material is established.

3. Approved Plant Materials

   a) It is the City's expressed desire to promote drought-tolerant species.

   b) The City shall maintain a list of approved plant materials, which is included within the Technical Manual. All required landscaping materials must be selected from this list.

      i) An applicant may request approval of a plant type not included on the approved list for consideration by the Community Development Director.

      ii) Turf, other than those identified on the recommended plant list, is not permitted.

         a. Exemptions: In particular situations (e.g., golf courses), the Community Development Director, following consultation with the City's Landscape Architect, may allow the use of other turf grasses.

      iii) Artificial trees, shrubs, and plants are not permitted.

   c) At the time of planting, all vegetation must meet the following minimum size requirements:

      i) Evergreen trees: 8 feet tall

      ii) Deciduous trees: 1.5-inch DBH single-trunk trees; 1.25-inch DBH for multi-trunk trees

      iii) Shrubs and ornamental grasses: 5-gallon container

   d) Plantings must have good structure and a good root system, including no girdling roots, with no flaws as defined by the American Nursery and Landscape Association American Standard for Nursery Stock, ANSI Z60.1 – 2004 or latest version.

   e) No single plant species shall be used for more than 50 percent of the required landscape materials.

f) The Community Development Director is authorized to limit species and placement to protect aboveground and underground infrastructure.

4. Installation Timing

   All required landscaping must be installed prior to issuance of a Certificate of Occupancy.

5. Maintenance

   a) The owner of the landscaped property shall be responsible for maintaining the area in a healthy, clean, trimmed, weed-free and litter-free condition. Proper irrigation, pruning, fertilizing and pest management are also included as maintenance.

   b) Landscape in parkways shall be maintained by the property owner of the contiguous property.

      i) Exemptions: Parkways that abut the rear property line of residential development and abut a Collector or Arterial Street shall be maintained by the City.

   c) Landscape in medians may be maintained by the City, adjacent property owner(s), homeowners' association, and/or other arrangement approved by the City.

   d) All approved landscape material must be maintained in a healthy, thriving condition, or must be replaced with the same or a substitution approved by the Community Development Director within 60 days. Maintenance shall be in accordance with ANSI A300.

   e) All plant growth shall be controlled so that it will not interfere with the installation, maintenance, or repair of any public utility, nor shall it restrict pedestrian or vehicular traffic or constitute a traffic hazard. This includes preventing plant growth from blocking the Clear Sight Triangle, as required by **Sec. 38-2.H. Clear Sight Triangle**.

   f) If a resident landscapes any property that is dedicated to the City, such resident is responsible for maintenance of that area until a written agreement is made to the contrary with the City.

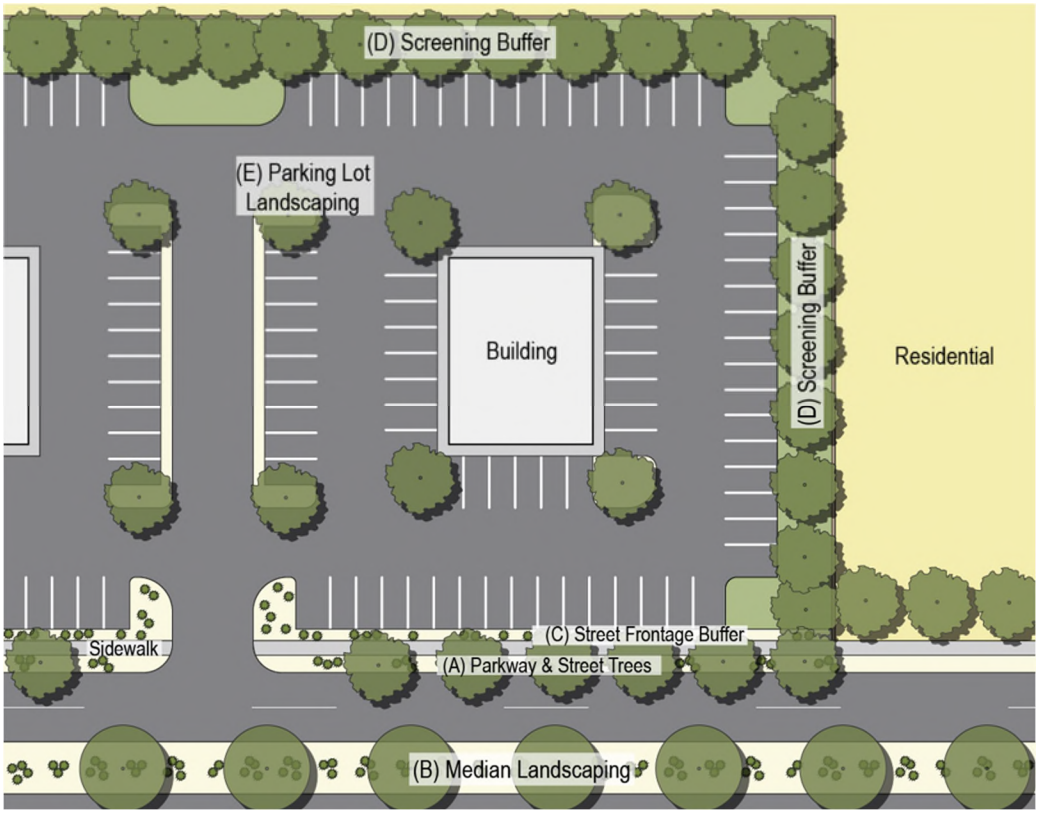
6. Payment in Lieu of Landscaping Parkways and Medians

   The Community Development Director, following consultation with the City's Landscape Architect, may determine that a payment in lieu of landscaping is acceptable in situations where meeting the above requirements is not feasible. Payment in lieu of landscaping may be approved by the Community Development Director, equal to the current costs of design, plantings and materials, construction, taxes, and contingencies that would otherwise be required to meet the standards herein.

D. Required Landscaping

The following figure and table summarize the required landscaping types unless expressly exempt within each subsection:

Figure 38-7-1. Required Landscaping Types



Landscaping Type	Requirement Summary	Applicability
(A) Parkway & Street Trees	Minimum 6' parkway width[1] with one tree per 30' of frontage along Streets in Urban Character Areas or 40' along Streets in Suburban Character Areas; plus one shrub per 25' feet of frontage.	Required on Arterials and Collectors for all new development or expansions of 20% or more.
(B) Median Landscaping	One tree per 250 square feet; plus one shrub per 250 square feet.	Required when the applicant constructs a street with a median or adjacent to an existing un-landscaped median.
(C) Street Frontage Buffer	Minimum 4' buffer extending the length of the parking or drive area with one shrub per 50 square feet of buffer.	Required for all new development (excluding 1-4 unit residential) or expansions of 20% or more when a parking lot or drive area is adjacent to the right-of-way.
(D) Screening Buffer	Varies; see **Sec. 38-8. Fencing, Screening, and Buffering**.	May be required depending on adjacent zoning; see **Sec. 38-8. Fencing, Screening, and Buffering**.
(E) Parking Lot Landscaping	Minimum 15% of the total parking area[2] shall be landscaped. A minimum of one live tree shall be provided for every 1,000 square feet of required landscaped area. A minimum of 20 live shrubs shall be provided for every 1,000 square feet of required landscaped area. One tree per 10 parking spaces.	Required for all development with more than 10 spaces in a surface parking lot.
(F) Lot Area Landscaping	Any unused area shall be retained in (or restored to) its natural state or landscaped in accordance with these standards. Residential lots (1-4 units) must have at least one tree in the front yard per 60' of frontage, in addition to any required street trees.	Required for all development.

[1] Parkway width less than 6' requires approval from the Public Works Director and the Parks and Recreation Department.

[2] For the purposes of this section, the parking area includes the entire tract of land except for the building pad and fenced-in storage area.

1. Parkway & Street Trees
   a) Street trees and shrubs are required on all Arterial and Collector Streets within Suburban Character Areas or Urban Character Areas.
   b) Street trees and shrubs shall be placed in the parkway of the street, unless the Community Development Director requires different locations of trees based on a lack of adequate parkway, utility conflicts, topography, or a uniquely shaped lot.
      i) Exception: Residential lots with between one and four units may plant the required trees in the front yard.
   c) The spacing for all street trees shall be at 30 feet or less for streets in Urban Character Areas or 40 feet or less for streets in Suburban Character Areas. Street trees may be clustered, provided that the number of trees planted equals or exceeds the number that would be required if the trees were evenly spaced.
   d) Shrubs shall be provided at a rate of one shrub per 25 linear feet of parkway frontage in Suburban Character Areas or Urban Character Areas.
      i) Exception: Residential lots with between one and four units do not require shrubs.
   e) Median and parkway areas must be graded to initially retain stormwater within the median or parkway. Swales and small retention areas must be incorporated into the design such that stormwater runoff may be available to the trees and shrubs in addition to the irrigation water.
   f) The finished grade of the groundcover will be one-half inch to one inch below the back of curb or back of sidewalk.
2. Median and Public Area Landscaping
   a) These requirements apply to medians and other areas (e.g., subdivision entrances, drainageways, and rights-of-way) that are dedicated to the City or development adjacent to an un-landscaped median.
   b) Applicants shall submit plans for planting and irrigation for the approval of the Community Development and Parks & Recreation Departments, affected utilities and the State Highway Department, if appropriate, prior to construction. Any such dedication of land shall be in addition to the requirements for dedication of park land or fees in lieu thereof as stated in **Sec. 38-5. Parks, Trails, and Open Space**.
   c) The City has adopted landscape themes for medians that shall act as a guide for development of medians, which are included in the Technical Manual.
   d) Design guidelines for properties that are to be dedicated to the City shall be as follows:
      i) Grassed areas shall have a maximum design slope of 5:1, that is, five feet horizontal distance for every one foot vertical. Mounded groundcover areas shall have a maximum design slope of 3:1, that is, three feet horizontal distance for every one foot vertical.
      ii) Median and parkway areas must be graded to initially retain stormwater within the median or parkway. Swales and small retention areas must be incorporated into the design such that stormwater runoff may be available to the trees and shrubs in addition to the irrigation water.
      iii) The finished grade of the groundcover will be one-half inch to one inch below the back of curb or back of sidewalk.
      iv) Pedestrian crossing areas shall be surfaced with a hard paving suitable for foot and wheelchair traffic, consistent with the latest ADA and similar accessibility standards.
      v) All medians shall contain a minimum two-inch water stubout. Those medians in a series under one development shall contain one two-inch stubout and one two-inch conduit between medians which is suitable for electricity and water. The conduit shall be a minimum of two-inch schedule 40 PVC and shall be placed a minimum of 24 inches underground.

vi) All drainage, retention and detention areas shall be buffered in accordance with **Figure 38-8-4. Required Compatibility Screen Type**.

vii) All planting and irrigation installation must be generally located within the center of the median to avoid future potential widening of the roadways, additional or expanded turning lanes or other modifications to the median.

viii) Median noses that are five feet to ten feet wide (back of curb to back of curb) must not be planted. Only groundcover or patterned and colored concrete may be installed in these areas. Median noses that are less than five feet wide (back of curb to back of curb) must be covered with patterned, colored concrete. Patterns may be score joint, broomed finish, or stamped, or a combination thereof. Colors must be appropriate to a public streetscape and must not be red.

3. Street Frontage Buffers

a) Street Frontage Buffers are required when a parking lot or other vehicular area is adjacent to a street or right-of-way, intended to help block light trespass from headlights onto adjacent properties or right-of-way.

b) Street Frontage Buffers shall be at least four feet in width and shall extend the width of the property line abutting the street with an exception for defined vehicular or pedestrian access points.

c) Street Frontage Buffers shall be planted at a rate of one shrub per 50 square feet of buffer.

4. Screening Buffers

Screening Buffers may be required along side and/or rear lot lines depending on the adjacent zoning. See **Sec. 38-8. Fencing, Screening, and Buffering** for requirements.

5. Parking Lot Landscaping

The following regulations apply to any new development or redevelopment.

a) A minimum area equal to 15 percent of the total parking area shall be landscaped.

i) For the purposes of this article, the parking area includes the entire tract of land except for the building pad and fenced-in storage area.

b) A minimum of one live tree shall be provided for every 1,000 square feet of required landscaped area.

c) A minimum of 20 live shrubs shall be provided for every 1,000 square feet of required landscaped area.

d) A minimum of 1 tree per 10 parking spaces.

e) Landscape areas must be defined by a curb unless designed as a stormwater retention facility. See **Sec. 38-4. Low-Impact Development and Green Infrastructure** and the Technical Manual for more information regarding incentives for incorporating sustainable design.

6. Lot Area

a) Any portion of the site not used for buildings, parking, driveways, plantings, plazas or designated gathering areas, walkways, utilities, or approved storage shall be retained in (or restored to) its natural state or landscaped in accordance with the following standards:

i) Living groundcover (as permitted by the approved plant list),

ii) Organic materials such as mulch or wood chips, or

iii) Inorganic materials such as decorative gravel or rocks.

b) Materials must be permeable, with any weed barrier allowing the percolation of standing water within 72 hours.

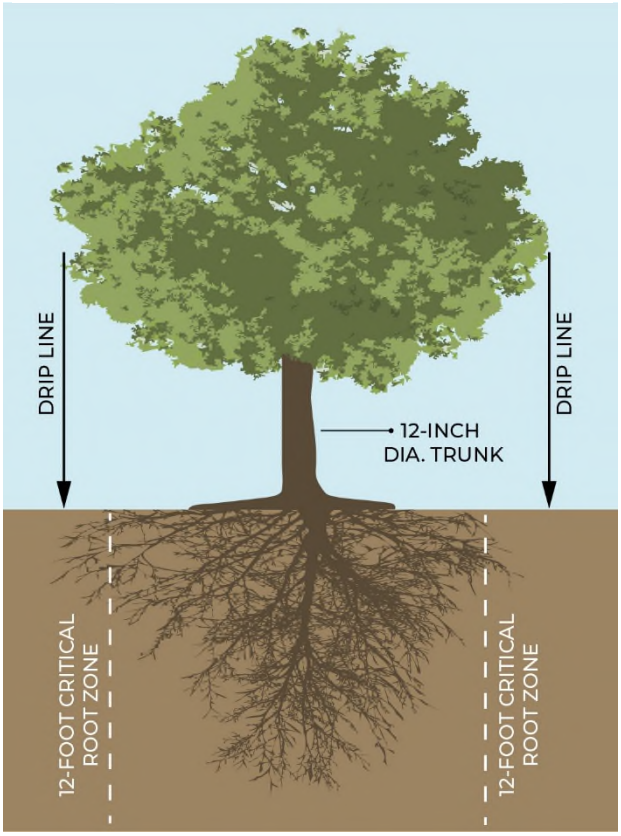
c) Loose materials shall be contained by a curb or other suitable alternative to contain the materials within the landscaped area.

d) Residential lots (1-4 units) must have at least one tree in the front yard per 60 feet of street frontage, in addition to any required street trees.

E. Critical Root Zone Protection

1. Every required tree shall have a Critical Root Zone (CRZ) surrounding the tree to protect the tree from damage or other harm.
2. The CRZ is measured as a radius outward from the trunk of the tree. The radius shall be determined based on ANSI A300 for the individual species. See **Figure 38-7-2** for an example.
3. The following activities are prohibited in the CRZ:
   a) Storage or parking vehicles, building materials, refuse, excavated soils, or dumping of poisonous or hazardous materials on or around the tree and roots. Poisonous or hazardous materials include, but are not limited to, paint, petroleum products, concrete or stucco mix, dirty water, or any other material that may be harmful to tree health;
   b) The use of tree trunks as a winch support, anchorage, temporary power pole, signposts, or other similar functions;
   c) Cutting of tree roots by utility trenching, foundation digging, placement of curbs and trenches, and other miscellaneous excavation without prior approval of the City;
   d) Soil disturbance or grade change;
   e) Vehicular traffic;
   f) Drainage changes that reduce the amount of drainage entering the CRZ; and
   g) Maintain adequate irrigation during construction.

Figure 38-7-2. Example Illustration of Critical Root Zone and Drip Line



4. The following restrictions apply during construction near the CRZ:
   a) All trees shall be protected by a fence, frame, or box constructed around the drip line of the preserved tree.
   b) A minimum of three inches of mulch or compost shall be spread beneath the drip line of the tree but must be kept four inches from the trunk.
   c) No person shall excavate any ditches, tunnels or trenches, place any paving material or place any drive or parking area within the drip line of any required tree without prior written approval of the Community Development Director at the time of Site Plan approval.
   d) No person shall attach any rope, wire, nails, advertising posters, or other contrivance to any required tree.

F. Landscape Plan

1. A Landscape Plan indicating the following shall be submitted in conjunction with the application for the building permit for Community Development Director approval:
   a) Type, size, and location of landscaping;

b) A summary of the tree protection methods to be utilized for any Protected Tree or other tree required by this section;

c) Existing and planned driveways and streets with associated clear sight lines;

d) Topography; and

e) An irrigation plan showing the type and size of pipes and heads;

2. All plans shall be at a scale of one inch equals 10 feet or one inch equals 20 feet.

3. The Landscape Plan shall include the following statements:

a) "The owner is responsible for all landscaping maintenance, including the repair or replacement of any required landscaping."

b) "An irrigation system will be designed, installed, and functional prior to the approval of the Certificate of Occupancy" (unless the requirement for an irrigation system is specifically waived by the City).

4. The Landscape Plan may include a Tree Mitigation Plan, if applicable (see **Sec. 38-6.E.2**).

Sec. 38-8. Fencing, Screening, and Buffering

A. Purpose

The purpose of this section is to establish when fencing, screening, or buffering is required to promote land use compatibility and a positive aesthetic appearance. Additionally, this section provides regulations related to the height, placement, and other considerations for both required and non-required fencing, screening, and buffering.

B. Applicability

1. The regulations included herein apply to all changes in occupancy or new development or expansions greater than 10 percent of the building footprint.
2. Screening must be installed prior to the issuance of a Certificate of Occupancy. All required fencing, screening, or buffering devices shall be permanently and continually maintained in a neat and orderly manner as a condition of use. The Certificate of Occupancy may be revoked for failure to adequately maintain such device.

C. General Regulations

1. Placement
   a) No fence, screen, buffer, or any other object may be placed within the Clear Sight Triangle. See **Sec. 38-2.H. Clear Sight Triangle** for more information.
   b) No wall or fence shall be permitted in a public right-of-way or easement, unless an encroachment agreement is obtained and approved by the City's right-of-way coordinator.
      i) If written approval of the governing agency, affected utility or individuals is obtained, a wall or fence may be placed on an easement.
2. Materials and Appearance
   a) Materials shall consist of one or more of the following materials (see **Figure 38-8-1**), unless otherwise stated:
      i) Brick masonry, stone masonry, concrete block, or other architectural masonry finish; or
      ii) Tubular steel (primed and painted) or wrought iron fence with masonry columns spaced a maximum of 20 feet on center with structural supports spaced every 10 feet, and with sufficient evergreen landscaping to create a solid screening effect; or
      iii) Living plant screens (Evergreen shrubs with a minimum of three feet in height at the time of planting) that will not be detrimental to adjacent property and will provide sufficient visual screening based on the proposed location and characteristics of the project; or

Figure 38-8-1. Examples of Acceptable Screening Materials

iv) Alternate equivalent screening that provides an exceptional screening aesthetic, meets sound structural practices and engineering design criteria, meeting the intent and function of this Section at the discretion of the Community Development Director.

b) All required screening devices must be equally finished on both sides.

c) All openings in the surface for passage shall be equipped with gates equal in height and screening characteristics specified below, but need not be of the same material as the main fence or wall.

d) Where a screening device is constructed, placed or planted on uneven terrain, there shall be no gap under the device, and the device must be composed of the same material throughout.

3. Common Walls or Fences

a) A Common Wall or Common Fence shall not be constructed or structurally altered in any manner without the written consent of adjacent property owners who share or will share ownership of the wall or fence.

b) Written consent must be submitted at the time of request for a building permit.

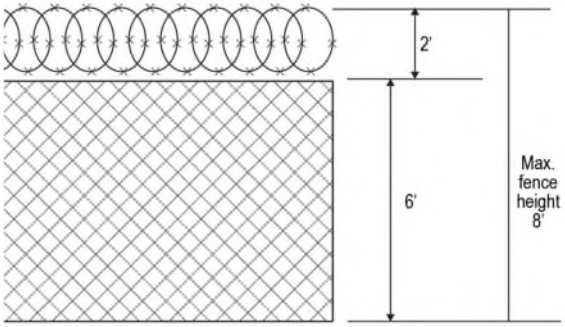
4. Retaining Walls

Retaining wall requirements are found in the Technical Manual. The proposed retaining wall design shall be submitted by the property owner/applicant to the Community Development Director and Public Works Director for approval consideration.

5. Barbed Wire and Other Similar Types of Containment Wire

a) Barbed wire and other similar types of containment wire (e.g., horse wire, "no climb" wire, and access-prohibiting wire) is permitted only when located at least six feet above the highest adjacent ground surface and will be included in the overall measurement of the fence or wall (see **Figure 38-8-2**). Such fences shall not exceed a maximum of eight feet in height.

Figure 38-8-2. Barbed Wire



b) Barbed wire and other similar types of containment wire are permitted only in the following locations:

i) In any district in conjunction with a commercial agricultural use, equestrian use, utility substation, detention facility use, or use located on airport property;

ii) CR, Commercial/Retail District (Rural, Suburban, Urban);

iii) LI, Light Industrial District (Rural, Suburban, Urban); or

iv) HI, Heavy Industrial District (Rural, Suburban, Urban).

c) Barbed wire and other similar types of containment wire shall not be permitted in the required front yard of any property, except those listed in **i) above**.

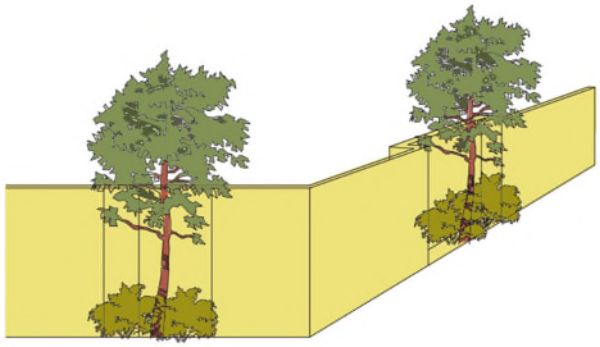
6. Chain-Link Fencing

Chain-link fencing shall be prohibited in front of the building face or on property lines adjacent to roadways with a Collector Street designation or higher.

7. Street-Facing Screening Wall Design

   Walls or fences 50 feet in length or longer along public streets must include features to avoid the appearance of blank walls facing the street. These features may include, but are not limited to, changes in depth, changes in texture or masonry patterns, columns, artwork, and/or landscaping shall be employed along the periphery to avoid the monotony of a large, blank surface.

Figure 38-8-3. Screening Wall Design Example



D. Required Buffer Yards

1. Buffer Yards are required between differing district types as indicated in **Figure 38-8-4**.

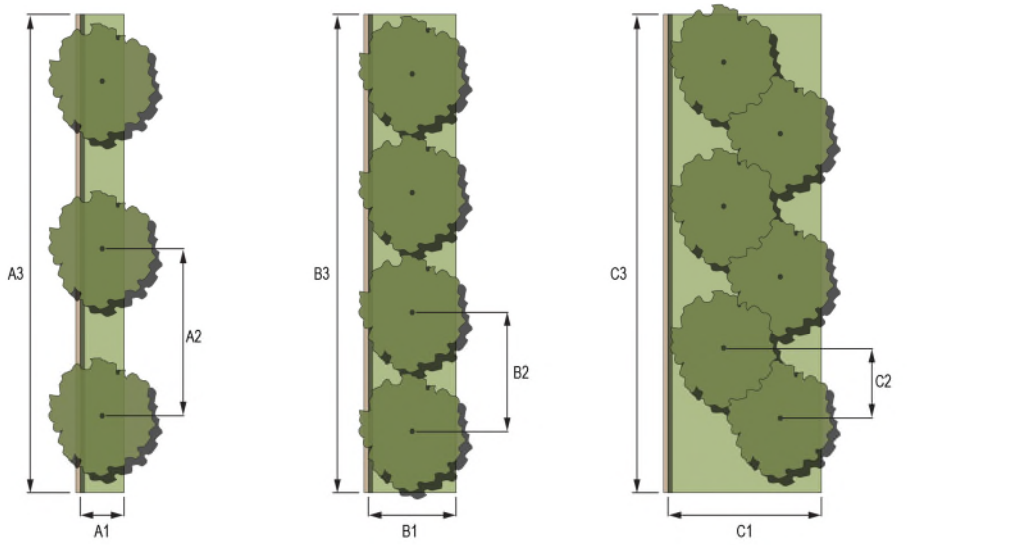
   a) Buffer Yards are not required when the sites are separated by a public roadway.

2. Buffer Yards shall be placed along the shared lot line on the property of the subject property district (according to **Figure 38-8-4**), with the wall along the property line. The property owner in the more intensive district is responsible for installing and maintaining the screening.

3. Buffer Yards may include screening walls, landscaping, drainage facilities, green infrastructure and low-impact development elements, walls and fences, but not parking or any permanent structures taller than the screening wall height.

4. The Community Development Director may modify or reduce the requirements within this **Sec. 38-8.D. Required Buffer Yards** to authorize an alternative configuration of buffering and/or other techniques that would result in an equivalent or improved appearance and compatibility with adjacent existing and future development.

Figure 38-8-4. Required Compatibility Screen Type



Type A
A1 = 10 ft deep buffer
A2 = 35 ft on center tree spacing
A3 = 6 ft tall masonry wall along property line

Type B
B1 = 20 ft deep buffer
B2 = 25 ft on center tree spacing
B3 = 6 ft tall masonry wall along property line

Type C
C1 = 35 ft deep buffer
C2 = 15 ft on center tree spacing
C3 = 6 ft tall masonry wall along property line

	Adjacent Zoning District							
Subject Property District (District below required to install buffer)	**NH-1 District**	**NH-2 District**	**NH-3 District**	**CR District**	**LI District**	**HI District**	**OS-1 District**	**OS-2 District**
NH-1 District	-	-	-	-	-	-	-	-
NH-2 District	-	-	-	-	-	-	-	-
NH-3 District	Type A	-	-	-	-	-	-	-
CR District	Type B	Type A	-	-	-	-	Type B	-
LI District	Type C	Type B	Type A	Type A	-	-	Type B	-
HI District	Type C	Type C	Type B	Type A	Type A	-	Type C	-
OS-1 District	-	-	-	-	-	-	-	-
OS-2 District	Type C	Type C	Type B	Type A	Type A	-	Type C	-

E. Required Screening

All development (excluding residential development with four or fewer units) shall comply with the following screening standards.

1. Dumpster/Waste Container Areas

   Dumpster enclosures shall be constructed of non-combustible screening material and shall be compatible in terms of color, texture, and scale that are used in the main building with which the dumpster enclosure is associated. Acceptable screening materials include rock, brick, and minimum twenty (20) gauge steel with a maximum one-quarter (1/4) inch gap between panels and one-quarter (1/4) inch in diameter holes. Dumpsters shall be screened with opaque to semi-opaque material on three sides and a gate (for easy access) on the fourth side. The screening and gate must be a minimum of twelve inches higher than the lid of the open container/dumpster. The dumpster enclosure shall be permitted a maximum two (2) inch gap from the bottom of the screening to grade to allow for the cleaning.

Figure 38-8-5. Example of a Screened Dumpster

2. Mechanical/Utility Equipment

   a) Mechanical/utility equipment must be screened from view from all angles using landscaping or walls in a manner that conceals the equipment. Such screening must remain consistent with the landscaping and architectural character (especially in terms of color, physical style, and scale). A screening wall shall be at least six feet in height and no more than one foot taller than needed to screen the equipment, as determined by the Community Development Director.

   b) When located on a rooftop or otherwise attached to the building, mechanical/utility equipment shall be screened from view through the use of building design elements such as varied roof height, parapets, etc. In instances where adjacent rights-of-way are significantly higher in elevation to adjacent properties, rooftop equipment should be screened to the best extent possible. When the chosen architectural style selected does not lend itself to using these techniques, such equipment must be shielded from view by an opaque screen that is treated in a manner that most accurately matches the look, design, and texture of the building to which it is attached.

Figure 38-8-6. Example of Screened Ground-Mounted Equipment

   c) Exterior mechanical/utility equipment mounted on building facades shall be prohibited unless used as an integrated architectural design feature and painted in a color that blends in with their visual background and/or building to which they are attached.

3. Outside Storage

   Any outside areas containing storage materials, whether directly for sale or otherwise, shall, at minimum, be fully enclosed on four sides with a masonry wall between 6 and 8 feet in height, (or taller if needed to be fully sight-obscuring), and must be set back at least as far as the main building's front facade. Outside storage screening

walls must be compatible with the architectural character of the development, especially in terms of color, texture, physical style, and scale.

a) Screening of outside storage is not required in the HI, Heavy Industrial District (Rural, Suburban, Urban), unless the property is adjacent to another zoning district

b) The Community Development Director may modify these requirements based on intensity and amount of storage materials and the surrounding development/zoning (e.g., a plant nursery).

4. Parking Structures

Structured parking visible from a public right-of-way or from any NH District shall be screened by one of the following methods (or a combination thereof) with the exception of ingress and egress points:

a) Liner Buildings that surround the parking structure;

b) Solid walls meeting the material and articulation requirements of **Sec. 36-4.C. Nonresidential, Mixed-Use, and Multi-Family Development** that are aesthetically consistent with any associated buildings; or

c) Alternative screening methods approved by the Community Development Director, such as:

i) Landscaping that screens at least 50% of pedestrian-level parking garage facades immediately upon installation, with species selected to eventually provide a full 100% screening;

ii) Incorporation of Glazing techniques that mimic a typical building; or

iii) An artistic covering that fully screens the view of vehicles, which may include murals, sculptures, lighting, and other materials that create an interesting appearance consistent with the remainder of the development.

5. Auto Storage and Salvage Yards

a) Automotive storage and salvage yards shall be fully enclosed on four sides and fully sight-obscuring from public right-of-way and from view of any NH District.

b) Exceptions:

i) Automobiles currently for-sale or parked for less than a 24-hour period do not require screening.

ii) Screening of automotive storage and salvage yards is not required in the LI, Light Industrial District (Rural, Suburban, Urban) or the HI, Heavy Industrial District (Rural, Suburban, Urban), unless the property is adjacent to another zoning district.

6. Loading Docks/Bays and Service Areas

Loading and unloading zones must be screened from the street via landscaping, walls, fencing, etc. Screening shall be sight obscuring (semi-opaque at minimum) and a minimum of 6 feet in height.

F. Other Required Fences

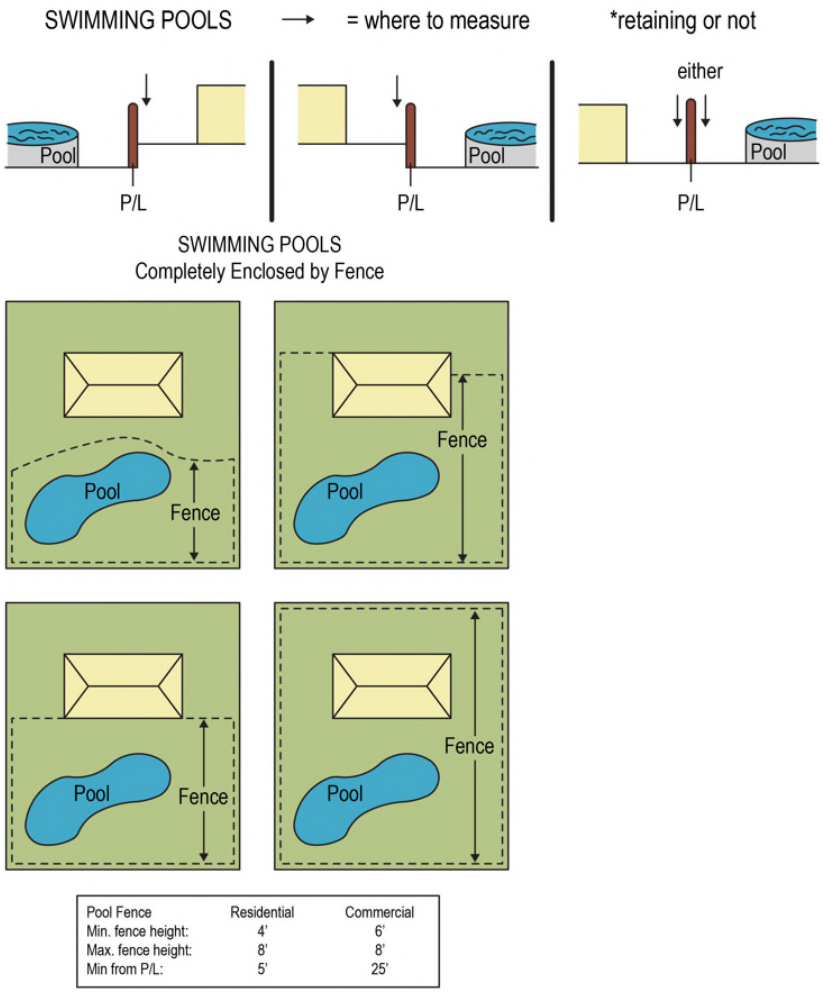
1. Swimming Pools, Whirlpools, Hot Tubs, and Other Similar Structures

   a) All water recreational structures, except commercial or public swimming pools, shall be completely enclosed by a wall or fence at least 4 feet in height. A minimum 4-foot fence or wall completely enclosing the entire yard or portion thereof where the structure is located will satisfy this requirement. All gates in fences shall be self-closing and equipped with self-latching devices.

   b) For commercial or public swimming pools, a protective fence or wall no less than 6 feet in height shall be provided which completely encloses the pool area, and the pool shall be no closer than 25 feet from any property line. All gates in fences shall be self-closing and equipped with self-latching devices.

   c) All other Building Code requirements for the construction of swimming pools and other similar structures shall be met.

Figure 38-8-7. Swimming Pool Enclosures



Pool Fence	Residential	Commercial
Min. fence height:	4'	6'
Max. fence height:	8'	8'
Min from P/L:	5'	25'

G. Maximum Fence or Wall Height

The following requirements apply to all fences and walls, unless alternative screening is required by this **Sec. 38-8. Fencing, Screening, and Buffering**.

1. Method of Measurement

   The height measurement of a wall or fence shall be made on the side of the wall or fence at the lowest non-artificially raised grade level.

2. Maximum Fence or Wall Height for Residential Land Uses

   a) Fences or walls within the required front yard setback: 4-foot maximum height.

      i) Exception: Arches or entryways are permitted in required front yard setbacks in accordance with the following (see **Figure 38-8-8**):

         a. Maximum height of 8 feet permitted.

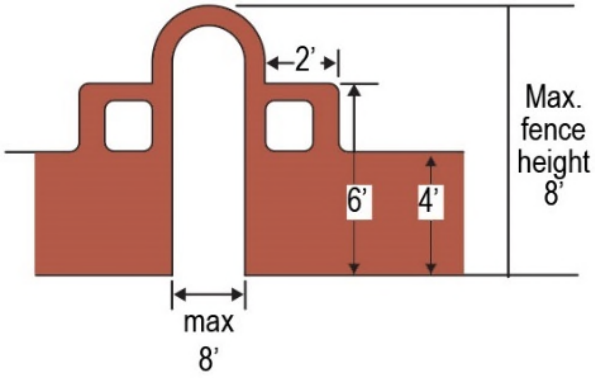
         b. Arch width shall not exceed 8 feet.

         c. A "step-down" design is permitted in conjunction with the arch. A 2-foot length on both sides of the arch is permitted at a height not to exceed 6 feet.

         d. Maximum of one arch or entryway is permitted in the required front yard.

         e. Arches or entryways are permitted behind the required front yard setback at any width, with a maximum height of 8 feet.

Figure 38-8-8. Arches or Entryways in the Front Yard Setback



   b) Fences or walls within the required rear and side yard setback: 8-foot maximum height.

   c) Fences or walls on corner lots: A maximum height of 8 feet shall be permitted on the secondary front yard, behind the primary required front yard setback. However, Clear Sight Triangle requirements shall be met (see **Sec. 38-2.H. Clear Sight Triangle**).

3. Maximum Height for Nonresidential Land Uses

   a) Fences or walls within the required front yard setback: 6-foot maximum height.

   b) Fences or walls within the rear and side yard setback: 8-foot maximum height.

   c) Fences or walls on corner lots: A maximum height of 8 feet shall be permitted on the secondary front yard, behind the primary required front yard setback. However, Clear Sight Triangle requirements shall be met (see **Sec. 38-2.H. Clear Sight Triangle**).

Sec. 38-9. Outdoor Lighting

A. Purpose

The purpose of this section is to provide regulations for outdoor lighting that will:

1. Permit reasonable uses of outdoor lighting for nighttime safety, utility, security, productivity, enjoyment, and commerce.
2. Be useful, targeted, low-level, and controlled, minimizing adverse offsite impacts including light trespass, and obtrusive light.
3. Curtail light pollution and improve the nighttime environment.
4. Help protect the natural environment and wildlife from the adverse effects of night lighting through the use of warm-colored lighting.
5. Conserve energy and resources to the greatest extent possible.
6. To promote safe lighting for pedestrian and vehicular traffic.

B. Applicability

1. Except as described below, all outdoor lighting shall comply with these requirements and the City's Traffic Signal and Street Lightings Approved Products List. This applies to any lighting device located exterior to a structure or that illuminates areas exterior to a structure, whether permanently or temporarily installed, or any other lighting, whether attached to structures, poles, the earth, or any other location, including lighting installed by any third party. This includes, but is not limited to:
   a) New lighting
   b) Replacement lighting
   c) Search light(s)
   d) Spotlight(s)
   e) Flood light(s)
   f) Security lighting
   g) Architectural lighting
   h) Lighting for parks, parking lots, roadways
   i) Athletic facility lighting
   j) Building overhang and open canopy lighting
   k) Product display area lighting
   l) Landscape lighting
   m) Mobile vendor lighting
   n) Other lighting not in direct conflict with this section.
2. The following are not regulated by this section:
   a) Lighting within public right-of-way or easement for the principal purpose of illuminating streets or roads. No exemption shall apply to any lighting within the public right-of-way or easement when the purpose of the luminaire is to illuminate areas outside the public right-of-way or easement.
   b) Repairs to existing luminaires.

c) Temporary lighting for theatrical, television, performance areas and construction sites.

d) Underwater lighting in swimming pools and water features.

e) Temporary lighting and seasonal lighting provided that individual lamps are less than ten watts and 70 lumens.

f) Sign lighting (regulated by **Sec. 38-10. Signs**).

g) Open gas flames.

h) Emergency outdoor lighting.

i) The residential use of individual solar landscaping luminaires not exceeding property boundaries.

j) Construction lighting that does not exceed construction site boundaries.

3. The provisions of this section shall be considered to be the minimum requirements to meet the purpose expressed in **Sec. 38-9.A** of this section; however, nothing herein shall prohibit the Building Official from imposing greater requirements to ensure the promotion of health, safety, and welfare of the citizens of the City.
4. All outdoor lighting shall be installed in conformance with the provisions of this section, applicable electrical, building, and energy codes, applicable sections of the Las Cruces Municipal Code and manufacturer's instructions.

C. Conflict

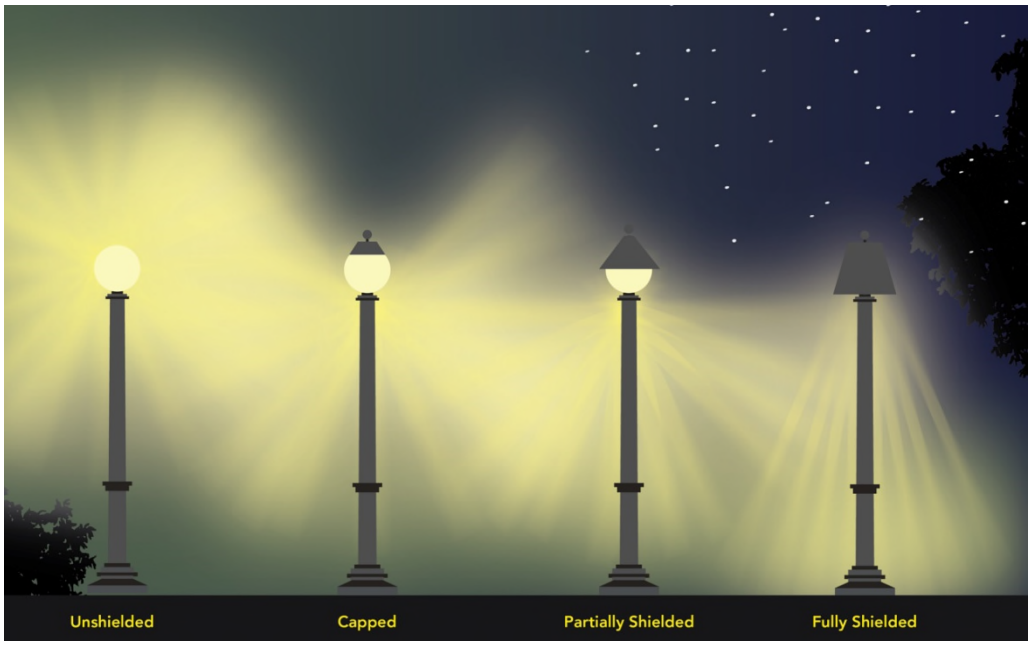
When the requirements herein conflict with specific lighting provisions of any of the following, only those specific provisions shall take precedence and all other requirements herein shall remain in force:

1. Lighting specified or identified in a special lighting permit.
2. Lighting required by federal or state laws or regulations.
3. When proposed, the conflicting regulation shall be submitted at the time of permit submittal.

D. General Requirements

All outdoor luminaries not specifically exempted above shall be fully shielded. Fully shielded fixtures encase the light source to prevent any light from escaping upwards or sideways. Only light directed downwards is allowed, ensuring that the illumination is limited to the target area.

Figure 38-9-1. Illustration of Fully Shielded Lighting



E. Lighting Zones

1. Lighting zones are established to align with adopted zoning districts, as shown in **Figure 38-9-2**. The lighting zone shall determine the limitations for commercial lighting as specified in this section. The lighting zones shall be as follows:

   a) Lighting zone 0 (LZ-0). Areas where the natural environment will be seriously and adversely affected by lighting. Impacts include disturbing the biological cycles of flora and fauna and/or detracting from human enjoyment and appreciation of the natural environment. Human activity is subordinate in importance to nature. The vision of human residents and users is adapted to the total darkness, and they expect to see little or no lighting. When not needed, lighting should be extinguished.

   b) Lighting zone 1 (LZ-1). Rural residential and other developed areas containing national parks, state parks, and city parks.

   c) Lighting zone 2 (LZ-2). Areas predominately consisting of residential zoning, neighborhood business districts, light industrial with limited nighttime use and residential mixed-use areas.

   d) Lighting zone 3 (LZ-3). All areas not included in zones 0, 1, 2, or 4.

   e) Lighting zone 4 (LZ-4). High-activity commercial districts in major metropolitan areas as designated by the Community Development Director.

2. All lighting in Lighting Zone 0 (LZ-0) and Lighting Zone 1 (LZ-1) shall use warm-colored lights that are 3000 Kelvin degrees or less to reduce the impact of outdoor lighting on wildlife and humans.

Figure 38-9-2. Lighting Zones

Zoning District	Lighting Zone
Zoning Districts	
NH-1, Neighborhood 1 District (Rural, Suburban, Urban)	LZ-1
NH-2, Neighborhood 2 District (Rural, Suburban, Urban)	LZ-2
NH-3, Neighborhood 3 District (Rural, Suburban, Urban)	LZ-2
CR, Commercial/Retail District (Rural, Suburban, Urban)	LZ-3
LI, Light Industrial District (Rural, Suburban, Urban)	LZ-3
HI, Heavy Industrial District (Rural, Suburban, Urban)	LZ-3
OS-1, Open Space-Preserve and Recreational District (Rural, Suburban, Urban)	LZ-0
OS-2, Open Space-Drainage District (Rural, Suburban, Urban)	LZ-1
Overlay Zoning Districts	
TCO, Town Center Overlay District	LZ-3
MXCO, Mixed Use Corridor Overlay District	LZ-3
AOD, Las Cruces International Airport Operations Overlay District	LZ-4
Special Zoning Districts	
UD, University District Overlay District	LZ-3
DDC, Downtown Development Code	LZ-3

HP, Historic Preservation	LZ-2
Planned Unit Developments (PUDs)	Determined by PUD

F. Residential Lighting

1. Applicability

   The requirements herein apply to residential properties with one to four units per lot.

2. Exceptions

   a) Shielded directional luminaires not exceeding 1,800 luminaire lumens; provided such luminaires shall be shielded to prevent glare and light trespass beyond the property boundary, aimed away from adjacent properties, and the center beam of each lamp shall be aimed at least 65 degrees below horizontal.

   b) Any other unshielded luminaire not exceeding 450 luminaire lumens.

   c) Security lights if they comply with all of the following:

      i) One or two flood lamps or spot lamps of less than 1,800 lumens each per luminaire.

      ii) The center of the beam of each lamp aimed at least 65 degrees below horizontal and away from adjacent properties when the source is visible from any adjacent property.

      iii) Are controlled by a motion-sensor switch.

      iv) Do not remain on longer than 15 minutes after activation.

G. All Other Lighting

1. Applicability

   The requirements herein apply to all properties except residential properties with one to four units per lot.

2. Total Initial Lumens Per Property

   a) The total installed initial lamp lumens of all outdoor lighting systems on the property shall not exceed the total site lumen limit. The total property lumen limit shall be determined using either the parking space method (**Figure 38-9-3**) or the hardscape area method (**Figure 38-9-4**). Only one method shall be used per permit application, and for properties with existing lighting, existing lighting shall be included in the calculation of total installed lumens.

   b) The total installed initial lamp lumens is calculated as the sum of the initial lamp lumens for all luminaires tested with relative photometry and 140 percent of initial lamp lumens for all luminaires tested with absolute photometry.

Figure 38-9-3. Allowed Total Initial Lumens per Property for Commercial Outdoor Lighting, per Parking Space Method

Note: May only be applied to properties up to ten parking spaces (including handicapped accessible spaces).

LZ-0	LZ-1	LZ-2	LZ-3	LZ-4
500 lms/space	700 lms/space	900 lms/space	1,200 lms/space	1,500 lms/space

3. Limits to Off-Site Impacts

   All luminaires, unless noted otherwise, shall be rated and installed according to **Figure 38-9-5**.

4. Adjustable Mounting Devices Prohibited

   Luminaires equipped with adjustable mounting devices permitting alteration of luminaire aiming in the field shall not be permitted, except as needed to conform with **Sec. 38-9.G.8** and **Sec. 38-9.H**.

5. Automatic Daylight Switching Requirements

   a) Controls shall be provided that automatically extinguish all outdoor lighting when sufficient daylight is available using a control device or system such as a photoelectric switch, astronomic time switch or equivalent functions from a programmable lighting controller, building automation system or lighting energy management system. All time switches, programmable lighting controller, building automation system or lighting energy management system shall be capable of retaining programming and the time setting during loss of power for a period of at least ten hours.

   b) Automatic lighting controls are not required for the following:

      i) Lighting under parking canopies.

      ii) Lighting for tunnels, parking garages, garage entrances, and similar conditions.

      iii) Approved emergency outdoor lighting.

Figure 38-9-4. Allowed Total Initial Lumens per Property for Commercial Outdoor Lighting, Hardscape Area Method

Note: May be used for any project. When lighting intersections of property drives and public streets or road, a total of 600 square feet for each intersection may be added to the actual property hardscape area to provide for intersection lighting.

LZ-0	LZ-1	LZ-2	LZ-3	LZ-4
1.5 lumens per sqft of hardscape	2.5 lumens per sqft of hardscape	4.0 lumens per sqft of hardscape	8.0 lumens per sqft of hardscape	12.0 lumens per sqft of hardscape

Figure 38-9-5. Maximum Allowable Backlight, Uplight, and Glare (BUG) Ratings

Note: A luminaire may be used if it is rated for the lighting zone of the property or lower in number for all ratings B, U and G. Luminaires must be installed according to its manufacturer's specifications. A luminaire certified as a full cutoff luminaire shall be deemed as meeting the uplight requirement.

	Zones				
Allowed Backlight Rating	LZ-0	LZ-1	LZ-2	LZ-3	LZ-4
Greater than 2 mounting heights from property line	B1	B3	B4	B5	B5
1 to 2 mounting heights from property line and properly oriented [1]	B1	B2	B3	B4	B4
0.5 to 1 mounting heights from property line and properly oriented [1]	B0	B1	B2	B3	B3
Less than 0.5 mounting height to property line adjacent to a street and properly oriented [3]	B0	B0	B1	B2	B3
Less than 0.5 mounting height to property line and properly oriented [1]	B0	B0	B0	B1	B2
Allowed Uplight Rating	U0	U0	U1	U2	U3
Allowed % light emission above 90° for street or area lighting.	0%	0%	0%	0%	0%
Allowed Glare Rating [2]	G0	G1	G2	G3	G4

Building Mounted Luminaires only [3] Greater than 2 mounting heights to any property line	G0	G1	G2	G3	G4
Building Mounted Luminaires only [3] 1 to 2 mounting heights to any property line	G0	G0	G1	G1	G2
Building Mounted Luminaires only [3] 0.5 to 1 mounting heights of any property line	G0	G0	G0	G1	G1
Building Mounted Luminaires only [3] Less than 0.5 mounting heights of any property line	G0	G0	G0	G0	G1

[1] The luminaire must be mounted with backlight (without shields) towards the property line.

[2] For property lines that abut public walkways, bikeways, plazas, and parking lots, the property line may be considered to be five feet beyond the actual property line for purpose of determining compliance with this section. For property lines that abut public roadways and public transit corridors, the property line may be considered to be the centerline of the public roadway or public transit corridor for the purpose of determining compliance with this section. NOTE: This adjustment is relative to this figure only and shall not be used to increase the lighting area of the site.

[3] Building-mounted luminaires that cannot be mounted with their backlight (without shields) to the property line shall meet the allowed glare rating for all luminaires. Light from a building-mounted luminaire must not exceed the B rating in the direction of the property line.

6. Automatic Lighting Reduction Requirements
   a) Total outdoor lighting lumens shall be reduced (by at least 30 percent) or extinguished at 11:00 p.m. or 30 minutes after the close of business, whichever is later.
   b) Lighting reductions are not required for any of the following:
      i) Approved emergency outdoor lighting;
      ii) Code required lighting for steps, stairs, walkways, and building entrances;
      iii) When, in the opinion of the Building Official, lighting levels must be maintained;
      iv) Motion-activated lighting;
      v) Lighting governed by a Special Use Permit in which times of operation are specifically identified; or
      vi) Businesses that operate on a 24-hour basis.
7. Emergency Outdoor Lighting
   a) The lumens allowed for approved emergency outdoor lighting shall be allowed in addition to the total property lumen limit for that property.
   b) Approved emergency outdoor lighting shall not be subject to the limits to off-site impacts for that property.
   c) Approved emergency outdoor lighting shall not be subject to the automatic lighting reduction requirements. Approved emergency outdoor lighting shall not be subject to the automatic switching requirements.
8. Architectural Illumination
   a) A separate allowance of lumens for architectural lighting will be allowed in the amount of ten percent of the calculated installed property lumens.
   b) Luminaires that are not mounted on the building shall be within 12 inches of the ground and 10 feet of the building.
   c) The luminaires used for architectural lighting shall be designed, fitted and aimed to shield the lamp and its reflective surfaces from off-site view and to place the light output onto and not beyond the building.

H. Flag Lighting

1. Flag lighting sources shall not exceed 7,000 lumens per flagpole.
2. The light source shall have a beam spread no greater than necessary to illuminate the flag and shall be shielded so the light source (lamp and reflector) is not visible at normal viewing angles.

I. Alternate Materials and Methods of Construction, Installation, and Operation

The provisions of this code are not intended to prevent the use of any design, materials, or method of installation or operation not specifically prescribed by this section, provided any such alternate has been approved. The Community Development Director may approve any such proposed alternate provided they find that it:

1. Provides at least approximate equivalence to the applicable specific requirements of this Code; and
2. Is otherwise satisfactory or complies with the intent of this Code; and
3. Has been designed or approved by a registered design professional and is supported by calculations showing that the design submitted meets the intent of the Code. This section shall not have the effect of waiving any requirements of this Code.

J. Special Lighting Permit

1. High intensity and special purpose lighting. The following lighting systems are prohibited from being installed or used except by special lighting permit:
   a) Temporary lighting in which any single luminaire exceeds 20,000 lumens or the total lighting load exceeds 160,000 lumens.
   b) Aerial lasers.
   c) Searchlights.
   d) Other very intense lighting defined as having a light source exceeding 20,000 lumens or an intensity in any direction of more than 2,000,000 candelas.
2. Complex and nonconforming uses. Upon special lighting permit issued by the Building Official, lighting not complying with the technical requirements of this section but consistent with its intent may be installed for complex sites or uses or special uses including but not limited to the following applications:
   a) Sports facilities, including but not limited to unconditioned rinks, open courts, fields, and stadiums;
   b) Construction lighting greater than 20,000 lumens or exceeds project boundaries;
   c) Lighting for industrial sites having special requirements, such as petrochemical manufacturing or storage, shipping piers, etc.;
   d) Parking structures;
   e) Urban parks;
   f) (Decorative and architectural lighting of bridges, public monuments, and public buildings;
   g) Theme and amusement parks;
   h) Historic buildings; or
   i) Projected images and movies, including drive-in theaters.
3. To obtain such a permit, applicants shall demonstrate that the proposed lighting installation:
   a) Has sustained every reasonable effort to mitigate the effects of light on the environment and surrounding properties, supported by a signed statement describing the mitigation measures. Such statement shall be accompanied by the information required for a commercial plan submittal.

b) Employs lighting controls to reduce lighting at a project specific curfew ("curfew") time that will be established in the permit.

4. The Community Development Director shall review each such application. A special lighting permit may be granted if, upon review, the Community Development Director believes that the proposed lighting will not create unwarranted glare, sky glow, or light trespass.

K. Plan Submittals

1. Plan submittals for projects involving outdoor lighting shall contain all the information required by the City of Las Cruces Building Code (Chapter 30, Las Cruces Municipal Code).
2. In addition, evidence of compliance with the requirements of this section shall be provided by including an outdoor lighting site plan (labeled as sheet OLP in the submitted plan set) consisting of the following:
   a) A note indicating which method for determining total site lumens is being used and show the calculations.
   b) Locations of all proposed outdoor luminaires (including site, parking lot, parking canopies, walkways/sidewalks, building-mounted, under-canopies, architectural, landscape, flagpole, external signage lighting, etc.). This includes all normal and emergency outdoor lighting. Lumens shall be listed for all new luminaires; BUG ratings shall be provided for all existing luminaires.
   c) A fixture schedule that includes all luminaires shown on the plan(s). The schedule shall include, at a minimum: Fixture type/mark; manufacturer; catalog/part number; lamp quantity per luminaire; lamp type; lamp initial lumens for all new luminaires and BUG rating for each existing luminaire; mounting height of the luminaire above finished grade, description/comments; and maximum BUG rating for the location.
   d) City ordinance requires most sites to reduce the outdoor illumination by a minimum of at least 30 percent or extinguished at 11:00 p.m. or 30 minutes after the close of business. The lighting plans shall therefore be prepared in a fashion that clearly identifies which fixtures are to remain on all night for security lighting purposes. This identification can be accomplished via fixture shading, keynotes, or the creation of a separate after-hours lighting/photometric plan designated OLS in the plan set.
   e) A note shall be placed on the lighting plan which identifies the time(s) at which the site will enter security-lighting-only mode, and a general description of the device(s) that will automatically be controlling the lighting.
   f) A pole detail for each type of pole light shall be included in the submittal. This detail shall include, at a minimum: Mounting height of the luminaire(s) as measured from the fixture lens to the finished grade of the parking lot, the fixture type of the luminaires mounted on the pole.
   g) A complete date for the current plan, and complete dates for all prior versions of the plans that were submitted to the City.
   h) A contact name and phone number for the preparer of the lighting submittal.
   i) All components shall be on one sheet. Failure to comply will result in plans being returned and not reviewed.
3. Additional information may be required by the Building Official or the Community Development Department in order to determine compliance with this section.
4. A description of luminaires, sufficient to demonstrate compliance with this section, including lamps, poles or other supports and shielding devices, provided as catalogue illustrations from the manufacturer, and photometric data, such as that furnished by the manufacturer, showing the downward angle of light emission shall be available on the jobsite with the approved set of plans.

L. Legal Nonconforming Lighting

1. Lighting installed prior to the effective date of this section shall comply with the following:

a) Any new luminaire or new outdoor lighting shall meet the requirements of this section for new outdoor lighting.

b) A legally installed luminaire existing as of the date of this section is exempt from the provisions of this section except that any replacement lighting must comply with the provisions of this section for new outdoor lighting.

c) For the purposes of this section, a legally installed luminaire means a fixture that was permitted and installed in accordance with the adopted codes and regulations applicable at the time of installation but must be included in plan submittal for new lighting proposed to be installed.

2. Resumption of use after abandonment. If a property with nonconforming lighting is abandoned or remains vacant for a period of 12 months or more, then all outdoor lighting on the property shall be brought into compliance with the provisions of this section for new outdoor lighting before any further use of the property occurs or before a certificate of completion, certificate of occupancy, or business registration is issued.

3. Repairs, Alterations, Change of Occupancy, Additions, Historic Buildings, and Relocated Buildings

a) Repairs

Relamping or replacement of components of a legally installed luminaire existing as of the date of this section (including capacitor, ballast or photocell) shall be exempt from the provisions of this section. Any other reconstruction or renewal of any part of a legally installed luminaire existing as of the date of this section for the purpose of its ongoing operation is not considered a repair and for the purposes of this section the luminaire shall be treated as if new outdoor lighting. Note that retrofitting a luminaire with new lamp technology or ballast technology is not considered a repair and for the purposes of this section the luminaire shall be treated as if new outdoor lighting.

b) Minor Modifications, Additions, or New Lighting Fixtures for Nonresidential and Multi-Family Dwellings

For non-residential and multi-family dwellings, all additions, modifications, or replacement of one fixture within a six-month period or more than 25 percent of outdoor lighting fixtures existing as of the effective date of this Code shall require the submission of a complete inventory and site plan detailing all existing and any proposed new outdoor lighting.

c) Change of Occupancy

Where the use in a space changes from one group of occupancies to another group of occupancies or changes from one division to another division in the same occupancy group (as defined in the International Building Code as adopted by the City of Las Cruces), all outdoor lighting on the property shall be brought into compliance with the provisions of this section for new outdoor lighting before the change in use commences or before a certificate of completion, certificate of occupancy, or business registration is issued.

d) Additions

Where there is an extension or increase in floor area of 25% or greater, additional dwelling units, number of stories, height of a building or structure, or parking spaces all outdoor lighting on the property shall be brought into compliance with the provisions of this section for new outdoor lighting before a certificate of completion, certificate of occupancy, or business registration is issued.

e) Historic Buildings

Where a historic building (as defined in this section) is unable to comply with the provisions of this section a special use permit shall be obtained before a certificate of completion, certificate of occupancy, or business registration is issued.

f) Relocated Buildings

Where a building is relocated all outdoor lighting on the property where the building is relocated to shall be brought into compliance with the provisions of this section for new outdoor lighting before a certificate of completion, certificate of occupancy, or business registration is issued.

4. Nuisance Lighting

   If a light is deemed to be a hazard to vehicular or pedestrian traffic, an immediate remediation shall be required.

5. Multiple-Tenant Commercial Properties

   a) Outdoor lighting associated directly with a specific tenant shall be treated as single-tenant commercial property.

   b) All outdoor lighting not specifically and directly associated with a single tenant shall be brought into compliance with the provisions of this section for new outdoor lighting within two years of the effective date of this section.

Sec. 38-10.Signs

A. Purpose

1. The purpose of this section is to permit signs that will not, by their size, location, or construction, endanger the public health and safety of individuals.
2. Furthermore, it is the purpose of this section to maintain property values and to create a more aesthetically pleasing community, through the preservation of the natural beauty and environment of the City.
3. This section regulates the time, place, and manner of display of signs. It is not the purpose of this section to regulate the specific content of any sign.

B. Applicability

1. This section shall apply to all new or expanded signs within the City limits.
2. The following are not included within the scope of these regulations:
   a) Signs posted by the City or other governmental entity;
   b) Banners legally attached to City or other public utility poles;
   c) Signs four square feet or smaller for display in an NH zoning district for less than one week;
   d) Signs placed on the lot of a for-sale model home;
   e) Signs placed inside of vehicles that are currently available for sale;
   f) Signs placed inside the field fence of an athletic field or stadium;
   g) Seasonal decorations; and
   h) Signs ancillary to business operations smaller than 6 square feet. Examples of such types typically include hours of operation, open/closed signs, service entrance signs, or menu displays.
3. Signage for Planned Unit Developments (PUDs)
   a) PUDs shall follow the regulations of this **Sec. 38-10. Signs** as applicable to the PUD base district (or primary use as determined by the Community Development Director).
   b) Applicants who wish to propose alternative signage shall submit a sign plan detailing the proposed signage location, dimensions, materials, lighting, and other features. Such a plan shall be reviewed and approved in conjunction with the PUD application.
4. All signs shall conform to the structural design requirements set forth in the International Building Code and companion documents.

C. Sign Permit Required

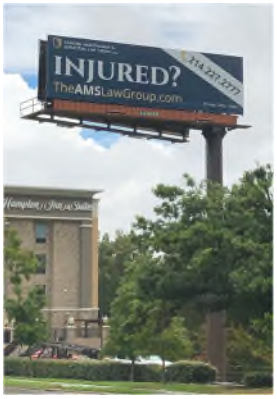
1. A sign permit is required for all new or expanded signs, unless otherwise stated.
   a) Exceptions. A sign permit is not required for the following:
      i) Normal maintenance, painting, repainting, or cleaning of a sign with no structural changes; or
      ii) Replacement of a sign face that does not increase the area of the sign face or add any additional illumination.
2. Each application for a sign permit shall be accompanied by plans and other pertinent information as necessary to clearly depict the site location, height, weight, size, material, method of erection, and construction of said sign.

D. Prohibited Signs

1. Any sign not expressly permitted within this **Sec. 38-10. Signs** is prohibited.
2. The following sign types are specifically prohibited:
   a) Billboards
   b) Inflatable or balloon signs
   c) Portable signs (other than a Sidewalk Sign)
   d) Signs with parts that move or spin to attract attention (other than an Electronic Reader Board)
   e) Snipe or bandit signs
   f) Streamers and pennants
   g) Vehicular signs
3. Any sign erected on, attached to, or painted on retaining walls, fences, rocks, or natural features is prohibited. This prohibition shall not include signs located at the entryway to a subdivision or signs located at athletic fields.
4. Any sign illegally placed, constructed, or maintained is prohibited.

Figure 38-10-1. Examples of Prohibited Signs

Billboard



Portable Sign

Snipe or Bandit Signs

Inflatable or Balloon Sign

Vehicular Sign

Moving Sign

Streamer or Pennant

E. Method of Sign Measurements

1. Setbacks

   Setbacks shall be measured in linear feet from property lines to the leading edge of the sign.

2. Sign Area

   a) Sign Area shall be calculated in square feet, and by means of the smallest square, circle, rectangle, or combination thereof that will encompass the sign face and any framing, trim, or molding, and the supporting structure (see **Figure 38-10-2**).

   b) All attachments to signs or sign structures (whether temporary or permanent) shall be included as part of the total sign area for the sign to which they are attached.

   c) The area of signs with more than one face 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 sides are back-to-back or separated by an angle of 45 degrees or less. If the two sides are not of equal size, the larger side shall be measured.

   d) For three-dimensional objects, the sign area is the sum of the two adjacent faces of a cube encompassing the object (see **Figure 38-10-3**).

Figure 38-10-2. Sign Area Calculation

3. Sign Height

   Sign height shall be measured in linear feet. The overall height of a sign structure is measured from the lowest elevation of the ground abutting the base of the sign to the highest point of the sign structure (see **Figure 38-10-4**).

Figure 38-10-3. 3D Object Area Calculation

Figure 38-10-4. Sign Height Calculation

F. Placement

1. No sign shall be permitted to violate the clear sight triangle as referenced in **Sec. 5-3.G. Clear Sight Triangle**.
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 shall 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 obstructs or interferes with the clear view of any traveler on any street.
4. Signs may only be placed in (e.g., bench signs, waste receptacle signs) or extend onto or over a public right-of-way or sidewalk when a specific exception is provided by the City Manager.
5. Any sign extending over an area intended for pedestrian use shall not be less than eight feet above the finished grade below it.
6. Any freestanding sign over 20 feet in height above grade or any sign extending above the public right-of-way shall require the seal of a Professional Engineer, indicating that the sign meets all best engineering practices and standards.
7. 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 Community Development Director. The City shall not be liable for any damages to the owner because of such revocation.
8. No sign shall be placed or constructed on a property without permission from the property owner.

G. Sign Types and Supplemental Standards

Attached Signs

1. Awning or Canopy Sign

Description

A sign that is fastened to or painted on an awning or canopy.

Supplemental Standards

No Awning or Canopy Sign shall project into the right-of-way except when a building has a setback of less than five feet.

2. Projecting Sign

Description

A sign attached to a wall that projects from the building face for view from either side.

Supplemental Standards

A Projecting Sign may exceed the building height by up to 36 inches; however, no sign shall exceed the maximum building height of the zoning district.

Any sign projecting over the right-of-way shall not project more than eight feet into the right-of-way and shall meet the minimum clearance established in **Sec. 38-10.F.5** above. As noted in **Sec. 38-10.F.6**, signs projecting over the right-of-way require the seal of a professional engineer.

3. Roof-Mounted Sign

Description

Any sign that is attached to the roof of a building or structure.

Supplemental Standards

Signs shall be more than 24 inches in height; however, no sign shall exceed the maximum height of the zoning district.

4. Wall Sign

Description

Any sign affixed flush with or painted onto the wall of any building. This description does not include other instances of painted applications, such as murals, that have been recommended by the City Art Board.

Supplemental Standards

No Wall Sign may extend more than 12 inches in depth out from the wall to which it is attached. No Wall Sign may be extended above the roofline.

5. Window Sign

Description

Any sign displayed in or painted onto a window. This description does not include Ancillary Signs as described in **B.2.h)**.

Supplemental Standards

Permanent window signs may be substituted for wall signage with a corresponding reduction of wall signage.

A window sign does not include merchandise or models of products or services incorporated in a window display.

Freestanding Signs

6. Menu Board Sign

Description

A sign located in the drive-through of a restaurant leading up to the drive-up window.

Supplemental Standards

The volume of the speaker shall not exceed ambient noise conditions as measured at the property line.

Any illumination must be discontinued at the close of business.

The design, materials, and finish of the sign shall match those of the building(s) on the same lot.

7. Monument Sign

Description

A Monument Sign is a freestanding sign constructed of masonry, metal, or similar weather-resistant materials with a concrete base that extends along the entire width of the sign.

Supplemental Standards

N/A

8. Pole Sign

Description

Any sign whose primary means of support is one or more poles set into a concrete footing, located at or below ground level.

Supplemental Standards

N/A

9. Sidewalk Sign

Description

A Sidewalk Sign is a moveable, self-supporting sign with a lightweight frame and base and an erasable or changeable surface. Sidewalk Signs are pedestrian-oriented and not intended to be read from passing vehicles.

Supplemental Standards

Sidewalk Signs may be placed on a public sidewalk if it does not reduce the clear area of the sidewalk to less than five feet.

One Sidewalk Sign is permitted per business. The sign shall only be placed outside during business hours.

Temporary Signs

10. Feather Sign

Description

A Feather Sign is a tall, narrow flag that flutters in the wind, commonly used to attract attention to events or businesses. Feather Signs are considered temporary signs.

Supplemental Standards

Feather Signs must be set back at least 15 feet from a front property line.

Feather Signs shall not be placed in an easement or Clear Sight Triangle.

Feather Signs must be removed daily.

11. Political Sign

Description

A Political Sign is a temporary sign announcing or supporting political candidates or issues in connection with any national, state, or local election.

Supplemental Standards

No individual political sign shall exceed 32 square feet in sign area.

All political signs may be erected no sooner than 90 days before the election and/or caucus to which they pertain and shall be removed within ten days following the same election and/or caucus.

Advertising on a duly permitted billboard shall be exempt from the size and time limits stated in this section.

Political signs are permitted to be placed on fences/walls (e.g., chain link fences, retaining walls, rock walls), but are not permitted to be placed in clear sight triangles or in a manner that would prevent clear sight of vehicles (see **Sec. 38-2.H. Clear Sight Triangle**).

12. Temporary Ground Sign

Description

A Temporary Ground Sign is a small sign intended for short-term display. Examples of temporary ground signs typically include but are not limited to real estate signs, political signs, or construction signs.

Supplemental Standards

Each property is allowed one temporary ground sign per road frontage for up to six months per every 12-month period. The Community Development Director may allow an additional six-month extension if the property is actively listed for sale or at least one building on the site is actively listed for lease.

No permit is required for temporary ground signs.

All temporary ground signs must have a solid, durable backing that resists folding or twisting, and be anchored or fastened to the ground. The property or sign owner must replace any sign that becomes damaged or faded, or reflects more than three degrees off-center.

Temporary Ground Signs are allowed within the required setbacks; however, they are prohibited in the right-of-way.

Temporary Ground Signs shall not exceed 8 square feet for property zoned NH-1 or NH-2, or 24 square feet for all other districts.

In addition, up to four temporary ground signs may be displayed on an indefinite basis if placed within 10 feet of the primary structure within the NH-1, NH-2, or NH-3 districts.

13. Temporary Special Event Banner

Description

Temporary Special Event Banners are temporary banners displayed across a public roadway in support of a special event.

Supplemental Standards

A Sign Permit shall be obtained, indicating the dates of display, number of banners to be displayed, location(s) of display, etc., and must be approved by the Community Development Director. All Temporary Special Event Banners shall be installed and removed either by the City or the entity requesting the display.

If installed and removed by the City, permit fees shall be based on the number of banners to be installed/removed at a rate approved by the City Council (Resolution No. 23-074). Permit fees shall be paid by the applicant upon permit approval and in advance of sign installation.

If installed and removed by the entity requesting the display the City requires a minimum of $1,000,000 insurance, with the City being named as an additional insured party and the entity must provide a hold harmless indemnity agreement, not holding the City responsible for any accidents or loss in the installation/removal of the banners.

Temporary Special Event Banners shall be restricted to placement on City-owned utility/light poles only.

Temporary Special Event Banners shall only be displayed along City-approved roadways.

Temporary Special Event Banners shall be permitted to be displayed 1.5 times the length of the event being advertised, with a maximum of 21 days.

14. Temporary Wall Banner Sign

Description

A Temporary Wall Banner Sign is a lightweight, flexible banner affixed to the side of a building intended for short-term display. Examples of Temporary Wall Banner Signs typically include but are not limited to grand opening or special sale signs.

Supplemental Standards

Each nonresidential building or tenant with a valid Certificate of Occupancy is allowed to display a Temporary Wall Banner Sign for a period of no more than 30 days within a 12-month period.

Banners must be securely affixed to the wall and shall be immediately replaced or removed if the banner becomes damaged or worn.

Temporary Wall Banner Signs shall not exceed 24 square feet or 15 percent of the building/tenant facade, whichever is greater.

H. Permitted Locations and Dimensional Standards

1. Permitted Locations

   Signs types are permitted by zoning district, as indicated in **Figure 38-10-5**.

2. Combined Maximum Area

   The maximum size is determined by the combined area of all attached signs and all freestanding signs. The maximum size for each grouping is indicated in **Figure 38-10-5**.

   a) For attached signs, the building on which the sign shall be placed is used to calculate the square footage of the sign. The exterior is considered the entire perimeter of the building.

   b) For freestanding signs, 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. Where a lot is accessed by an internal drive (e.g., outlots), frontage is calculated based on the largest single frontage along the drive.

   c) For buildings with frontage on more than one street, the sign area is calculated by the frontage on each street. Each frontage side is calculated separately; the signs must be displayed on the same frontage that is measured.

Figure 38-10-5. Permitted Sign Locations and Standards

Zoning Districts											
	NH-1, Neighborhood 1 District (Rural, Suburban, Urban)	NH-2, Neighborhood 2 District (Rural, Suburban, Urban)	NH-3, Neighborhood 3 District (Rural, Suburban, Urban)	CR, Commercial/Retail District (Rural, Suburban, Urban)	LI, Light Industrial District (Rural, Suburban, Urban)	HI, Heavy Industrial District (Rural, Suburban, Urban)	OS-1, Open Space-Preserve and Recreational District (Rural, Suburban, Urban)	OS-2, Open Space-Drainage District (Rural, Suburban, Urban)	MXCO, Mixed Use Corridor Overlay District	TCO, Town Center Overlay District	NCO, Neighborhood Center Overlay District
Attached Signs	Max. Combined Area of Attached Signs										
	1 linear foot of exterior wall = 1 sqft			1 linear foot of exterior wall = 1.5 sqft					1 linear foot of exterior wall = 1.25 sqft		1 linear foot of exterior wall = 1 sqft
Awning or Canopy Sign		X	X	X	X	X			X	X	X
Projecting Sign		X	X	X	X	X			X	X	X
Roof-Mounted Sign				X	X	X					
Wall Sign	X	X	X	X	X	X	X		X	X	X
Window Sign	X	X	X	X	X	X	X		X	X	X
Freestanding Signs	Max. Combined Area of Freestanding Signs										
	0-100' frontage = 50 sqft 101-300' frontage = 75 sqft 301'+ frontage = 100 sqft			0-100' frontage = 100 sqft 101-300' frontage = 150 sqft 301'+ frontage = 200 sqft					0-100' frontage = 75 sqft 101-300' frontage = 125 sqft 301'+ frontage = 150 sqft		0-100' frontage = 50 sqft 101-300' frontage = 75 sqft 301'+ frontage = 100 sqft
Menu Board Sign				X	X	X			X	X	
Monument Sign	X	X	X	X	X	X	X	X	X	X	X
Pole Sign				X	X	X					
Sidewalk Sign	X	X	X	X			X		X	X	X
Temporary Signs	See individual sign types for dimensions										
Feather Sign	X	X	X	X	X	X	X	X	X	X	X

Political Sign	X	X	X	X	X	X	X	X	X	X	X
Temporary Ground Sign	X	X	X	X	X	X	X	X	X	X	X
Temporary Special Event Banner	X	X	X	X	X	X	X	X	X	X	
Temporary Wall Banner Sign	X	X	X	X	X	X	X		X	X	

3. Maximum Number of Freestanding Signs

   Each lot or parcel shall be limited to one freestanding sign.

4. Maximum Height

   The maximum height for freestanding signs is determined by zoning district and street class, as indicated in **Figure 38-10-6**.

5. Minimum Setback

   The minimum setback for the placement of freestanding signs is determined by street class, indicated in **Figure 38-10-6**. Setbacks are measured from the property line.

Figure 38-10-6. Maximum Height and Minimum Setback for Freestanding Signs

Street Class	Maximum Height by Zone								Minimum Setback	
	NH-1, Neighborhood 1 District (Rural, Suburban, Urban)	NH-2, Neighborhood 2 District (Rural, Suburban, Urban)	NH-3, Neighborhood 3 District (Rural, Suburban, Urban)	CR, Commercial/Retail District (Rural, Suburban, Urban)	LI, Light Industrial District (Rural, Suburban, Urban)	HI, Heavy Industrial District (Rural, Suburban, Urban)	OS-1, Open Space-Preserve and Recreational District (Rural, Suburban, Urban)	OS-2, Open Space-Drainage District (Rural, Suburban, Urban)	Front Yard	Side Yard
Local Street	3’	3’	6’	6’	18’	30’	6’	6’	10’	5’
Collector Street	6’	6’	12’	18’	18’	30’	12’	12’	12’	5’
Minor Arterial	6’	6’	12’	18’	18’	30’	12’	12’	15’	5’
Principal Arterial	6’	12’	18’	30’	30’	30’	18’	18’	15’	5’

I. Sign Features and Lighting

1. Electronic Display Boards

   a) Electronic Display Boards are allowed in conjunction only with the following sign types, and must not exceed 75 percent of the sign face:

      i) Menu Board Sign

      ii) Monument Sign

      iii) Pole Sign

      iv) Wall Sign

   b) No scrolling, flashing, rotating, or animated displays are allowed.

   c) Displays shall remain static for at least 30-second periods. Transitions must occur within a one-second period.

   d) The display shall be configured to turn off or return to a static, default design if a malfunction occurs.

2. Changeable Copy Signs

   Changeable Copy Signs are allowed in conjunction only with the following sign types, and must not exceed 75 percent of the sign face:

   a) Awning or Canopy Sign

   b) Menu Board Sign

   c) Monument Sign

   d) Pole Sign

   e) Projecting Sign

   f) Wall Sign

Figure 38-10-7. Examples of Electronic Display Boards

Figure 38-10-8. Examples of Changeable Copy Signs

3. Sign Lighting

   a) Maximum Brightness

      i) Maximum brightness levels for internally illuminated signs shall not exceed 5,000 nits when measured from the sign's face at its maximum brightness, during daylight hours and 250 nits when measured from the sign's face at its maximum brightness at night.

      ii) Each internally illuminated sign must have a light sensing device that will automatically adjust the brightness of the display as the natural ambient light conditions change to comply with the limits set here within.

      iii) The luminance on the face of an externally illuminated sign shall not exceed 150 nits. Photometric evidence of the installed luminaires showing compliance with this section shall be provided to the city within ten business days of installation.

      iv) A sign's nighttime lighting shall count toward the maximum allowable lighting for the property (See **Sec. 38-9.G.1**).

   b) Shading and Shielding

      i) Internally illuminated signs must be constructed so that the top of the sign is constructed of metal or of suitable material that does not allow light penetration vertically, so as to ensure that light is not emitted directly towards the sky.

      ii) Externally illuminated signs shall have luminaires mounted at the top of the sign and aimed downward. The luminaires shall be designed, fitted and aimed to shield the lamp and its reflective surfaces from off-site view and to place the light output onto and not beyond the sign.

   c) Signs In and Near a NH-1 District or Rural Character Area

      i) Signs in a NH-1 District or Rural Character Area shall not be illuminated.

      ii) Signs that face a NH-1 District or Rural Character Area having a linear distance of 75 feet or less from that zone shall not be illuminated.

J. Common Signage Plan

1. Applicability

   A Common Signage Plan applies to two development scenarios:

   a) A multi-tenant center or one lot with multiple buildings, excluding accessory structures (required), and

   b) Multiple adjacent lots (optional).

2. Bonus Area

   Developments utilizing the Common Signage Plan shall receive a 15 percent increase in the maximum size area indicated in **Figure 38-10-5. Permitted Sign Locations and Standards** for freestanding signs.

3. Submittal Requirements

   A Common Signage Plan shall include the following information:

   a) The location of all buildings, parking areas, driveways, landscaped areas, and any other information as required by the City;

   b) Calculation of the maximum total sign area, the maximum height of signs, and the number of signs by type on each lot;

   c) An accurate indication on the plan of the proposed location of each present and future sign of any type; and

d) An accurate depiction of the sign structure and materials, specifying standards for consistency among all signs on the lot(s) affected by the plan with regard to color scheme, lettering or graphic style, lighting, location of each sign on the buildings, materials, and sign proportions.

4. Review and Approval Procedure

a) The Common Signage Plan shall be submitted in conjunction with any site plan or other development plan required by the City.

b) The Community Development Director shall be responsible for the review and approval of a Common Signage Plan.

c) After approval of a Common Signage Plan, no sign shall be erected, placed, painted, or maintained, except in compliance with such plan, and such plan may be enforced in the same way as any provision of the subsection.

K. Maintenance, Abandonment, and Removal

1. Maintenance and Safety

a) All signs shall be kept in good repair, both structurally and in appearance. All braces, bolts, clips, fastenings and the 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 Code Enforcement Officer determines that any sign becomes unsecured, unsafe or subject to fall, the Code Enforcement Officer shall give written notice of the sign's condition in accordance with **3. Repair or Removal of Noncompliant Signs**.

2. Abandoned Signs

a) All signs shall be fully removed when the business/operation on site is no longer conducted.

i) For signs with a changeable face (e.g., multi-tenant signs), a new blank face shall be inserted. Alternatively, the entire sign face may be painted and the original message must not show through the paint.

ii) For signs where a message is placed on a structure or object (e.g., an awning), only the message is required to be removed. The message must not be visible following removal.

3. Repair or Removal of Noncompliant Signs

a) Any written notice to repair or remove a sign in violation of this code will be sent via certified mail by the Code Enforcement Officer to the land owner and to the sign owner lessee, or person(s) responsible for the sign.

b) If such order is not acted on within seven days, the Code Enforcement Officer may initiate proceedings to remove the sign at the expense of the land owner, sign owner, lessee, or person(s) responsible for the sign.

c) Additional time may be granted by the Code Enforcement Officer if compliance is proceeding.

d) Only one written notice per violation will be issued. The notice shall remain in effect for the duration of the business's present ownership.

e) Upon final determination that the sign is unlawful (following any appeals as outlined in **Sec. 34-3.F. Appeals**), the City reserves the right to remove and dispose of the sign at the sign owner's expense.

f) No notice is required for the removal and disposal of signs illegally placed in the right-of-way or clear sight triangle (see **Sec. 38-2.H. Clear Sight Triangle**).

L. Nonconforming Signs

1. Nonconforming signs that were lawful at the time of their construction may be continued.

2. No person may increase the extent of nonconformity of a nonconforming sign. No nonconforming sign may be enlarged or altered in such a manner as to aggravate the nonconforming condition, nor may illumination be added to any nonconforming sign.
3. When any sign is substantially damaged (i.e., the cost of restoring the sign is at least 50 percent of the market value of the sign before it was 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 section.
4. Any change in the use of any building or property on which a nonconforming sign is located will require that all nonconforming signs on that property be brought into compliance with all applicable sections of this section.
    a) Exception: The message of a nonconforming sign may be changed so long as this does not create any new nonconforming issues.
5. A nonconforming sign shall not be moved or replaced except to bring the sign into conformity with this section.
    a) For the purpose of this subsection, the term "replaced" means the replacing of any or all parts of a sign that would extend the normal life span of the sign. An example is replacing wood pole supports with metal I-beam supports.
6. Any nonconforming sign shall be considered abandoned if the sign is blank for 90 days, and the land and sign owner(s) are responsible for its removal. For the 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;
    b) The advertising message it displays becomes illegible in whole or substantial part; or
    c) The advertising copy has been removed.

Sec. 38-11.Wireless Communication Facilities

A. Purpose

The purpose of this section is to establish supplementary regulations governing wireless communication facilities, including towers, co-located facilities, and antennas. These regulations promote the following goals:

1. Encourage the location of facilities to preserve the character of Las Cruces' neighborhoods and support viewshed protection;
2. Protect residential uses and land uses from potential adverse impacts of wireless communication facilities;
3. Prioritize co-location of wireless communication facilities over additional single-use towers;
4. Minimize the number of new towers;
5. Encourage the use of minimally visually intrusive technology to the maximum extent technically feasible;
6. Promote regulatory certainty; and
7. Allow telecommunications providers to provide services to the community quickly, effectively, and efficiently.

B. Applicability

1. This section applies to all towers and antennas located within the City's jurisdiction, except as expressly exempted below.
2. Exemptions
   a) Amateur (Ham) radio antennas, limited to the number and height necessary to engage in amateur communications;
   b) Microwave reflectors and parabolic antennas;
   c) Antennas and equipment located completely inside of buildings; and
   d) Minor modifications of existing wireless communications facilities and attached wireless communications facilities, whether emergency or routine, provided there is little or no change in the visual appearance.
      i) Minor modifications include the addition of antennas to conforming wireless towers and attached wireless communications facilities that comply with all applicable regulations of this section.
      ii) A building permit is required to authorize minor modifications as stated in **i)** above.

C. General Requirements

1. Federal Law

   The wireless communication facility regulations of this section must be applied within the constraints of the Telecommunications Act of 1996 and Section 6409 of the Middle-Class Tax Relief and Job Creation Act of 2012.
2. All structures shall be sited, designed, constructed, operated, inspected, maintained, repaired, modified, removed and replaced in compliance with the City's adopted Uniform Building Code, as amended.
3. Communication facilities may be considered a principal or accessory use. Another principal or accessory use on the same lot does not preclude installation of a tower on that lot.
4. Required Approvals

   Except in the LI, Light Industrial District (Rural, Suburban, Urban) and HI, Heavy Industrial District (Rural, Suburban, Urban), communication towers must be of a monopole design unless a Special Use Permit is approved (see **Sec. 36-5.C. Special Use Permits (SUPs)**) allowing an alternative design that is determined to better blend into the surrounding environment or that the required antennas cannot be supported by a monopole.

a) Applicable permits are required to authorize alteration of existing, or co-location of new communication facilities on existing structures that comply with the requirements of this Code.

5. Communication structures, towers, and antennas shall comply with the following requirements:

a) Business Registration

Business registrations are required for each communication structure for commercial purposes.

b) Setbacks and Separation

i) Communication structures shall be placed within the primary buildable area for the parcel's specific zoning district and must be to the side and/or rear of all residential dwellings (e.g., house, apartment, duplex, triplex, quadplex, townhouse, etc.).

ii) Freestanding facilities are prohibited in the following locations:

a. Within 50 feet of an existing right-of-way.

b. Within any setback established by the applicable zoning district.

iii) Communication structures must be set back a distance equal to at least 110 percent of the height of the structure from any adjacent lot containing or zoned to permit residential uses.

iv) This use is prohibited within 1,000 feet in any direction of any other freestanding wireless communication facility or structure, as measured from the wall or fence of each facility. This requirement does not apply to small wireless facilities within the public right-of-way.

v) Towers shall be set back one foot for each one foot in height plus 10 percent of the total height from any residential use or structure on any adjacent or the same parcel.

vi) Any increase in height or reduction of minimum spacing or setback requirements shall require approval of a Zoning Variance.

c) Lighting

Towers may not be illuminated by artificial means and may not display strobe lights unless such lighting is expressly required by the Federal Aviation Administration or other federal or state authorities. When incorporated into the approved design of the tower, light fixtures used to illuminate ballfields, parking lots, or similar areas may be attached to the tower.

d) Signage

The use of any portion of a tower for advertising or signs other than warning or equipment information signs is expressly prohibited.

e) Maximum Height

i) Single-carrier wireless communication facilities: 65 feet, or the maximum height permitted in the applicable zoning district.

ii) Co-locations on any existing unconcealed tower or existing structure: 75 feet, or the maximum height permitted within the applicable zoning district plus 10 feet.

f) Viewshed Protection

Only co-locations and stealth towers are permitted in the following locations:

i) Within 660 feet of an easement or public right-of-way identified as part of an existing or future trail system as established by the City’s adopted Active Transportation Plan.

ii) Within 660 feet of the centerline of a public street designated as a protected view corridor.

D. Co-Location

1. All commercial use communication structures shall be co-located or integrated within an existing structure unless evidence is presented demonstrating that such co-location or integration cannot and should not occur. Evidence may include, but is not limited to, that no other structure suitable for co-location exists:
   a) Within a one-mile radius to meet the applicant's engineering requirements or structural strength or space availability needs for all improvements;
   b) In which unavoidable electromagnetic interference would occur between the new and any existing communication structures;
   c) In which other factors render the use of existing structures unsuitable;
   d) In which urban design features and aesthetic views would be hampered, beyond the objectives desired with the creation of this requirement, of existing natural and man-made structures; and
   e) Whose owners of existing structures would not allow the placement of the applicant's structure or such owners are requiring payments thereof that substantially exceed commercially reasonable rates.
2. Such evidence shall be presented to the Community Development Department for review and approval by the Community Development Director. Such proof may be required as part of the Special Use Permit and/or building permit approval processes, and only then shall an independent, freestanding communication structure be allowed in accordance with other requirements of this Code. Where co-location is proposed on a City-owned facility, such evidence shall also be presented to the Director responsible for City facilities.
3. Co-location of structures shall be in accordance with the following provisions:
   a) If the receiving structure was previously granted a Special Use Permit for its use and placement, including necessary variances for height and setbacks, the original special use permit does not need to be amended provided all requirements of the original Special Use Permit and this section have been met.
   b) Additional buildings and additions to existing equipment and accessory structures for towers must comply with applicable architectural and urban design criteria for the subject property.
   c) An unlimited number of communication antennas may be placed on an existing tower and/or other communication structure, provided all other requirements are met, including building codes and urban design criteria.
   d) If not governed specifically by this section, the building or structure receiving a co-located communication facility must comply with all applicable zoning and building code provisions, if applicable, or other city ordinances and/or state laws related to their placement, use, and construction.
   e) All co-located communication facilities must be an integrated architectural design feature and painted or textured such a color as to blend in with their visual background.
   f) When roof mounts are used, at a minimum, the first five feet of the communication structure shall be screened from view on all sides using building design elements, such as varied roof heights and/or parapets.
   g) Wall mounts cannot project more than three feet from the surface of the building and the projection cannot violate any of the normally required building setbacks and/or screening buffer yards. Structures that are attached parallel to a pitched roof surface cannot project more than three feet above the surface of such roof.
      i) Exception*:* This does not apply to roof top mounted structures that vertically ascend upward from a flat roof or structures placed at the apex of pitched roofs.
   h) All wall-mounted communication structures must maintain a minimum clearance of eight feet above the nearest adjacent ground and/or walking surface.

i) There shall be no limit on the number of wall and roof mount structures, in any zoning district, provided the structure is compatible with and integrated to the architecture of the receiving structure and can be demonstrated in plans to be submitted to the Community Development Director for review and approval.

E. Stealth Towers

The use of stealth towers or design techniques is encouraged and intended to provide more options for the placement and use of communication structures while integrating or concealing the communication structure into an improvement.

1. Examples of communication structures integrated and/or concealed into public or private facilities using stealth towers include but are not limited to:
   a) Flagpoles,
   b) Spires, bell towers, and other architectural features added to buildings,
   c) Integrated communication structures on utility substations, buildings, and water tanks,
   d) Extensions of communication antennas to existing lighting poles at sports facilities, and
   e) Any other proposed communication structure that is integrated and/or concealed within a building or structure and is approved in accordance with the provisions of this section.

F. Urban Design Criteria

1. General Provisions
   a) Building architecture, not including the tower, shall be consistent with surrounding structures in both style and construction material.
   b) Access to all communication structures and associated buildings on the property shall be shown on the Site Plans as part of special use or building permit approval processes.
   c) No chain link fencing around any communication structures is allowed along arterial or collector streets.
   d) All utility buildings and structures accessory to a tower must comply with all applicable requirements of the underlying zoning district. Exterior ground mounted equipment occupying more than 50 square feet, if visible from ground level, must be screened from view of abutting property used or zoned for residential purposes by a screening wall or fence in accordance with the screening standards for mechanical and utility equipment in **Sec. 38-8.E.2**.
   e) Equipment buildings associated with communication structures shall follow an architectural style, construction materials, and colors similar to existing buildings within the neighborhood; building facades for tower accessory structures and the first 20 feet of towers shall be painted earth-tones or similar colors to existing structures within the neighborhood and constructed of similar building materials.
   f) Antennas or other radiating/receiving devices are not required to have architectural treatments or other design features, such as painting and texturing, applied as required within this Code, if such treatments would interfere with the operation of the device. Such treatments are required of the supporting structure, including towers, and not the radiating/receiving device.
2. Towers and Other Communication Structures in Residential Districts

   In addition to **1. General Provisions** above, communication structures located within residential districts are also subject to the following:

   a) All private communication structures on residentially zoned property shall either be painted or treated the same color as the primary structure or the surface to which the structure is attached. This includes painting or screening roof-mounted communication structures.

i) Screening and/or painting of roof-mounted structures is required on all sides the residential property in which a communication structure is to be or is placed.

3. Towers and Other Communication Structures in Commercial and Industrial Zoning Districts.

a) Additional Setbacks for Antennas, Communication Structures, and Satellite Service Devices:

i) Structures shall be set back at least one foot for each one foot in height from any residential dwelling structure on any adjacent parcel.

ii) Equipment and accessory structures shall conform to building and accessory structure maximum heights and minimum setbacks for the parcel's specific zoning district.

b) Additional Setbacks and Placement Restrictions for Towers:

i) Structures shall be placed within the primary buildable area for the parcel's specific zoning district and must be to the rear of the primary building structure. If there is no primary building, then the tower must be within the primary buildable area.

ii) A Special Use Permit may be granted to permit tower height greater than what is allowed. The Special Use Permit process shall also be used for any deviations related to setbacks and/or screening buffer yards.

G. Special Use Permit Review Criteria

1. The regulations within this subsection apply for all commercial communication structures that require the approval of a Special Use Permit.

2. Factors to be Considered

In addition to any other applicable requirements, the following factors must be considered in a decision to approve or deny a special use permit for a wireless communications tower:

a) Height of the proposed tower;

b) Proximity of the tower to residential structures, residential district boundaries, and existing towers;

c) Nature of uses on adjacent and nearby properties;

d) Surrounding topography;

e) Design of the tower, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness;

f) The total number and size of antennas proposed and the ability of the proposed tower to accommodate co-location;

g) Architectural design of utility buildings and accessory structures to blend with the surrounding environment;

h) Proposed ingress and egress;

i) The need for a tower within the immediate geographic area to provide an acceptable level of communications service to the area;

j) The size of the tract and the most likely future development as indicated by the Comprehensive Plan, planned infrastructure, topography and other physical considerations.

H. Removal of Abandoned Antenna and Towers

Abandonment or cessation of use of the communication structure shall require the removal of all facilities associated with the communication structure from the subject property within six months after the abandonment or cessation of use. Foundations for such structures should be altered or removed to be visually appealing and safe.

Chapter 32 DESIGN STANDARDS[1]

ARTICLE I. IN GENERAL

Sec. 32-1. Title.

This chapter shall be entitled "The City of Las Cruces and Five-Mile Planning and Platting Jurisdiction (Extraterritorial Zone) Design Standards" and may be referred to as "the design standards."

(Ord. No. 949, § 1.1, 9-8-87)

Sec. 32-2. 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:

ADT means average daily traffic, which is the total traffic for a year divided by 365.

Alley means a minor public way which is used primarily for vehicular service access to the back or side of properties otherwise abutting on a street.

Ambient air means that portion of the atmosphere, external to buildings, to which the general public has access. Land owned or controlled by the stationary source and to which public access is precluded by a fence, physical barriers, or other effective means is exempted from the ambient air.

Arterial street means a street which is used primarily for serving large volumes of comparatively high-speed traffic from one area of the city to another.

Asphalt treated base means base course aggregate and bituminous material mixed in a central plant, spread and compacted on a prepared surface in substantial compliance with the specifications, lines, grades, thicknesses and typical cross section shown on the plans.

Backfill means that soil which is replaced in a hole after excavation and placement of irrigation lines, plant materials, conduits and structures.

Bikepath means a portion of a roadway or separate pathway designated for use by bicycles.

Building setback means the right angle distance from a point on or within street right-of-way to the closest point of any building structure.

Channel means any arroyo, stream, swale, ditch, diversion, or watercourse that conveys storm runoff, including manmade facilities.

Channel stability means a condition in which a channel neither degrades to the degree that structures, utilities or private property are endangered, nor aggrades to the degree that flow capacity is significantly

[1]Cross reference(s)—Streets and sidewalks, ch. 26; utilities, ch. 28; buildings and building regulations, ch. 30; development impact fee, ch. 33; drainage and flood control, ch. 34; excavations and curb cuts, ch. 35; subdivisions, ch. 37; design standards for subdivisions, § 37-266 et seq.; zoning, ch. 38.

diminished as a result of one or more storm runoff events or moves laterally to the degree that adjacent property is endangered.

Channel treatment measure means a physical alteration of a channel for any purpose.

Chemical soil stabilization/suppression means a method of dust control implemented by any person to mitigate PM10 emissions by applying petroleum resins, asphaltic emulsions, acrylics, adhesives, or any other approved material that are not prohibited for use by the city, the state environment department, the Environmental Protection Agency, or any other law, rule, or regulation.

Collector street means a street that carries traffic from local streets to the major arterial streets and highways.

Construction and demolition activities means any on-site activities preparatory to or related to building alteration, rehabilitation, removal or razing, or improvement on real property, including the placement and upkeep of mobile or manufactured homes or buildings. "Construction" also means construction of roadway systems including, arterials, expressways, interstates, tunnels, overpasses, bridges, interchanges, residential and commercial streets within a subdivision, and airport runway improvements.

Control plan means a written description of all reasonably available control measures (RACMs) to be implemented at a work site and/or in transit to and from a work site for any earth moving, construction, or potential dust generating operation. Such written description may be incorporated into building and construction plans or a separate document submitted with said plans.

Crown means the cross slope or difference in elevation between the high point of a street (usually the centerline of the street) and the gutter line, adjacent to the pavement edge, for any given cross section. Crown is normally expressed as a percentage.

Cul-de-sac means a minor street with only one outlet and culminated by a turnaround.

Curb cut means a depressed segment of a vertical roadway curb.

Curb return means a curved segment of curb used at each end of an opening in the roadway curb.

Design storm means a storm that deposits a stated amount of precipitation within a stated period over a defined area and which is used in calculating storm runoff and in designing drainage control, flood control and erosion control measures.

Design year means the year during which the roadway improvements shall reach life expectancy with normal maintenance.

Development review committee means an informal group of representatives employed or retained by the city whose duties include reviewing subdivision or subdivision-related proposals and resolving conflicting comments, recommendations or design differences between city reviewing departments and developers. The committee's decision shall be final unless overruled by the planning and zoning commission or board of adjustment or city council.

Disturbed area means any area in which the soil will be altered by grading, leveling, scraping, cut and fill activities, excavation, brush and timber clearing, grubbing, and unpaved soils on which vehicle operations and/or movement will or has occurred.

Double penetration means, commonly, two or three successive applications of asphaltic material and mineral aggregate.

Drainage means storm drainage.

Drainage course means a natural watercourse or indenture for the drainage of surface waters.

Drainage plan means a plan indicating an on-site drainage proposal, the passage of stormwaters through the development and safe discharge of runoff onto adjacent lands or into storm drainage facilities. Also, a comprehensive analysis of (i) the existing storm drainage conditions of a proposed development, and (ii) the disposal of the increased runoff which is generated by the proposed development.

Driveway means a point of vehicular access between a street and an abutting property, and is further defined to include:

(1) The area between the face of curb and the right-of-way line for streets with curbs.

(2) The area between the edge of pavement of the outside travel lane and the right-of-way line for strip paved streets.

(3) The area between the right-of-way line and 15 feet from the right-of-way line toward the street for completely unimproved streets.

Drought tolerant plants means plants from the state and other dry areas that can survive on very little water, such as that which falls in Southern New Mexico in normal rainfall years.

Dust generating operation means any activity capable of generating fugitive dust, including, but not limited to, activities associated with creating a disturbed area, construction and demolition activities, and the movement of vehicles on unpaved roadways or parking areas.

Easement means the right, liberty, advantage or privilege that one individual or entity has in land of another, either express or imputed (utility, grant, or necessity).

Engineer means a person who is engaged in the practice of engineering and is qualified to so practice as attested by his legal registration as a professional engineer in the state.

Erosion means the transportation of soil particles, or mass movement of soil (mass wasting), by water, wind front leaving, or mechanical means.

Erosion control means treatment measures for the prevention of damages due to soil movement and to deposition from the ten-year design storm runoff.

ETZ means extraterritorial zone.

Flood control means the treatment measures necessary to protect life and property from the 100-year design storm runoff.

Flood hazard area means an area subject to inundation from the 100-year design storm runoff.

Freeway means a divided multilane highway for through traffic with all crossroads separated in grade and with full control of access.

Frontage road means a local street which is parallel to and adjacent to another street, normally a highway or a freeway.

Fugitive dust means any particulate matter entrained in the ambient air which is caused from manmade and natural activities without first passing through a stack or duct designed to control flow, including, but not limited to, emissions caused by movement of soil, vehicles, equipment, and windblown dust. Excluded particulate matter includes matter emitted directly from the exhaust of motor vehicles, or from other combustion devices, portable brazing, soldering or welding equipment, and pile drivers.

Grading plan means a plan describing the existing topography and proposed grading, including retaining walls and details, interfaces with adjacent properties, streets, alleys and channels, referenced to mean sea level based on a city benchmark, and showing sufficient contours, spot elevations and cross sections to allow a clear understanding by reviewers, contractors and inspectors.

High wind event means a climatological occurrence in which the average wind speed exceeds a threshold in which fugitive dust will be generated from undisturbed areas, naturally covered areas, disturbed areas, and construction sites, regardless of reasonably available control measure implementation. Notwithstanding other climatic conditions, the average wind speed for high wind events is a sustained wind speed of 25 miles per hour or greater.

Hot mix asphaltic concrete means high-quality, thoroughly controlled hot mixture of asphalt cement and well-graded, high-quality aggregate, thoroughly compacted into a uniform dense mass.

Improvements includes infrastructure such as streets; curbs; gutters; sidewalks; fire hydrants; storm drainage facilities; bikepaths; trails; and water, sewer, and gas systems or parts thereof.

ITE means Institute of Transportation Engineers.

Landscaping means a combination of trees, shrubs, perennials, groundcovers and artifacts, arranged in such a manner as to effect a design that follows the principles of this chapter.

Local street means a street of relatively short length that provides access to a collector street and is designed to discourage its use by through traffic.

Lot means a portion of a subdivision or other parcel of land intended for the purpose of development, whether immediate or future. It also is tract of land described by metes and bounds and held in separate ownership, as shown on the records in the county assessor's office.

Maintenance means the cleaning, shaping, grading, repair and minor replacement of drainage, flood control and erosion control facilities, but not including the cost of power consumed in the normal operation of pump stations.

Major arroyo means any channel whose watershed exceeds 320 acres in a 100-year design storm, whether such watershed is in its natural or unaltered state or has been altered by development, runoff diversions, or detention facilities.

Native plants means plants that are indigenous to the state from other places that have become established in wildlands without cultivation.

Natural cover means any vegetation which exists on the property, prior to any construction activity or achieved through vegetation restoration back to a natural state, including the placement of sod.

One-hundred year design storm means that storm whose precipitation within a six-hour period and resulting runoff has a one-percent chance of being equaled or exceeded in any given year.

Ornamental plants means plants cultivated in this area for landscaping purposes.

PM10 means particulate matter, both filterable and condensable, with an aerodynamic diameter less than or equal to a nominal ten micrometers.

Palliative means any agent used to lessen or reduce dust emissions.

Parking area means that portion of a lot, the use of which is devoted to more than four off-street parking spaces.

Parkway means that area of a public street that is between the curb and sidewalk or between the sidewalk and the property line, which is used for planting purposes.

Particulate matter means any material emitted or entrained into the air as liquid or solid particulate, with the exception of uncombined water.

Public rights-of-way means the total area of land deeded, reserved by plat, or otherwise acquired by the city, the county, or the state.

Reasonably available control measures (RACM) means techniques used to limit the emission and/or airborne transport of fugitive dust from its original site to accomplish satisfactory results for temporary and/or extended suppression of dust and PM10 emission(s).

Roadway means that portion of the street available for vehicular traffic.

SCS means Soil Conservation Service.

Sidewalk means a pedestrian walkway with permanently improved surfacing.

Slope means an inclined piece of land, three feet or higher vertical rise, with a five horizontal to one vertical incline or greater.

Street means a public way that has been dedicated or reserved by plat, other than an alley, which affords the principal means of access to abutting property.

Street trees means trees planted in the public right-of-way along city streets for beautification and benefit of the general public.

Surveyor means a person who is engaged in the practice of surveying and is qualified to so practice as attested by his legal registration as a professional surveyor in the state.

Ten-year design storm means that storm whose precipitation within a six-hour period and resulting runoff has a ten-percent chance of being equaled or exceeded in any given year.

Topsoil means soil which is with the A-1 horizon of a soil profile, containing organic matter, nutrients, and the microorganisms necessary for normal plant growth.

Visible dust emission means dust of such opacity as to obscure an observer's view to a degree equal to or greater than an opacity of 20 percent, for a period or periods aggregating more than three minutes in any one hour.

Water conservation means proper water management procedures, including design as well as maintenance procedures by using drip irrigation, drought tolerant plant materials and gray water.

Wildlife means indigenous or naturalized bird, reptilian, mammalian, fish, or invertebrate life found in the out-of-doors.

Wind speed means the average wind velocity, regardless of direction, based on a 60-minute average from the nearest weather report or PM10 monitoring station, or by a portable wind instrument located at the site.

(Ord. No. 949, § 1.6, 9-8-87; Ord. No. 1224, §§ 2, 3, 3-18-91; Ord. No. 1789, § III, 4-3-00)

Cross reference(s)—Definitions generally, § 1-2.

Sec. 32-3. Purpose.

The design standards in this chapter are to provide for the harmonious development of the city and its environs in order to establish conditions favorable to the health, safety, convenience, and general welfare of citizens of the city. More specifically, this chapter is designed to achieve the following objectives in newly developed areas:

(1) Adequate provisions for light and air, public rights-of-way, public open spaces, and drainage and private property utilized by the public.

(2) Economy in governmental expenditure and adequate reimbursement of the city for services performed.

(3) Safe, convenient circulation of people, goods and vehicles.

(4) Coordination of land development in accordance with orderly physical patterns as stated in adopted plans and policies as may have been or may be adopted by the city council.

(Ord. No. 949, § 1.2, 9-8-87)

Sec. 32-4. Statutory authority and jurisdiction.

This chapter is created and adopted pursuant to the authority set forth in NMSA 1978, § 3-19-6, as amended, and shall be applicable to all property within the corporate limits of the city, except for state and federal land being used for public purposes, and within the five-mile planning and platting jurisdiction (ETZ) of the city.

(Ord. No. 949, § 1.3, 9-8-87)

Sec. 32-5. Interpretation and conflict.

(a) *Minimum requirements.* The provisions of this chapter shall be considered the minimum requirements to meet the purpose expressed in section 32-3.

(b) *Local conflict.* Where the provisions of any local ordinance, regulation, or covenant imposes greater restrictions than those of this chapter, the provisions of such document shall prevail.

(c) *Federal and state conflict.* Any provision of U.S. or state law, which imposes a greater duty, standard or requirement than that contained in this chapter shall supersede this chapter.

(d) *Interpretation of meaning.* The development review committee shall interpret the meaning of the sections of this chapter. Disagreement with an interpretation may be appealed to the board of adjustment, formerly known as the code enforcement board of appeals, and the board's decision may be appealed to the city council.

(e) *Conflict within this chapter.* When two or more provisions of this chapter are conflicting, the most restrictive provision shall apply.

(Ord. No. 949, § 1.5, 9-8-87; Ord. No. 1224, § 1, 3-18-91)

Sec. 32-6. Violations; penalties.

(a) *Violations.* The definition of "violation of this Code" set out in subsection 1-10(a) is hereby adopted to apply to acts or failures to act in accordance with the requirements of this Code and such definition is incorporated in this section by reference as if set out in full at this place.

(b) *Penalties.* The municipal court may impose a fine for each offense, not to exceed $300.00, 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 of the court to remove structures or take other actions to abate, remove or bring into compliance any violation of this chapter. Failure to comply with any such orders for removal or other judgments of the municipal court, including failure to pay fines previously imposed, shall constitute a contempt of court and may be separately punished at the discretion of the municipal court.

(c) *Other remedies.* Nothing in this section shall limit the city from seeking other remedies at law or equity to enforce this chapter.

(Ord. No. 1158, § 1.6.A—C, 7-2-90)

Secs. 32-7—32-35. Reserved.

ARTICLE II. STANDARDS FOR PUBLIC RIGHTS-OF-WAY

Sec. 32-36. City streets.

(a) *Purpose of this article.* The purpose of article II is to provide information for the establishment of public rights-of-way. This involves right-of-way requirements and general design specifications for city streets, design criteria for sidewalks, and specifications for the installation of street lights. General information regarding utility improvements is also provided. These shall be considered the minimum standards and nothing shall prevent the engineering review committee or the development review committee from imposing greater standards to achieve the purposes outlined in section 32-3 of these design standards.

(b) *Right-of-way and roadway requirements for city streets.* It shall be the policy of the city that major thoroughfares, collectors and arterials with medians, be built from the outside edge of the right-of-way in towards the center. This prevents the dismantling of previously constructed infrastructure in order to accommodate future street improvements such as widening. The location of collector and arterial streets shall be generally guided by the MPO transportation plan and specifically located as development occurs. Coordination between the city staff, development review committee and the developer will occur to provide the appropriate classification and alignment of all major and minor roadways within and abutting developments to encourage appropriate and efficient transportation circulation patterns.

A subdivider shall be responsible for 100% of the street improvements within the boundaries of the subdivision. When improvements are required on streets adjacent to a subdivision or property boundaries as indicated by street classification, as determined by the MPO transportation plan, transportation element of the comprehensive plan and/or the development review committee, the subdivider shall provide the following street improvements or pay for the cost of these improvements to the city:

Adjacent Street Classification	Street Improvement Requirements
Low Density Local	full street section
Minor Local	full street section
Major Local	½ street section, including sidewalk, curb and gutter
Collector	½ street section, including sidewalk, curb and gutter
Minor Arterial	½ street section, including sidewalk, curb and gutter
Major Arterial	½ street section, including sidewalk, curb and gutter

Access requirements for subdivisions shall consist of the following:

(1) Minimum access to the subdivision shall be from a dedicated and accepted public right-of-way. In instances where the access to a subdivision of is unimproved it shall be the responsibility of the subdivider to construct a minor local roadway from the subdivision boundary to the nearest paved public roadway. If the roadway to the proposed development is classified as a major thoroughfare by the MPO transportation plan (e.g., a collector or arterial), the developer shall provide the equivalent of

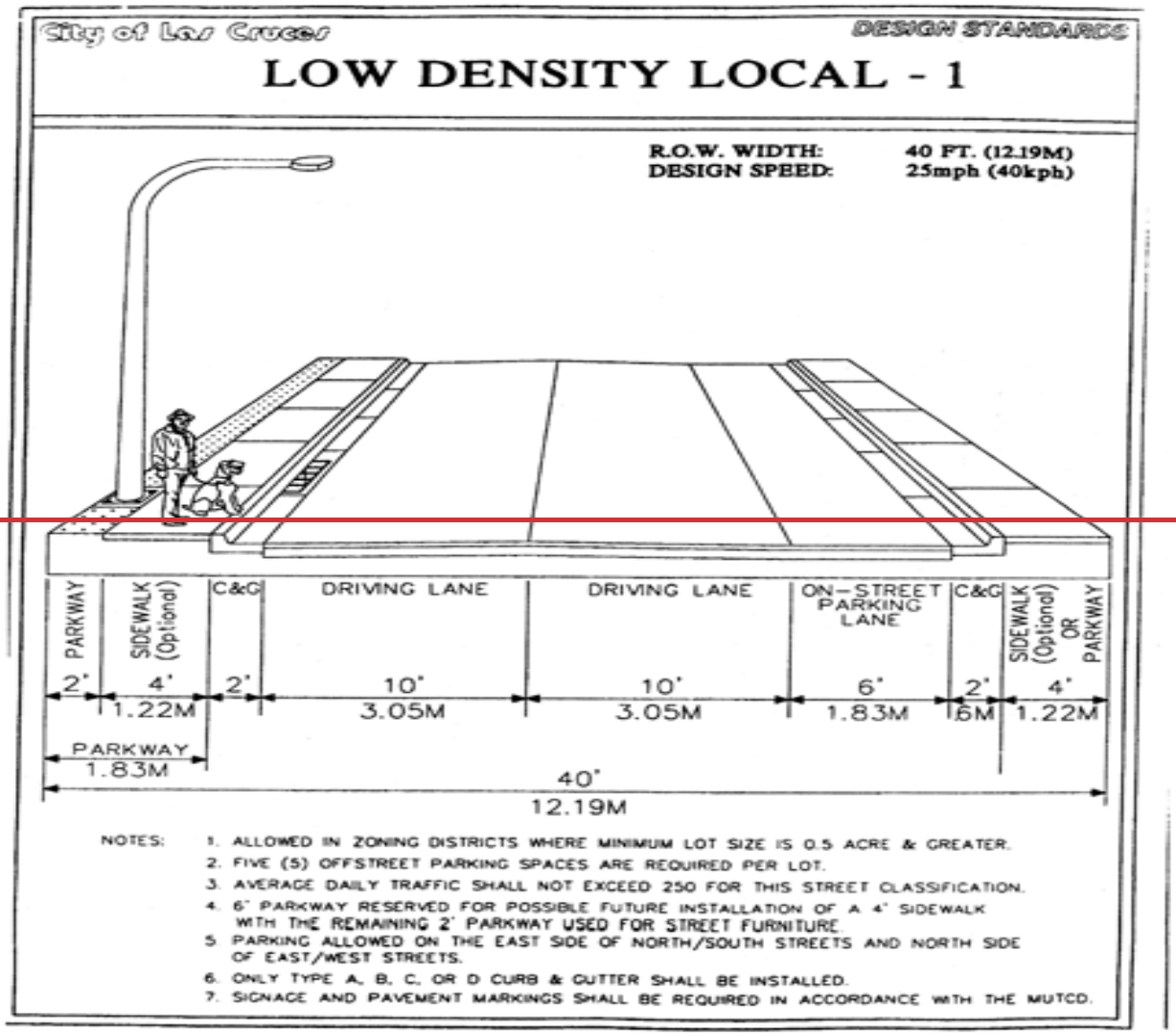
a minor local roadway, designed and constructed to a cross section approved by the city from the boundary of the subdivision to the nearest paved public roadway.

(2) Access to lots within a commercial or industrial subdivision shall be from either a dedicated and accepted improved public right-of-way or an improved access established by a 50 foot (15.24m) wide permanent private road and/or access easement. Exceptions to allow a narrower lot access may be considered by the DRC.

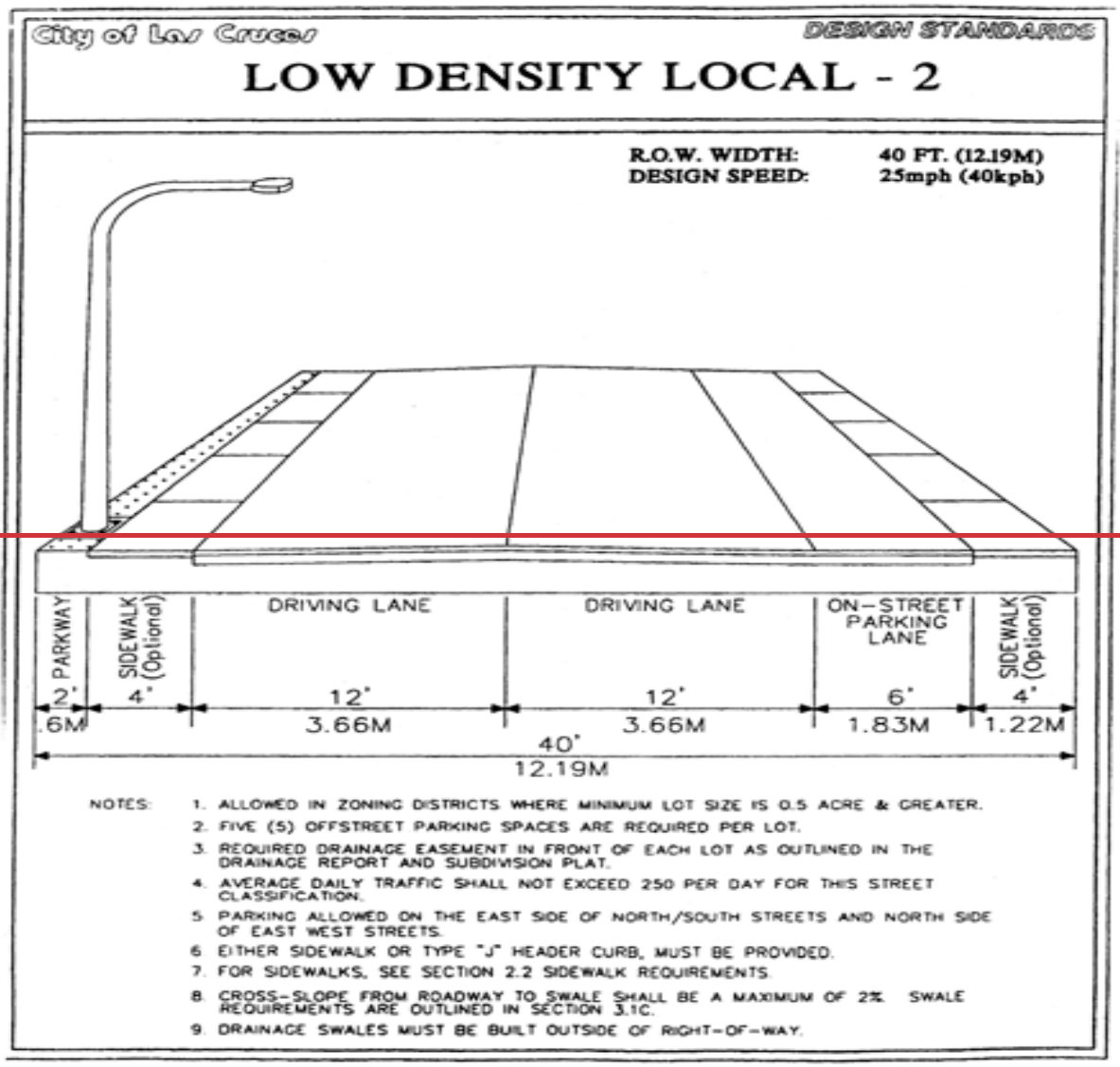
(3) Access to lots within a residential subdivision shall be from a dedicated and accepted improved public right-of-way.

All developing parcels of real property shall include a minimum of 50 percent of the necessary additional right-of-way to conform to the MPO transportation plan for all roads classified major local and above. 100 percent of the required right-of-way shall be required for low density and minor local streets. A permanent right-of-way easement may be granted in lieu of dedicated right-of-way. The decision to accept a permanent easement in lieu of dedicated right-of-way rests with the development review committee. The development review committee may waive all additional right-of-way requirements in instances where expansion of a specific roadway is neither feasible nor planned.

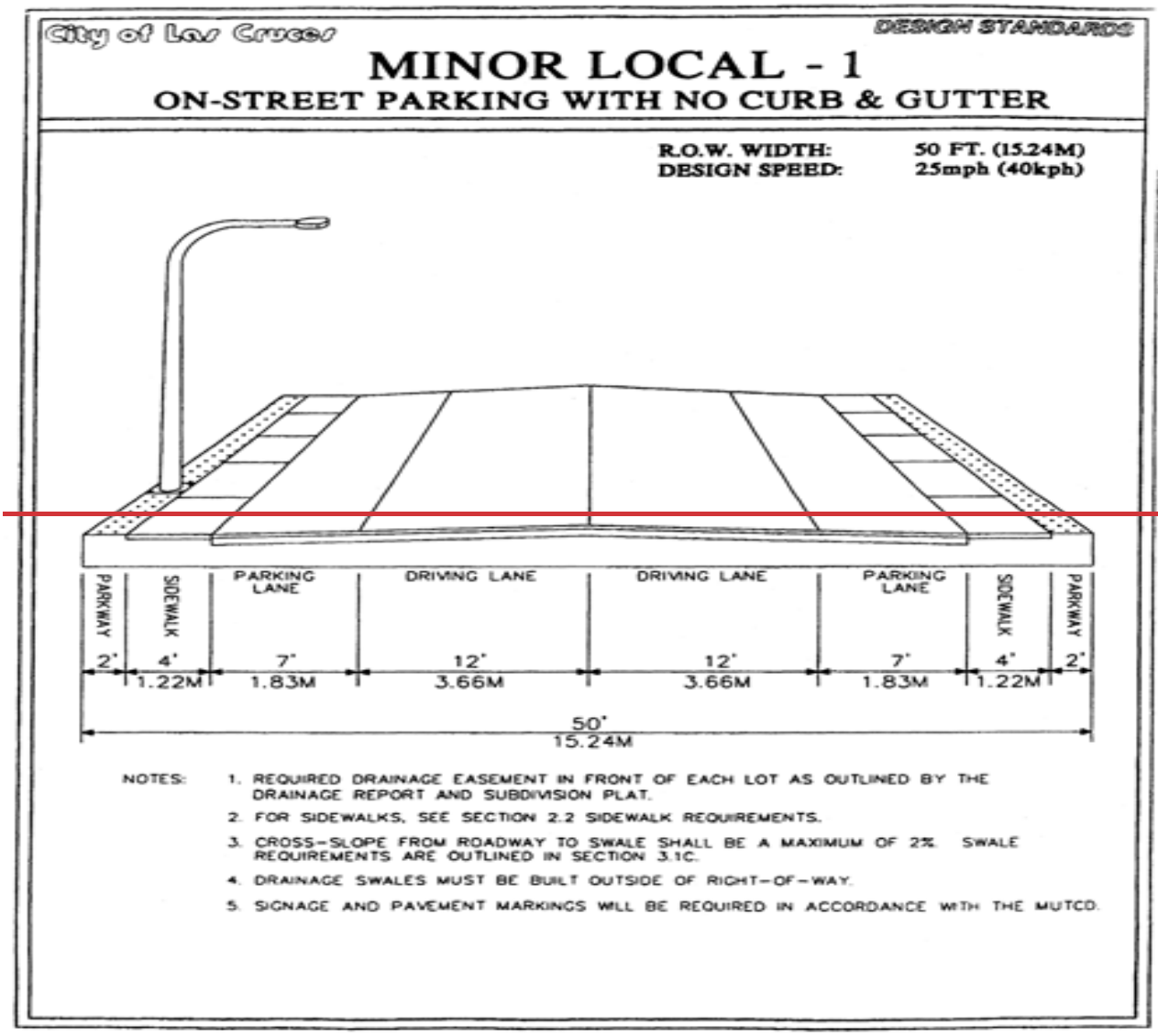
The following cross-section (14 pages) provide the requirements for right-of-way, paving width, parkways, and general use criteria for all acceptable city street classifications. Deviations or modifications to design may be acquired through the engineering review committee.



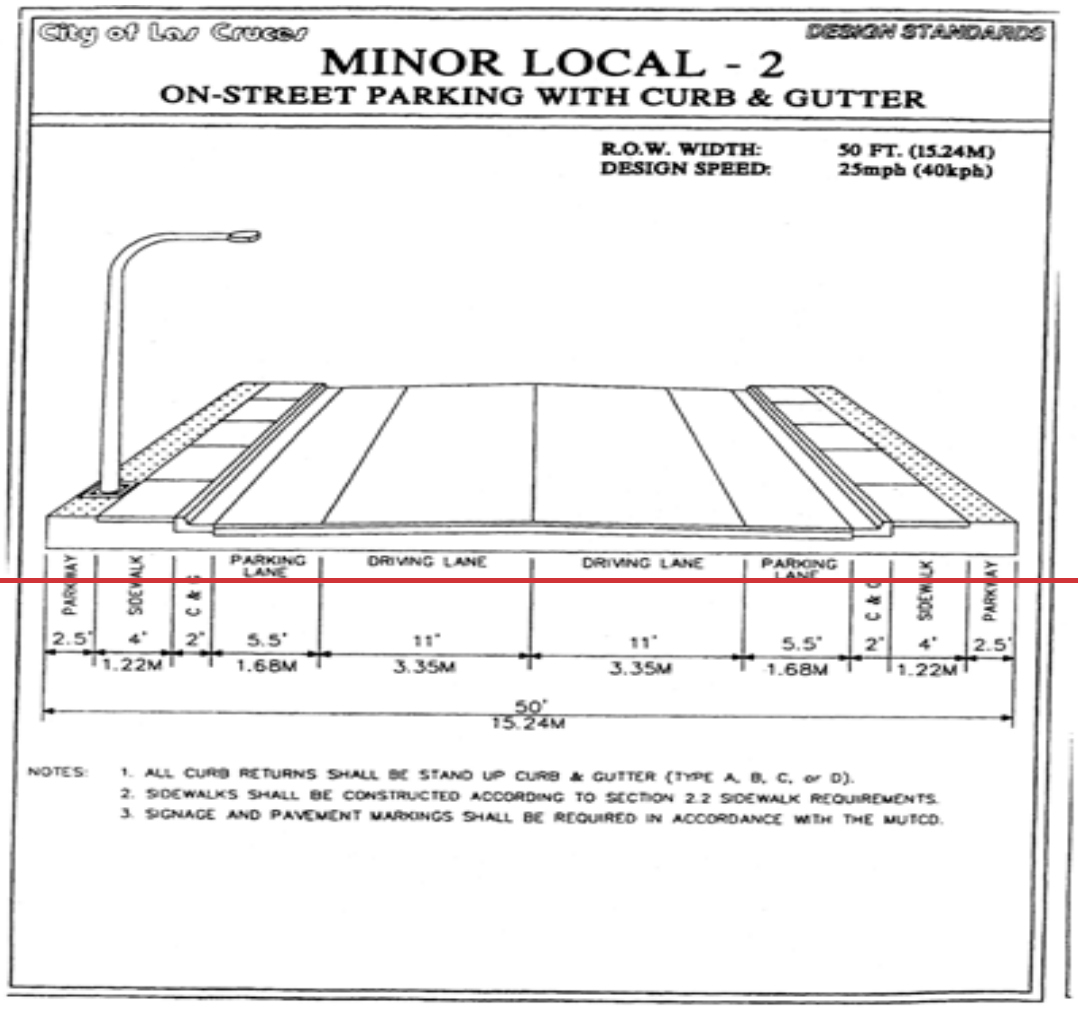
~~Low Density Local 1~~



~~Low Density Local 2~~



~~Minor Local 1~~



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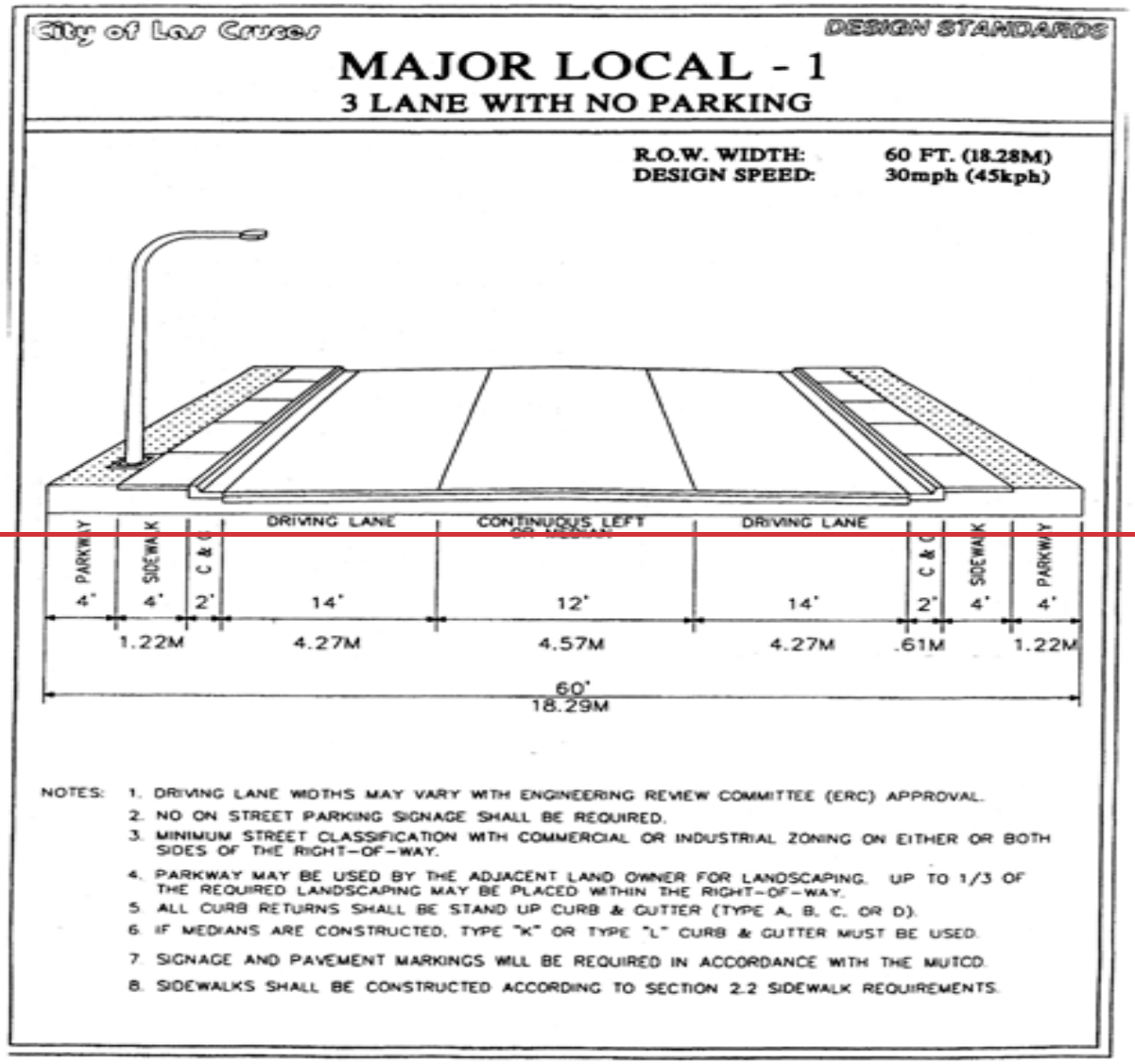
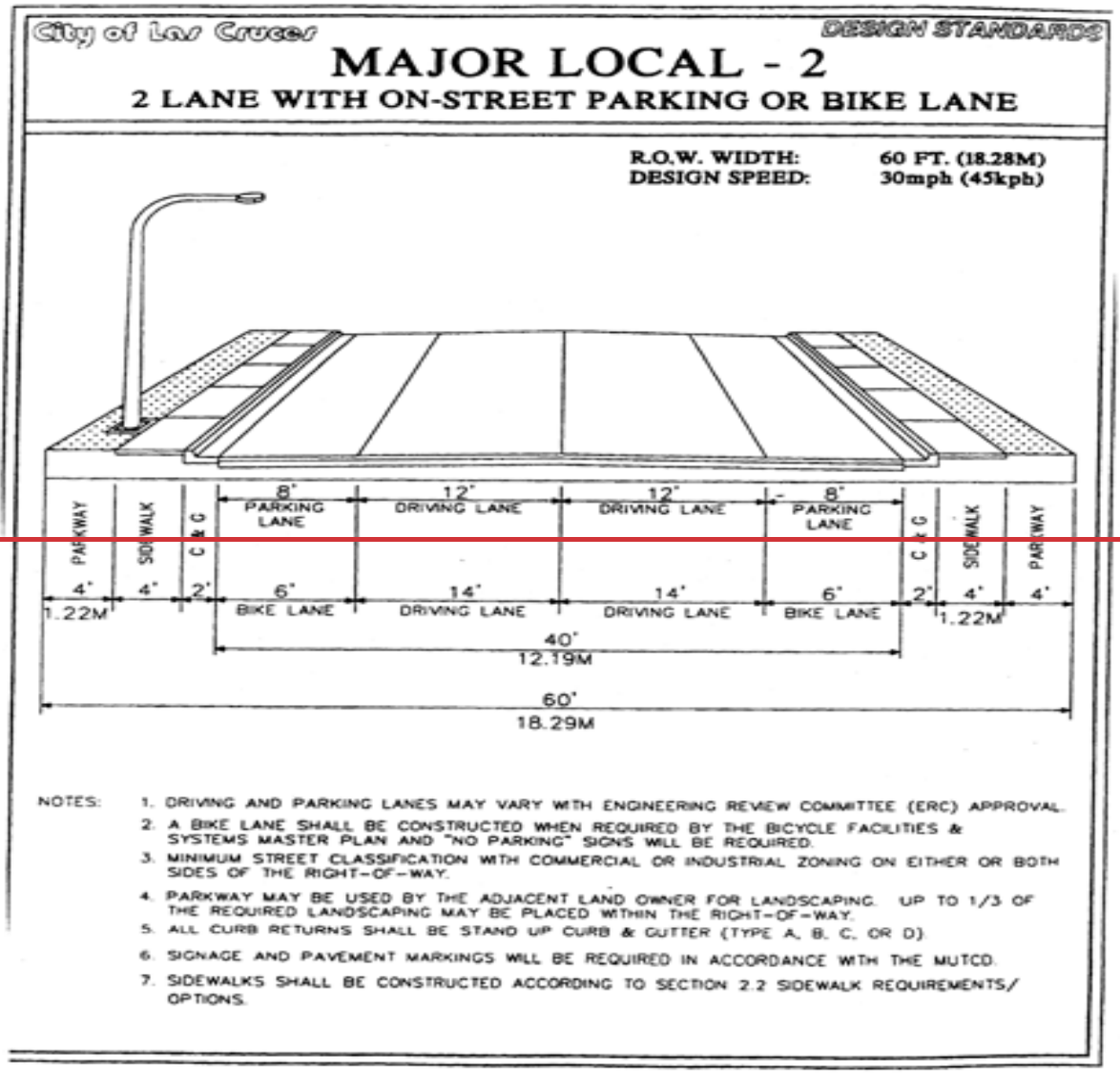


~~Major Local 1~~



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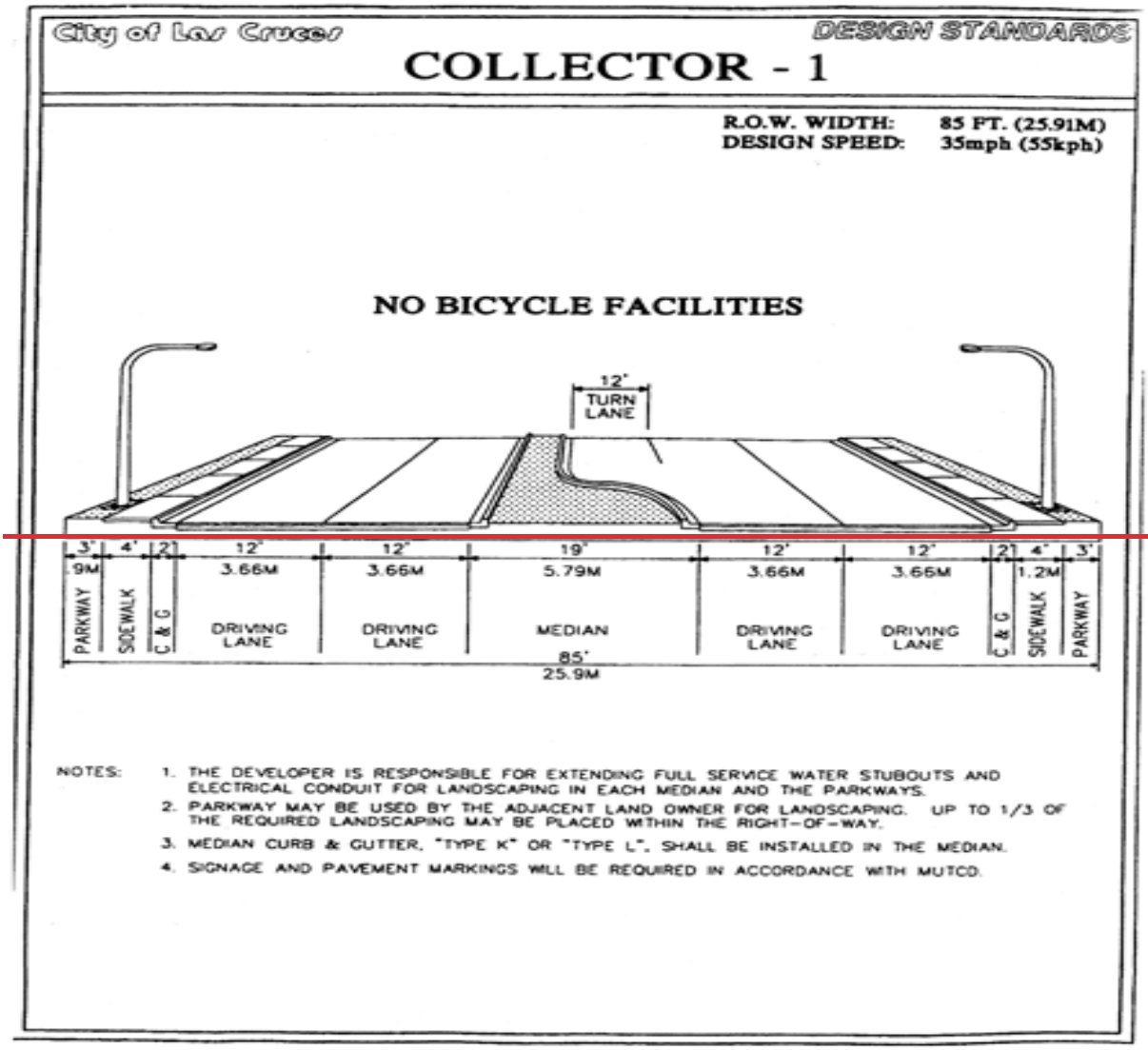
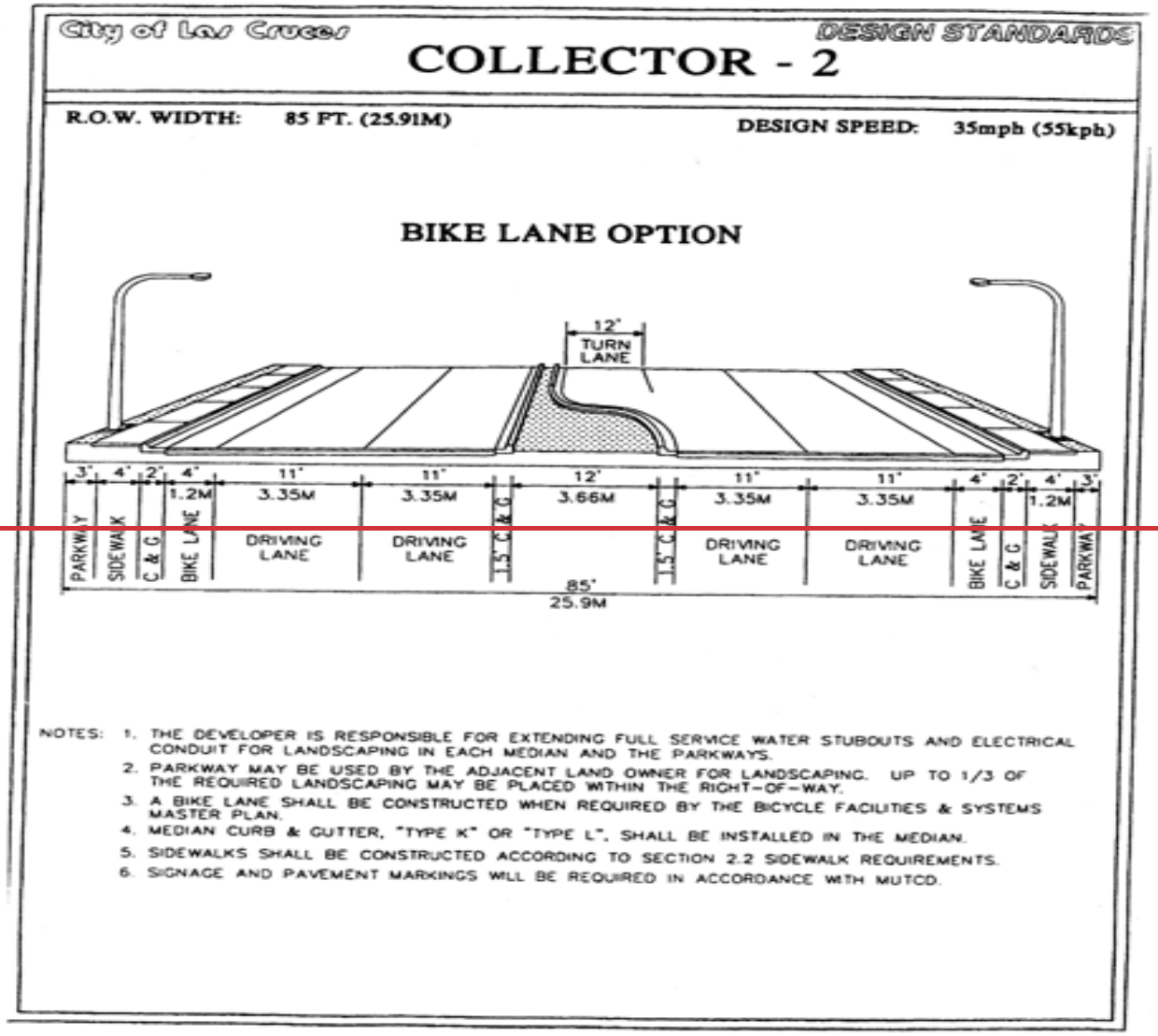
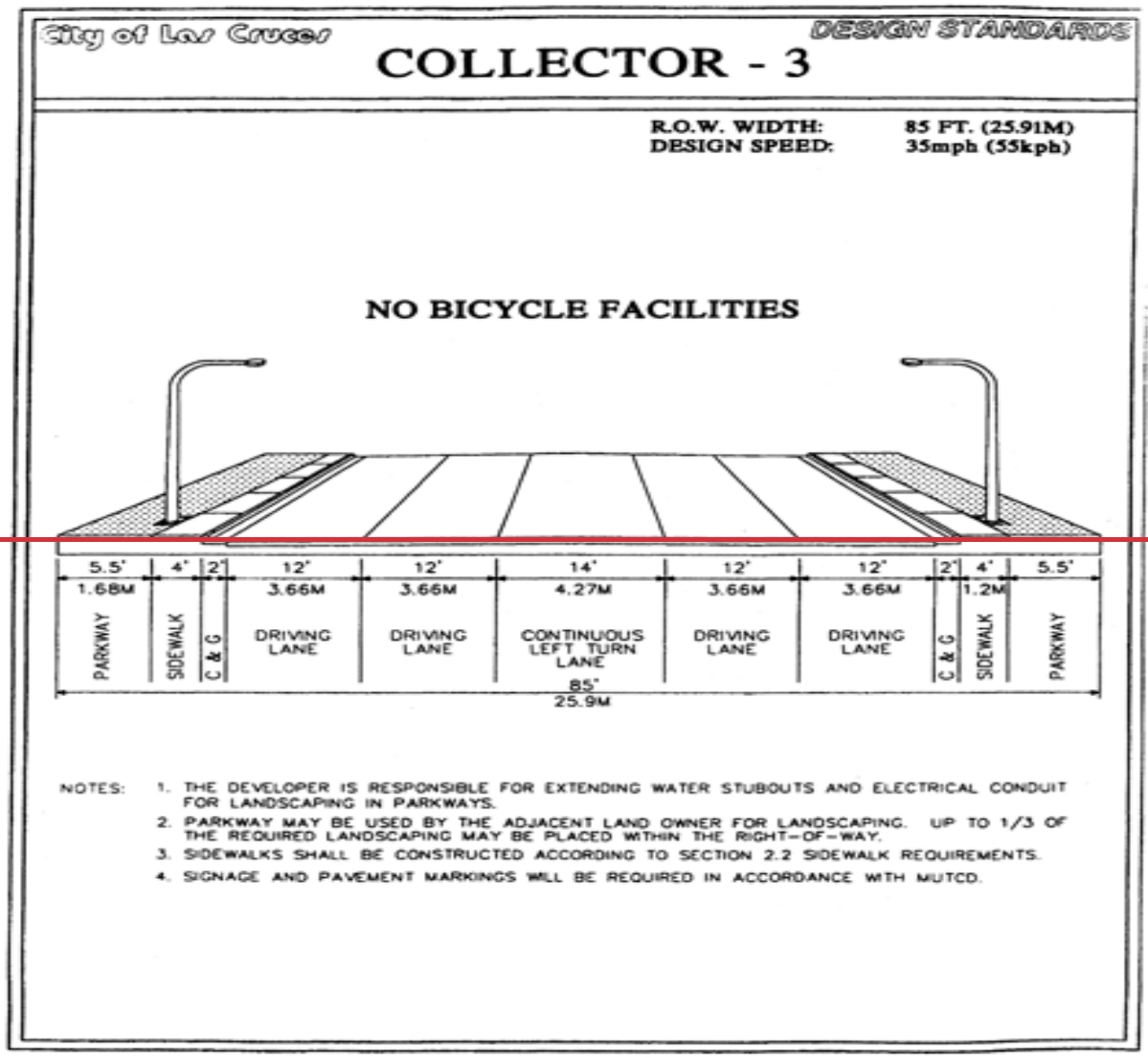

City of Las Cruces
DESIGN STANDARDS
COLLECTOR - 1
R.O.W. WIDTH: 85 FT. (25.91M)
DESIGN SPEED: 35mph (55kph)
NO BICYCLE FACILITIES
12' TURN LANE
3' .9M PARKWAY
4' SIDEWALK
2' C & G
12' 3.66M DRIVING LANE
12' 3.66M DRIVING LANE
19' 5.79M MEDIAN
12' 3.66M DRIVING LANE
12' 3.66M DRIVING LANE
2' C & G
4' 1.2M SIDEWALK
3' PARKWAY
85' 25.9M
NOTES:
1. THE DEVELOPER IS RESPONSIBLE FOR EXTENDING FULL SERVICE WATER STUBOUTS AND ELECTRICAL CONDUIT FOR LANDSCAPING IN EACH MEDIAN AND THE PARKWAYS.
2. PARKWAY MAY BE USED BY THE ADJACENT LAND OWNER FOR LANDSCAPING. UP TO 1/3 OF THE REQUIRED LANDSCAPING MAY BE PLACED WITHIN THE RIGHT-OF-WAY.
3. MEDIAN CURB & GUTTER, "TYPE K" OR "TYPE L", SHALL BE INSTALLED IN THE MEDIAN.
4. SIGNAGE AND PAVEMENT MARKINGS WILL BE REQUIRED IN ACCORDANCE WITH MUTCD.

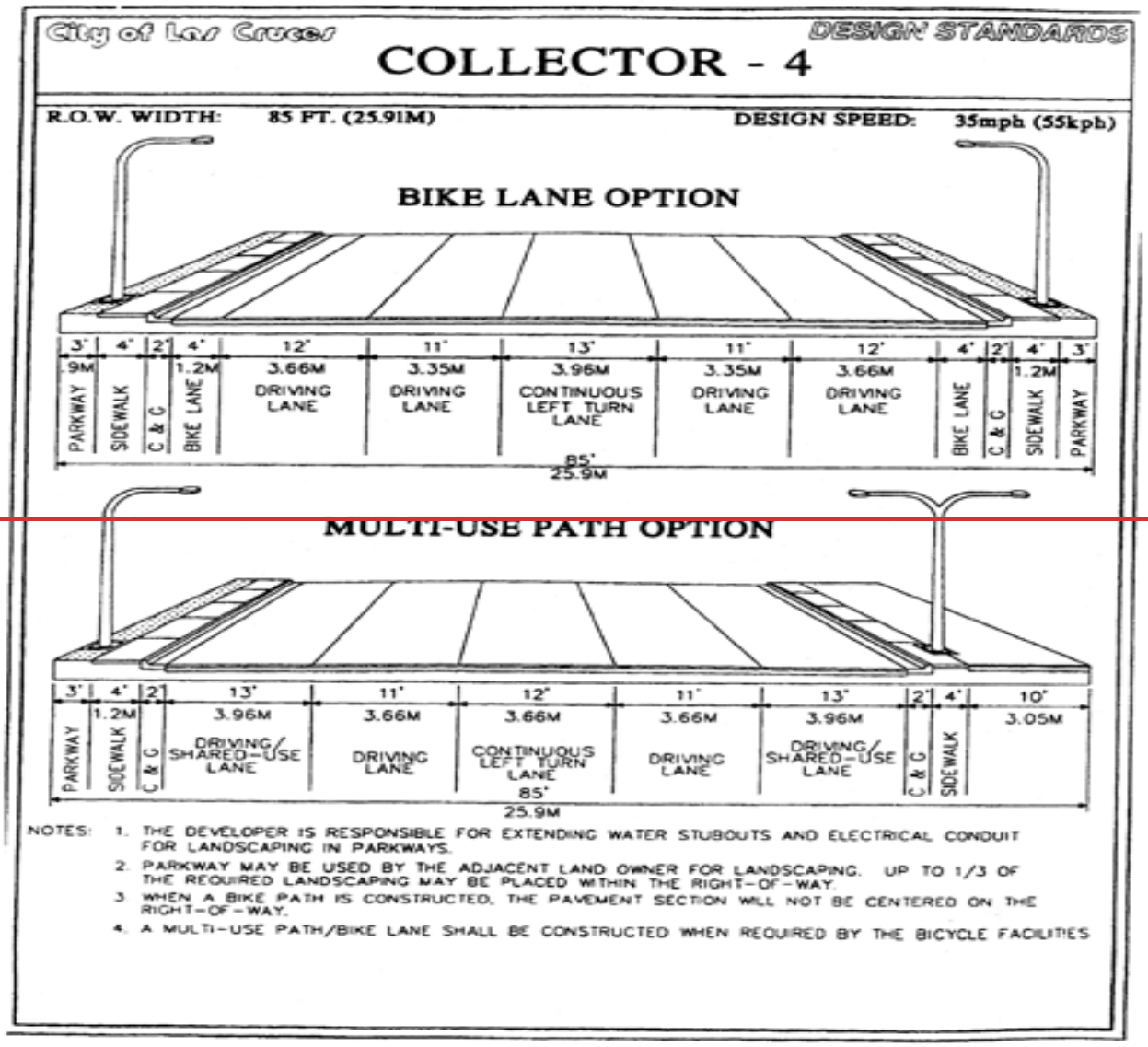
~~Collector 1~~


City of Las Cruces
DESIGN STANDARDS
COLLECTOR - 2
R.O.W. WIDTH: 85 FT. (25.91M)
DESIGN SPEED: 35mph (55kph)
BIKE LANE OPTION
12'
TURN LANE
3' PARKWAY
4' SIDEWALK
2' C & G
4' 1.2M BIKE LANE
11' 3.35M DRIVING LANE
11' 3.35M DRIVING LANE
1.5' C & G
12' 3.66M
1.5' C & G
11' 3.35M DRIVING LANE
11' 3.35M DRIVING LANE
4' 1.2M BIKE LANE
2' C & G
4' SIDEWALK
3' PARKWAY
85'
25.9M
NOTES:
1. THE DEVELOPER IS RESPONSIBLE FOR EXTENDING FULL SERVICE WATER STUBOUTS AND ELECTRICAL CONDUIT FOR LANDSCAPING IN EACH MEDIAN AND THE PARKWAYS.
2. PARKWAY MAY BE USED BY THE ADJACENT LAND OWNER FOR LANDSCAPING. UP TO 1/3 OF THE REQUIRED LANDSCAPING MAY BE PLACED WITHIN THE RIGHT-OF-WAY.
3. A BIKE LANE SHALL BE CONSTRUCTED WHEN REQUIRED BY THE BICYCLE FACILITIES & SYSTEMS MASTER PLAN.
4. MEDIAN CURB & GUTTER, "TYPE K" OR "TYPE L", SHALL BE INSTALLED IN THE MEDIAN.
5. SIDEWALKS SHALL BE CONSTRUCTED ACCORDING TO SECTION 2.2 SIDEWALK REQUIREMENTS.
6. SIGNAGE AND PAVEMENT MARKINGS WILL BE REQUIRED IN ACCORDANCE WITH MUTCD.

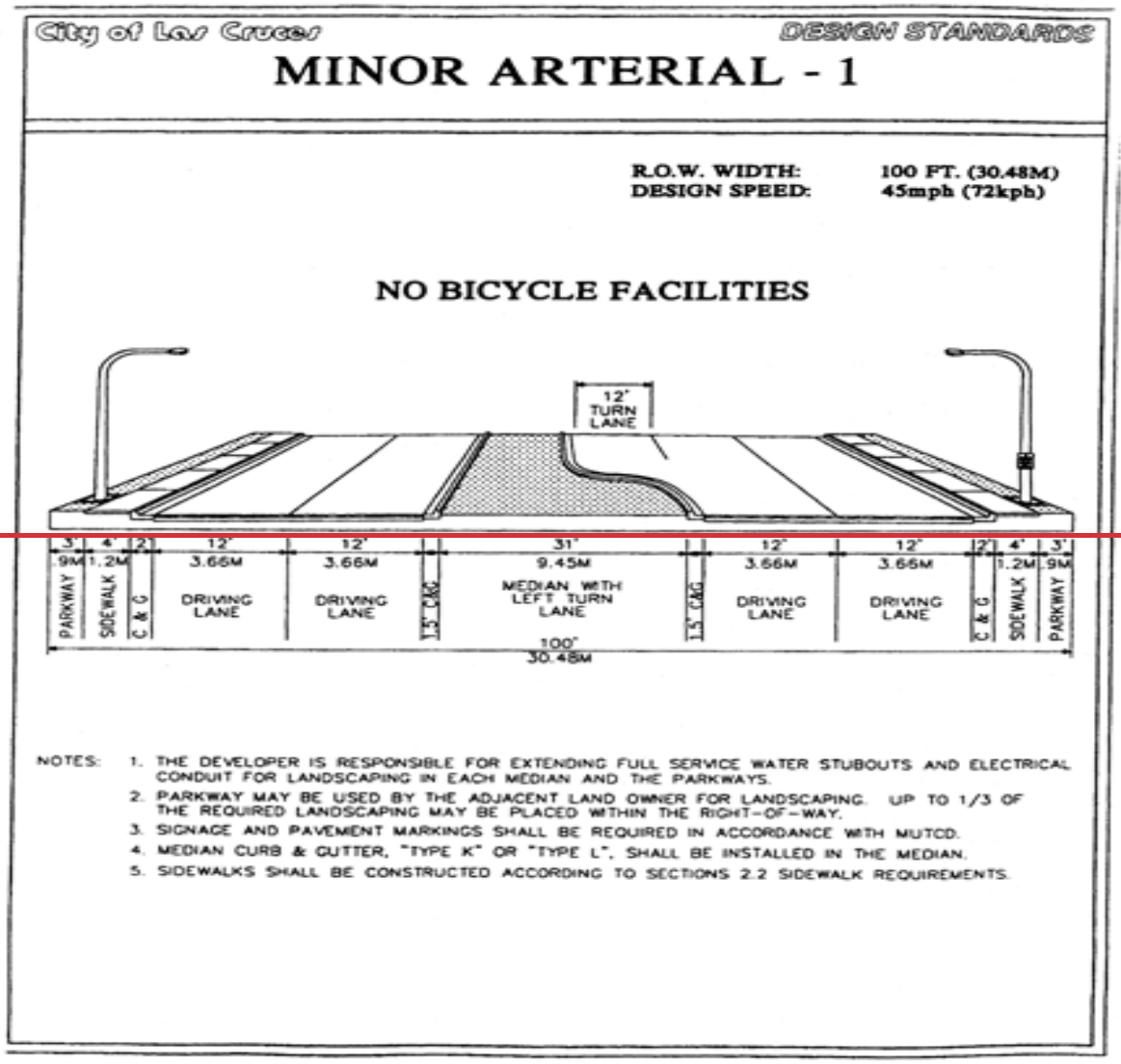
~~Collector 2~~


City of Las Cruces
DESIGN STANDARDS
COLLECTOR - 3
R.O.W. WIDTH: 85 FT. (25.91M)
DESIGN SPEED: 35mph (55kph)
NO BICYCLE FACILITIES
5.5' 1.68M PARKWAY
4' SIDEWALK
2' C & G
12' 3.66M DRIVING LANE
12' 3.66M DRIVING LANE
14' 4.27M CONTINUOUS LEFT TURN LANE
12' 3.66M DRIVING LANE
12' 3.66M DRIVING LANE
2' C & G
4' 1.2M SIDEWALK
5.5' PARKWAY
85' 25.9M
NOTES:
1. THE DEVELOPER IS RESPONSIBLE FOR EXTENDING WATER STUBOUTS AND ELECTRICAL CONDUIT FOR LANDSCAPING IN PARKWAYS.
2. PARKWAY MAY BE USED BY THE ADJACENT LAND OWNER FOR LANDSCAPING. UP TO 1/3 OF THE REQUIRED LANDSCAPING MAY BE PLACED WITHIN THE RIGHT-OF-WAY.
3. SIDEWALKS SHALL BE CONSTRUCTED ACCORDING TO SECTION 2.2 SIDEWALK REQUIREMENTS.
4. SIGNAGE AND PAVEMENT MARKINGS WILL BE REQUIRED IN ACCORDANCE WITH MUTCD.

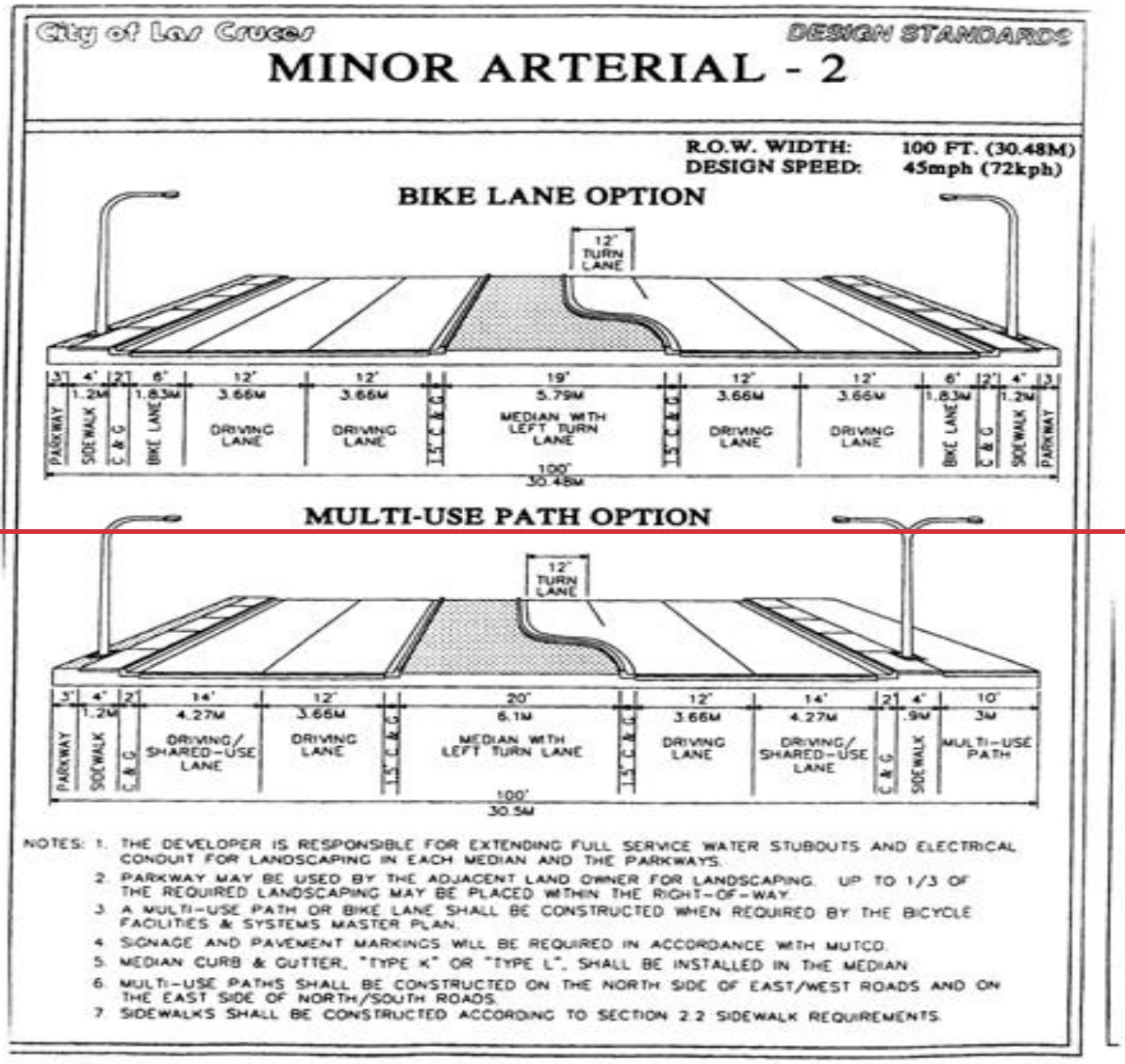
~~Collector 3~~


City of Las Cruces
DESIGN STANDARDS
COLLECTOR - 4
R.O.W. WIDTH: 85 FT. (25.91M)
DESIGN SPEED: 35mph (55kph)
BIKE LANE OPTION
3' .9M PARKWAY
4' SIDEWALK
2' C & G
4' 1.2M BIKE LANE
12' 3.66M DRIVING LANE
11' 3.35M DRIVING LANE
13' 3.96M CONTINUOUS LEFT TURN LANE
11' 3.35M DRIVING LANE
12' 3.66M DRIVING LANE
4' BIKE LANE
2' C & G
4' 1.2M SIDEWALK
3' PARKWAY
85' 25.9M
MULTI-USE PATH OPTION
3' PARKWAY
4' 1.2M SIDEWALK
2' C & G
13' 3.96M DRIVING/SHARED-USE LANE
11' 3.66M DRIVING LANE
12' 3.66M CONTINUOUS LEFT TURN LANE
11' 3.66M DRIVING LANE
13' 3.96M DRIVING/SHARED-USE LANE
2' C & G
4' SIDEWALK
10' 3.05M
85' 25.9M
NOTES:
1. THE DEVELOPER IS RESPONSIBLE FOR EXTENDING WATER STUBOUTS AND ELECTRICAL CONDUIT FOR LANDSCAPING IN PARKWAYS.
2. PARKWAY MAY BE USED BY THE ADJACENT LAND OWNER FOR LANDSCAPING. UP TO 1/3 OF THE REQUIRED LANDSCAPING MAY BE PLACED WITHIN THE RIGHT-OF-WAY.
3. WHEN A BIKE PATH IS CONSTRUCTED, THE PAVEMENT SECTION WILL NOT BE CENTERED ON THE RIGHT-OF-WAY.
4. A MULTI-USE PATH/BIKE LANE SHALL BE CONSTRUCTED WHEN REQUIRED BY THE BICYCLE FACILITIES

~~Collector 4~~

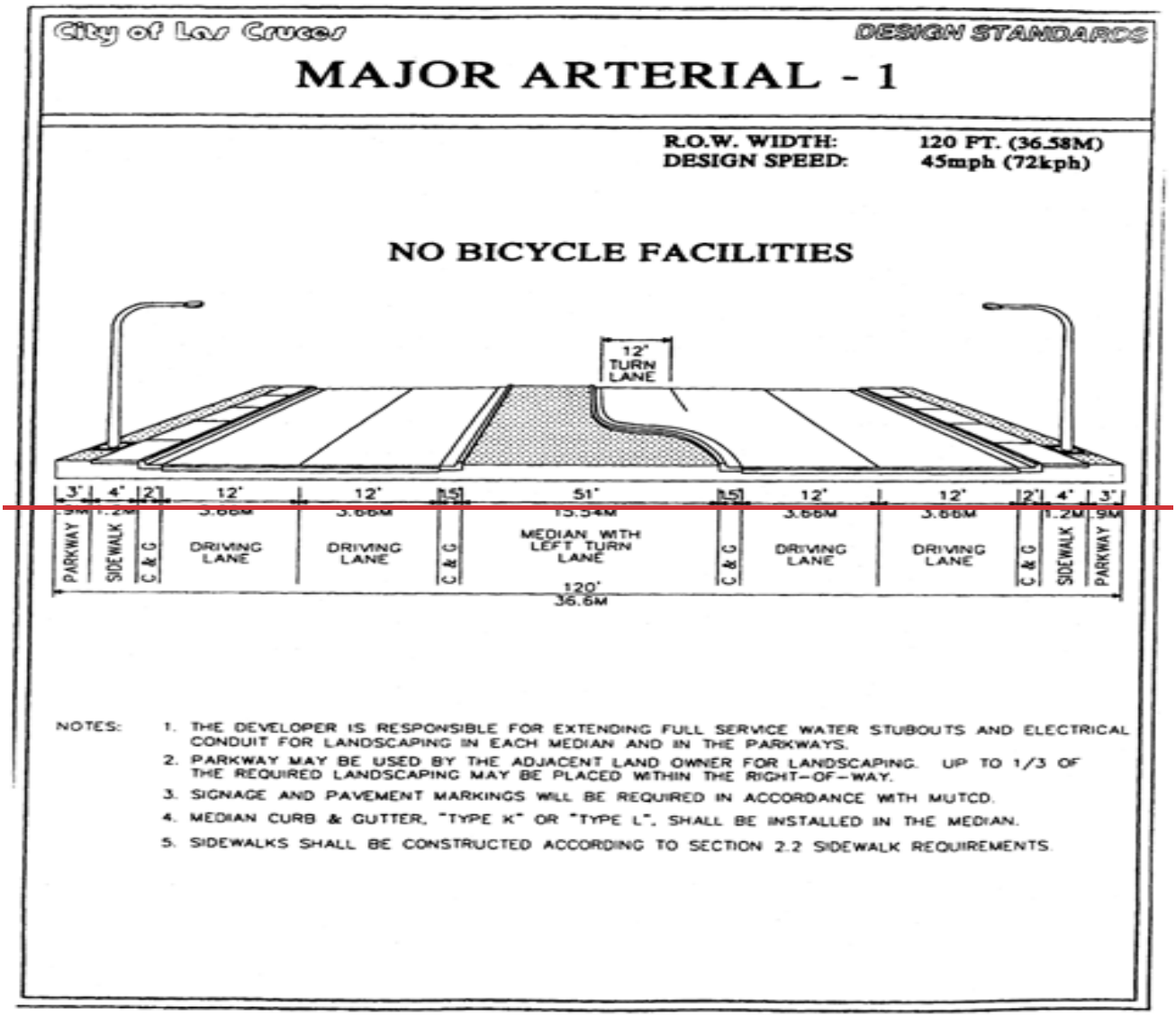


~~Minor Arterial 1~~

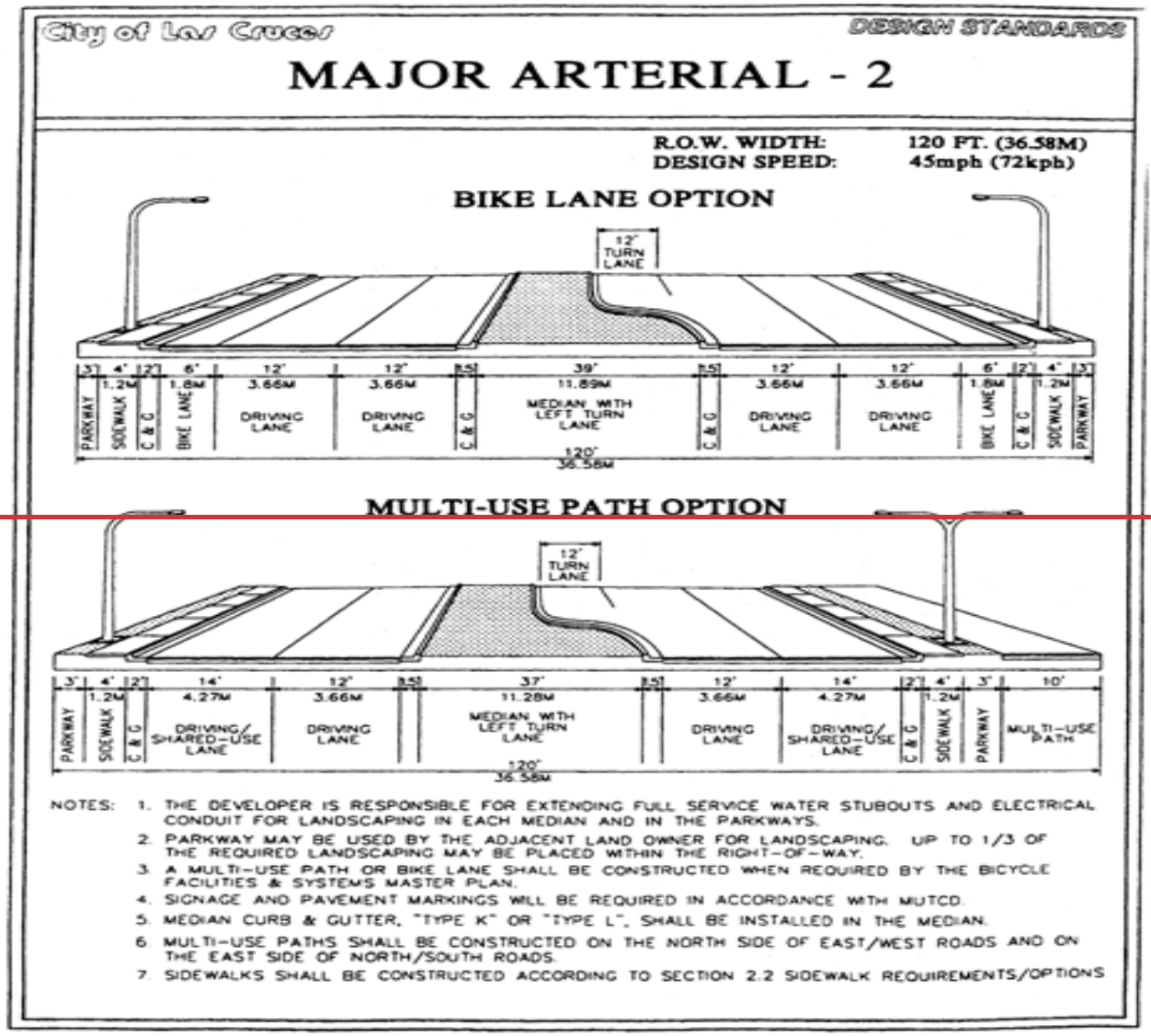


NOTES:
1. THE DEVELOPER IS RESPONSIBLE FOR EXTENDING FULL SERVICE WATER STUBOUTS AND ELECTRICAL CONDUIT FOR LANDSCAPING IN EACH MEDIAN AND THE PARKWAYS.
2. PARKWAY MAY BE USED BY THE ADJACENT LAND OWNER FOR LANDSCAPING. UP TO 1/3 OF THE REQUIRED LANDSCAPING MAY BE PLACED WITHIN THE RIGHT-OF-WAY.
3. A MULTI-USE PATH OR BIKE LANE SHALL BE CONSTRUCTED WHEN REQUIRED BY THE BICYCLE FACILITIES & SYSTEMS MASTER PLAN.
4. SIGNAGE AND PAVEMENT MARKINGS WILL BE REQUIRED IN ACCORDANCE WITH MUTCD.
5. MEDIAN CURB & GUTTER, "TYPE K" OR "TYPE L", SHALL BE INSTALLED IN THE MEDIAN.
6. MULTI-USE PATHS SHALL BE CONSTRUCTED ON THE NORTH SIDE OF EAST/WEST ROADS AND ON THE EAST SIDE OF NORTH/SOUTH ROADS.
7. SIDEWALKS SHALL BE CONSTRUCTED ACCORDING TO SECTION 2.2 SIDEWALK REQUIREMENTS.

~~Minor Arterial 2~~



~~Major Arterial 1~~



~~Major Arterial 2~~

~~(c) *Cul-de-sac requirements.* The use of cul-de-sacs in residential and commercial/industrial developments are permitted by these design standards;~~

~~(1) A traditional bulb shaped cul-de-sac shall be considered the approved standard and its length shall be measured from the center line of the intersecting street to the center point of the cul-de-sac.~~

~~(2) Hammerhead cul-de-sac length will be measured from the center line of the intersecting street to the back of curb at the end of the cul-de-sac.~~

~~(3) *Cul-de-sac dimension requirements.*~~

~~a. Maximum cul-de-sac length will be 750 feet (228.6m) in residential or commercial subdivisions. An additional 750 foot (228.6m) of length which allows up to a 1500 feet (457.2m) cul-de-sac may be applied for through the development review committee when topography or land/lot~~

configuration indicate the need for a longer cul-de-sac. A request for a cul-de-sac in excess of 750 feet (228.6m) shall be submitted to the subdivision administrator at the time of preliminary plat submittal. The subdivision administrator will process the request with the preliminary plat to the development review committee following the initial staff review. The development review committee will consider the request for additional length in light of peak hour traffic, number of units, size of lots, fire flow requirements, and any other considerations the development review committee may believe affects safety. Mitigation techniques such as, but not limited to, sprinkled fire suppression systems, additional hydrants, additional water lines to provide looped systems, increased street widths, and/or a secondary emergency vehicle access into the cul-de-sac at a remote point from the intersecting street may be required by the development review committee. In no case shall a waiver be granted to allow a cul-de-sac in excess of 1500 feet (457.2m).

b. The right-of-way and paving width of the stem of the cul-de-sac shall be the same width as the street classification given to the cul-de-sac. For example, if the cul-de-sac is serving a commercial development, it shall follow the requirements for a major local street.

c. A traditional bulb shaped cul-de-sac turnaround shall have a minimum radius of fifty (50) feet (15.24m). The minimum paving radius shall be thirty-six (36) feet (10.67m) including curbing.

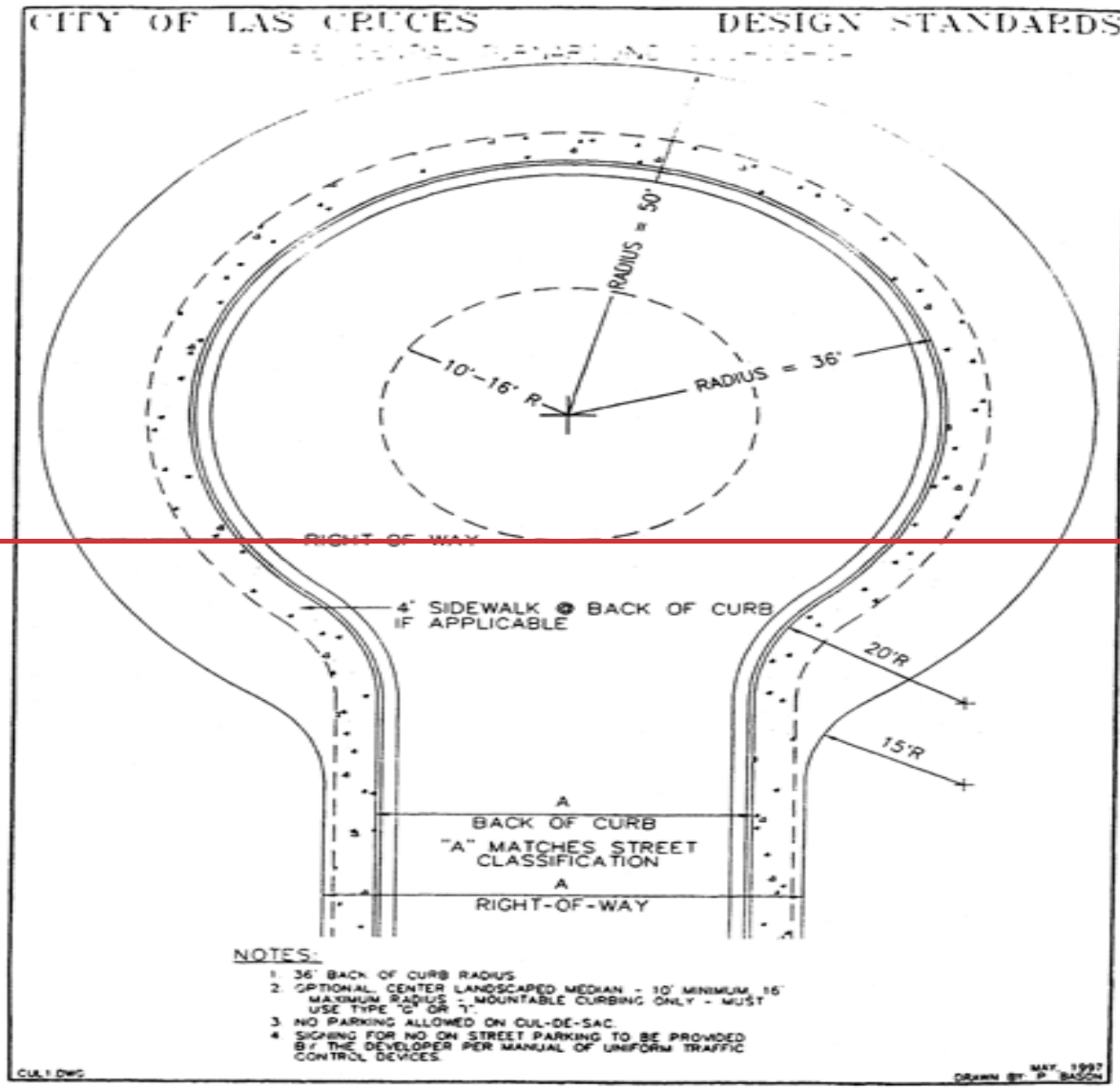
(4) *Alternative turn-around criteria.*

a. Developments using hammerhead turnarounds shall be required to provide three off-street parking spaces per unit located along the turn-around as measured from the point of curvature to the point of curvature (PC/PC). The cul-de-sac shall be limited to a maximum length of 250 feet (76.2m) and a maximum of 16 single story dwelling units.

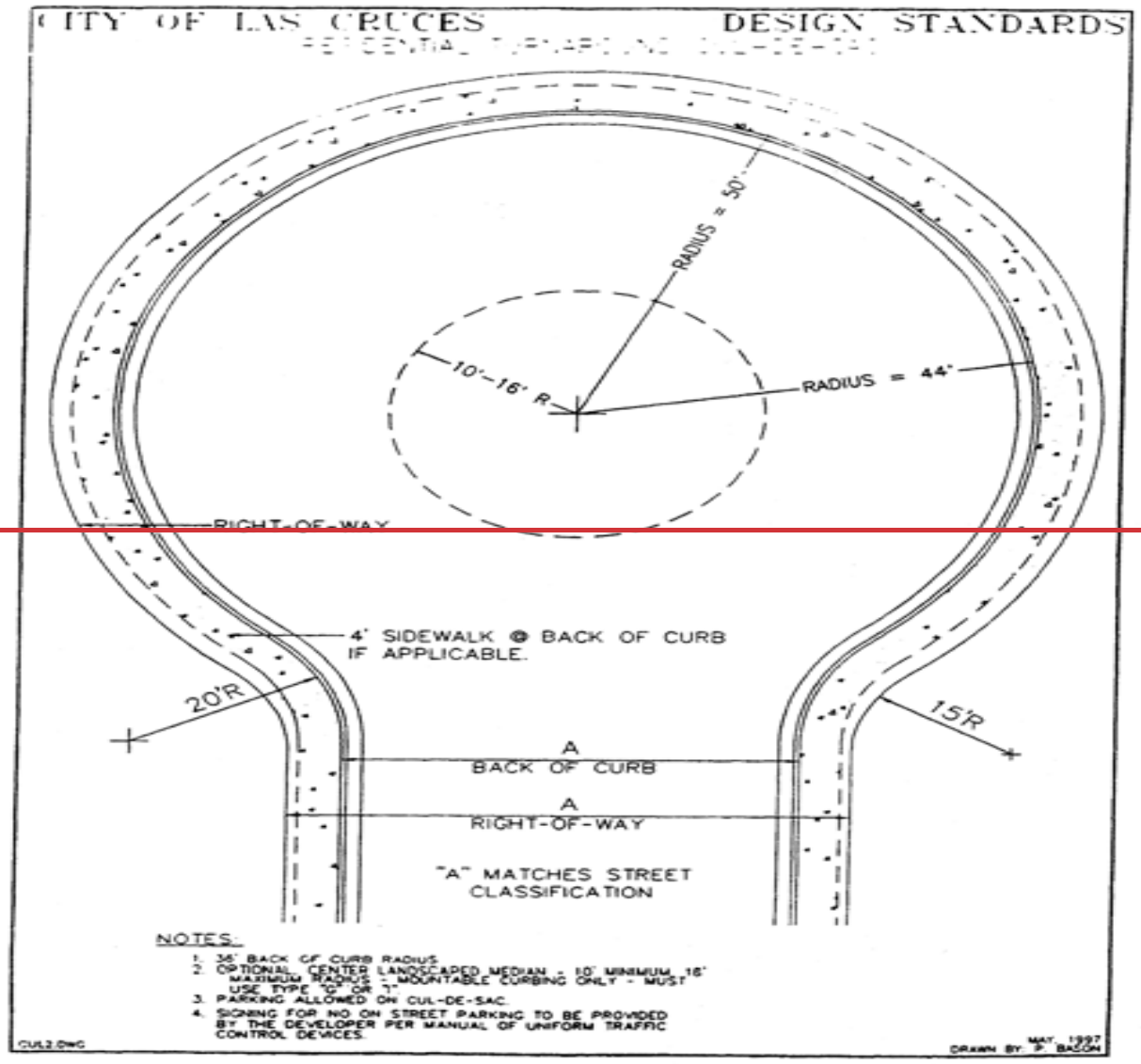
b. Cul-de-sacs with other alternative turnaround designs, i.e. offset bulb, tear-drop shaped, "Y" shaped, eyebrows, etc., shall be reviewed on a case by case basis by the development review committee.

(5) In cases where on-street parking is not allowed in the cul-de-sac turnaround areas, signing of the cul-de-sac no parking areas shall be accomplished at the time of subdivision construction and in accordance with the manual on uniform traffic control devices for urban parking and stopping signs.

See next three pages for cul-de-sac details.



~~Design Standards 1~~



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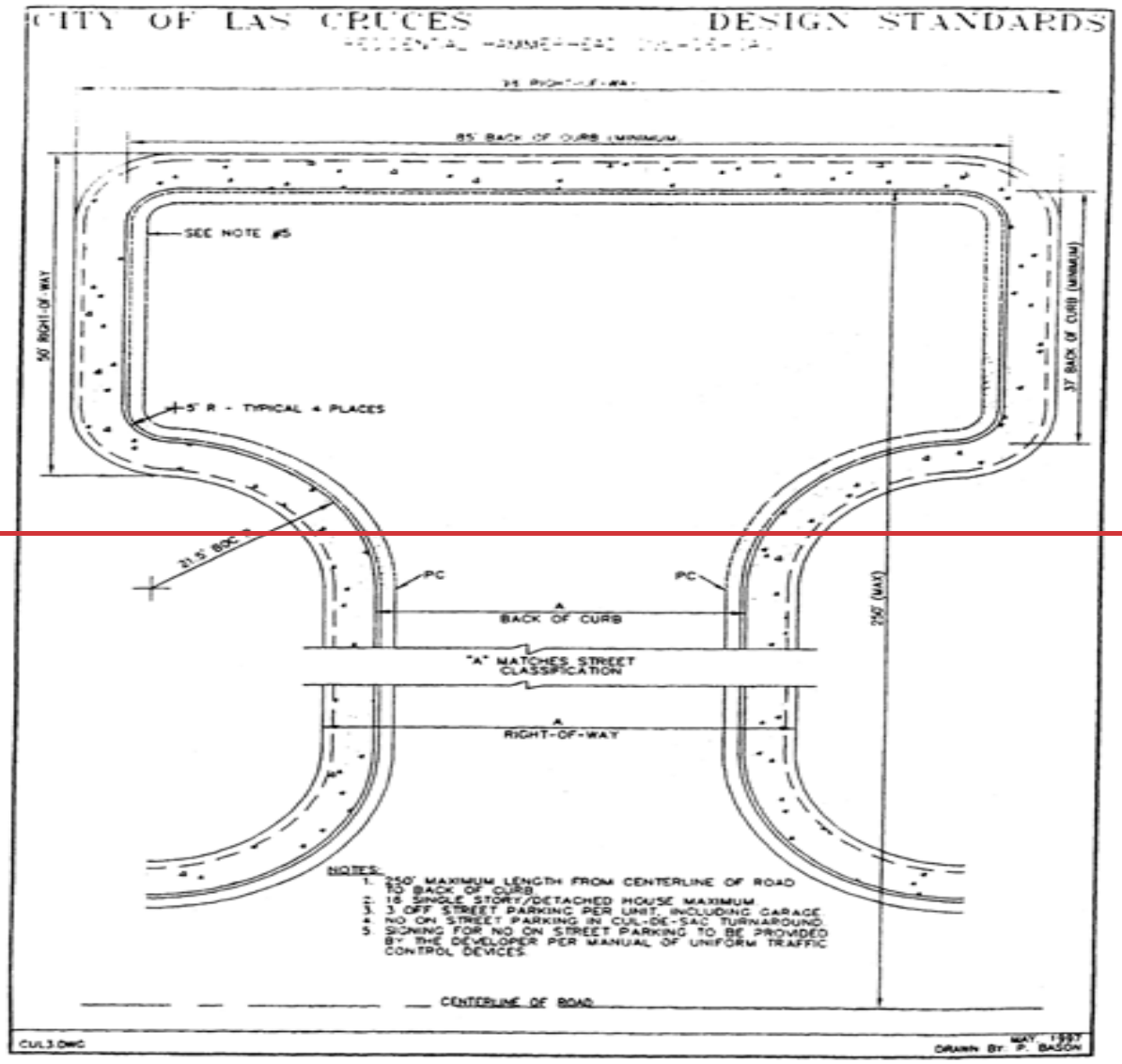


~~Design Standards 3~~

~~(d) *Curbing.* All city streets require some form of approved curbing. Curb and gutter use is primarily dictated by drainage conveyance needs as well as traffic safety concerns. The following pages detail the approved curbing types as well as outline under what conditions the various curb types are applicable:~~

~~(1) Type A, six-inch stand-up curb and gutter.~~

~~(2) Type B, six-inch modified stand-up curb and gutter.~~

~~(3) Type C, eight-inch stand-up curb and gutter.~~

~~(4) Type D, eight-inch modified stand-up curb and gutter.~~

~~(5) Type E, rollover curb and gutter.~~

~~(6) Type F, modified rollover curb and gutter.~~

~~(7) Type G, rollover curb and gutter.~~

~~(8) Type H, drive over curb and gutter.~~

~~(9) Type I, drive over curb and gutter.~~

~~(10) Type J, header curb.~~

~~(11) Type K, median curb and gutter.~~

~~(12) Type L, modified median curb and gutter.~~

~~(13) Type M, rundown gutter, four feet.~~

~~(14) Type N, rundown gutter, two feet.~~

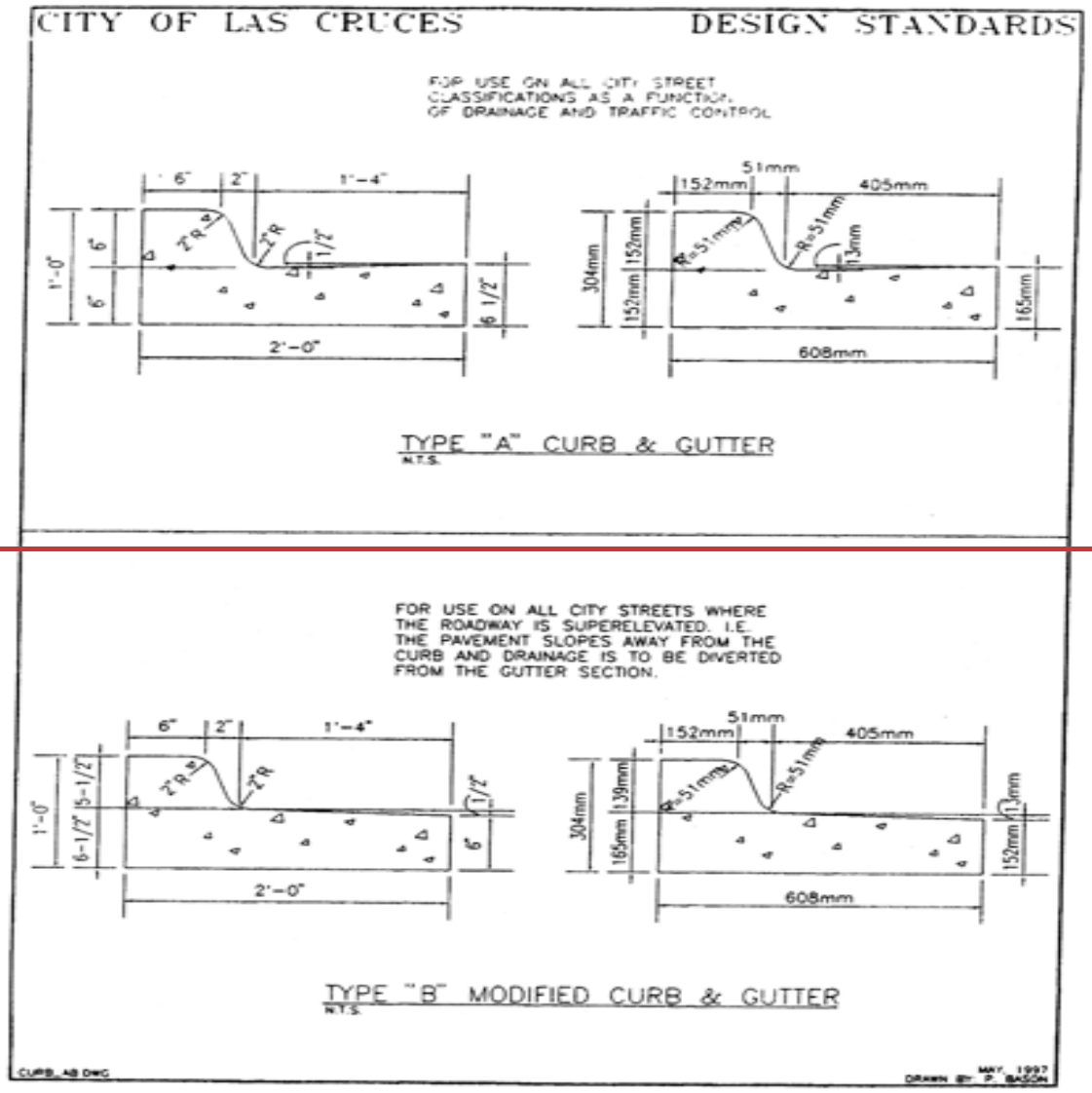
~~(15) Type O, temporary asphalt curb.~~

~~(16) Type P, temporary extruded concrete median curb.~~

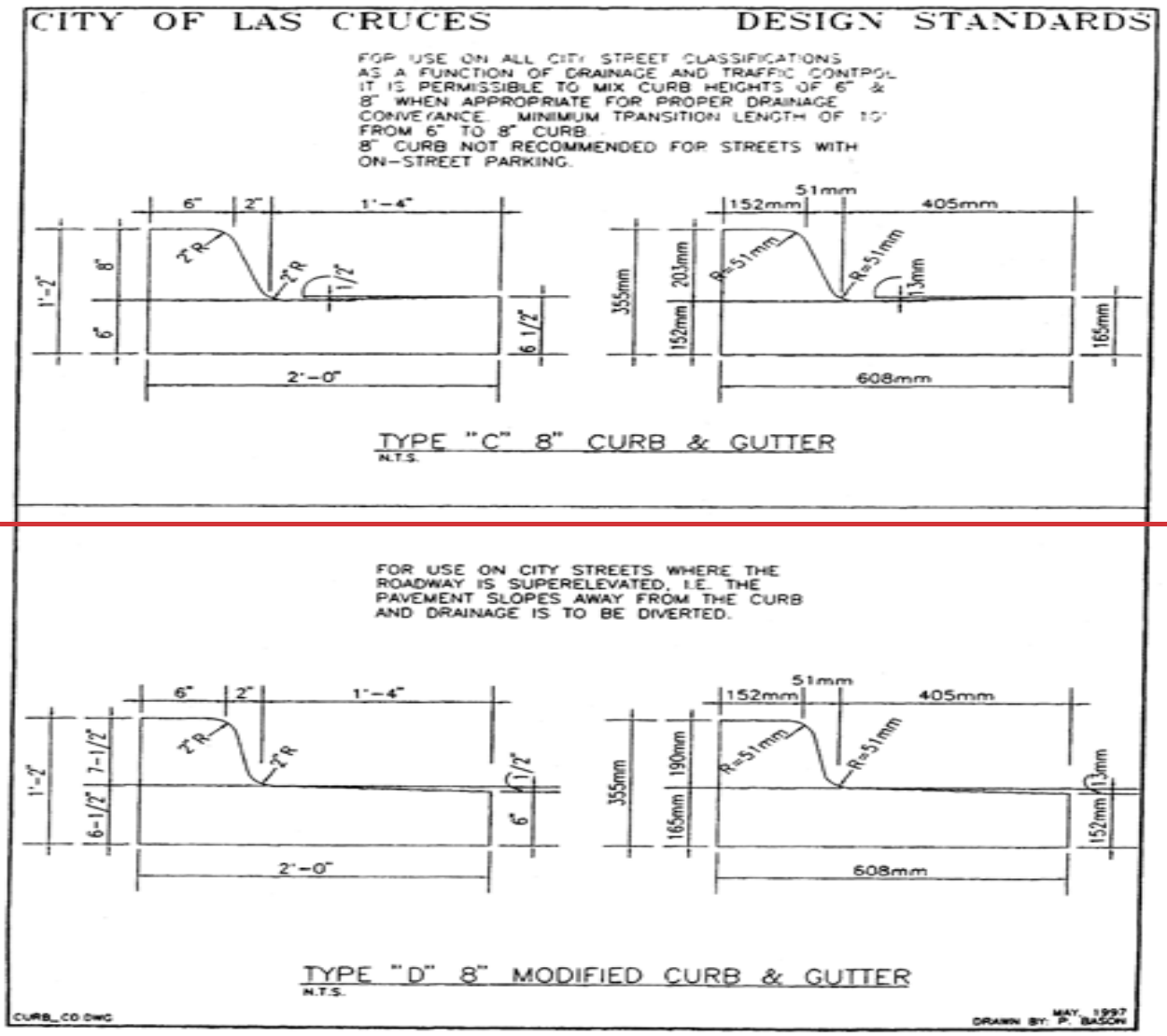
~~(17) Type Q, valley gutter.~~

~~(18) Type R, drivepad curb.~~

~~See next 9 pages for curb details.~~



~~Design Standards 4~~



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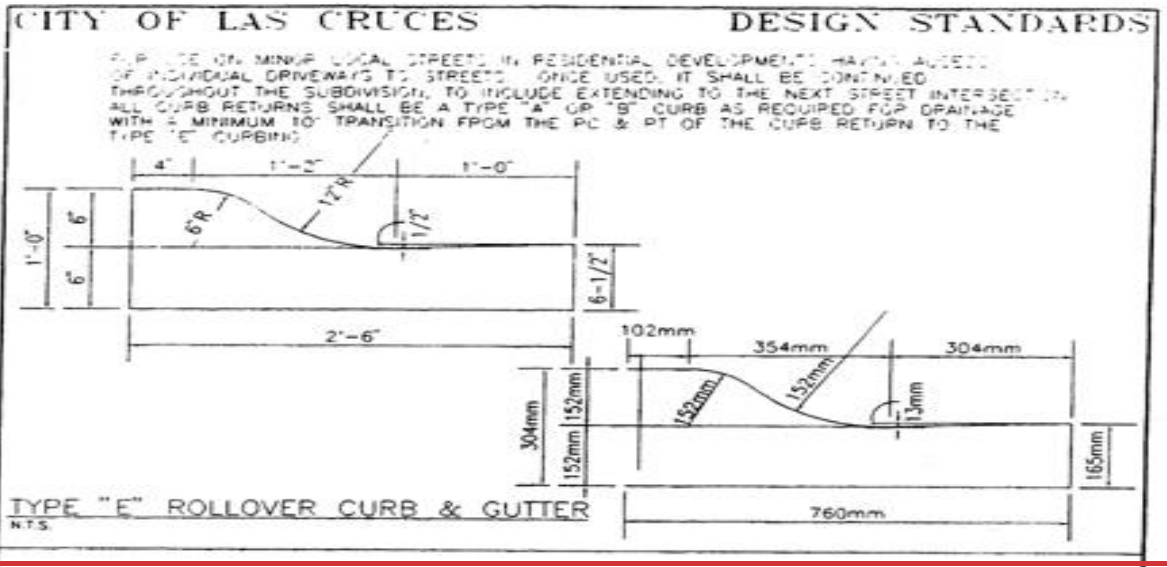
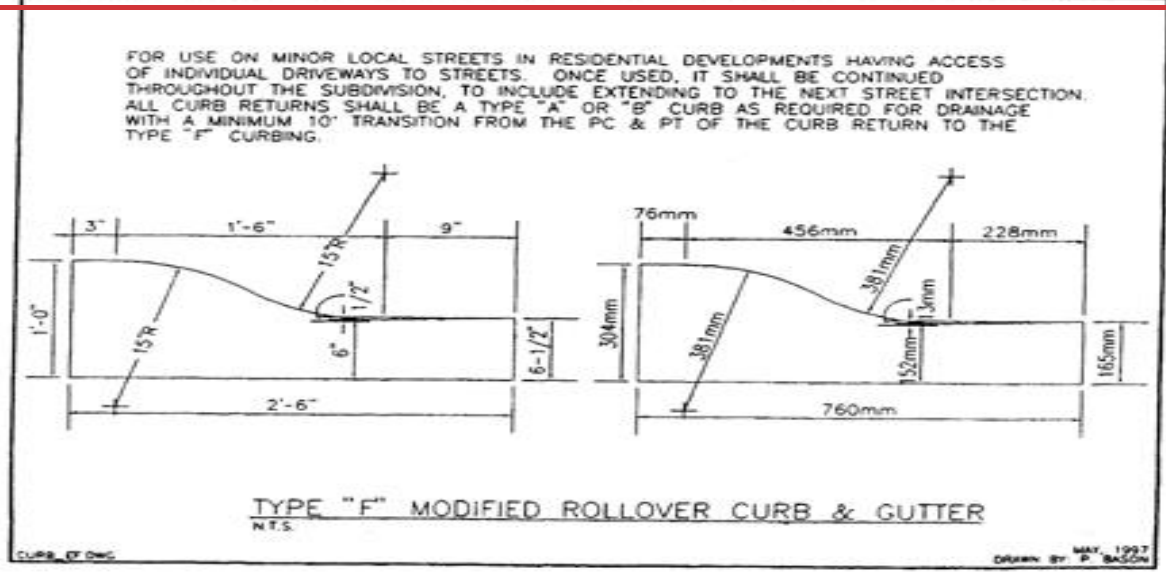
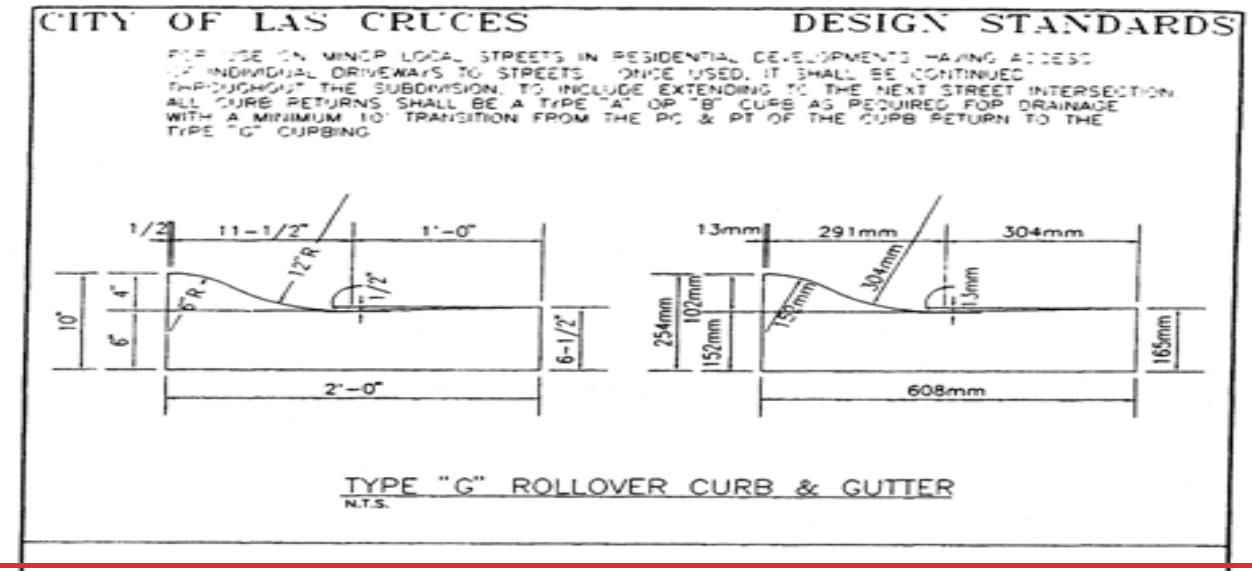
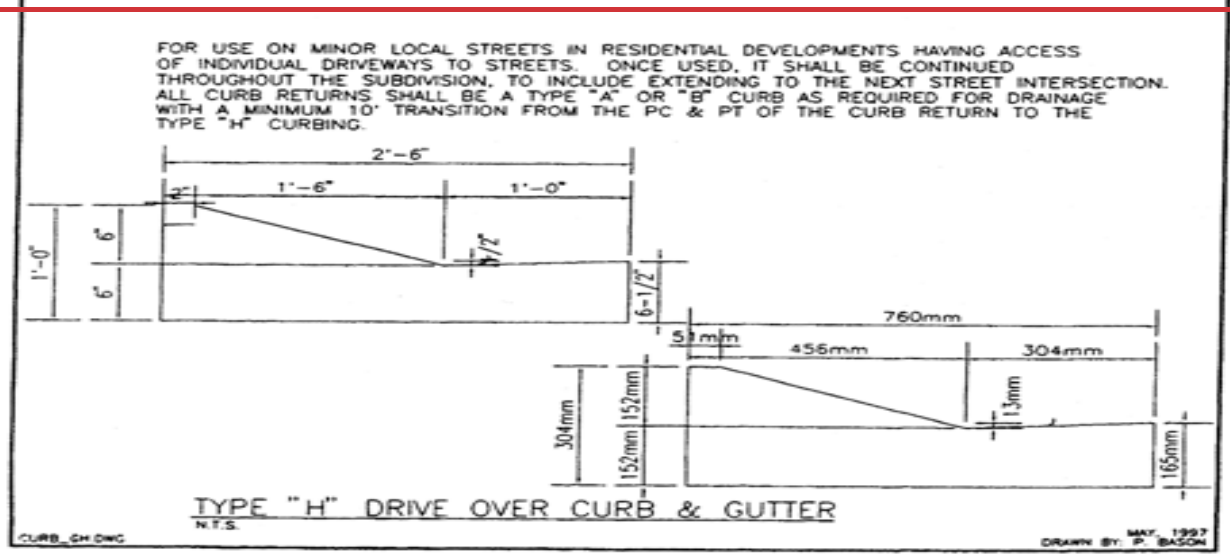


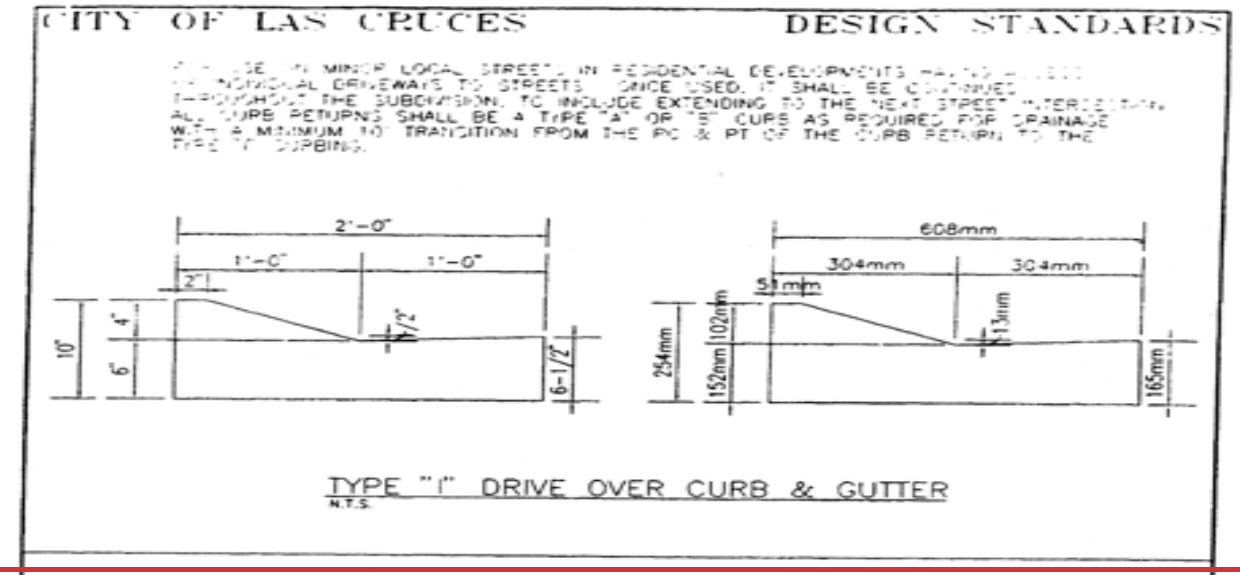


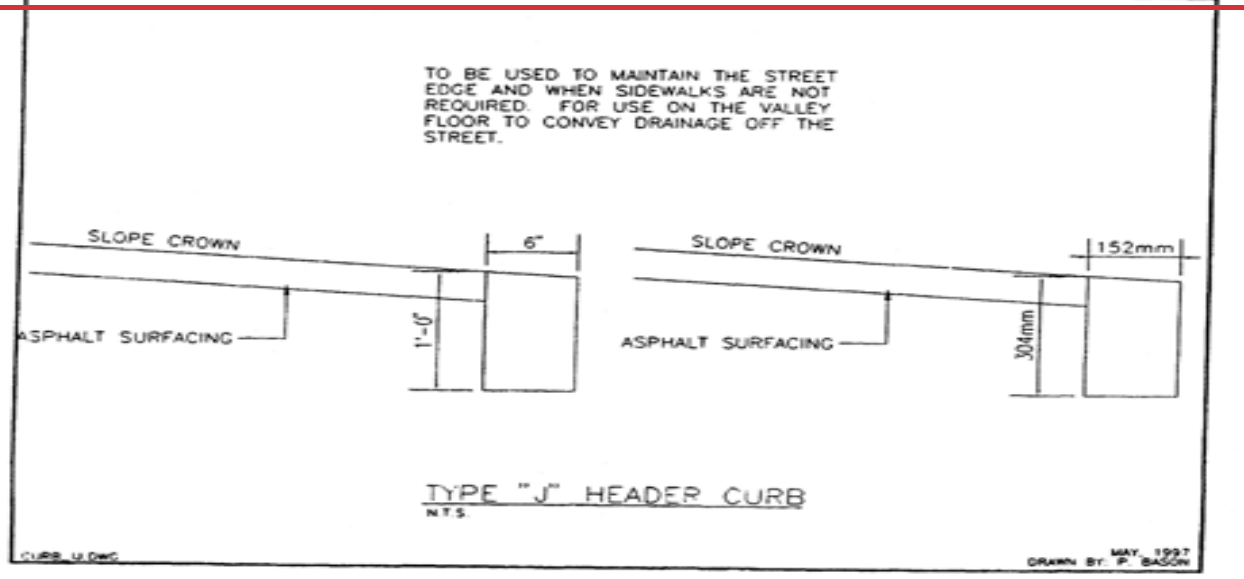
~~Design Standards 6~~



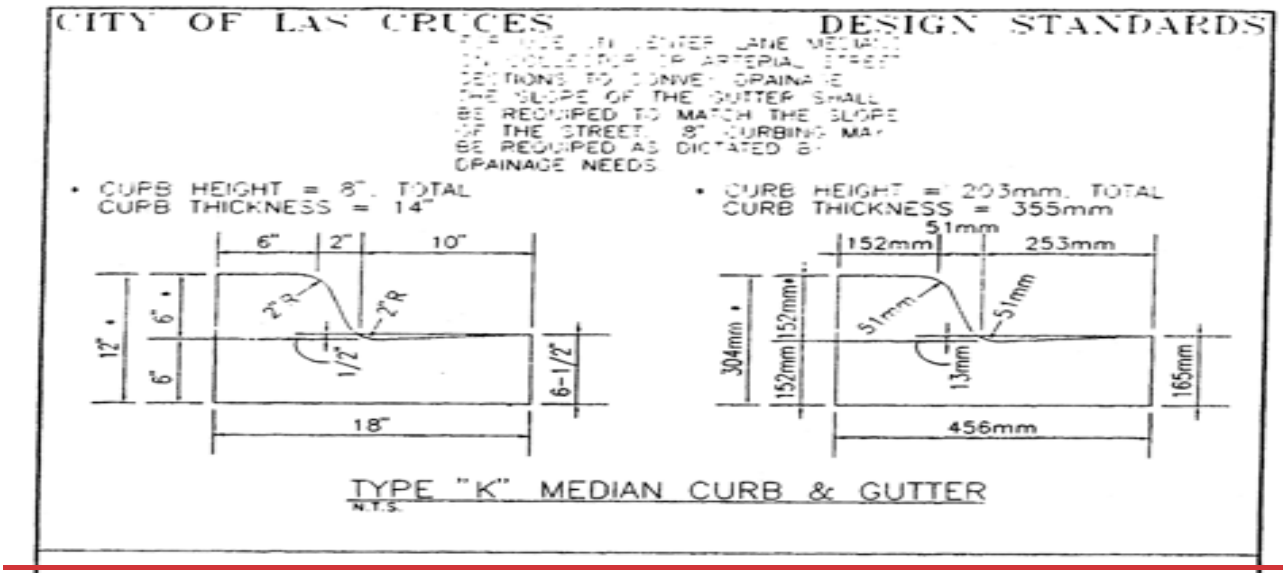


~~Design Standards 7~~

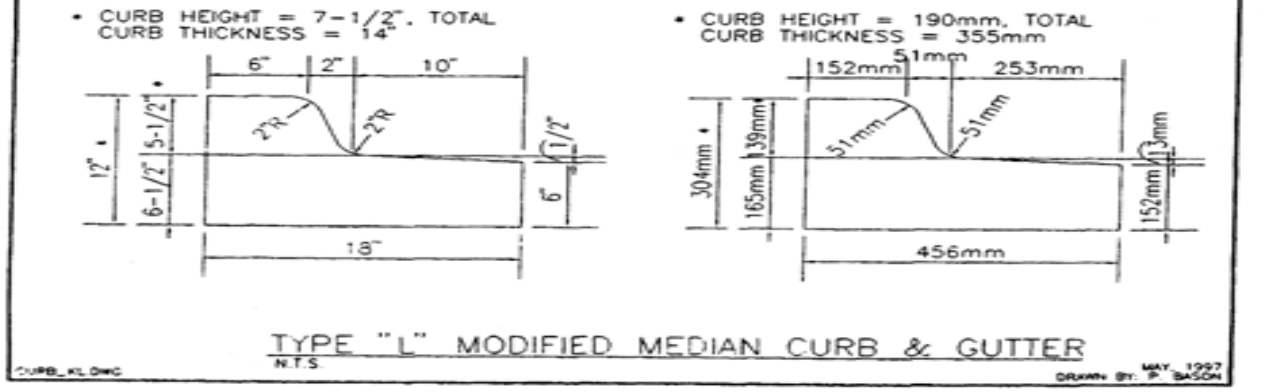




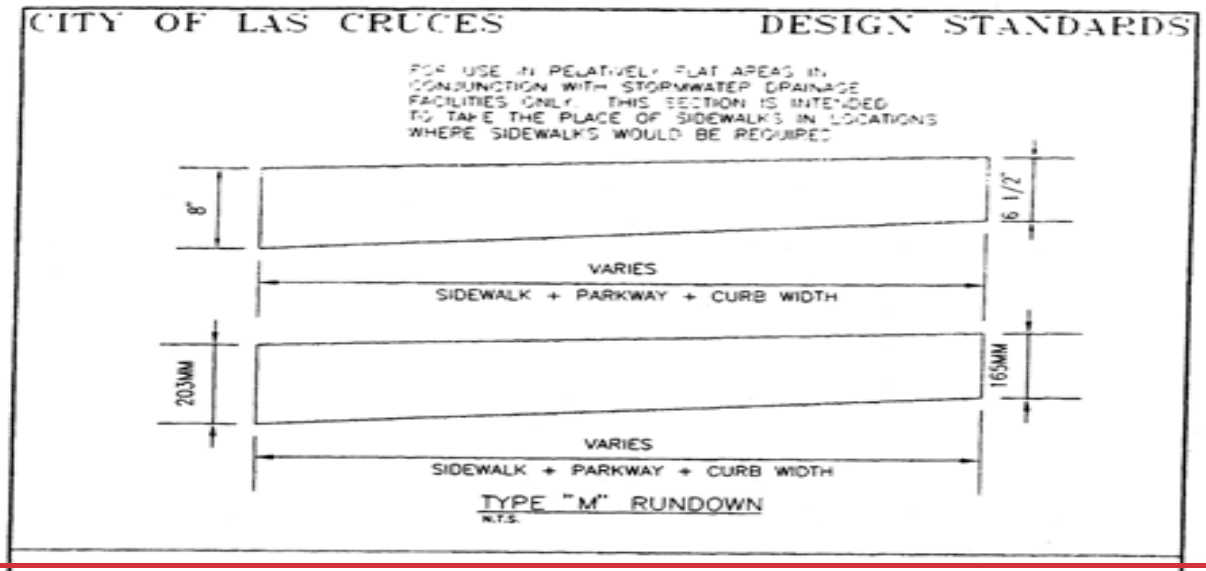
~~Design Standards 8~~

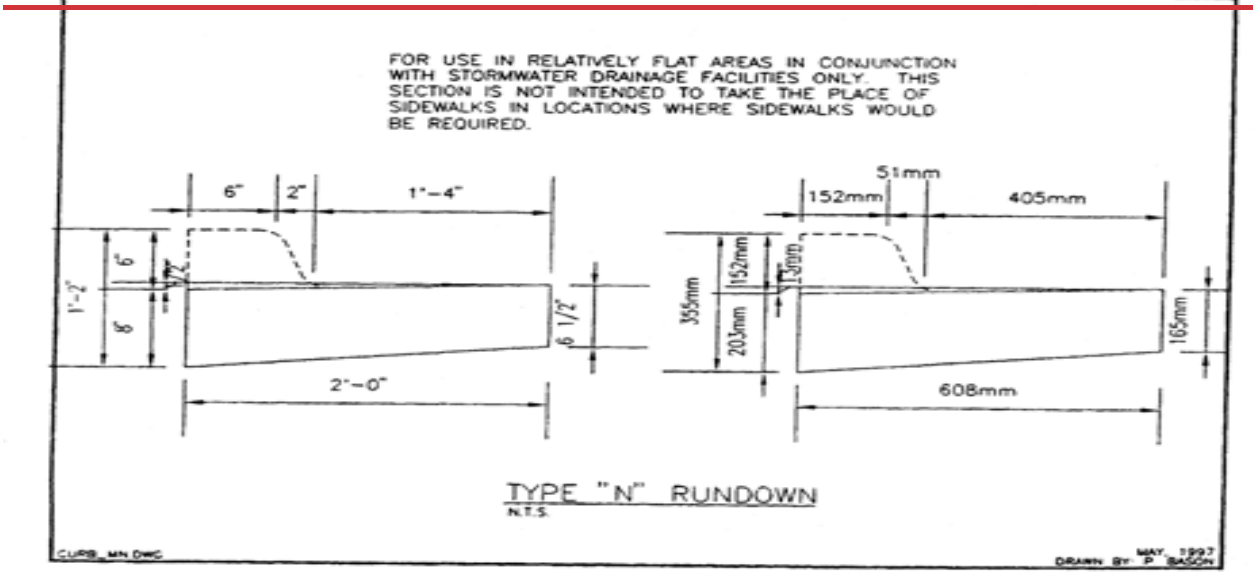


FOR USE ON CENTER LANE MEDIANS ON COLLECTOR OR ARTERIAL STREET SECTIONS TO CONVEY DRAINAGE. THE SLOPE OF THE GUTTER SHALL BE REQUIRED TO MATCH THE SLOPE OF THE STREET. TO BE USED ON SUPERELEVATED MEDIANS. 8" CURBING MAY BE REQUIRED AS DICTATED BY DRAINAGE NEEDS.



~~Design Standards 9~~





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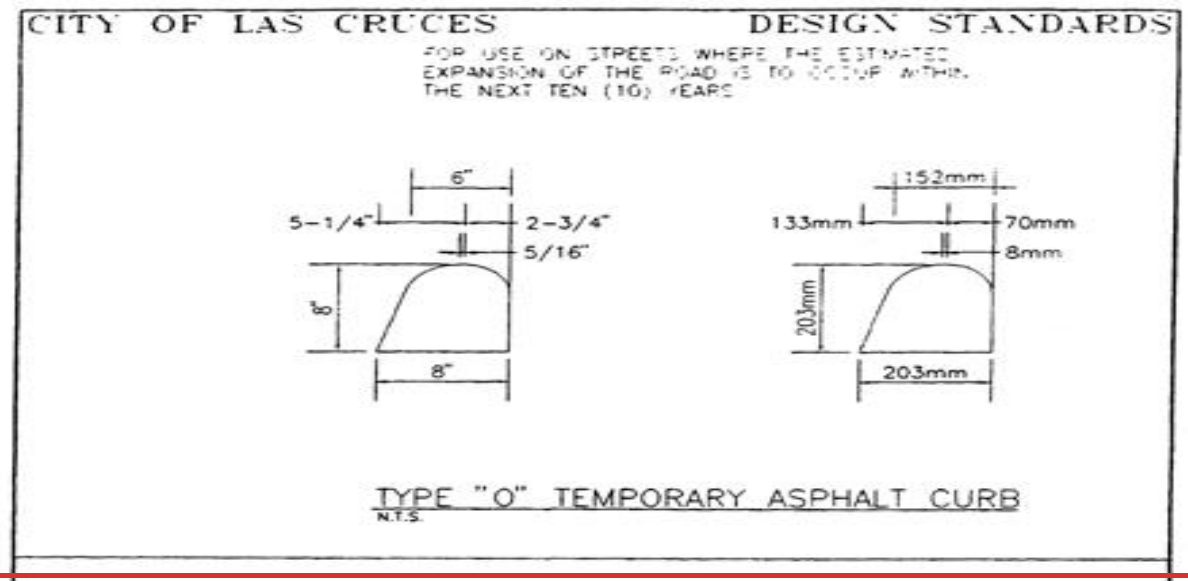

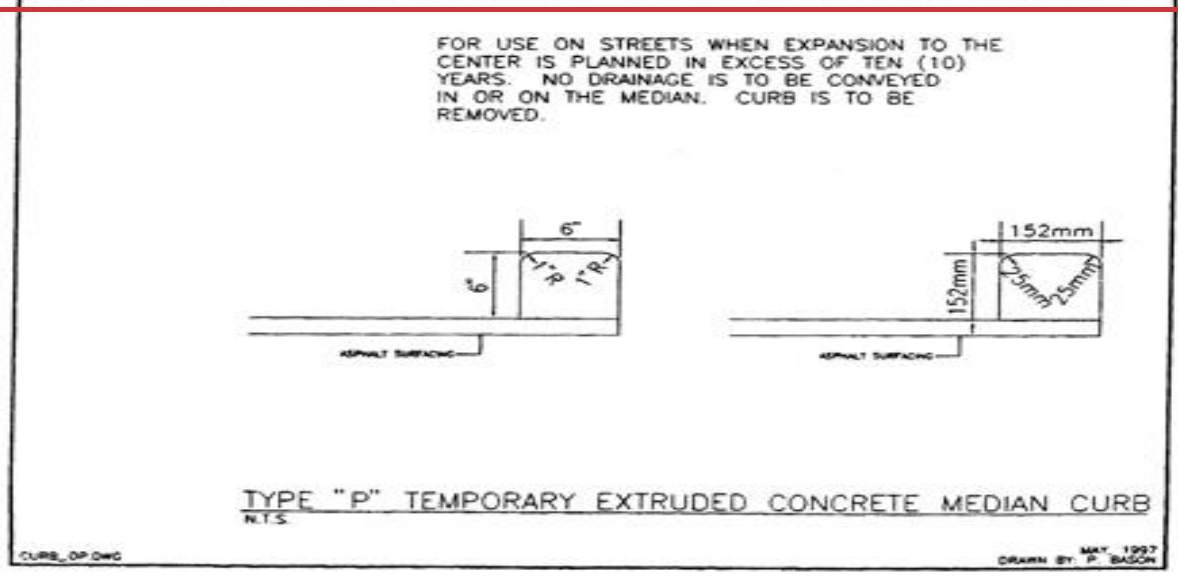

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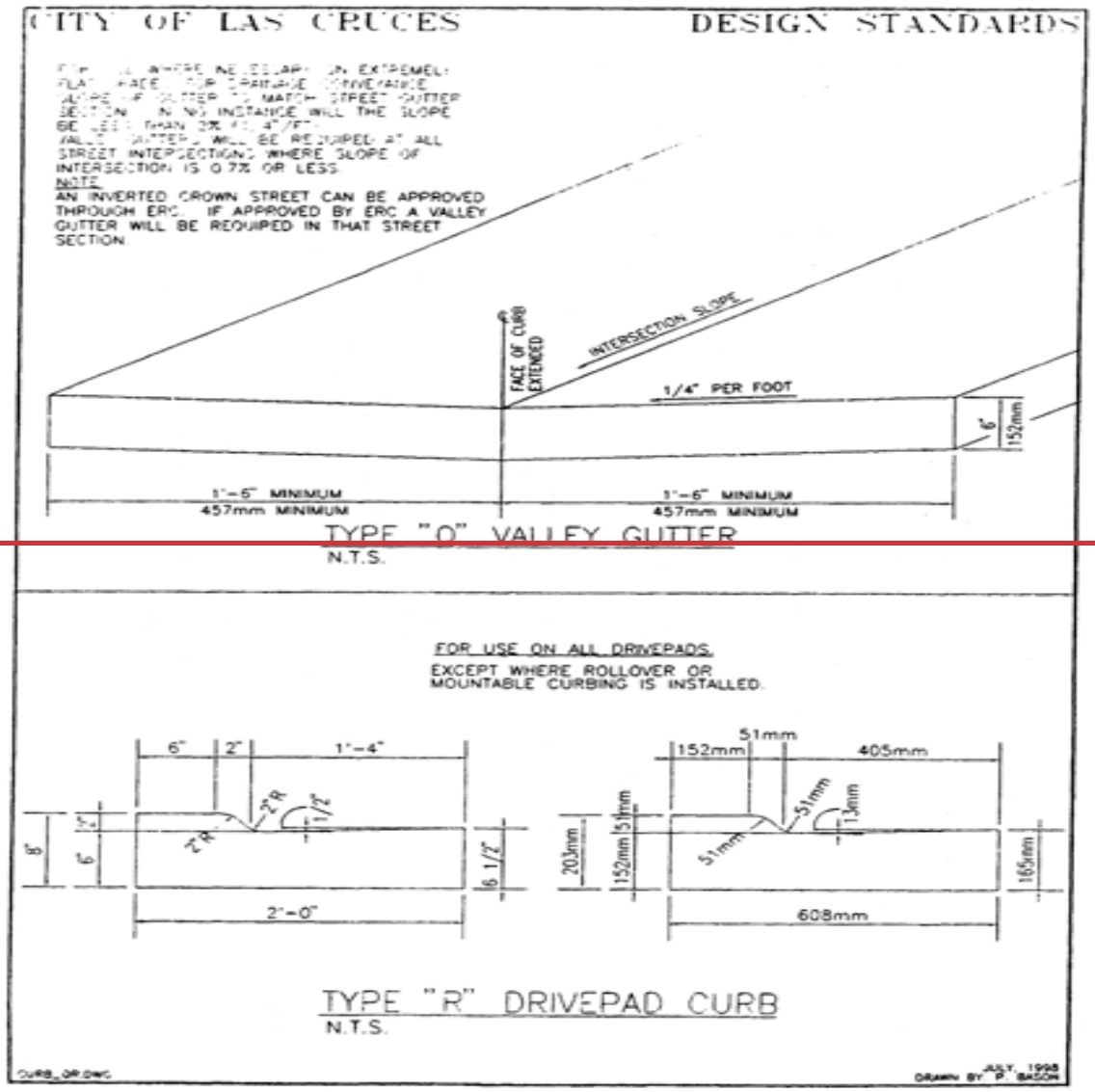


~~Design Standards 12~~

~~(c) *General design criteria for streets.*~~

~~(1) Minimum right-of-way radius at intersections:~~

~~a. Rights-of-way 15 feet (4.57m) at property line for minor local roads.~~

~~b. Rights-of-way 25 feet (7.62m) at property line for all classifications higher than minor local.~~

~~(2) Minimum side slope outside right-of-way (steepest slope), two (horizontal) to one (vertical).~~

~~(3) Street logs with centerline offsets of less than 125 feet (38. 10m) shall not be permitted on local streets. Street jogs shall not be permitted for collectors or arterials.~~

(4) Streets shall be laid out so as to intersect as nearly as possible at right angles, and no street shall intersect any collector or arterial street at less than 75 degrees and no local or light commercial streets at less than 60 degrees.

TABLE I

STANDARD UNITS
GENERAL DESIGN CRITERIA FOR STREETS
(NUMBER IN PARENTHESES APPLY TO FOOTNOTES)

	Minimum Centerline Radius (Feet)(10)				Vertical Curve Requirement(4), (7) Vertical Curvature Design Value(2)			
Street Classification	Design Speed mph	0.02 Feet/Feet Super-elevation (feet)	With Normal Crown(6), (8) (feet)	Min. Length Vertical Curve (feet)(1)	K Value For Crest Stopping Sight Distance(5)	K Value For SAG Stopping Sight Distance(5)	Change Allowed Without Vertical Curve (percentage)(7)	Maximum Grade Allowed (percentage)
Major arterial	50	1,050	1,400	150	160	110	0.4	7
Minor arterial	45	800	1,100	135	120	90	0.4	7
Collector	35	450	600	100	50	50	0.7	8
Major Local	30	380	380	50	30	40	1.0	10
Minor Local	25	180	* 180	50	20	30	1.0	10
Low Density Local	15	180	* 180	50	20	30	1.0	10

METRIC UNITS
GENERAL DESIGN CRITERIA FOR STREETS
(NUMBER IN PARENTHESES APPLY TO FOOTNOTES)

	Minimum Centerline Radius (Feet)(10)				Vertical Curve Requirement(4),(7) Vertical Curvature Design Value(2)			
Street Classification	Design Speed (km/h)	0.02 m/m Super-elevation (m)	With Normal Crown (m)(6), (8)	Min. Length Vertical Curve (m)(1)	K Value For Crest Stopping Sight Distance(5)	K Value For SAG Stopping Sight Distance(5)	Change Allowed Without Vertical Curve (percentage)(7)	Maximum Grade Allowed (percentage)(9)
Major arterial	80	320	425	50	160	110	0.4	7
Minor arterial	70	245	335	40	120	90	0.4	7
Collector	55	135	185	30	50	50	0.7	8
Major Local	45	115	115	15	30	40	1.0	10

Minor Local	40	70	55	15	20	30	1.0	10
Low Density Local	25	70	55	15	20	30	1.0	10

Major local, minor local, and low density local street intersections(10)

Major arterial, minor arterial and collector street intersections with or without traffic signals(11)

* Cul-de-Sacs R=120 feet

Footnotes for table 1

1. Controlling limit only when algebraic grade difference A times the design value K is less than minimum shown: in all other cases, L = KA shall control.
2. The values for K shown are to be used in determining the minimum length of vertical curve required by the use of the relationship L= KA.

   Where:

   L = Length of vertical curve in feet

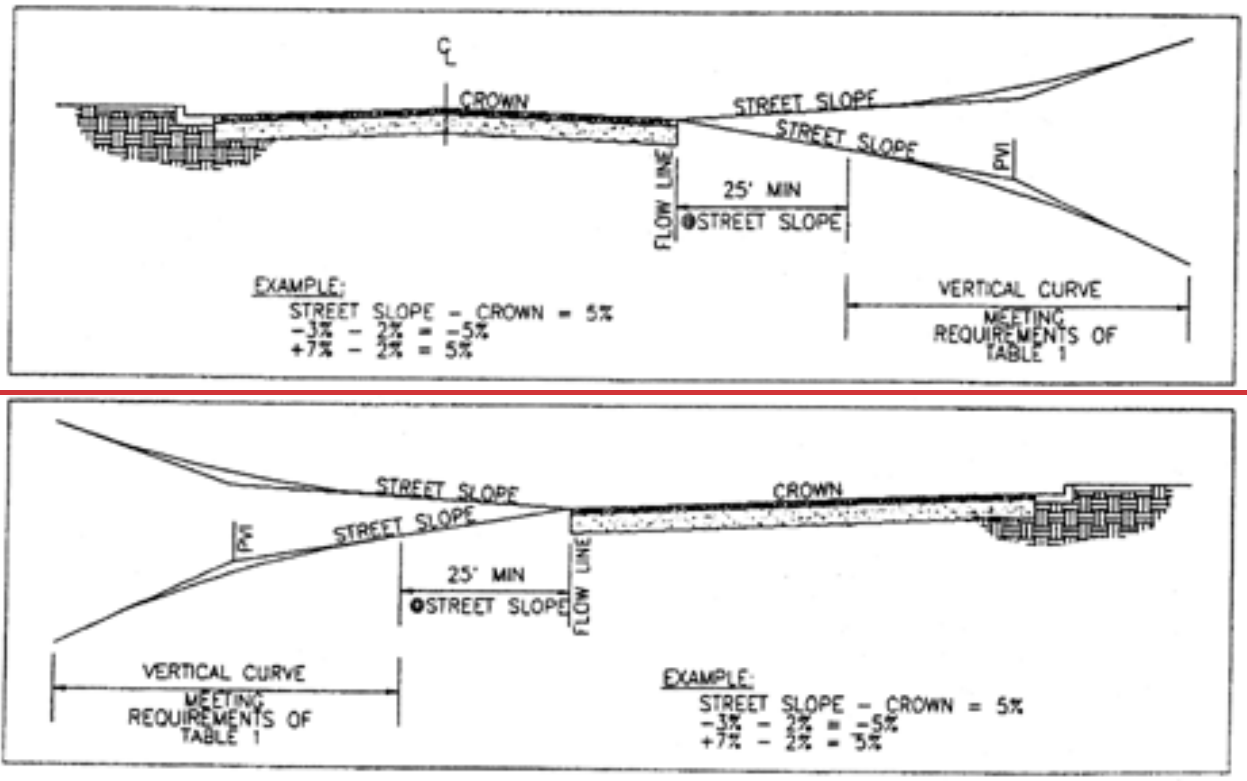
   A = Algebraic difference in grades expressed in percent

   K = Design value indicate of rate of curvature
3. Lengths of vertical curves longer than the minimums resulting from the use of K values shown should be used wherever possible; however, K should not exceed 167 feet (50.90m) per percent change in grade when curb and gutter is used for drainage considerations.
4. Crest vertical curves are based on eye height of three feet, three inches, object height of six inches and AASHTO minimum stopping distances. SAG vertical curves are based on AASHTO standards. If AASHTO standards are revised to more restrictive values, the more restrictive values shall supersede the values of this table.
5. The crown will be a minimum of one-half percent and maximum 2½ percent. Streets with cross slope shall not exceed five percent. Greater cross slopes may be allowed only with the express written permission of the public works director or at street intersections. Calculations shall be submitted for review and approval for cross slopes greater than five percent indicating the conveyance capacity of the street section for drainage runoff.
6. A minimum of 50 feet (15.24m) distance equal to the minimum length vertical curve must be maintained between vertical points of intersection.
7. Local residential streets with 90-degree or near 90-degree (interior angle between 80 degrees and 110 degrees) turns may be designed with a minimum centerline radius of 50 feet (15.24m) with the express written permission of the public works director. Appropriate advisory signs may be required.
8. Minimum slope in streets with standard curb and gutter shall be one-half percent. Minimum slope in streets with header curb or rundown curb shall be zero percent. The crown on a zero-percent to one-half percent street shall be a minimum two percent.
9. Major local, minor local and low density local street intersections shall have a maximum algebraic difference in grades expressed in percent of five (street slope minus crown slope). All nonthrough streets shall have a minimum 25 feet (7.62m) landing from the flowline of the intersecting street with vertical curves, meeting the criteria listed in table I for the different street classifications, beginning at

the end of the landing. All through streets shall meet the criteria listed In Table I for the different street classifications for vertical curves. See drawings below.

10. Major arterial, minor arterial and collector street intersections with or without traffic signals shall meet the criteria listed in Table I for the different street classifications for vertical curves. Design of vertical curves within the street Intersection shall accommodate all drainage conveyance runoff.

11. Source: Design of Urban Streets, Federal Highway Administration; U.S. Department of Transportation.



Vertical Curves

(Ord. No. 949, § 2.1, 9-8-87; Ord. No. 1048, 1-17-89; Ord. No. 1224, § 1, 3-18-91; Ord. No. 1575, § I, 9-3-96; Ord. No. 1745, § I, 6-7-99; Ord. No. 1929, §§ I, II, 8-5-02)

Sec. 32-37. Sidewalk requirements.

Sidewalks for pedestrian traffic are required when a street is built in the city. The only exception to this requirement shall be a low density local street with stand-up curb and gutter. Sidewalks shall be required along all streets where the average residential lot size of adjacent lots is one-half acres (2023.44m^2) and less.

(1) When this requirement is applied. It shall be the responsibility of the developer, at the time of subdivision construction, to prepare all sidewalk subgrade and to construct the sidewalks along all collector and arterial streets or any other street classified higher than a minor local. The construction of sidewalks along all local streets shall be the responsibility of the building contractor or the homeowner If they are not provided by the developer. The sidewalk may have a minimum thickness of four inches (101.6mm) if the sidewalk is built at the time of roadway construction and the subgrade and base course under the sidewalk is the same as under the roadway and if the sidewalk is built flush with the street without curb and gutter, or if a

mountable type curb is used. A minimum thickness of six inches (152.4mm) is required if the sidewalk is not constructed at the time of roadway construction and is abutting a mountable type curb. Sidewalks shall be built in accordance with current concrete specifications as per the City of Las Cruces Standard Specifications for Road Construction, as amended.

(2) Standards for sidewalk construction.

a. Sidewalks shall be adjacent to curb or pavement. When a sidewalk is built flush with the street, utilizing a mountable type curb, then the sidewalk shall have a minimum thickness of four inches (101.6mm) if constructed at the same time as roadway construction or six inches (152.4mm) If not built at the time of the roadway. The four-inch (101.6mm) sidewalk when adjacent to mountable type curbing shall be designed as a rigid pavement (concrete) based on twenty of the street average daily load (ADL). Sidewalk in lieu of curb and gutter shall be designed as a rigid pavement (concrete) using street ADL. A minimum thickness of six inches (152.4mm) is required if the sidewalk is not constructed at the same time as roadway construction or if the sidewalk abuts the pavement.

b. Wheelchair ramps with sidewalk from point of curve (PC) to point of tangency (PT) shall be constructed in accordance with applicable sections of the Americans With Disabilities Act (ADA) at the time of roadway construction.

c. Sidewalks shall have a minimum width of four unobstructed feet (1.22m). Street lights, power poles, fire hydrants, street signs or other types of obstructions shall not be permitted in the sidewalks. If street obstructions are in the way of proposed sidewalks, the obstructions shall be relocated prior to construction of the sidewalk or the sidewalk shall be widened to allow four feet (1.22m) of unobstructed width.

d. The material under the sidewalk shall be a minimum of six inches (152.4mm) of A-2-4 material (pursuant to AASHTO Soil Classification) with a minimum compaction of 95 percent.

(Ord. No. 949, § 2.2, 9-8-87; Ord. No. 1745, § I, 6-7-99)

Sec. 32-38. Street lights—Specifications for installation.

(a) *Conduit.* Conduit shall be one and one-half inch (38.10mm) PVC Type, Schedule 40. Installation depth shall be 18 inches (457.20mm) minimum and 24 inches (609.60mm) maximum. Variation from these depths, when crossing other utilities to maintain twelve inches (604.80mm) separation, is allowable when approved by the public works director or his/her designee. Location and alignment shall be as shown on standard construction drawing, unless otherwise specified on the subdivision construction plans.

(b) *Backfill.* Backfill shall be as stated in the city standard specifications for road construction, as amended.

(c) *Foundations for street lights.*

STREET LIGHT FOUNDATION REQUIREMENTS

Street Light Pole Height	Foundation Size Specifications
25′ (7.62m) pole with 6′ (1.83m) arm	2′ × 2′ × 3′ (0.61m × 0.61m × 0.91m)
35′(10.66m) pole with 8′ (2.43m) arm	3′ × 3′ × 4′ (0.91m × 0.91m ×1.22m)
Dual arm pole	3′ × 3′ × 5′ (0.91m × 0.91m × 1.52m)

All poles shall require bolts with nuts and washers (furnished by the city with bolt template); a ground rod five-eighths of an inch × eight feet (15.88mm × 2.44m); one-half inch (12.70mm) rebar reinforcement, approximately forty linear feet (12.19m), as shown on construction plans; one and one-half inch (38.10mm) PVC conduit for

continuous circuit; and, Class A 3,000 PSI (20,684.27kPa) concrete. Material test of concrete shall be made, when specified by the public works director or his/her designee.

d. *Joint use of underground trench.* Joint use of trench for the installation of electrical service by El Paso electric company, and/or for street light circuits, is acceptable when approved by both the city and El Paso electric company.

e. *Completion of street light system.* When development of housing begins, and subject to notification given to the city public works department by the contractor/developer, the city shall complete the installation of the street light system to full operation.

(Ord. No. 949, § 2.3, 9-8-87; Ord. No. 1224, § 1, 3-18-91; Ord. No. 1745, § I, 6-7-99; Ord. No. 1929, §§ I, II, 8-5-02)

Note(s)—For further information, refer to the street lighting policy and ground rules for installation of street lighting.

Sec. 32-39. Utility improvements.

(a) *General.*

(1) Subdivider shall be responsible for all design and construction costs.

(2) All water, sewer, and gas construction shall meet or exceed utilities department and Rio Grande natural gas association standard specifications for construction of water, sewer, and gas utilities, hereinafter called "city specifications" as adopted by the city council from time to time.

(3) City specifications shall apply to all water, sewer, and gas construction in subdivisions within the planning and platting jurisdiction of the city, to include required fire flows.

(b) *Water and sewer.* When a community water and/or sewer system is to be constructed, the subdivider shall include deed restrictions on the final plat requiring that any individual water supply system or wastewater treatment system comply with requirements of the NMED.

(c) *Gas.* If the subdivider desires to install a natural gas system within the subdivision, the system must meet or exceed city specifications.

(Ord. No. 949, § 2.4, 9-8-87; Ord. No. 1048, 1-17-89; Ord. No. 1745, § I, 6-7-99; Ord. No. 1929, §§ I, II, 8-5-02)

Cross reference(s)—Utilities, ch. 28.

Sec. 32-39.1. Bicycle facilities.

Bicycles are legally classified as vehicles and may be ridden on all public roadways, except where prohibited by law. The following list identifies the types of bicycle facilities that can be installed:

(1) Signed shared roadway;

(2) Bicycle lane; and,

(3) Separated, multiple-use path.

A signed shared roadway is a wide curb lane or a roadway with a paved shoulder which has been designated as a preferred bicycle route. A bicycle lane is a portion of a roadway which has been designated by striping, signing, and pavement markings for the preferential or exclusive use of bicyclists. A multiple-use path is a facility that is physically separated from motor vehicle traffic by an open space or barrier. The path may be located within the road right-of-way or an independent right-of-way. Multiple-use paths shall be con structed on the north side of east/west roadways and on the east side of north/south roadways, unless otherwise directed by the development

review committee. Separated, multiple-use paths may be appropriate either in corridors not served by other bikeways or in corridors where there are few motor vehicle conflict points. Paths should not be used to preclude on-road bicycle facilities, but rather supplement an on-road bicycle facility system.

The requirement for the provision of bicycle facilities shall be guided by the bicycle facilities plan, as amended, and the bicycle element of the city metropolitan planning organization transportation plan, as amended. Construction of bicycle facilities shall conform to the AASHTO Guide for the Development of Bicycle Facilities, as amended, and the Manual on Uniform Traffic Control Devices, as amended. When the provision of bicycle facilities is required, the subdivider shall be responsible for 100 percent of the required improvements within the boundaries of the development and 50 percent of any required improvements adjacent to the development.

(Ord. No. 1745, § I, 6-7-99; Ord. No. 2302, § I, 4-24-06)

Sec. 32-40. Details.

Details referred to in this division shall be as follows:

Title		No.
Standard Street Section:		
	Minor local for residential lots less than 0.5 acre (1A and 1B)	S-1
	Minor local for residential lots less than 0.5 acre (1C)	S-2
	Minor local for residential lots of 0.51 to 1.00 acre	S-3
	Minor local for residential lots 1.01 to 4.99 acres	S-4
	Minor local for residential lots 5 acres or greater	S-5
	Major local	S-6
	Minor and major collector	S-7
Cul-de-sac detail		S-8
Curb and gutter details		S-9
Curb and gutter details		S-10
Typical wheelchair ramp detail		S-11

(Ord. No. 949, § 2.5, 9-8-87)

Sec. 32-41. Complete streets.

This article shall apply to all roadways and or segments of a roadway on city right-of-way which meet one or more of the following criteria:

(a) Are located within the Las Cruces city limits and are listed on the Elevate Las Cruces Map 1.4, Future Thoroughfare Map, and are owned and maintained by the City of Las Cruces; or

(b) Are designated collector and above and are being designed and constructed by private developers as part of subdivision or site plan development and will become part of the city's owned and maintained street network.

(Ord. No. 2993, § (I)(Exh. A), 2-22-22)

Sec. 32-42. Complete streets—Definitions.

(a) *Active transportation plan.* An active transportation plan is a comprehensive set of strategies to ensure better options for any human-powered form of transportation including people who walk, use a bike, and use a wheelchair. It encompasses trips made for any purpose including commuting, recreation, leisure, or others. The City of Las Cruces Active Transportation Plan (ATP) projects prioritize the construction of sidewalks, on-street bicycle facilities, and multi-use paths that are currently identified as per ATP Figure 7, Proposed Bikeway Network, ATP Figure 8, Proposed Pedestrian Focus Areas, and ATP Figure 9, Proposed Priority Bikeway Projects, and that improve access to transit routes and major destinations.

(b) *Complete streets.* A roadway with cross-sections (including public right-of-way and public or private easements abutting a public right-of-way that are designated for a roadway) built at a human scale, designed and operated for equal access by all users, including pedestrians, bicyclists, motorists and transit riders of all ages and abilities, to allow comfortable and convenient street crossings, and pedestrian access to adjacent land uses. Complete streets components include, but are not limited to, sidewalks, bike lanes, dedicated bus lanes, comfortable and accessible public transportation stops, frequent and comfortable pedestrian crossing opportunities, median pedestrian islands, accessible pedestrian signals, curb extensions and pedestrian bulb-outs, reduced travel lane widths determined by the design speed of the roadway, context-appropriate curb return radii, roundabouts, proactive traffic calming elements, or other features that accommodate efficient multimodal travel.

(c) *Connectivity.* Frequency by which streets or roadways intersect, or how closely intersections are spaced.

(d) *Context sensitive design.* Design that seeks to balance the need to move vehicles efficiently with other outcomes specific to communities and neighboring properties through which a street passes, such as placemaking, pedestrian-friendliness, historic preservation, and economic development.

(e) *Deficiency project.* Deficiency projects are those identified to correct inadequate service and bring system capacity to adopted level of service standards. Deficiency expenditures shall enhance the capacity, safety, and efficiency of all modes of travel within the roadway network. New roads and improvements to existing roadway facilities may include improvements for all transportation and mobility modes, including motor vehicles, transit operations, pedestrians, and bicyclists.

(f) *Multimodal level of service.* A set of indicators published by the National Academy of Sciences, National Highway Cooperative Research Board through Report 616 and any successor document used to evaluate the convenience and comfort of facilities for transit users, pedestrians, bicyclists and other non-motorized users of the public right-of-way. These may include, but are not limited, to the connectivity of sidewalks and paths throughout an area, the availability and convenience of road crossings for pedestrians, the separation of nonmotorized traffic from motorized traffic (e.g., sidewalk widths and distance from traffic lanes, presence of separators like bollards or trees), motorized traffic speed control (e.g. traffic calming features), way finding, sense of security (e.g., visibility and lighting of sidewalks), transit stations, and weather protection.

(g) *Persons of low or moderate income* as defined in chapter 13, housing, of the Las Cruces Municipal Code.

(h) *Rehabilitation project.* Rehabilitation projects are those required to extend the service life of an existing facility, improve its operation, improve safety, or restore original performance or capacity.

(Ord. No. 2993, § (I)(Exh. A), 2-22-22)

Sec. 32-43. General policy.

(a) The following complete streets principles shall apply to all projects that alter or otherwise affect streets that are within the jurisdiction of this article.

(1) The overarching goal of any project that affects street configurations, signalization, and all other design features shall be based on improving streets to be comfortable and efficient accommodations for all users.

(2) The city shall consider how the project will impact the surrounding community and must work to avoid or mitigate any negative consequences. Any mitigation efforts must be consistent with the complete streets ordinance.

(3) On-street bicycle facilities shall be designed and implemented as identified by the City of Las Cruces Active Transportation Plan. All projects on any roadway shall include appropriate measures to facilitate the crossing of bicycle traffic wherever a designated bicycle facility crosses the street.

(4) On roadways that serve industrial and/or freight uses, complete streets improvements that are consistent with freight mobility and support other modes of travel shall be considered.

(5) Vehicle lane widths shall be governed by the tables entitled General Parameters for Arterial Thoroughfares and Collector Thoroughfares as established in the Manual for Context Sensitive Solutions in Designing Major Urban Thoroughfares for Walkable Communities published by the Institute of Transportation Engineers (ITE) or any successor documents or standards that may result from amendments or replacements. Local streets with vehicle lane widths exceeding 12 feet are strongly discouraged except where motor vehicles and bicycles share lanes on bicycle routes designated by the City of Las Cruces Active Transportation Plan.

(6) Mid-block pedestrian crossings shall be installed as necessary for a project to meet the intent of this article under the criteria established in the Manual on Traffic Control Devices (MUTCD) Chapter 36-18, the Urban Street Design Guide of the National Association of City Traffic Officials (NACTO), and the Guide for the Planning Design and Operation of Pedestrian Facilities by the American Association of State Highway and Transportation Officials (AASHTO). Unsignalized mid-block crossings are permitted where warranted and should be clearly marked by signs and other high-visibility features. Where necessary, mid-block pedestrian crossings shall be controlled by pedestrian-activated conventional traffic signals or pedestrian hybrid beacons (PHB).

(7) Roadway projects, excluding routine maintenance and non-routine maintenance projects, which are only intended to maintain the current condition of the roadway, not including the city's annual roadway reconstruction program, shall be designed to mitigate existing, insufficient multimodal facilities.

(8) The city shall provide accommodations, to the extent possible, for all modes of transportation to continue during the construction or repair work.

(9) Roadway projects on arterial corridors shall prioritize the comfort of multimodal users by using traffic calming techniques, such as narrowing traffic lanes, and by providing buffers between vehicle traffic and pedestrian and bicycle facilities where possible. This may include striped buffers, adding parallel parking where it does not currently exist or installing parallel stripes delineating existing parking lanes.

(10) Roadway cross sections shall be designed and built using guidance from Elevate Las Cruces (ELC) Comprehensive Plan, in particular:

a. The Future Thoroughfare Map on pages 74—75 of ELC shows proposed and existing locations of limited access highways, principal arterials, minor arterials, and major collectors in land use

character zones designated as urban, suburban, rural, and other. New design standards in Realize Las Cruces will outline attributes of principal arterials, minor arterials, collectors, and local streets based on the character zone a road is located within.

b. Attributes include function, roadway continuity, spacing between intersections, community relationship, posted speed, traffic volumes, and number of travel lanes. These tables also show whether features such as parking lanes, curb and gutter, medians, bikeways, and transit would be permitted, required, optional or not allowed; and whether roadside elements such as edge zone, throughway zone and frontage zones are allowed, optional or not allowed. For example, collectors and local streets within the rural character zone do not require edge zones.

c. Attributes that provide stormwater harvesting in support of native Chihuahuan Desert vegetation or proven drought tolerant vegetation within the right-of-way (ROW) is required, as noted by ELC Policy 6.4: Apply low-impact development design principles to streets based on development context or the results of applicable drainage studies; and specifically, ELC Action 6.4.3: Allow green street technologies such as bio-retention and bio-filtration planters, bio-retention swales, and permeable pavements to be used by developers to mitigate on-site stormwater detention requirements.

(11) Curb cuts serving access points blocked by walls, fences or other structures that prohibit entry to a lot shall be replaced with curb, gutter and sidewalk as part of any roadway project.

(Ord. No. 2993, § (I)(Exh. A), 2-22-22)

Sec. 32-44. Project compliance.

(a) Any department pursuing projects that alter or otherwise affect streets shall work collaboratively on an annual basis to determine, identify and prioritize projects in communities with low or moderate income, high proportions of elderly citizens, high proportions of citizens with disabilities. The low or moderate income community criteria is one of the many factors that shall be taken into consideration when identifying and selecting project prioritization under this article and shall not be the sole determinant. Other factors or criteria that shall be taken into consideration include traffic fatalities, aging infrastructure, creating safe and efficient access for older adults and people with disabilities, and any other factors that enhance and improve public safety and health. The city shall develop a process of data collection and analysis for such prioritization and documentation. After such analysis, the city shall post the plan online for public feedback, including information regarding projects that alter or otherwise affect streets. This information shall include project scope, schedule, funding, and an identifier for how those projects in low or moderate income areas are prioritized. The report shall include how the process to create the list was evaluated.

(b) Any departments pursuing projects that alter or otherwise affect streets shall follow the most current capital improvement project criteria as indicated in the project prioritization matrix as follows:

(1) *Community benefit.* The improvement of living standards, increase of gross receipts tax revenues, creation of permanent jobs, promotion of equality, or increased access to resources and recreation.

(2) *SHEE.* Safety, health, environmental and emergency factors.

(3) *Planning alignment.* Alignment with a plan which has been approved by council.

(4) *Sustainability and water conservation.* The level of water consumption, carbon emissions, and contribution to ecological processes.

(5) *Existing capital.* The condition of relevant capital already owned by the City of Las Cruces.

(6) *Funding.* Secured or anticipated funding for the project.

(7) *Budgetary impact.* Impacts on operational budget and/or revenues.

(8) *Scheduling.* The earliest timeframe in which a project could realistically start or be "shovel ready."

(9) *External requirements.* Mandates or requirements from external agencies or governmental entities.

(c) All major projects involving streets under the authority of this article, including road construction, reconstruction of sidewalks or restriping, shall be considered an opportunity to either retrofit existing streets or construct new streets consistent with the principles of this article.

(d) The department of public works shall annually submit a memorandum to the city council listing upcoming projects, to include scheduled street maintenance program projects such as resurfacing and other projects including reconstruction, curb, gutter and sidewalk repair or capital improvement projects. This memorandum shall detail how those projects will be consistent with the principles of this article and shall indicate:

(1) The location, scope and estimated cost of the project.

(2) Whether the project is to be implemented under the street maintenance program or by the engineering and architecture program.

(3) How the project incorporates any existing policies for street improvements established by corridor, neighborhood, or area land use plans, or the reasons for which implementing such recommendations is not reasonable.

(4) How the project complies with the context-sensitive standards in the Municipal Code Design Standards.

(5) All complete streets improvements recommended by the department of public works for inclusion as part of the project.

(6) Whether and when the improvements can be implemented through the existing revenues available for maintenance projects or capital improvement program.

(7) Other potential funding sources that may be required.

(e) Projects may be exempted in part from the requirements of this article upon review by the director of public works department or designee, provided but not limited to, the following criteria;

(1) Existing adopted ordinances and policies affecting the street preclude a certain use (e.g. non-motorized vehicles).

(2) The project is a routine maintenance activity. Examples of exempt projects include patching, sidewalk repair or cleaning.

(3) The project is limited by available publicly owned right-of-way.

(4) The project is located on state or federal right-of-way, the city has made an effort to obtain permission for certain features compliant with the provisions of this article, and the agency with control of the right-of-way has indicated they will not permit requested features.

(f) All proposed exceptions must be justified in writing by the requestor of the exception based on the criteria above, based upon engineering judgement, and be made available to the public with opportunity for public comment. The city council shall, by resolution, designate certain corridors or street segments for complete streets improvements. The resolution shall:

(1) Establish the transportation modes to be prioritized or accommodated on the affected corridor.

(2) Provide an estimate of costs to plan, design, engineer and construct the improvements; and funding sources for the project.

(g) Design and engineering of streets, sidewalks, bikeways, and other facilities shall follow the relevant standards set forth in the following documents or any successor documents or standards that may result from their amendment or replacement:

(1) Urban Street Design Guide of the National Association of City Traffic Officials (NACTO).

(2) Urban Bikeway Design Guide of the National Association of City Traffic Officials (NACTO).

(3) Guide for the Planning Design and Operation of Pedestrian Facilities by the American Association of State Highway and Transportation Officials (AASHTO).

(4) Guide for the Development of Bicycle Facilities by the American Association of State Highway and Transportation Officials (AASHTO).

(5) Guide for Improving Pedestrian Safety at Uncontrolled Crossing Locations (FHWA).

(6) Manual for Context Sensitive Solutions in Designing Major Urban Thoroughfares for Walkable Communities published by the Institute of Transportation Engineers (ITE).

(7) Manual on Uniform Traffic Control Devices (MUTCD).

(8) Report 616, Multi-Modal Level of Service Analysis for Urban Streets, National Cooperative Highway Research Program (NCHRP).

(9) ADA requirements for bus stops according to ESPAToolkitFrontCoverDraft.pdf (nadtc.org).

(h) Engineering criteria. Deviations or alternatives from the Municipal Code for intersection spacing, geometry, alignment and other characteristics shall be considered on a case-by-case basis, and as approved may be implemented provided they meet the standards set forth in the documents specified in items (1) through (9), above.

(Ord. No. 2993, § (I)(Exh. A), 2-22-22)

Sec. 32-45. Implementation.

The city shall use an existing advisory committee on multimodal transportation issues to assign it the complete streets advisory functions.

(a) Duties of the committee shall include:

(1) Establishing and monitoring complete streets performance measures.

(2) Receiving bi-annual reports from the department of public works on complete streets implementation.

(3) Reviewing and making recommendations regarding complete streets priority areas for investment and improvement, with a focus on low or moderate income communities, areas with high populations of elderly citizens, and high populations of citizens with disabilities.

(4) Reviewing the annual complete streets implementation report and providing related feedback and recommendations to the department of public works regarding areas of strong progress, needs for improvement, and equity considerations.

(b) The committee shall meet at least bi-annually. Meetings of the committee shall be in compliance with all laws regarding open meetings.

(Ord. No. 2993, § (I)(Exh. A), 2-22-22)

Sec. 32-46. Performance measures.

(a) To evaluate policy implementation and assess how well the transportation network is serving all users, performance targets and identified performance measures that are consistent with those established in the city's strategic plan and Elevate Las Cruces shall be monitored.

(b) Quantitative and qualitative performance measures shall track progress on equitable implementation in low or moderate income communities.

(c) The PRC shall consider safety and equity benefits as follows:

(1) The number, locations, and cause of collisions, injuries, and fatalities by mode of transportation.

(2) Trip and commute mode percentages (e.g., drive alone, carpool, transit, bicycle, walk) as reported by the American Community Survey (ACS) five-year estimates and decennial census.

(3) Number of children walking or bicycling to school, by school and by demographic group (mode, age, gender, income, race, ethnicity, and disability status).

(4) Percentage of people living within walking distance (a quarter mile) of a park, transit stop, or bike route, by demographic group (mode, age, gender, income, race, ethnicity, and disability status).

(5) Total number of bus stops, percentage of bus stops with shelter, percentage of bus stops with bench, percentage of bus stops with ADA compliant accessibility, and percentage of bus stops with other pedestrian/bicycle amenities (e.g., bike racks).

(d) The department of public works, with the assistance of regional transportation entities, shall be responsible for collecting and reporting baseline and annual data for selected performance measures.

(Ord. No. 2993, § (I)(Exh. A), 2-22-22)

Sec. 32-47. Reporting requirements.

(a) On an annual basis, the public works director shall coordinate and submit a complete streets implementation report to the city council. The report shall be publicized and made publicly available online. The report shall include, but not be limited to:

(1) Baseline and current data, trends, and analysis related to performance measures.

(2) A summary of all transportation projects planned or undertaken in the last year, including their funding, status, a map, and clear identification of which transportation projects are located in low or moderate income communities.

(3) A summary of all updates to plans, policies, street design standards, manuals and procedures, zoning and municipal codes conducted pursuant to this policy or likely to affect implementation of this policy.

(4) A summary of all staff complete streets trainings and professional development.

(5) An overview of progress toward the objectives of the policy.

(6) Recommendations for improving implementation of this policy, including effectiveness, equity, and additional policy needs.

(b) The public works director shall complete an equity evaluation of complete streets policy implementation in low or moderate income communities. The report shall include, but not be limited to:

(1) A summary of how the complete streets ordinance implementation is being prioritized in low or moderate income communities; and

(2) An analysis of complete streets ordinance implementation in the city overall versus implementation in low or moderate income communities.

(Ord. No. 2993, § (I)(Exh. A), 2-22-22)

Secs. 32-48—32-70. Reserved.

ARTICLE III. DRAINAGE[2]

DIVISION 1. GENERALLY

Secs. 32-71—32-100. Reserved.

DIVISION 2. URBAN DRAINAGE CRITERIA

Sec. 32-101. Introduction.

This division contains guidelines for drainage system design and establishes a policy for recognized and established engineering design of storm drain facilities to protect the health, safety and welfare of the general public. Methods and processes included in this division are intended to serve as minimum standards. Recognized and established engineering practices and principles shall be followed in all engineering projects within the city and the five-mile planning and platting jurisdiction (ETZ). The public works director of the city shall determine the required parameters of any particular project or technical analysis and may require additional criteria should such be deemed to be in the best interest of the general public.

(Ord. No. 949, § 3.1A, 9-8-87; Ord. No. 1224, § 1, 3-18-91; Ord. No. 1929, §§ I, II, 8-5-02; Ord. No. 2187, 4-4-05)

Sec. 32-102. Hydrology storm definitions.

(a) *Initial and major design storm.* For the purposes of this division, every urban area has two separate and distinct storm events. One is the initial or ordinary storm system corresponding to a ten percent chance (ten-year, 24-hour) storm in any given year. The other is the major, or extraordinary, storm which corresponds to a one percent chance (100-year, 24-hour) storm in any given year. Since the effects and routing of stormwaters for the major one percent chance, 24-hour storm may not be the same as for the initial ten percent chance, 24-hour storm, all storm run-off drainage plans submitted for review and approval shall indicate the effects of the initial and the major storm.

(1) *Initial ten percent chance, 24-hour storm system.* The ten percent chance storm drainage system shall be so designed as to provide protection against regularly occurring damage, to reduce street maintenance costs, and to provide orderly urban drainage ways.

(2) *Major one percent chance, 24-hour storm system.* The major storm drainage system shall be so designed as not to cause property damage or loss of life from the runoff expected in a major storm

[2]Cross reference(s)—Drainage and flood control, ch. 34.

event. The anticipated effects of the one percent chance storm on the ten percent chance storm drainage system shall be clearly identified in the drainage report.

(3) *Historic flow.* The historic flow shall be defined as the peak flow rate of stormwater that enters, crosses and/or exits a proposed development in its pre-developed and undisturbed condition for both the initial (ten percent chance) and major (one percent chance) storm events. It shall be the responsibility of the developers/owners engineer to show that peak flow and volume from a proposed development or construction project does not adversely affect or impact any upstream or downstream property, up to and including the next major drainage facility, drain and/or regional ponding area as determined by the public works director or his designee. The development must not increase the peak, volume or change the location of the historic flow unless specifically allowed by the public works director.

(b) *Design storm frequencies.* The initial ten-year/ten percent chance and major 100-year/one percent design storms shall apply to all land uses including but not limited to residential, planned unit development (PUD), general commercial, parks, and open channels.

(c) *Runoff computation.* Total storm runoff shall be computed in accordance with the criteria set forth in this division. Runoff computations for both the ten percent chance and one percent chance storm shall be submitted with the proposed storm drainage plan. The most recent official federal (ACOE, FEMA, FIS, USDA, USGS, etc.) data and references must be used when analyzing flow that crosses any site.

(d) *Major arroyo crossings* Roadway crossing of major arroyos by arterials will be done through a shared cost allocation process between the city and major developers in affected areas.

For purposes of this section, the term "major arroyo" shall mean any channel or waterway whose watershed exceeds 1.5 mi^2 (2.6 km^2) and larger or a flow of 1,000 cfs (28.31 m^3/s) and larger in a one percent design storm whether such watershed is in its natural or unaltered state or has been altered by approved development, runoff diversions, or detention facilities.

(1) *Funding contributions:* Funding may be provided by the city for participation if such arrangements have been made and approved by the city council as part of the city's current or proposed budget process. Funding for arroyo crossings will be considered by the city council during the master plan proposal phase as well as the master plan stage when a resultant imminent public benefit will be realized by creating a critical link in the major transportation system as defined by the city and the metropolitan planning organization.

The amount of the city participation in construction of such arroyo crossings may be established up to 50 percent of the construction and inspection cost. Adjustments to this value may be warranted from time to time and may be deviated from upon recommendation and justification from the public works and approval by the city council.

If development is proposed where traffic generated by such proposal is without measurable public benefit, as determined by the city, then the developer will be responsible for full arroyo crossing construction. In circumstances where the city determines there is no public benefit to build an arroyo crossing, developers may be required to build the complete arroyo crossing at the time of their development.

A formal request, in the form of a proposal, is required during the master plan phase when city participation is requested. When more than one developer is involved it is the responsibility of the party requesting city participation to acquire support from all parties involved.

(2) *Funding alternatives:* There are two alternate methods for achieving cost contribution by the city for such major arroyo crossings. In both scenarios, the developer will be responsible for paying for and providing the design of the improvements for review and consideration by the city.

a. Pro-rata construction cost paid by developer to the city.

b. Design and participation in a voluntary special assessment district (S.A.D.) in conformance with state law.

(3) *Design considerations:*

a. The developer will be responsible for providing the engineering, design, flood mapping revisions and associated costs (if needed).

b. In consideration for city participation, the developer must coordinate the design elements with city public works staff to ensure cohesion to regional open space and multi-use paths and alignments.

(Ord. No. 949, § 3.1B, 9-8-87; Ord. No. 2187, 4-4-05)

Cross reference(s)—Definitions generally, § 1-2.

Sec. 32-103. Runoff analysis methods.

(a) *Applicability.* This section sets forth the minimum design, technical criteria and specifications for the analysis and design of drainage systems. All subdivision construction plans, planned unit developments, paving projects, or any other commercial or residential construction submitted for approval by the city shall include storm drainage analysis and appropriate system design before any phase of construction will be permitted. Such analysis and design shall meet the criteria outlined in this article and must be approved by the public works department before a permit is issued.

(b) *Development of less than three acres.* (0.00 to 2.99 acres) (0.00 to 1.21 ha) Runoff analysis for developments of less than three acres can be based on general runoff coefficients for valley and/or mesa areas. The runoff coefficient is a value that is used to approximate the amount of runoff that a developer or home builder will need to retain on site to maintain existing drainage characteristics. Drainage plans based on the soil conservation service (SCS) method, in lieu of this simplified approach, will be acceptable. SCS submittals should include all supporting documentation, soils maps, CN tables, etc. Any site with a channelized flow crossing the site must use the SCS method. Developments within the 100-year flood plain must comply with Las Cruces Ordinance No. 1933. Specific requirements shall be as follows:

(1) Identify area classification.

a. Valley areas, land slope less than one percent.

b. Mesa areas, land slope greater than or equal to one percent.

(2) Runoff and flow coefficients.

a. Valley areas runoff, 2.8 inches. (71.12 mm)

b. Mesa areas runoff, 2.0 inches. (50.80 mm)

c. Flow coefficient, 1.6 cfs/acre-in. (.004408 $M^3/(s*ha*mm)$)

	A*Fc*Rc = Q = flow rate
English	Impervious Area(acre)*Flow Coefficient (CFS/acre-in)*Runoff Coefficient (in) = Peak Flow Rate (CFS)
Metric	Impervious Area(ha)*Flow Coefficient ($M^3/(s*ha*mm)$*Runoff Coefficient (mm) = Peak Flow Rate (M^3/sec)

(3) Calculate impervious area of land to be developed. Impervious area includes the building, sidewalks, asphalt paving, etc. (Places where water cannot penetrate into the ground, including some desert landscaping.) Calculate area in square feet (square meters).

(4) Find required storage volume by multiplying the impervious area (square feet) (or square meters) by the runoff coefficient (inches or millimeters) and a conversion factor one foot/12 inches (one meter/1,000 millimeters).

	A*CR*CF = SV = Storage Volume
English	Area(FT^2)*Runoff Coefficient (in)*Conversion factor (1ft/12in) = Required Storage Volume (FT^3)
Metric	Area(m^2)*Runoff Coefficient (mm)*Conversion Factor (1m/1,000mm) = Required Storage Volume (M^3)

(5) Indicate on the construction plans how the required storage volume will be controlled on site. Include details on wall and berms that will control or direct runoff, asphalt and lot grade, and method of overflow of the storage area.

(6) Acceptable types of drainage structures are as follows:

a. *Open ponding.* Open retention ponds are recommended in areas that have good percolation of water into the soil. Open ponds offer the maximum amount of storage for a given land area. The minimum depth shall be 18 inches (0.46 m), and the pond shall be located a minimum of five feet from adjacent property lines and ten feet (3.05 m) from any structures. The design parameters are further defined in section 32-107.

1. *French drain.* French drains are acceptable in areas that have poor percolation rates, i.e., clay. A French drain shall be used only to provide increased percolation rates for runoff. French drains must have an open pond above rock level with a minimum clearance of 12 inches (0.30 m) between grate and top of rocks.

A. *Underground storage.* Underground storage is recommended in areas with good percolation and limited space. Credit is given for the open volume only; no credit is given for rock voids. No credit will be given for "rock ponds." Some acceptable products include, but are not limited to, perforated CMP, perforated HDPE, Rainstore©, infiltrator systems, etc. Designs must include a method to maintain the structures effectiveness.

(c) *Development equal to or greater than three acres.* For development equal to or greater than three acres (1.214 ha), the following shall apply:

(1) Runoff analysis for developments equal to or greater than 3.0 acres (1.214 ha) shall be based on the soil conservation service (SCS) method which is outlined in a publication entitled "Peak Rates of Discharge for Small Watersheds, Chapter 2 (revised 2/85 for New Mexico), Engineering Field Manual for Conservation Practices." This manual is specifically for the application of the SCS procedure in New Mexico. Rainfall data for analysis can be obtained from the city public works department. The city requires the use of a modified S.C.S. Type II Storm with a minimum of 75 percent of rainfall occurring in a one-hour period. The following limitations apply to the SCS method:

a. Minimum initial time, five minutes. (Not Tc)

b. Time of concentration (Tc) is equal to the sum of initial time and gutter/pipe flow time. However, engineers must calculate the time of concentration. Time of concentration used shall be

calculated value or six minutes, whichever is greater. All calculations must be included in the drainage report.

c. Overland flow portions of time of concentration are to be calculated for a maximum reach length of 500 feet (152.4 m).

d. Curve numbers (CNs) shall be from USDA SCS, TR 55, 1986 or newer tables. CNs for residential or commercial/industrial uses shall be calculated using actual hydrologic conditions. CNs must be rounded to the nearest whole number.

(2) *Specific requirements.* The following criteria shall be utilized in the analysis of the drainage system:

a. Runoff analysis shall be based upon the proposed land use, and shall take into consideration all contributing runoff from areas outside of the study area. The analysis of storm runoff from undeveloped and existing developed areas lying outside of the study area shall be based upon present land use and topographic features.

b. The probable future flow pattern in undeveloped areas shall be based on existing natural topographic features (existing slopes, drainage ways, etc.).

c. Average land slope in both developed and undeveloped areas may be used in computing runoff. However, drainage patterns and slopes that have already been established shall be used in areas where available.

d. Flows and velocities which may occur at a design point when the upstream area has been fully developed shall be considered. Drainage ways, including the ten percent chance and one percent chance systems shall be designed such that the increased flows and velocities, due to development, meet the guidelines for the ten percent chance and one percent chance design storms.

e. Streets can be used as drainage ways for the ten percent chance storm runoff. The primary use of streets shall be for the conveyance of traffic.

f. On-site retention or detention is required for all sites. Detention ponds must detain the one percent chance rainfall allowing the predeveloped flow or less to flow off the development. An approved routing system must be used to route the hydrograph through the detention pond(s). Detention pond storage volumes shall be calculated for the ten percent chance and 100-year (one percent chance) storm by flood routing using a hydrographic method (HEC-1, HEC-HMS, SCS Hydro, TRSS, or generally recognized method) or by the FAA method. The changing of a natural drainage way location will not be approved unless such change is shown to be without unreasonable hazard and liability, substantiated by thorough analysis and investigation of all affected down stream facilities. This includes impacts to buildings, public and private infrastructure, habitats and, open space. The use of detention facilities may not be acceptable where outfall is into another storage facility. When the peak flow and total volume into the storage facilities is greater than the pre-development peak flow and total volume, a detailed hydrologic analysis of both facilities must be provided to the city for review. These facilities may be sensitive to increased volumes of runoff as opposed to increase rates of flow. Such facilities require approval of the public works director.

g. The planning and design of drainage systems shall be such that problems are not transferred from one location to another. Outfall points shall be designed in such a manner that will not cause increased flooding and/or erosion downstream. Irrigation canals shall not be used as outfall points unless such is shown to be without hazard substantiated by thorough hydrologic and hydraulic analysis. Approval for use of irrigation canals for drainage shall be obtained in writing from the controlling agency and shall be submitted to the city as part of the drainage study.

h. Floodplain information shall be required along with a conditional letter of map revision (CLOMR) and a letter of map revision (LOMR) for one percent chance for storm flows of greater than 250 cfs (2.83 M3/S), developments of five acres and larger, developments with 50 or more lots, and/or developments with any changes to the existing flow path in FEMA flood hazard zones AE, A, AH, AO, and D upon the submittal of any on preliminary and/or final drainage drawings for review. Information shall include peak discharges for the ten percent, two percent, one percent and 0.2 percent chance storms for the floodplain inundation area and anticipated depth of floodwaters one foot and deeper. Standard step backwater models shall be used for flood depth determination. The Hydrologic Engineering Centers HEC-2 analysis method may be required. Improvements and subdivisions will not accepted by the city until the FEMA flood study has been approved by FEMA.

A CLOMR will be submitted for review by the city and submitted to FEMA prior to plan and/or final plat approval.

A LOMR will be submitted for review by the city and submitted to FEMA before acceptance by the city and before the issuance of any certificate of occupancy. Costs incurred for the preparation of materials and fees paid to FEMA will be borne by the developer.

i. Dedicated drainage easements or rights-of-way are required for drainage ways, and these shall be designated on all drainage drawings and subdivision plats. Drainage rights-of-way dedicated to the city shall have a minimum clear bottom width of 15 feet (4.57 m) of clear unobstructed space with a design that facilitates cleaning using available equipment.

j. Approval will not be made for any construction which will encroach on any drainage easement or impair surface or subsurface drainage.

(Ord. No. 949, § 3.1C, 9-8-87; Ord. No. 1224, § 1, 3-18-91; Ord. No. 1929, §§ I, II, 8-5-02; Ord. No. 2187, 4-4-05)

Sec. 32-104. Specific analysis requirements.

(a) *Requirements for storm drainage reports and construction plans.* All drainage reports shall be prepared by a professional engineer, registered in the state, and shall comply with the minimum requirements and specifications set forth in this section. Review schedules will be as outlined in the subdivision and building codes. However, reports involving large developments and complex structures will require more review time. The engineer should be aware that whenever unusual or serious drainage problems are anticipated in conjunction with a proposed development, additional analysis and information beyond the minimum requirements outlined in this section may be required by the public works director or his designee of the city. The following specifications and criteria shall be used:

(1) *Master drainage study.*

a. A master drainage study shall be required prior to approval for any annexation, planned unit development, or subdivision preliminary plat. The purpose of the master drainage study is to identify major drainage ways, ponding areas, locations of culverts, bridges, open channels and drainage basins which are contributory to the proposed study area. In addition, the ability of downstream drainage facilities to pass the developed runoff from the proposed development must be analyzed in the master drainage study. The master drainage study shall contain a general outline of the proposed drainage routing plans for the development. The report shall include but not be limited to the following information and calculations:

1. Calculations for peak flow from all upstream off-site tributary drainage areas.

2. Calculations for peak flow within the proposed development for all drainage basins larger than 20 acres (8.09 ha).

3. Preliminary analysis of the one percent and ten percent chance storm floodplain and major drainage ways.

4. Closed subbasin analysis including identification of water into or out of subbasin.

5. Discussion and analysis of downstream drainage facilities.

6. Discussion of drainage problems and solutions which are anticipated within the proposed development.

7. The report shall be printed and bound on 8½ inch by 11-inch paper.

8. All drainage studies/reports must include a table of pertinent values in the body of the report. The values shall include, at a minimum, flow depth for all flow paths, peak velocity, Tc, freeboard for channels (not including streets), flow (Q), CN numbers, and volumes of runoff for basins. Drainage studies shall include maps showing both flow and volume into and out of basin(s) and proposed development.

9. Flows may need to be routed to a historic point of convergence for both the pre and post condition.

b. Drawings for the master drainage study shall include but not be limited to the following:

1. Any and all floodplains and floodways must be identified. A copy of the applicable FEMA floodplain map is required indicating limits of current study.

2. Existing topography, two-foot (0.5m) contour interval minimum.

3. Location and size of existing and proposed open channels, storm drains, detention/retention areas, SCS soils map, and all other drainage structures.

4. Identification of all drainage basins in the development.

5. Location of all streets larger than residential classification.

6. Identification of all drainage basins tributary to the proposed development.

7. Basin maps may be scaled as small as 1″ = 600′ (1:7200). Orthophoto maps at a scale of one inch equals 200 feet are preferred. Basin maps shall have each basin name, area (acres), ten percent and one percent peak flows (CFS) into and out of the basin (shown at the location of concentration) and, clearly indicated flow paths. Maps of a scale 1″ = 2,000′ may be used for undeveloped, offsite basins greater than one square mile.

8. All maps shall be a minimum of 24″ × 36″ and shall be professionally incorporated within the report. Pre-printed maps, such as USGS maps, are acceptable if otherwise allowable. Maps of a smaller size may be accepted at the reviewer's discretion.

c. Inlet and storm drain size calculations are not required with the master drainage study; therefore, the number of sub basins analyzed in the report shall be held to the smallest practical number.

d. Recommended outline. The following is a sample outline for a typical master drainage report. Each of these headings should be addressed in the report body with supporting information and calculations in the appendices. Information provided at this stage of the review process is reviewed for only the phase submitted for and only for the requirements above. Post development items are considered conceptual during this review phase.

1. Introduction and purpose
2. Methodology
3. Scope of investigation
4. Meteorological and geological
    A. Climate
    B. Rainfall
    C. Soil investigation
        (i) Hydrologic soil classification
        (ii) Runoff curve number
        (iii) Soil description
5. Basins
    A. Basin parameters
6. Hydrology
    A. Pre-development
        (i) Direct runoff
        (ii) Runoff volume computation
        (iii) Peak flow computations
    B. Post-development
        (i) Direct runoff
        (ii) Runoff volume computation
        (iii) Peak flow computations
    C. Comparison and ponding of pre- and post-development
7. Hydraulics
    A. Natural and manmade channels
    B. Streets
    C. Culverts and storm drains
8. Conclusion section
    A. Discussion of final drainage items
    B. Detailed description of hydraulic and hydrologic interaction
9. Appendices
    A. All required maps and drawings
    B. All calculations
    C. Input and output from any modeling and routing software.

(2) *Final drainage study.* The final drainage study shall be a detailed study and analysis of the drainage in the proposed development for both predevelopment and post-development conditions. Developments include but are not limited to subdivisions, commercial developments, or planned unit developments. It shall include detailed calculations for all runoff within the proposed development, and detailed calculations for all runoff exterior to the site, with detailed calculations supporting the design of all drainage structures within the development. Final drainage studies shall use the approved methods as in section 32-103(c)(2). Construction plans for all drainage structures, grading plans and street grades, where applicable, shall also be considered part of the final drainage study. Drawings and calculations comprising the final drainage study shall include but not be limited to the following information:

a. Clearly labeled existing and proposed contours for proposed development. (Contour interval based on USGS datum, two-foot (0.61 m) contour interval minimum.)

b. Location and elevations of city or USGS benchmarks. All elevations shall be based on USGS datum.

c. Property lines.

d. Streets, right-of-way limits, names and grades.

e. Existing drainage facilities and structures, including existing irrigation ditches, roadside ditches, drainage ways, gutter flow directions, and culverts. All pertinent information such as size, slope, and location of existing drainage ways shall be included to facilitate review and approval of drainage plans.

f. Overall drainage area boundaries and drainage sub-area boundaries.

g. Proposed type of curb and gutter (vertical, combination, rollover, or flat) and gutter flow directions including crosspans (intersections).

h. Proposed storm drains, open drainage ways and right-of-way requirements, including proposed inlets, manholes, culverts, erosion control and energy dissipation devices, and any other required appurtenances necessary for drainage control.

i. Proposed inflow and outfall points for runoff from the study area.

j. Routing and combining all flows at various critical points for the initial ten percent chance (ten-year) and major (one percent chance, 100-year) storm runoff. Note: When a stormwater pollution prevention plan (SWPPP) or erosion control plan is required, this evaluation is required for a 50 percent chance, two-year storm during construction.

k. Minimum finished floor elevation and ground site elevations at all critical building locations for protection from major storm runoff.

l. Predevelopment and post-development basin maps, with a scale of one inch equals 100 feet, (1:100) of the proposed development, which shall show the following information:

1. Location and size of all drainage structures.

2. General flow patterns and flow paths within the development also to include offsite basins affecting the development.

3. Finished floor and ground site elevations of all buildings and adjacent sites and structures.

4. One percent chance flood level in all streets in which the curb is overtopped during the one percent chance storm.

5. All drainage basins within, and affecting, the development shown in a table listing basin names, basin area (acre), ten percent and one percent peak flows into and out of each

basin shown at the flow path location. Note: The number of basins should be limited to the smallest practical number.

m. All floodplains and floodways within the proposed development. A copy of the current FEMA floodplain map is required, showing project limits.

n. All drawings shall be on 24-inch by 36-inch (0.610x0.914m) sheets. Maps of a smaller size may be accepted at the reviewer's discretion.

o. SCS soils map showing project location.

p. Final drainage study shall incorporate master drainage study.

q. Recommended outline. The following is a sample outline for a typical final drainage report. Each of these headings should be addressed in the report body with supporting information and calculations in the appendices. Information provided at this stage of the review process is reviewed for only the phase submitted for and only for the requirements above.

1. Introduction and purpose

2. Methodology

3. Scope of investigation

4. Meteorological and geological

    A. Climate

    B. Rainfall

    C. Investigation

        (i) Hydrologic soil classification

        (ii) Runoff curve number

        (iii) Soil description

5. Basins

    A. Basin parameters

6. Hydrology

    A. Pre-development

        (i) Direct runoff

        (ii) Runoff volume computation

        (iii) Peak flow computations

    B. Post-development

        (i) Direct runoff

        (ii) Runoff volume computation

        (iii) Peak flow computations

    C. Comparison and ponding of pre- and post-development

7. Hydraulics

    A. Natural and manmade channels

B. Streets

C. Culverts and storm drains

8. Conclusion section

A. Discussion of final drainage items

B. Detailed description of hydraulic and hydrologic interaction.

9. Appendices

A. All required maps and drawings

B. All calculations

C. Input and output from any modeling and routing software.

(3) *Plan details.* The following details shall be indicated on the drainage plans:

a. Title block (lower right-hand corner preferred).

b. Scale.

c. Date and revisions.

d. Name of professional engineer and firm.

e. Professional engineer's seal.

f. Drawing number (sheet n/n).

g. Legend.

h. Approval blocks for various city departments.

(4) *Construction plans.* Construction plans shall show the following information:

a. *Plan.*

1. North arrow.

2. Property lines, adjacent property's, ownership thereof and subdivision information.

3. Street names and easements with width dimensions and location.

4. Existing utility lines, location and depth, or height, as follows:

A. Water.

B. Gas.

C. Telephone.

D. Storm drains.

E. Irrigation canals.

F. Sanitary sewers.

G. Other utilities.

b. *Profile.*

1. Vertical and horizontal grids with scales.

2. Ground surface grade (dashed) and proposed grade (solid).

3. Existing utility lines where crossed.

4. Benchmarks (USGS datum).

c. *Proposed construction.*

1. *Pipes and culverts.*

A. Plan showing stationing.

B. Profile.

C. Size, length between manholes, and pipe composition.

D. Grades of pipe.

E. Inlet and outlet details of all manholes and inlets, and connections to existing drainage systems.

F. Manhole details including station numbers and invert and top elevations.

G. Typical bedding details for pipe for all bedding situations encountered on project.

2. *Open channels.*

A. Plan showing stationing.

B. Profile indicating grade of invert of channel, top of lining if any and adjacent ground grade.

C. Typical cross sections.

D. Construction notes.

E. Lining details.

F. Riprap and bedding details, gradation requirements for same.

G. Structure details of all inflow, outflow and drop structures. Including sub grade and foundation design details.

(5) *Technical specifications.* Technical specifications shall be included on any drainage project that is permitted for construction within the city. Specifications shall meet the minimum guidelines for construction as outlined in the city standard specifications for roadway construction.

Additional specifications for construction shall be included to the point that there exists a clear understanding of the nature and quality of work to be performed on the project. The city may request additional technical specifications for projects that will become city property or will be involved in the storm drainage maintenance program.

(b) *Construction approval.* Record drawings of improvements shall be provided for all subdivision or public right-of-way construction projects. The design engineer and the city must review and approve any changes to the original design of a project. Record drawings will be made by the design engineer from information provided by job-site contractors or field surveys. Upon obtaining the record drawings, final inspection, Letter of Map Revision (when applicable), and approval by the public works director or his/her designee, the project can be issued a letter of acceptance or the improvement can be accepted by the city in the case of a subdivision or planned development.

(c) *Sediment transport.* Moving water has the ability to transport sediment. The amount of sediment per unit of water that can be transported is related to flow depth, velocity, temperature, vertical and horizontal channel alignment, the amount of sediment available, the size and density of sediment available and many other

minor but sometimes important parameters. A channel's stability can be defined in terms of its ability to function properly during flood events without serious aggradation or degradation and that its continued operations can be relied upon without extraordinary maintenance and repairs. While channel stability problems are largely associated with earth and flexible material linings, concrete lined supercritical channels are not immune. Any time a downstream channel reach has a lower sediment capacity than an upstream portion, there is a potential for sediment accumulation. Recommended design aids for sediment transport in the Southwest Region is a report written by Simons, Li and Associates for the City of Aurora, Colorado entitled *Drainage and Flood Control, Design Guidelines and Criteria, Channels and Hydraulic Structures on Sandy Soil* dated June 1981. Another resource is the *Sediment and Erosion Design Guide* prepared for AMAFCA by RCE of Fort Collins, Co March 1994. These reports are used by many Southwest cities and is recommended for use in the city for analysis of drainage.

(d) *Construction site discharge.* The Environmental Protection Agency (EPA) has determined that construction can cause up to ten times the sediment and pollutants to leave a site during a rain event. As a part of the Clean Water Act, the EPA mandates that all construction which clears at least one acre of ground, (or is part of a larger development, like a subdivision) comply with the construction general permit). The EPA also mandates that the city keep pollutants including sand and debris out of streets and storm drains. All construction sites and subdivisions one acres (0.405 ha) and greater in size under development in the city shall provide a site erosion control plan when subject to the EPA construction general permit. The erosion control plan shall include temporary ponding, site stabilization, silt fences, berms etc. as necessary to control site erosion and eliminate sediment transport to downstream lands or right-of-way or offsite (i.e. adjacent streets). Ponding volumes for SWPPP preparation shall be based on a minimum of a two-year storm event and associated runoff. The disturbed area of the construction site shall be taken into account when determining the methods to control site erosion. Structures or measures to improve stormwater quality to city drainage systems in accordance with the city's stormwater management plan must be shown on both residential and commercial subdivisions plans.

The *National Pollutant Discharge Elimination Manual Stormwater Management Guidelines for Construction and Industrial Activities* provides the appropriate methodology for use in the state and is recommended for use in developing the erosion control plan and stormwater pollution prevention plan (SWPPP), however any best management practices (BMP) may be submitted for review. The city reserves the right to review the SWPPP for any development. A SWPPP must be acceptable to the regulatory agency prior to any land disturbance activity or permit issuance.

See City of Las Cruces Municipal Code Ordinance 2146, Section 34-133, "Stormwater discharge from construction activities" for specific design requirements.

(e) *Undeveloped system outlets.* Site developments and subdivisions one acre (2.02 ha) and greater in size that discharge storm runoff to an undeveloped or "natural" drainage system shall be designed to minimize the impact of developed "clean" runoff on the downstream system. The development plans shall include an analysis of the proposed site discharge and the method(s) to limit the downstream erosion to the minimum practical extent. In general, flow rates must be limited to a non-erosive level, see table 32-105.5.C. It shall be the responsibility of the owner to maintain all proposed erosion and sediment control devices in proper functioning order. If and when a downstream system is developed to a point that downstream erosion is not a concern, the development may abate the measures to limit storm run-off to less than the historical discharge rate.

(f) *Undeveloped system inlets.* In a location where an inlet will allow a natural flow to enter the development, permanent BMP's must be in place to remove silt and floatable material from entering the developed area while safely allowing historic flow. Such inlets must facilitate ease of maintenance.

(g) *Erosion control plan review.* The erosion control plan for construction sites and for undeveloped system outlets may be prepared by the developer, if the project is less than five acres (0.00) - 4.99 ac) (2.01 ha) in size, is not a designated flood plain, and does not have a major arroyo crossing the site. All other sites shall

be prepared by a registered professional engineer, licensed in the state. All erosion control plans will be reviewed by the city public works department. Failure to implement effective best management practices outlined in the erosion control plan or the SWPPP may result in a stop work notice on construction sites.

(Ord. No. 949, § 3.1D, 9-8-87; Ord. No. 1929, §§ I, II, 8-5-02; Ord. No. 2187, 4-4-05)

Sec. 32-105. Hydraulics of storm drainage systems.

(a) *Allowable pavement encroachments.*

Street flow capacities. For the purpose of this division, both the ten percent chance and one percent chance storm runoff must be considered, and calculations showing storm runoff at critical sections shall be submitted. The following criteria shall apply in the determination of allowable street flow capacities:

(1) *Initial (ten percent chance) storm street capacities.* Pavement encroachment for the initial design storm shall not exceed the limitations outlined in the following table:

ALLOWABLE PAVEMENT
ENCROACHMENT
DEPTH OF RUNOFF FLOW
FOR 10% CHANCE STORM

Street Classification	Maximum Encroachment
Local	No curb overtopping, flow may spread to crown of street
Collector	No curb overtopping, flow spread must leave the equivalent of one 10-foot (3.3 m) driving lane clear of water
Arterial (minor and major)	No curb overtopping, flow spread must leave the equivalent of two, 10-foot (3.3 m) driving lanes clear of water. One lane in each direction
Freeway	No encroachment allowed on any traffic lane

The ten percent chance storm drainage system shall commence at a point where the maximum allowable encroachment occurs.

(2) *Major (one percent chance) storm street flow capacities.* The allowable depth of flow and inundated area for the major storm runoff shall not exceed the limitations outlined in the following table:

ALLOWABLE PAVEMENT
ENCROACHMENT
DEPTH OF FLOW AND
INUNDATED AREA FOR
MAJOR STORM RUNOFF

Street Classification	Maximum Encroachment
Street Classification	Allowable Depth and Inundated Area
Local and collector	Residential dwellings, public commercial and industrial buildings shall not be inundated at the ground line unless

	buildings are flood proofed. The storm runoff shall be contained within the right-of-way
Arterial	Residential dwellings, public, commercial and industrial buildings shall not be inundated at the ground lines unless buildings are flood proofed. Depth of water at the street crown shall not exceed six inches (0.152m) to allow operation of emergency vehicles. The depth of water over the gutter flow line shall not exceed 12 inches (0.305M). The storm runoff shall be contained within the right-of-way
Freeway	No water on crown of street

(3) *Cross street flow capacities.* Cross street flow can occur by two separate means. One is runoff that has been flowing in a gutter and then flows across the street to the opposite gutter, outlet, or inlet. The second case is flow from an external source, such as a drainage way or conduit, which will flow across the crown of a street when the conduit capacity is exceeded. The maximum allowable cross street flow depth based on the worst condition shall not exceed the limitations stipulated in the following table:

ALLOWABLE CROSS STREET SECTION FLOW

Street Classification	Initial Storm Runoff 10% chance, 24-hour	Major Storm Runoff 1% chance, 24-hour
Local	Inch (0.076 m) depth at crown	6 inches (0.16 m) of depth above crown
Collector	Depth of flow shall not exceed 3 inches (0.076 m), at crown.	6 inches (0.16m) of depth above crown
Arterial	None	None
Freeway	None	None

*Cross street velocity should not exceed ten ft./sec. unless approved by public works director.

(b) *Storm drains and storm inlets.* Storm drains and inlets shall be of sufficient capacity to adequately convey the expected runoff from the ten percent chance design storm. The storm drain system and subsequent storm inlets shall commence at all locations where the allowable street capacity is exceeded or at locations where ponding of water is likely to occur.

(1) *Minimum pipe diameter.* The minimum allowable pipe size to be used in storm drains and laterals is as follows:

MINIMUM ALLOWABLE PIPE SIZE

Type of Conduit	Minimum Pipe Diameter
Main trunk	24 inches (0.610 m)
Individual laterals (to drop inlets)	18 inches (0.457 m)

Elliptical or arch pipe will be allowed where design conditions dictate, provided that the cross sectional area of the arch pipe is not less than the area of the conduits listed above.

(2) *Allowable pipe materials/applications.* Allowable pipe materials and applications are as follows:

a. HDPE (first and last joint shall be concrete or CMP where pipe exits soil if no drop inlet).

b. Reinforced concrete pipe, class III.

c. Corrugated metal pipe: application is dependent on soil conditions and pipe application.

d. Life expectancy of all pipe shall be 20 years minimum based on designed usage.

Note: All pipes and conduits must be designed to withstand all structural loads (dead load and live load). State department of transportation standards shall be considered as a minimum guideline for the basis for design. Storm drains and culverts shall not have a cover depth of less than two feet of finished grade at any point unless design analysis and conditions of site dictate otherwise.

(3) *Manhole spacing.* The maximum allowable spacing between manholes or other provisions for cleanouts shall not exceed those listed in the following table:

MAXIMUM ALLOWABLE MANHOLE SPACING

Pipe Diameter	Maximum Allowable Spacing Between Manholes and Cleanouts
24—36 in. (0.610 m—0.914 m)	400 feet (122 m)
42—60 in. (1.061 m—1.52 m)	500 feet (152 m)
Greater than 60 in. (1.524 m)	750 feet (228 m)

Manholes shall be placed at any change in grade or direction and at all connections unless approved by the public works director. The storm drain system should be placed under the roadway. Alternate locations may be approved by the public works department if conditions prevent standard location.

(4) *Calculation of flow capacities in drainage conduits.* The capacities of conduits shall be computed using Manning's formula, appropriate flow nomographs, or approved computer modeling program. The value of the roughness coefficient (n) to be used shall not be less than those specified in the following table. The average full-flow velocity in conduits shall not be less than two feet/second (0.61m/s). Included in the table are roughness coefficients that can be used in open channel flow calculations.

VALUES OF N FOR THE MANNING FORMULA

Flow Condition	n
Plastic pipe, PVC, HDPE	0.009
Smooth metal	0.010
Ordinary concrete	0.013
Asphalted cast iron	0.013
Vitrified clay	0.014
Cast iron pipe	0.015

Concrete pipe		0.015
Brick, dressed stone		0.016
Smooth earth		0.018
Firm gravel		0.020
Corrugated metal pipe		0.023
Natural channels:		
	Clean, straight, no pools	0.029
	As above, with weeds and stones	0.035
	Winding, pools and shallows, clean	0.039
	Very weedy and sluggish	0.112
Lined channels:		
	Concrete surface (bottom and sides):	
	Smooth finish	0.015
	Unfinished	0.017
	Curb and gutter	0.021
	Concrete bottom with sides:	
	Mortared stone	0.020
	Dry rubble or riprap	0.033
Asphalt:		
	Rough	0.016
	Smooth	0.013

Values quoted in this subsection are averages of many determinations; variations of up to 20 percent must be expected, especially in natural channels.

(5) *Storm drainage inlets.* Storm drainage inlets shall be a grate, curb opening or combination inlet. Combination curb/gutter inlets shall be used at all points where ponding or sump conditions exist. The theoretical capacity and spacing of storm inlets will be analyzed using the criteria outlined in these specifications. The allowable capacity will be determined using the reduction factors listed in the following table. These reduction factors compensate for debris plugging, pavement overlaying, variations in design assumptions and other factors that decrease capacities.

(6) The size of outlet pipes from stormwater inlets shall be based upon the theoretical capacity of the inlet, but in no case shall pipes be smaller than 18 inches (0.457 m) in diameter.

INLET REDUCTION FACTORS

Condition	Allowable Inlet Type	Percent of Theoretical Capacity Allowed	Calculation
Sump and continuous grade	Combination curb opening with grate	65	0.65*QT
	Curb opening only	85	0.85*QT
	Grate only	50	0.5*QT

*QT is the theoretical flow through the inlet.

Computations for storm drain and inlet design capacities shall be submitted as part of the final drainage study. Adequate details of the proposed storm drain system; inlets and manholes shall be included in the drainage report and detail drawings within the plan set. Theoretical flow capacities shall be reduced by the reduction factors outlined in this subsection to obtain design flow capacities.

(c) *Crossing structures and culverts.* Crossing structures and culverts shall convey the one percent storm through the structure with additional design that provides for overflow capacity if the structure capacity is reduced due to trash or debris accumulation. Culverts under major arterials shall have sufficient capacity to pass the runoff from the major storm considering that 20 percent of the inlet is plugged. All other culverts shall be designed with emergency overflow that will help convey the major storm event. Capacities shall be calculated for the inlet, pipe, and outlet control conditions where the most conservative condition shall be used. In determining the amount of overflow required, the following capacity credit shall apply:

CAPACITY CREDIT FOR STRUCTURES

Cross Section Area of Structure	Capacity Credit Percent of Full Flow Capacity	* Percent of Major Storm Flow to be Considered as Emergency Overflow
Less than 20 SF (1.858 m^2)	50	50
Greater than 20 SF(1.858 m^2)	80	50

* Shall meet street cross flow requirements of this section.

Qt*[Capacity Credit] equals allowed structure capacity.

The appropriate amount of emergency overflow onto streets shall be taken into account when analyzing storm runoff and allowable street capacities for the major storm. The following design criteria should be used for all culvert design:

(1) *Culvert.* The culvert, including all inlet and outlet structures, shall properly take care of water, bed load and debris at all stages of flow.

(2) *Inlets.* Culvert inlets shall be designed to minimize entrance and friction losses. Inlets shall be provided with either flared end sections or headwalls with wing walls and adequate rip-rap protection. Projecting ends will not be acceptable. For large structures, provisions shall be made to resist possible structural failure due to hydrostatic uplift forces. Structure shall be reinforced concrete with removable, lockable grates.

(3) *Outlets.* Culvert outlets shall be designed to avoid sedimentation, undermining of the culvert or erosion of the downstream channel. Outlets shall be provided with either flared end sections or headwalls with wing walls, aprons (containing energy dissipaters), and toe walls. Additional outlet control in the form of riprap, channel shaping, etc., shall required where excessively high discharged velocities occur, see table 32-105.5.C. Outlets shall have removable galvanized steel grates to facilitate cleaning (rebar racks are not acceptable). No sharp energy dissipaters will be permitted.

(4) *Slopes.* Culvert slopes should be such that neither silting nor excessive velocities and scour occur. Generally the minimum slope of culverts shall be 0.5 percent.

(5) *Headwater.* Generally the headwater to diameter ratios should not exceed the following:

RECOMMENDED MAXIMUM
HEADWATER TO
DIAMETER RADIOS

Storm Frequency	HW/D

10% chance storm	1.0
1% chance storm	1.25

Excessive ponding above culvert entrances will not be acceptable if such ponding appears likely to cause property or roadway damage, culvert clogging, saturation of fills, detrimental upstream deposits, or inundate existing or future utilities or structures.

(6) *Tail water.* The height of tail water at outlets shall be subject to the criteria listed under headwater criteria above.

(7) *Rip-rap.* The construction of rip-rap surface treatment shall consist of furnishing and placing stone, with or without grout, and with or without wire mesh. Cutoffs shall be provided, to a minimum thickness of three times the required apron thickness, at both the upstream and downstream terminals of the rip-rap apron when a stable feature is not present (i.e. concrete cutoff wall). All rip-rap shall have either a filter material (FM) or a non-woven geotextile between the soil and rip-rap, except where rip rap is grouted. Wire-tied rip-rap shall have stakes and conform to NMDOT serial BRR-001-08. The rip-rap used shall conform to the following:

MINIMUM RIP-RAP REQUIREMENTS

Water Velocity Fps (m/s)	Weight of Rock lb (kg)	Apron Thickness in (mm)	Rip-Rap Designation	Use
N/A	N/A	T/2	Type FM (filter material)	Filter material only
By design	30 (13.6)	By design	Type WT** (wire tied)	Gabion
0—3.9 (0—1.2)	50 (22.7)	18 (457.2)	Type L (very light)	Gabion or loose
4—7.9 (1.2—2.4)	100 (45.4)	24 (609.6)	Type L (light)	Gabion or loose
Public works approval	300 (136.1)	By V.S. design ACOE method	Type M (medium)	Loose
Public works approval	750 (340.2)	By V.S. design ACOE method	Type H (heavy)	Loose
Public works approval	2,500 (1,134)	By V.S. design ACOE method	Type VH (very heavy)	Loose

** (Note: For use in 12-inch (0.305 m) high or smaller gabions.

Grouted rip-rap shall be hand placed in a mortar bed to a minimum of one-third the diameter or of three inches thick, whichever greater, of type "s" mortar. Rip-rap shall not be placed deeper than one-half the thickness of the grout bed. Voids in the rip-rap shall be completely filled with mortar for the full thickness of the rip-rap. After the grout is placed, the surface of the rip-rap shall be swept with a stiff broom. The finished surface of the rip-rap shall not vary more than three inches from the design grade. Riprap stones shall conform to the following:

MINIMUM REQUIREMENTS FOR GROUTED RIP-RAP

Water Velocity Fps (m/s)	Stone Volume;eol ft^3 (m^3) Ex. ⅓ Stone + ⅔ Mortar = 1 Unit Grouted Rip-Rap		*Minimum Dimension in (mm)
	Min.	Max.	
0—5 (0—1.5)	⅓ (0.009)	1 (0.028)	3 (76.2)

5—10 (1.5—3.0)	1 (0.28)	2 (0.57)	6 (152.4)

* Minimum size in the least dimension.

(d) *Open channels.*

(1) *General criteria.* Except as modified in this division, open channels shall be designed for the major storm event (one percent chance storm) with additional analysis showing the effects of the initial (ten percent chance) storm. Whenever practical, channels should be designed to avoid flows at or near supercritical depth. Channel capacities should be computed using sound engineering practices, if the city determines potential backwater conditions exist a more extensive analysis (HEC II, HEC-RAS) will be required. No channel shall have a depth less than critical depth plus freeboard.

(2) *Hydraulics.* The channel cross section may be of the type most suited to the location. The drainage report and design hydraulics of flow in channels shall include analysis of the hydraulics indicating the following parameters for existing and proposed channels and drainage ways:

a. Flow cross section geometry for each different configuration of channel shape.

b. Flow cross sectional area.

c. Wetted perimeter.

d. Hydraulic radius.

e. Manning's roughness coefficient (n).

f. Flow velocity.

g. The maximum capacity of the channel, including freeboard requirements.

h. Design discharge.

i. Bed slope.

j. Froude number.

k. Freeboard requirement based on one percent chance event (minimum 12 inches) (0.305 m).

l. Flow type (subcritical, critical, or supercritical).

(3) *Erosion.* All channels shall be designed with the proper and adequate erosion control features.

(4) *Water surface profile.* A water surface profile for the major storm runoff shall be computed for all channels and clearly shown on final drawings submitted for approval. Computations of the water surface profile shall utilize standard backwater methods, taking into consideration all losses due to velocity changes, drops, bridge and culvert openings, and other obstructions. Computations shall be submitted with the final design plan. The energy gradient line should also be computed and be shown on the final drawings. The engineer shall be responsible for obtaining FEMA approval of flood insurance study (FIS) flood hazard zone changes and new/revised flood zone maps as part of the project development.

(5) *Unlined channels.* Unlined channels shall be classified as channels whose slope maintains flows with a Froude number of 0.8 or less. Drops may be used to maintain these criteria. All channels will be evaluated on a case-by-case basis considering, depth, side slopes, lining, velocity, safety, etc.

a. *Side slopes.* Side slopes shall be as flat as practical. Side slopes of 4:1 (horizontal to vertical) shall be considered a normal maximum. Any side slope steeper than this will require written approval from the public works director.

b. *Flow depth.* The maximum design depth for the major storm runoff shall be 4.0 feet (1.219 m) in open channels, unless otherwise authorized by the public works director.

c. *Design velocity.* A maximum velocity for the major storm runoff needs to recognize the scour potential of the soil-vegetative complex. Average velocities need to be determined by mixed flow analysis using HEC-RAS which account for drops, expansions, contractions and other structural controls. Velocities need to be kept sufficiently low to prevent excessive erosion in the channel. The following velocities are recommended as maximums for major storm runoff flows:

Table 32-105.5.C

	Maximum Velocity (fps) (mps)	
Cover	Clay (Erosion Resistant Soil)	Sandy (Easily Eroded Soil)
No cover, dirt lined	4.0 (1.219)	2.5 (0.7620)
*Buffalo grass, bluegrass, smooth brome, blue gramma, native grass mix	7.0 (2.134)	5.0 (1.524)
*Lespedeza, lovergrass, kudzu, alfalfa, crabgrass	4.5 (1.372)	3.0 (0.914)

* Grass cover assumed to be a good stand and well maintained.

(6) *Lined channels.* Lined channels are defined as those exhibiting characteristics which would require lining of the channel to ensure structure stability, to achieve the desired design life of the channel, and to protect areas adjacent to the structure. Contributing factors in the analysis to channel lining requirements include bed slope, flow rate, soil type and stability, and any flow conditions that cause velocity changes. Generally, in most soil conditions, channels exhibiting hydraulic characteristics which result in a Froude number of 0.8 or greater during the ten percent chance or one percent chance storm will require stabilization in the form of a lining. All channels will be evaluated on a case-by-case basis considering, depth, side slopes, lining, velocity, safety, etc.

a. *Side slopes.* Side slopes of a channel shall be those best suited to the terrain and location. Maximum channel slopes with minimal slope protection and/or stabilization, as in table 32-105.5.c shall be no steeper than 2:1 (horizontal:vertical).

b. *Depth of flow.* The depth of flow shall be kept to a minimum, considering velocities involved and land areas needed for drainage easements.

c. *Lining materials.* Lining materials shall be composed of one of the following:

1. Concrete of sufficient strength and thickness to support all design loads, including maintenance equipment. Roughening of concrete surfaces is encouraged.

   Roughening may be accomplished by use of darbies, exposed aggregate, or other suitable methods approved by the public works director.

2. Asphalt of sufficient strength, including base materials, to support all anticipated design loads, including maintenance equipment. Asphalt linings shall be of a mix design which will

resist damage due to erosion and lack of vehicular traffic for the design life of the lining which shall be 20 years.

3. Riprap, set in concrete or mortar, shall have the rock size and weight sufficient to resist displacement of the rock by the energy present in the flow of the major storm event. Riprap may be stabilized by grouting, can be set in concrete, or may be wire tied. Standard gabions may be used to stabilize rock under some conditions.

4. Other types of linings such as wood, metal, tile, wire-tied rip rap, reno mattress, brick, fibermesh concrete, or other materials may be used when approved by the public works director.

d. *Freeboard.* The design of channels at supercritical stages shall be taken into account; requirements for freeboard to provide a splash and hydraulic jump phenomenon. For conditions of uniform flow, the minimum lined elevation shall include freeboard above the flow surface of the major storm and shall be calculated using the following equation:

[Sub-Critical Flow]

Freeboard (in feet) =
$d/4 + 0.025*(v)*(d)^{1/3}$

Where:

d = Depth of flow (feet)

v = Velocity of flow (ft./sec.)

Freeboard (in meters) =
$d/4 + 0.025*(v)*d)^{1/3}$

Where:

d = Depth of flow (meters)

v = Velocity of flow (m/s)

For conditions where the total energy content of the flow must be considered, such as bends, drops, abrupt changes in grade or area, convergence of flows, obstructions within the channel, and other conditions which may produce a hydraulic jump, the minimum freeboard above the flow surface of the major storm runoff shall be calculated using the following equation:

[Super Critical and Critical Flow]

Freeboard (in feet) =
$0.5 + (v^2/(2*g))$

Freeboard (in meters) =
$0.152 + (v^2/(2*g))$

Where:

v = Velocity of flow ($m/^2$)

g = Gravity constant = 9.81 m/s^2

Where:

v = Velocity of flow (ft./sec.)

g = Gravity constant 32.3 ft./$sec.^2$

Minimum freeboard under bridges shall be two feet (0.610)

(7) Walls adjacent to open channels shall be constructed to an elevation that is a minimum of six inches (0.152 m) above the finish lot grade at the time of roadway construction.

(c) *Storm drain lift stations.* The use of storm drain lift stations is strongly discouraged and will be considered only in cases involving extenuating circumstances.

All lift stations will be designed to handle twice the 100-year routed peak flow rate and have a detention pond capable of removing silt, debris and, floatable material before entering the lift station entrance works. Under no circumstance shall a channel feed directly into a lift station.

At a minimum, all lift stations must have an exerciser in the control panel and be equipped with a supervisory control and data acquisition (SCADA) system compatible with the existing city system. The pumps will be driven by a three-phase power system and have a redundant power source such as another electrical grid or an automated generator capable of driving all the pumps simultaneously.

(Ord. No. 949, § 3.1E, 9-8-87; Ord. No. 1224, § 1, 3-18-91; Ord. No. 1929, §§ I, II, 8-5-02; Ord. No. 2187, 4-4-05)

Sec. 32-106. Retention/detention pond design.

(a) The use of on-site detention/retention is required for the purpose of limiting the initial ten percent chance and major one percent chance storm runoff rates to historical levels. The type of design for each facility is subject to approval by the public works director.

(b) Detention/retention pond facilities should be designed using a storage outflow relationship for the facility and a flood hydrograph routing procedure. For drainage basins smaller than one acre (.4047 ha), only retention ponds shall be used, detention or retention ponds may be used only for developments larger than one acre (.4047 ha).

(c) For drainage basins larger than one acres (.4047 ha), a flood hydrograph routing method will be required.

(d) Off-site runoff entering the development may occur in the drainage basin, and if this is the case, the analysis for the detention facility must take the flows into account. Off-site runoff should be analyzed as outlined herein. Off-site flows may be routed around the detention facility. However, entrance and exit points of storm runoff shall not be altered nor shall the post development peak flow exceed that historic peak flow for both one percent and ten percent chance rain events.

(e) Those developments immediately adjacent to specific major drainage ways may have the detention requirements waived, subject to approval by the public works director. These areas must be thoroughly analyzed to show that no additional hazards will be created downstream and that downstream facilities (channels and/or detention/retention areas) can safely handle the increased flow rates or volumes. The city's stormwater management policy plan must be adhered to as well. This document requires the controlling and maintaining of major arroyos without damaging or affecting habitat, recreation, or open space values of these arroyos.

(f) For any detention/retention facility design, a soils report shall be included. This report shall include but not be limited to soil boring logs, water table elevations and soil classifications. Sufficient and representative soil borings and tests shall be required to illustrate suitability for intended purpose and percolation characteristics.

(g) Compliance with the city's stormwater management policy plan must be completed as a supplement to this design standard.

(Ord. No. 949, § 3.1F, 9-8-87; Ord. No. 1224, § 1, 3-18-91; Ord. No. 1929, §§ I, II, 8-5-02; Ord. No. 2187, 4-4-05)

Sec. 32-107. On lot ponding; minimum pad elevations.

(a) One common manner in which post development runoff is controlled at or below pre-developed conditions is by way of on-lot ponding. When this approach is used there shall be restrictive covenants filed on record at the county to convey drainage requirements from seller to purchaser. When on-lot ponds are proposed a ponding icon shall be shown on all plats to indicate that the lot requires a pond and is the responsibility of the property owner to maintain. When on-lot ponding is proposed all lots shall have on-lot ponds and the percent credit shall be as follows:

Lot Size				% Credit
ft^2	ac	(m^2)	(ha)	
0—8,300	0—0.1905	(0—771.1)	0—0.077	10
8,300—10,890	0.1906—0.250	(771.2—1011.7)	0.077—0.101	40
10,891—21,780	0.25—0.500	(1011.7—2023)	0.101—0.202	70
21,780—43,560	0.500—1.00	(2023—4047)	0.202—0.405	85
43,560+	1.00+	(4047+)	0.405+	100

Required ponding volume ≥ Credit * volume of lot ponds + volume of regional pond.

Example: A ten-lot subdivision, with 0.2 acre lots, is determined to require 5,000 cubic feet of on-site volume. The engineer decides to place 600 cubic foot ponds on each lot. The regional pond will be required to hold 2,600 cubic feet.

5,000 - ((10 × 600) × 0.40) = 2,600 cubic feet required in regional pond.

(b) There will not be a minimum pad elevation for houses on lots in the five-mile ETZ. However, the grading plan must reflect pad elevations in relationship to the center of the street and have been stamped by a professional engineer licensed in the state which would certify the drainage plan as workable.

(c) An area of two feet (0.609 m) out from the perimeter of the house must be a maximum two percent slope away from the pad of the structure.

(d) All required ponding must be constructed at time of initial grading and must not be deferred until home construction is started and must not be altered during home construction without an engineered solution.

(e) Many different ponding configurations can serve the foundation of detaining/retaining stormwater runoff. However, the city will limit the types of ponding areas that can be used and has further described them as follows:

The type and design for each facility is subject to approval by the public works director and facilities director for type C pond. Three specific types of stormwater ponding areas will be permitted. The ownership, operation and maintenance responsibilities affect the design of the ponding area.

Type "A" - Private

Type "B" - City (drainage facility)

Type "C" - City (park/dual use facility)

The following parameters shall be used to guide the design of the three types of ponding facilities:

Element	Type A - Private	Type B - Drainage Facility	Type C - Park / Dual use
Operation and maintenance	Private	City streets section	City parks section
Size	Any	One acre minimum (0.405 ha)	2.5 acres min. (1.01 ha) (or as directed by the minimum park size)
Shape	Any	Rectangular preferred	Any
Depth*	18" minimum (0.457 m) 4 feet maximum (1.21 m)*	Same as type "A"	Same as type "A"
Capacity	As needed to hold generated runoff	As needed to hold generated runoff plus an additional equivalent volume to provide a regional benefit	Same as type "A"
Side slopes**	> 4:1 erosion control measures 2:1—3:1 stepped or grouted rock (slope stabilization)	8:1 with natural slopes As steep as 4:1 when erosion control and access ramp are provided	Same as "B"
Access	Optional	Must have improved access road with 8:1 maximum slope	Same as "B"
Outlet	Must lead to drainage way, right of way (approval needed), or drainage easement	Same as type "A"	Same as type "A"
Storage time	Must drain or percolate within 24 hours	Same as type "A"	Same as type "A"
Landscape (when landscaped)	To be approved by the city landscape architect (see CLC stormwater management policy plan)***	Low maintenance perimeter buffer to be approved by public works dept.	To be approved by the city landscape architect and parks department
Fencing/railing	Optional - Unless hazard exists to those using public property	Required - Maintenance access gate also required	Same as type "A"
Park fee credits	Case by case	None	Same as type "A"

* Ponds deeper than four feet will be considered, when additional safety measures are taken.

** Sandy soil may require erosion protection with slopes flatter than 6:1, slopes steeper than 2:1 are not allowable.

*** Nonresidential only.

(Ord. No. 949, § 3.1G, 9-8-87; Ord. No. 2187, 4-4-05)

Sec. 32-108. Drainage system operation and maintenance.

(a) The actual effectiveness of any storm drainage system compared to that determined through modeling and other engineering computation procedures may differ greatly. The intake capacity of a storm drain inlet can be reduced by more than 75 percent due to debris accumulation. Trash collecting on a pier of a bridge over a flood control channel may actually direct water out of the channel although the discharge is well below the channel design capacity. Sand and silt accumulations within a storm sewer may completely block the line. Pump stations that have not been regularly exercised may not operate when called upon.

(b) In order to increase system efficiency and improve the city drainage systems, the following maintenance guidelines should be adopted by the city and operators of private drainage systems:

Facility	Maintenance	Inspection
Channels	Monthly June-October	Semiannual
Pump stations	Monthly June-October	Semiannual
Detention facilities	As necessary monthly June-October	After any major storm (one inch or greater)
Storm sewer systems	Annual	Biannual
Storm sewer inlets	After rainfall events or biweekly during rainy periods	Semiannual

(c) Proper operations and maintenance of storm drainage and flood control facilities includes both cleaning and minor repair to the facilities as well as completely rebuilding some facilities which have, through weathering or lack of maintenance, been rendered useless or present a threat to public safety.

(Ord. No. 949, § 3.1H, 9-8-87; Ord. No. 1224, § 1, 3-18-91; Ord. No. 2187, 4-4-05)

Sec. 32-109. National pollutant discharge elimination system (NPDES).

Persons obtaining construction permits clearing over one acre of ground should be aware that they are subject to the federal Environmental Protection Agency (EPA) construction general permit, State of New Mexico Environment Department Regulations, and City Ordinance 2146 regarding pollution of stormwater. Visit the city's website for the latest updates and assistance.

http://www.las-cruces.org/public_works/engineering_services/stormwater.asp

(Ord. No. 2187, 4-4-05)

Secs. 32-110—32-135. Reserved.

DIVISION 3. FENCES, WALLS, RETAINING WALLS, AND SLOPE PROTECTION[3]

[3]Editor's note(s)—Ord. No. 2804, §§ I, II(Exh. A), adopted Feb. 6, 2017, repealed the former div. 3., §§ 32-136—32-145, and enacted a new div. 3 as set out herein. The former div. 3 pertained to similar subject matter and derived from Ord. No. 2699, § II(Exh. A), adopted Nov. 18, 2013.

Sec. 32-136. Scope of division.

Construction of all fences, walls, retaining walls, and slope protection within the city shall require an approved building permit and shall conform to the minimum design standards as specified within this division and in accordance with the latest city adopted edition of the International Building Code (IBC), city construction specifications, and design standards. Exempt items are listed in Las Cruces Municipal Code (LCMC), chapter 30, article II, division 3, section 30-201. All development in the special flood hazard area (SFHA; also known as the flood zone) must comply with Code of Federal Regulations (44 CFR 60.3); and City Ordinance 1933 (chapter 34—drainage and flood control). Each request will be reviewed on a case by case basis.

(Ord. No. 2804, §§ I, II(Exh. A), 2-6-17)

Sec. 32-137. Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section and are part of the LCMC.

Building/construction permit is an official document or certificate issued by the building official authorizing performance of a specific activity as defined in LCMC, chapter 30, article II, division 2, sections 30-171 through 30-722.

City is the City of Las Cruces administrative government which encompasses all lands within the city's corporate boundary as designated by the present city limit location(s) plus the addition of lands outside city limits which are either leased or annexed.

City of Las Cruces design values are listings of various engineering design values that amend the soil engineering properties in the IBC. When no site-specific soil properties have been identified through exploration and laboratory testing, these amended values shall be used.

City project review is conducted to confirm that engineering principles are applied in conformance with both city design standards and the IBC.

Collapse zone is the area around the wall or fence that would be affected by a potential wall or fence failure. If the wall or fence were to fail, it could fall straight out and could hit the ground similar to that of a falling tree. It is measured along the ground perpendicular to the wall or fence at a distance equal to the height of the wall or fence.

Common yard wall. An artificially constructed barrier or structure along a property line between two or more properties owned by two or more separate property owners.

Compaction is the process of making a soil denser through the application of dynamic impact to the soil mass. Specific minimum requirements are found within the current city construction specifications (standard specifications for road construction).

Concrete masonry units (CMUs) are preformed concrete blocks typically used to construct retaining walls, yard walls, or building walls. They typically are available at most building supply and home improvement stores.

Control measures (CMs) are preferred defensive mechanisms designed to reduce soil erosion from surface storm water. (See Stormwater Pollution Prevention Plan (SWPPP).

Decorative retaining wall (segmented retaining wall). See garden retaining walls.

Engineer (professional) is a person licensed by the New Mexico State Board of Licensure who is legally allowed to represent himself to the public as an engineer and is allowed to perform engineering design or construction of private and public works.

~~*Engineering site review* is a surficial review of a site to determine its preliminary engineering capability based on exposed indicators that include historical site stability and past development(s). This investigation is performed under the direction of an engineer.~~

~~*Erosion control.* See Stormwater Pollution Prevention Plan (SWPPP).~~

~~*Expansion joint* is a designed break within a concrete or masonry structure to allow movement from both shrinkage (concrete curing) and thermal expansion/shrinkage.~~

~~*Expansive soils* are soils that contain a high concentration of clay-sized particles that, when wetted, will expand in size and lose strength, or, when dried, will shrink and form a hard cemented layer. These soils are typically restrictive to the water passage.~~

~~*Fence* is any artificially constructed access barrier consisting of posts, wire, wood, steel, cable or similar material to enclose or screen areas of land. Included within this definition are prefabricated fence panels (wood, plastic, or metal) that are typically sold at building supply stores.~~

~~*Garden walls (segmented walls)* are walls constructed but not limited to using commercially available stacked concrete blocks to form its face. Typically, such walls are used to support raised planting beds for landscaping purposes. See LCMC, chapter 38, article VI, section 38-60 for additional wall information.~~

~~*Geotechnical soils investigation* is an engineering investigation of the subsurface soils at a specific location to establish their unique engineering design properties. Investigations are documented with all findings, location(s), investigation equipment listing, with field crew names, and responsible engineer included.~~

~~*Geotechnical soils report* is a written summary report containing all information obtained from a geotechnical soils investigation, a discussion of the findings and their evaluation(s), and a summary of specific engineering design recommendations, parameters, or designs. This document is signed and sealed by an engineer.~~

~~*Good engineering* is the correct application of the current scientific principles to the evaluation, design, and construction of structural engineering projects. All projects must meet the minimum standards as adopted by the city. All designs are based on health, safety, convenience, and general welfare of the public.~~

~~*Ground water* is free water/moisture located beneath the ground surface in soil pore spaces and rock fractures. Typically, it represents seepage from the ground surface or adjacent water sources.~~

~~*International Building Code (IBC)* is the model building code developed by the International Code Council (ICC). This code has been adopted by the city for construction within the city exempting one- and two-family dwellings.~~

~~*International Residential Code (IRC)* a comprehensive, stand-alone residential code which contains minimum regulations for one- and two-family dwellings and townhouses up to three stories. It brings together all building, plumbing, mechanical, fuel gas, energy and electrical provisions for one- and two-family residences.~~

~~*Landscape architect* is an individual registered under the Landscape Architects Practice Act to practice landscape architecture in the state. Nothing contained in this definition shall be construed as authorizing a landscape architect to engage in the practice of architecture, engineering, or land surveying as defined by New Mexico Administrative Code, Title 16, Chapter 44, Landscape Architects.~~

~~*Mechanically stabilized earth (MSE) retaining walls* are a style of retaining walls that appear similar to garden walls but are typically internally reinforced by geotextile/geogrid layers extending into their retained backfills from their block facings. These walls are designed by engineers.~~

~~*No disturbance zone* (Figure A) is part of the designed foundation zone downslope of a retaining wall foundation. This zone develops the passive resistance to prevent the horizontal forces from the retained fill from moving the wall. Typically, this zone is a minimum width equivalent to the depth of the retained soil.~~

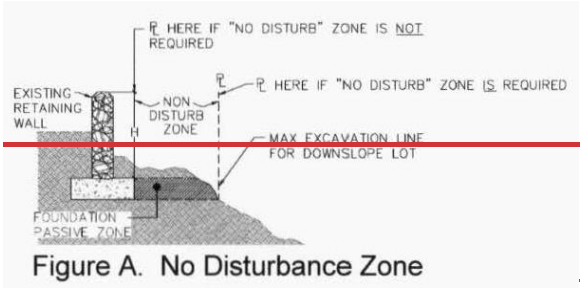


Figure A. No Disturbance Zone

~~*NPDES* is the Federal National Pollutant Discharge Elimination System. This national law is the basis for the city Stormwater Management Plan (SWMP).~~

~~*Open landscape walls (segmented walls).* See garden walls.~~

~~*Passive zone* is the zone located immediately downslope of a retaining wall foundation that is specifically designed to prevent the wall from sliding from the pressure of the retained soil (see no disturbance zone.)~~

~~*Poorly drained soil* is a soil gradation that contains a high percentage of silt and clay-sized particles that act to restrict water passage.~~

~~*Practice of engineering* is any creative or engineering work that requires engineering education, training, and experience in the application of special knowledge of the mathematical, physical and engineering sciences to such creative work as consultation, investigation, forensic investigation, evaluation, planning and design of engineering works and systems, expert technical testimony, engineering studies and the review of construction for the purpose of assuring substantial compliance with drawings and specifications; any of which embrace such creative work, either public or private, in connection with utilities, structures, buildings, machines, equipment, processes, work systems, projects and industrial or consumer products or equipment of a mechanical, electrical, hydraulic, chemical, pneumatic, environmental or thermal nature, insofar as they involve safeguarding life, health, or property, including such other professional services as may be necessary to the planning, progress, and completion of any engineering work.~~

~~*Presumptive soil bearing capacity* is a general soil bearing capacity value based only on the soil classification. City adopted presumptive soil bearing values shall be used if no site specific soil properties have been developed from a site investigation (see table for city design values in section 32-138, fences, walls, retaining walls, and slope protection). Alternate soil bearing capacity values may be used for design if based on a site-specific geotechnical investigation and laboratory soil testing.~~

~~*Private-to-private yard wall construction* is the construction of a yard wall or garden wall on private land that does not have any impact on public lands or utilities.~~

~~*Retained fill depth (grade differential)* is the fill depth retained by a retaining wall as measured by the soil surface elevation difference immediately adjacent to both sides of the wall.~~

~~*Retaining wall* is a designed wall constructed of but not limited to brick, block, rock, concrete, MSE, or reinforced concrete, to retain over 24 inches of soil or surcharge. Retaining walls must be designed to resist the sum of all specific forces with a predetermined safety factor.~~

~~*Retaining wall system* is a combination of retaining walls and slope protection designed and constructed to retain and protect a single large slope.~~

~~*Review for building permit application* is the city's review of proposed development plans, documents, and specifications to insure compliance with all local, state, and federal applicable codes, standards, and ordinances. This review does not approve professional engineering design(s) but ensures only that reasonable engineering standards of practice have been employed in the design process.~~

Rock wall (rubble stone) is a wall construction style composed of roughly fractured stones laid without regularity of coursing and bonded with cement grout forming consistent joints and high internal strength. Such construction can be used for either yard or retaining walls.

Safety factor is a reasonable engineering design factor increasing a force or load to cover unknown factors/forces that may impact it. Typically such factors are in the range of 1.5—2.0 (min.) for retaining walls and may extend much higher for other specific engineered designs.

Setback is the right-angle distance from an adjacent structure to a point on a property line. For more information see LCMC, chapter 38, article VI, section 38-62 and article VII, sections 38-70 through 38-73.

Slope protection is a surface added to a slope to provide erosion protection. Typically it is composed of loose or cemented rock on slopes that are below their angle of internal friction, or part of a retaining wall system for slopes above their retained soil angle of internal friction.

Specification is an explicit set of requirements to be satisfied by a material, product, or service.

Stone masonry is the profession and skill used in building rock walls. Stone masonry, when properly designed, utilizes carefully fitted stones in a matrix of cement mortar to form a strong, durable, and stable structure.

Stormwater Pollution Prevention Plan (SWPPP) is an engineered plan to combat potential pollutant sources at a construction site by presenting appropriate measures to prevent or control the pollution of stormwater runoff. It is based on the National Pollutant Discharge Elimination System (NPDES) laws and regulations. Minimum compliance to the SWPPP plan will identify and place best management practices (BMPs) and CMs that are locally available and have been proven successful at specific locations within/around the construction site.

Structural fill is a fill designed by a professional engineer to have high strength that can support a structure without settlement or displacement. Such fills consist of soils that are both layer placed and compacted to high compaction levels. Typically, this construction is inspected and tested to ensure that the designed minimum compaction levels are achieved.

Wall is an artificially constructed barrier of solid material such as brick, block, rock, concrete (or reinforced concrete), used to enclose or screen an area.

Wall foundation zone (Figure B) is the zone that supplies the structural support for a wall and may include resistance to its lateral movement. This is the zone immediately below the foundation and includes the prepared subgrade it rests on.

Wall height (cumulative) is the physical height of a wall measured vertically from the top of lowest adjacent finished grade to the top of the wall structure.

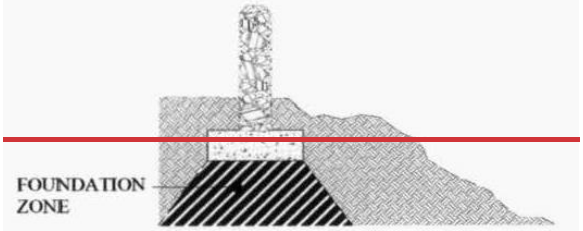


Figure B. Wall Foundation Zone

Wall height (retaining) is the difference of finished grade from opposite sides of the wall.

Wall height (yard) is the physical height of a wall measured vertically from the top of highest adjacent finished grade to the top of the wall structure.

Well-drained soil is a mixture of sand and rock with only minor amounts of silt and no clay component.

Word terminology. Whenever construction permit documents contain the words "adopted," "reasonable," "suitable," "acceptable," "properly," "satisfactory," or words like "effect" and "import", unless otherwise specified herein, shall mean adopted, reasonable, suitable, acceptable, proper, or satisfactory in the judgment of the city and its engineer or designee. This acceptance refers only to the compliance with existing city codes and specifications and does not infer the acceptance of the responsibility for the accompanying design or construction.

Yard wall is a wall constructed of, but not limited to, brick, block, rock, concrete or reinforced concrete, erected to enclose or screen yard areas. A yard wall may retain a grade differential of up to 24 inches and may be located on a property line with ownership shared between adjacent property owners. However, at the discretion of the chief development engineer or designee this grade differential may be extended up to 30" based on proposed design, loading and soil conditions. The decision of the chief development engineer or designee shall be final.

(Ord. No. 2804, §§ I, II(Exh. A), 2-6-17)

Sec. 32-138. Fences, walls, retaining walls, and slope protection.

The following shall be applied to all fences, walls, retaining walls, and slope protection designs and construction:

A. Construction permit applications, when applicable, shall include all structural calculations, investigative reports, and design documentation.

B. All fences, walls, retaining walls, and slope protection within the city shall be designed and constructed per LCMC, chapter 32 and in accordance with the latest city-adopted edition of the IBC for both private and public construction. The zoning code height restriction that shall be applied is stated in LCMC, chapter 38, article VI, section 38-60.

C. The exposed face(s) of a fence, yard wall, or a yard/retaining wall combination shall be designed to resist 90 mph winds acting perpendicularly against front and back wall exposures. Use the design criteria specified in ASCE 7-10.

D. The following design values shall be used when no geotechnical site-specific investigation and subsequent laboratory test values have been developed:

City of Las Cruces Design Values

$\emptyset$	28°	[a] Soil Angle of Internal Friction (max.)
γs	120 PCF	[a] Compacted (dry) Soil Density (min.)
$\gamma'w$	43.3 PCF	[c] Active Equivalent Fluid Pressure (min.)
K	(Only Soil Test Value)	[b] Soil Permeability Coefficient
P_{use}	2,000 PSF	[a] Useable foundation bearing capacity (IBC max)
F_y	60 KSI	Rebar, yield strength (min.)
S_{28}	3,000 PSI	Concrete compressive strength, 28 days (min.)
S_{28}	Based on ASTM C270 design for (yard walls only)	Mortar use type S cement, designed per ASTM C270, and field tested per ASTM C780 procedure A1 & A3

S_{28}	1,800 PSI (retaining walls only)	Mortar use type S cement, compressive strength (min.)
γc	150 PCF	Density of concrete (min.)
γRW	135 PCF	Density of rock masonry wall (min.)
ƒ	0.25	Coefficient of friction for soil/concrete (IBC) (max.)

[a] Site specific soil properties gained from a geotechnical investigation and subsequent soil laboratory testing shall be used when available.

[b] Published soil permeability data typically relate poorly to local stratigraphy and soil structure, therefore only site-specific field/laboratory permeability tests shall be used.

[c] Based on 120 PCF and ø = 28°

E. Proposed excavation of existing ground surface immediately downslope of a structure (wall/building), known as the "no disturbance zone," shall not be undertaken unless a specific engineering analysis and design determines that the structure will remain stable during and after the excavation. Such design documents shall be signed and sealed by an engineer and meet all requirements as listed in OSHA Trenching and Excavation Standards, 29 CFR, Part 1926.650. If this zone extends onto adjacent property, it shall be within a maintenance easement signed by the adjacent property owner of record.

F. It shall be the property developer/owner's responsibility to ensure that their development does not extend onto, or impact, adjacent lots, properties, or developments. An engineer shall provide full design documentation with signature and seal for all development plans.

G. All development shall prevent drainage impacts on adjacent slopes and structures.

H. Walls and fences in a special flood hazard area (SFHA). All walls and fences located in a SFHA as determined by the Federal Emergency Management Agency (FEMA) shall obtain a building permit and meet requirements of city flood plain administration.

I. Any retaining wall foundation or its "no disturbance zone," shall not extend into a special flood hazard area (SFHA), floodplain, or on-lot ponds without a geotechnical engineering design to ensure its continued foundation stability under flood saturation or erosion. All such designs shall be based on an established base flood elevation from a 100-year event (one percent chance of occurrence). Documentation shall include a hydrologic evaluation to confirm full compliance with CFR, Title 44 and LCMC, chapter 34. These engineered designs must include all documentation with signature and seal.

J. Reserved.

K. The minimum upslope setback for any wall from the top edge(s) of a soil bank/slope is typically two times the wall height as measured from the top of the stable portion of the bank to the closest edge of the wall foundation. This value may be modified by an engineer based on a geotechnical soils investigation and associated design. Additional setback distance adjustments may be added by the city's engineering staff or the community development department if the stability of a soil slope(s) or the soil bearing capacity could become compromised from flooding, stability, or if it has a history of instability.

(Ord. No. 2804, §§ I, II(Exh. A), 2-6-17)

Sec. 32-139. Erosion control.

The following shall apply to all construction listed in this division:

A. All development, construction, temporary grading, and subsequent erosion controls for fences, walls, retaining walls, and slope protection shall meet the erosion control requirements as stated in LCMC, chapter 32, article V, sections 32-301 and 32-302. All BMPs shall be listed in the SWPPP plans.

B. All grading for construction shall limit surface soil disturbance to a minimum.

C. If required an approved surface water drainage SWPPP plan and a notice of intent (NOI), which must be included as part of the initial project design plan submissions for construction permit.

(Ord. No. 2804, §§ I, II(Exh. A), 2-6-17)

Sec. 32-140. Geotechnical soils investigation.

A geotechnical soils investigation shall explore and identify the type and structure of the subsurface soils at a specific site.

A. Specific tests and activities shall be conducted to identify at a minimum:

1. Soil type, color, moisture content, gradation, and index properties.

2. Changes in soil type with depth.

3. Soil strength tests at specific depths including zones of weakness.

4. Ground water table (GWT), its elevation, and the sampling date if encountered in the exploration.

5. Actual bottom-of-hole (BOH) elevation based on topographic site map to locate various soil strata and bearing capacity.

B. Sampling: All laboratory testing shall come from undisturbed soil samples.

C. Equipment information:

1. Describe the field exploration company, equipment, sampler size, operator and who logged hole.

2. Document weather, site, exploration hole location on site map, hole number, and the top-of-hole elevation/location.

3. Log all information onto field soil boring log sheets including field testing/sampling and its depth, the site, sign field log sheet.

D. Ponds: Site investigation subsurface exploration depth below the designed bottom-of-pond (BOP) elevation with percolation tests to define the infiltration zone shall be:

1. Yard ponds. Exploration at least five feet (min.) below the designed bottom-of-pond (BOP) elevation for at least 20 percent of ponds in a development. Exploration points shall be equally spaced across proposed pond locations.

2. Community ponds. One exploratory hole at least ten feet below BOP (min.) for each pond.

3. City ponds. One exploratory hole at least 20 feet below BOP (min.) for each pond.

4. Soil samples shall be undisturbed samples for laboratory classification and permeability testing. Other parameters may be required to support specific pond requirements. They may include, but are not limited to, the following:

   a. Additional permeability tests at specific depths. This testing may be required for impoundments that are designed to permeate water into GWT during a specific time period.

   b. Installation of subsurface instrumentation required for engineering design or monitoring.

(Ord. No. 2804, §§ I, II(Exh. A), 2-6-17)

Sec. 32-141. Geotechnical soils report.

A geotechnical soils report based on a geotechnical soils investigation shall be required if the soil conditions are unknown, unreliable, or otherwise unusual as determined by the city community development department, technical and engineering services section. This requirement must also be met for soils that are classified as expansive, very fine, loose structure, have a history of instability, have a potential for future instability, whose properties are inconsistent, or will have a designed slope steeper than 3:1. Any soils report, or addendum, for a project/development shall be part of the building permit application and shall be presented as part of the construction permit drawing submittal. A geotechnical soils report shall be included with the following items A through J as a minimum:

A. Hole number with top-of-hole and bottom-of-hole elevation(s).

B. Soil stratigraphy (exploration logs).

C. In situ soil testing with test type and location(s).

D. Soil classification (AASHTO/Unified); and support testing.

E. Sieve analysis and support testing.

F. Water table elevations notation on exploration logs.

G. Discussion of all findings (investigative and laboratory) with specific design recommendations pertaining to the subject project/development. All soil engineering calculations using the specific soil parameters determined from the exploration and testing shall be included.

H. Other parameters may be required, including but not limited to the following to support specific development requirements:

   1. Structural design factors (SPT tests); with testing results.

   2. Stability design for slopes that exceed minimum design standards.

   3. Topographic map of the ground surface with exploration holes locations noted. Possibly including various cross sections showing identified subsurface stratigraphy.

(Ord. No. 2804, §§ I, II(Exh. A), 2-6-17)

Sec. 32-142. Fence construction (nonrockwall).

The following applies to all fences either manufactured or site constructed.

A. All fences.

- Private-to-private fence six feet or under in height from the finished grade will require no building permit or public inspection but shall require a fence zoning certificate. The integrity of the construction is the sole responsibility of the property owner.
- Private to public fence. Fences that abut public property or whose collapse zones are within public property shall be subject to building permit and public inspection.
- Fence location shall be accurately drawn on a site plan to include height, gate locations, the adjacent rights-of-way and easements, and property lines.
- All fencing installations shall withstand 90 mph winds against their exposed surfaces applied perpendicular to each side separately.
- No fences or their footings shall be placed on city property.
- Fence post foundations shall extend a minimum of two feet into the ground per engineer's design. Fence post foundations shall be enclosed in concrete for a minimum lateral dimension of two times the post diameter minimum and extend six inches below the bottom of the post.

B. Fences under six feet high.

- All fences under six feet high shall be installed per manufacturer and/or engineers, recommendations.

C. Fences over six feet high.

- All fences over six feet high shall require a building permit and installed per manufacturer and/or engineer's recommendations.

(Ord. No. 2804, §§ I, II(Exh. A), 2-6-17)

Sec. 32-143. Slope protection.

The following applies to all slope protection applications:

A. All slope protection designs steeper than 3:1 shall be designed by a license professional engineer and reviewed by the city prior to issuance of a construction permit.

B. Mortar for rock slope protection shall be Type M and shall have a minimum compressive strength of 2,500 psi at 28 days as determined by the AASHTO T 106 test. A mix design certification for the mortar mixture shall be forwarded to the city for compliance review and approval prior to use.

C. Rock and mortar slope protection shall be both internally and externally drained to expel collected water to designed collection point(s).

D. Internal drainage of slope protection shall:

1. Use two-inch diameter (min.) high-density polyethylene (HDPE) pipes (or better) extending through the slope protection.
2. Drainage pipe inlet ends shall have a single layer of geotextile gravel drain zone (drainage) over them.
3. Horizontal spacing of the drainage pipes shall be 20 feet (nominal).
4. Additional rows of drainage pipes shall be spaced every ten feet of slope distance.
5. Drainage pipe locations shall be staggered from adjacent row locations.
6. Pipes shall be sloped to drain onto slope protection surface.

7. Drainage pipes shall have a secured geotextile (drainage) covering over their inlet ends if draining a sand retained back-fill.

E. The downslope edge of slope protection shall include a stable foundation structure to prevent movement.

F. The downslope edge shall be graded to drain collected water to designated areas as designed.

G. The unprotected soil adjacent to slope protection shall not be steeper than four to one (4H:1V) unless otherwise recommended by a geotechnical soils report and designed by an engineer. Adjacent slopes shall drain surface water away from the slope protection.

H. Prior to placing slope protection, the fill slopes shall be constructed as a structural fill including both layer placement and compaction. Compaction testing is defined in the City of Las Cruces Standard Specifications for Road Construction, latest Edition.

I. Cut slope construction (undisturbed soil) shall have its exposed surface compacted in accordance with the City of Las Cruces Standard Specifications for Road Construction, latest Edition.

J. Rock and mortar slope protection shall have a six-inch thick mortar bed (min.) with rocks embedded three to four inches into the mortar. The joints between rocks shall be tightly packed with mortar. The mortar shall extend to within one-quarter inch of the rock surface. The minimum joint width should be no less than one-half inch wide. Rock that comes into contact with an adjacent rock (i.e. no joint) will not be allowed. Rock and mortar slope protection shall be constructed with no voids in their structure. Material design elements other than concrete, mortar and rock is not allowed within a rock and mortar slope protection system unless approved by the design engineer. The presence of unapproved material will be the basis for rejection of construction. Alternative designs for any slope protection will be considered by the community development department.

K. Rock used in slope protection construction shall meet the size as specified in the latest Edition of the New Mexico Department of Transportation (NMDOT) Standard Specifications for Highway and Bridge Construction. All rock for slope protection shall be of a quality such that it will not flake or disintegrate.

L. Slope protection using planted vegetation is encouraged. Its design shall be in compliance with the city landscape design standards and shall include an adequate watering system, plant maintenance plan, and meet the following specifications:

1. Plants specified shall be suitable for the Chihuahuan Desert climate. Native plants are preferred but other suitable plants will be considered for approval by the city landscape architect.

2. All seed planting shall be covered with a securing blanket to protect seeds to full germination.

3. Planting and irrigation plans must be stamped by a landscape architect licensed to practice in the state.

4. A varied planting is more effective than a monoculture on a slope, and therefore, is desired by the city.

5. Use of plastic sheeting under a mulch layer is not allowed.

6. Organic mulch (i.e., straw mats, tacked clean straw, bark-mulch, or similar) are recommended for use with newly planted vegetation.

7. Slopes steeper than 4:1 shall not be used for planting slope protection.

8. United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) practice standards shall be met for slope protection planting as presented in the following guidelines:

a. Reference NRCS Conservation Practice Standard, Conservation Cover, Code 327.

b. Reference NRCS Conservation Practice Standard, Critical Area Planting, Code 342.

c. Reference NRCS Conservation Practice Standard, Mulching, Code 484.

d. Reference NRCS Conservation Practice Standard, Runoff Management System, Code 570.

(Ord. No. 2804, §§ I, II(Exh. A), 2-6-17)

Sec. 32-144. Walls.

A. General design requirements:

1. Construction plans for proposed walls shall show property address, property lines, adjacent structures, surveyed location with setbacks, and setbacks in sufficient details to complete the construction. Construction plan details shall include surface drainage and surcharge load designations. Access portals through any wall shall be fully designed to insure retention of backfill.

2. The permittee is responsible for the location of all property lines affected by a proposed wall and shall be responsible for the location of footings and walls with respect to those boundaries.

3. Walls shall be set on stable soil. Areas identified by the city as having a history of instability shall be either stabilized as part of the wall design or the wall setback onto an adjacent stable site. Specific site investigation and design may be required. Figure C shows the differences in the three wall types.

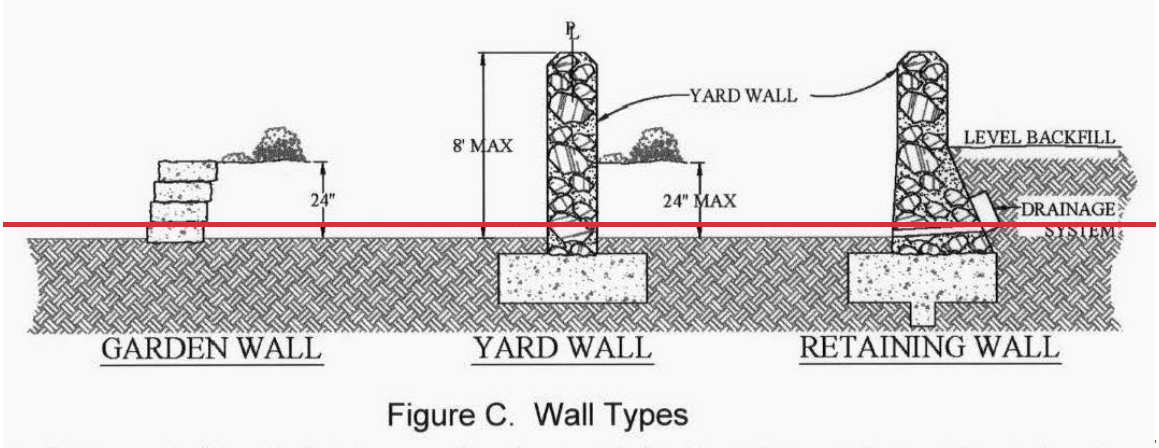


Figure C. Wall Types

4. No items shall be attached to any wall unless included in the initial wall design. The design of additional attachments shall be signed and sealed by an engineer.

5. Reinforcing bars placed within all concrete structures shall be placed on chairs or tied prior to the placing of the concrete. Stabbing dowels into wet concrete is not allowed (see ACI 318).

6. Rock walls shall be constructed with no voids in their structure and contain large interlocking stones which overlap both horizontally and vertically. Material other than concrete mortar and rock is not allowed within a rock wall unless approved by the design engineer. The presence of unapproved material within a rock wall will be the basis for rejection of construction.

7. Minimum construction temperature. For both concrete and mortar construction is 40°F and rising for both air and ground temperatures for concrete sections under 12 inches thick. No ice shall be present within the materials (mixing sand and water) to be added to fresh mortar/concrete. Temperature

projections for the four days immediately following placement shall remain above 40°F or the construction shall be covered and heated to 55°F (min.) for the same period (see ACI 306R-88).

8. Maximum concrete temperature. For concrete placement, the maximum maintained allowable temperature is 90°F. If concrete is to be cooled by the addition of ice, after-placement-slump tests are to be taken to ensure that the water/cement ratio remains within design tolerances. If outside the allowed water content, the specific truck of concrete is rejected and all its concrete is to be removed from the work site.

9. Once mixed, concrete and cement mortar shall not be retempered by the addition of water or sand and shall only be placed while in a workable condition. Once the mortar has started to "set," it shall not be used and must be removed from the construction site by the contractor.

10. Cement shall not be stockpiled on the work site. Sand may be stockpiled on the work site provided it is protected from moisture and adjacent contamination. All loose material shall be stored away from streets and storm drains. Approved silt fencing, or filtration medium, to prevent siltation, shall be used to protect all on-site storm drain systems.

11. Only walls designed and constructed by the city for public projects shall be constructed on city property per their approved construction plans. No private wall shall be constructed within city right-of-way.

12. Common yard wall. Private-to-private yard wall six feet or under in height from the finished grade and is not a retaining wall will require no building permit or public inspection but shall require a wall and fence zoning certificate. The integrity of the construction is the sole responsibility of the property owner.

    Private to public yard wall. Walls that abut public property or whose collapse zones are within public property shall be subject to building permit and public inspection. (See also section 32-1441, yard walls.)

13. Any wall that will help restrain wind or water erosion within a lot or area may be constructed during the project's initial construction phase. This designation shall be identified as part of the site design by the engineer and verified by the city prior to the construction permit issuance.

B. Concrete:

1. All concrete shall have a minimum tested compressive strength of 3,000 psi after a 28-day cure for wall construction. All concrete mix designs shall be forwarded to the city for approval prior to start of construction (mix design documentation is typically available from concrete plant mix supplier).

2. All concrete quantities over one cubic yard shall be plant mixed with a minimum strength of 3,000 psi after a 28-day cure. Concrete quantities less than one cubic yard may be site mixed but shall have a minimum compressive strength of 3,000 psi after a 28-day cure.

3. Portland cement shall conform to ASTM C150/C150M and shall be Type I or Type II.

C. Mortar:

1. Mortar for all retaining walls shall have a minimum compressive strength of 1,800 psi. Yard walls shall comply with ASTM C270-12. Mortar cubes shall be cured and tested in accordance with AASHTO T 106.

2. Required proportioning shall be determined from the mix design by a testing laboratory and signed by an engineer. Mortar for rock wall, retaining wall, and slope protection shall be Type S prepared per ASTM C270 and tested in accordance with ASTM C780, using procedure A1 or A3. All mix design certification shall be forwarded to the city for approval prior to start of construction.

3. Mortar mixing may be by hand or a rotating paddle-mixing machine. Mortar shall be sampled in accordance with ASTM C172.

4. Mortar shall only be placed while in a "workable" condition with no signs of it starting to "set". If a rock is moved once the mortar has started to set, the mortar shall be removed and replaced with fresh mortar before the rock is replaced.

5. It is intended that the mortar width between the rocks should be uniform in appearance. The minimum joint width should be no less than one-half inch wide. Rock that comes into contact with an adjacent rock (i.e. no joint) will not be allowed. All mortar joints shall be filled to within one-quarter inch of the wall face with a smooth finish. For nonstandard mortar joint architecture, alternative designs shall be submitted for review and approval by the city.

6. Portland cement for mortar shall conform to ASTM C150M and shall be Type I or Type II.

7. Sand for site-mixed mortar shall be commercially washed and supplied.

8. Sand shall only be stored on-site when separated from underlying ground surface and protected from all adjacent contamination.

9. Mortar joints on rock walls may have small pieces of rock (shards) placed into their exposed surfaces for appearance provided that the following is achieved:

   a. After the mortar has been placed to within one-quarter inch of the exterior wall surface, the rock shards may be installed.

   b. All shards shall be both clean and moist when inserted into the grout surface.

D. Rock:

1. Rock for wall construction shall be placed with all surfaces clean and damp for good mortar adhesion.

2. Rocks for wall construction shall be of size and shape, and laid in a manner, that they "overlap" both horizontally and vertically within the wall.

3. Rocks grouted onto the outer face(s) of a wall in a "veneer" fashion, shall include a "tie" structure extending into the wall. Such "tie" structure shall be designed by an engineer.

4. All rock for wall construction shall be of a quality such that it will not flake or disintegrate.

E. Wall foundation:

1. All wall footings shall bear on a compacted cohesionless (sand/crushed gravel) subgrade soil a minimum of eight inches thick and not on a cohesive (silt, clay, or caliche) soil. All foundation soils shall be compacted to 95 percent of ASTM D1557-12 or AASHTO T 180 test standards, at a moisture content of plus or minus two percent of optimum.

2. All footings (except garden wall) shall be constructed of concrete with vertical faces on all four lateral sides. Locations where the soil will not hold a vertical face the foundation faces will be formed.

3. Unless differing engineering recommendations with calculations have been developed, the following shall apply:

   a. Footing thickness shall be 12 inches of concrete (min.).

   b. Minimum footing reinforcement is two #4 deformed bars (continuous) with 14 fourteen inches (min.) lateral spacing and #4 cross-bars at 24 inches spacing (max.). Footing continuous reinforcing shall comply with ACI 318, with a minimum steel ratio of 0.0014.

   c. Concrete covering over all reinforcing bars and their ends shall be three inches thick (min.). All reinforcing bars shall be supported by chairs to insure three inches of concrete cover.

d. Soil cover over the top of wall footing shall be six inches (min.).

e. First course of rock above the footing shall have an average diameter between eight inches and 16 inches with a six-inch (min.) embedment into the foundation concrete.

F. Final cleanup:

1. All exposed wall surfaces, and adjacent ground surfaces, shall be cleaned of splattered mortar left from construction. All debris and removed mortar shall be removed from the construction site by contractor.

2. All adjacent disturbed soil shall be constructed to designed shape and contour per final design. All adjacent soil surface shall be planted for erosion prevention or designed landscaping.

G. No disturbance zone (see Figure A):

1. Construction/disturbance plans within a no disturbance zone shall be designed by an engineer and approved by the city.

2. Design documentation shall include:

a. Geotechnical soils report signed and sealed by and engineer.

b. Project specific construction drawings and supporting design calculations.

c. Building permit application shall include both a and b.

3. Ground surfaces down-slope of the no-disturbance zone shall be no steeper than 3:1 (H:V).

4. The no-disturbance zone shall not extend onto adjacent property except within a permanent retaining wall easement for both slope stability and maintenance.

H. Garden walls may be constructed without an engineered design or a city building permit provided they meet the following criteria (1—4):

1. Garden walls shall be constructed using the manufacturer's design and construction specifications and have a grade differential of not more than 24 inches.

2. Any garden wall retaining over 24 inches high shall be considered to be a retaining wall and shall require a review by the city for adequacy, zoning, and ordinance compliance prior to issuance of a construction permit.

3. Garden walls may be constructed along property lines if within their height restrictions, have a level backfill, and must totally remain on the wall owner's property.

4. Private garden walls shall not be located on city property.

5. Garden walls 48 inches high and under may be designed by a landscape architect registered in the state. Such walls shall have no backfill reinforcement, have a level backfill, and no additional surcharge. Design drawings shall be signed and sealed by a state registered landscape architect.

6. Garden walls over 48 inches high with reinforced backfill, or backfill surcharge above level shall be signed and sealed by an engineer.

I. Yard walls—Reinforced concrete, masonry, or rock/mortar (Figures D and E under section 32-145, retaining wall design standards). Yard walls may be constructed without an engineered design provided they meet all of the following design criteria:

1. Yard wall may have a maximum grade differential of 24 inches between its front and back. Deviations to this provision may be considered on a case by case basis by the chief development engineer.

2. Yard wall foundation zone shall have a history of stability or be constructed as a structural fill.

3. Yard walls separating individual lots may be constructed as part of the individual lot development(s).

4. Yard wall height shall be no more than eight feet high (max.) as measured from the top of the lowest adjacent grade to the top-of-wall.

5. Yard wall footing width shall have the following minimum widths:

   - *Reinforced concrete and reinforced masonry wall:* 20 twenty inches (min.).
   - *Mortared rock wall:* 20 inches (min.).

6. Yard wall expansion joints are required for both concrete masonry units (CMUs) and reinforced concrete walls and shall be spaced 16 feet (max.) along each wall segment. These joints shall extend from the foundation to the top-of-the-wall.

7. Yard wall thickness (min.):

   - *Reinforced masonry:* six inches (min.).
   - *Mortared rock:* 16 inches (min.).
   - *Reinforced concrete:* six inches (min.).

8. Yard wall reinforcement (min.):

   - *Reinforced concrete:* #4 rebar vertically and horizontally at 18 inches on center (max.) with #4 footing dowel at 36 inches.
   - *Reinforced masonry:* #4 rebar vertically at 24 inches (max.) with #4 footing dowel at 48 inches and #4 rebar horizontally in an eight- inch (max.) bond beams at the top of the wall and at 48 inches (max.).
   - *Mortared rock:* Mortared rock walls shall not contain steel reinforcement except in its concrete footing.

9. Any yard wall that does not meet the above specifications shall be designed by an engineer.

(Ord. No. 2804, §§ I, II(Exh. A), 2-6-17)

Sec. 32-145. Retaining wall design standards.

(Figure F in this section)

An engineer shall design all retaining walls.

1. Retaining wall types include, but are not limited to, mechanically stabilized earth (MSE), gabion, reinforced concrete, reinforced earth, bin, anchored or tied-back, rock gravity, terraced, and nonstandard systems including, but not limited to, rock veneer wall modifications.

2. Retaining wall construction drawings. Developers, property owners, or builders shall submit detailed engineered construction drawings and specifications for each specific location at time of building permit application. As a minimum, the following information shall be included:

   - Construction drawings for all walls shall be on 24" x 36" sheets.
   - Specifications may be either on the drawing sheet or on separate 8½" x 11" sheets.
   - All geotechnical design reports and wall calculations shall be on separate 8½" x 11" sheets.
   - Typical cross-section/detail of the wall shall include finished soil elevations on both sides of wall and identify surcharges and their locations

- All wall reinforcement locations and required concrete cover.
- All material specifications.
- Wall locations shall be identified on specific site grading plans to scale with survey information.
- Construction plans shall note elevations of top-of-wall (TOW) at its ends, corners, and bottom-of-footings (BOF).
- Construction plans shall show all adjacent structure(s), utilities, and property lines within 20 feet on each side of a wall or wall system.
- Construction plans shall accurately show wall system(s) width and property line location(s) to scale.
- Construction drawings shall show drainage system(s) and associated water collection system.
- Additional requirements by the city.

3. Retaining wall designs:

- Shall be for a 50-year (min.) safe service life.
- Reinforcement requirements shall be designed by an engineer.
- Retaining wall design loadings shall include sum of forces from retained soil, adjacent loads, passive forces, base friction, and wind loads. All wall designs require a minimum factor-of-safety of 1.5 against overturning, sliding, and foundation bearing from the summation of all applied forces.
- Resultant force vector for the sum of all retaining wall loads shall be within the middle one-third of the foundation width and give a positive bearing stress under the foundation heal.
- Retaining wall systems shall be wall segments individually designed. The global stability of the entire slope shall be checked for minimum safety factor of 1.5.
- Retaining walls shall be designed to ultimate height as required for final site development.
- Retaining wall designs shall use the city design values, section 32-138(D) in this document unless a site-specific geotechnical investigation and soils laboratory testing identifies alternative soil structural properties. The alternative values shall then be used.
- Retaining wall exposed face batter shall be positive (into the wall) and have a 1:24 (H:V) (min.) slope after completion of all foundation yielding and back fill placement.
- Retaining wall ends shall meet the following requirements:

  a. Must have a structural connection to another wall/structure, use wing walls, have slope reinforcement, or have a 3:1 (H:V) soil slope or less to insure fill containment.

  b. Temporary wall ends for fill containment may be designed for wall segments to be extended in the future.

  c. Fill containment design(s) shall be shown on the approved wall construction plans.

4. Future wall modification. If a retaining wall design includes a future modification:

- The "retaining" part of the wall shall be designed and constructed to retain the ultimate lateral loads during the projects initial construction phase. Its foundation shall be sized to avoid exceeding the allowable soil bearing capacity, overturning, or sliding resistance by a safety factor of 1.5 (min.) due to the ultimate loads against the wall.

- Changes to a retaining wall backfill (retained fill) after completion of its initial construction shall require investigative and design documentation signed and sealed by an engineer.
- Wall structural modifications shall require a full review by the city community development department, technical and engineering services section prior to issuance of a new building permit.
- All drawings and calculations for the modification shall be included with the initial building permit application.

5. Ground surface drainage. Ground surfaces adjacent to any wall shall be graded to prevent water infiltration into the wall foundation zone. Where this is not practical, one of the following shall be part of the final design by an engineer.
   - A drainage system(s) extending from the retained ground surface to the bottom-of-wall-foundation for the length of the wall.
   - The wall designed to withstand the additional hydraulic pressure of the saturated backfill.
6. Wall drainage system outlets shall drain into a designed collection area(s).
7. Retaining wall foundations shall extend through their retained fills or be founded on a structural fill constructed per engineer's design.
8. Retaining walls at the following locations shall be constructed to their ultimate dimensions during the projects initial development phase. This means any retaining wall:
   - Forming the border with adjacent public rights-of-way.
   - Reinforcing a slope with a history of instability.
   - That is part of a specific site/area drainage system.
   - Or wall system, retaining over two feet of soil.
   - A surcharge (vehicles, structure, or sloped backfill above level), within one wall height horizontal distance from the fill side wall face.
   - That is part of the site development of an essential structure.
   - That is determined by the city building official, development chief engineer or their designee to help reduce surface erosion from either wind or storm water prior to the subdivision's complete build-out.
9. Retaining wall backfill extending to twice the wall height horizontally from the wall shall comply with the following:
   - Shall be sand, noncohesive, and well-drained soil-rock mixture.
   - Compacted using any hand compaction equipment such as "vibratory plate compactor", "jumping jack" stomper/rammer, or small roller. Exercise caution to not move or break the wall.
   - Backfill soil shall have a maximum aggregate size of four inches.
   - Backfill and compaction testing shall be done according to the City of Las Cruces Standard Specifications for Road Construction, latest Edition.
   - Walls using a poorly drained soil backfill shall be designed to resist the additional hydraulic pressure and expansion from total backfill soil saturation.
   - Surface drainage (see section 32-145(5) in this Code).

10. Retaining wall drains:

    - Bottom row of drains extending through a retaining wall shall be located with their outlets within six inches (max.) above adjacent finished ground surface.
    - May extend through the retaining wall using a three-inch diameter (min.) PVC plastic pipe and graded to drain away from the retained fill.
    - Drain pipe inlets to be securely covered with geotextile (drainage) secured to the pipe.
    - Walls over eight feet high shall have two rows of drains (min.) with the second being three feet above the bottom row with locations staggered.
    - Horizontal spacing of drain pipes shall be ten feet (max.) with each row of outlet location staggered.
    - All drain water shall be drained to designated collection area(s). All drainage paths on adjacent property shall be located within a "maintenance easement." Drainage way maintenance shall remain responsibility of retaining wall owner.

11. In-ground ponds and swimming pools:

    - Shall be setback the larger of either ten feet or twice the height of the retaining wall (as measured from the top of its foundation to the top of the retained soil), from any retaining wall.
    - If pond/pool seepage could reach the wall foundation, then a drainage system to intercept the water shall be installed. This drainage zone shall extend from the ground surface to below the bottom-of-footing elevation and laterally the full length of the impoundment (min.) along the wall.
    - Drainage shall be into designated collection area or utility.

12. Landscaping in close proximity to a retaining wall shall be specifically considered in the structural analysis of the wall. Such planting zones may require specific independent drainage system(s) to prevent hydraulic pressure buildup against the retaining wall(s). Root barriers shall also be designed for areas of future root growth.

13. Engineer's certification. It is the intent of these standards to assure that the engineer of record is involved in both the design of the wall as well as the general oversight of construction of the wall. Therefore, the engineer or designee is asked to conduct site visits to assist with the assurance that construction appears to be meeting the requirements set and if changes are undertaken, they have been done so with their approval. To that end, the engineer shall submit a statement based on site visit(s) and observations stating that to the best of their knowledge and judgment the construction complies with the permitted plans.

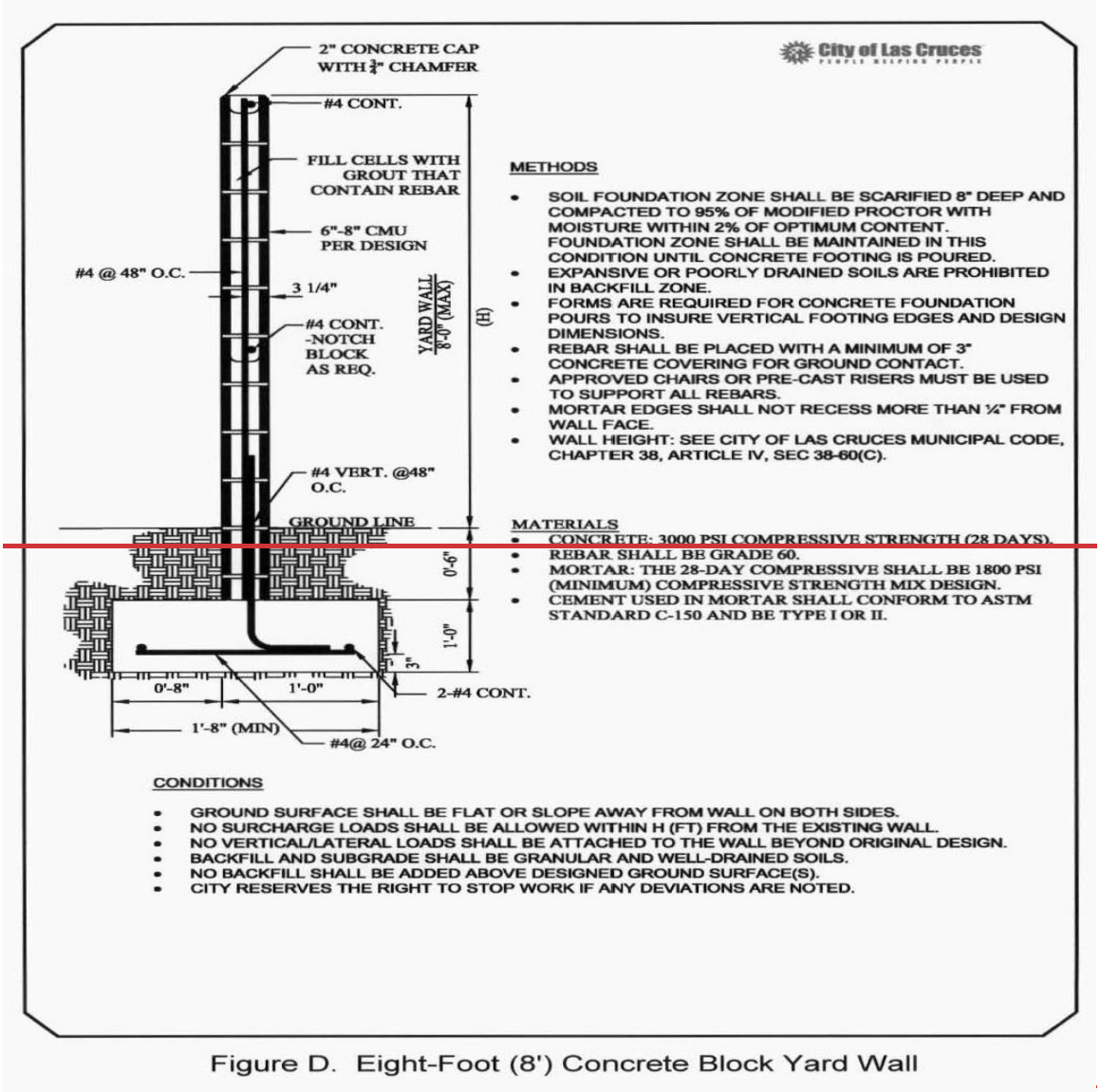


Figure D. Eight-Foot (8') Concrete Block Yard Wall

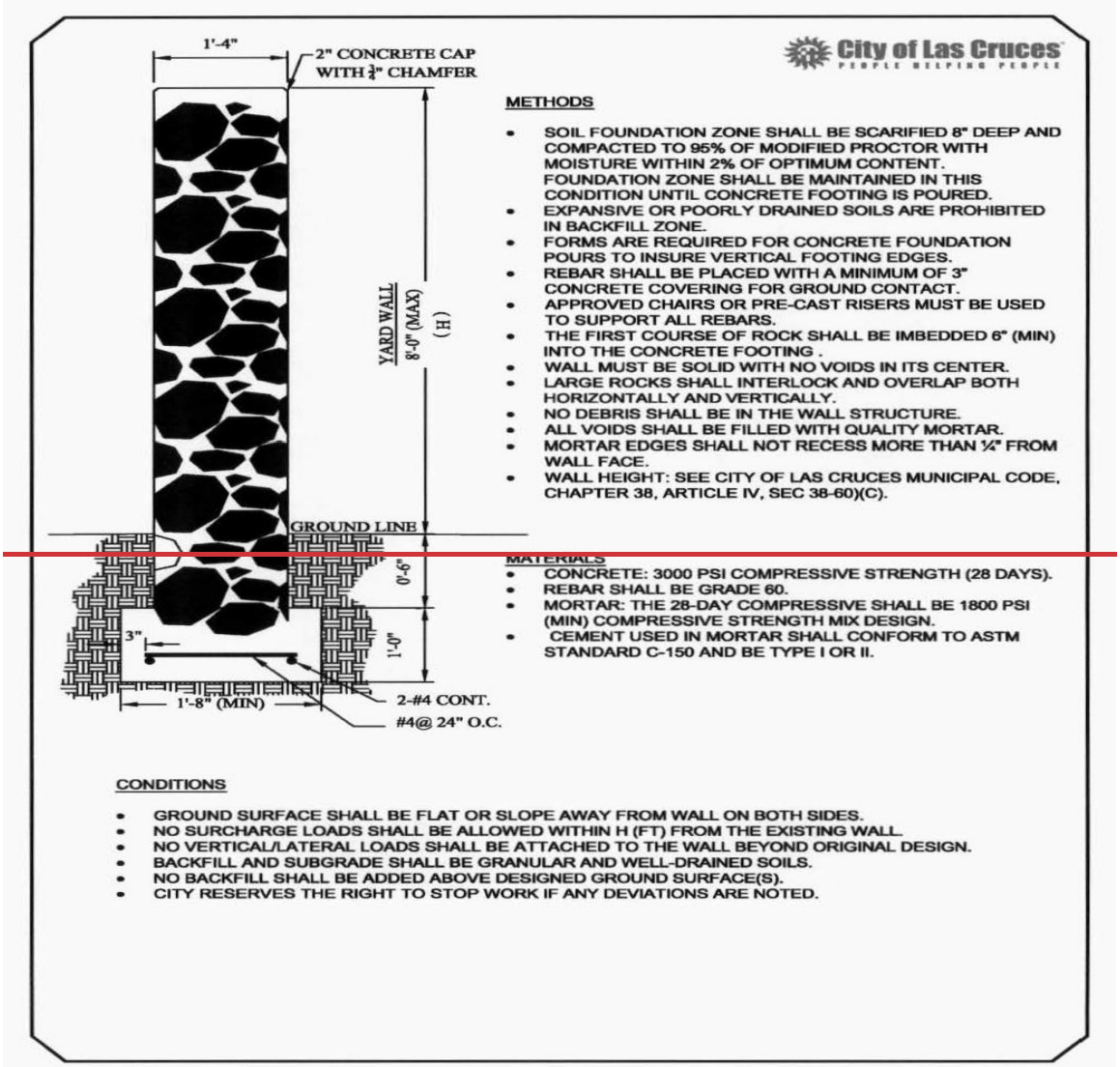


Figure E. Eight-Foot (8') Rock Yard Wall

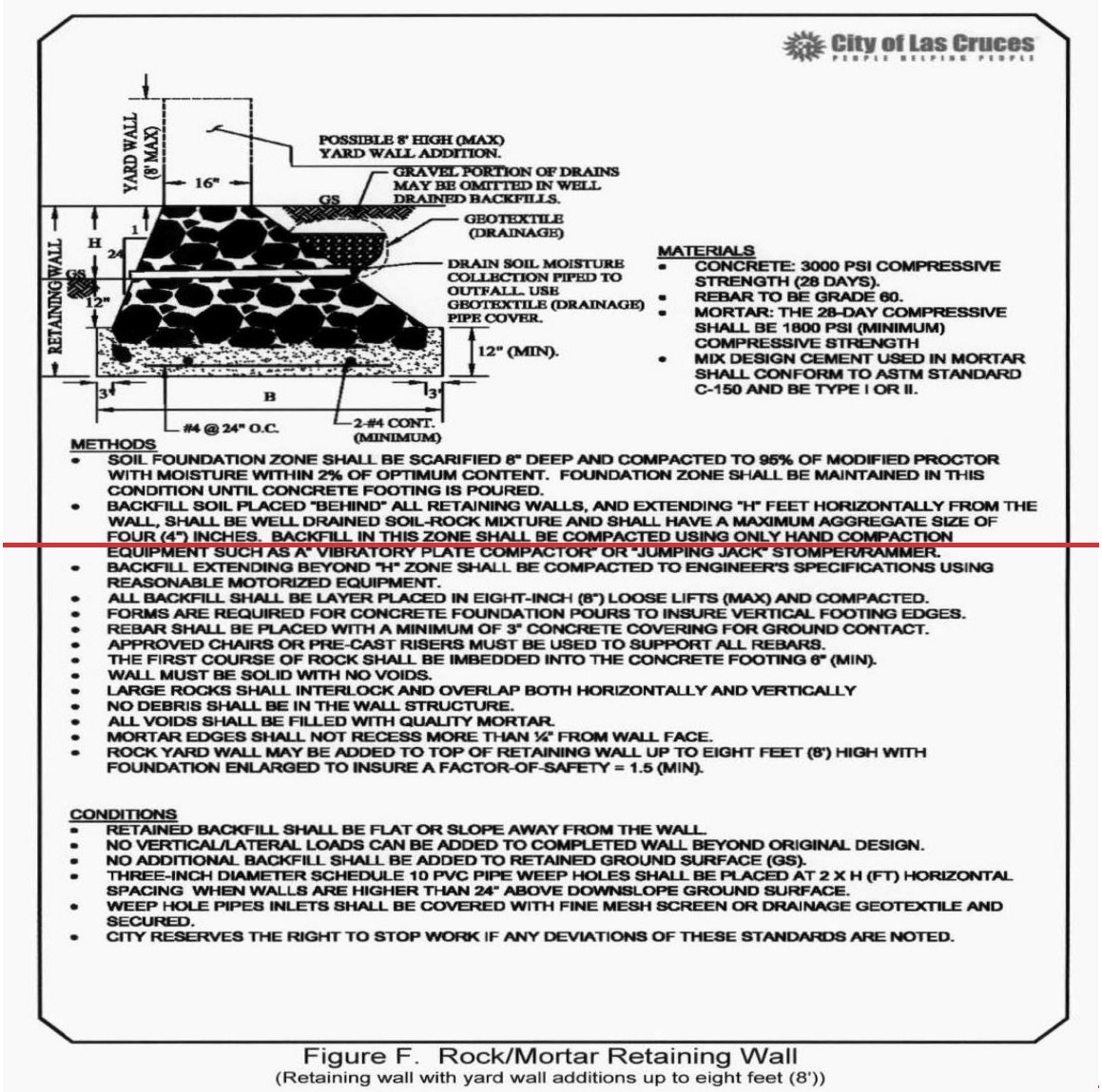


Figure F. Rock/Mortar Retaining Wall
(Retaining wall with yard wall additions up to eight feet (8'))

~~**REFERENCED STANDARDS**~~

~~This section lists the standards referenced within this document. All standards referenced in chapter 32, of the City of Las Cruces Municipal Code (LCMC) have been adopted by the city for use in the design and construction of projects within the city. Other standards that have previously been adopted within the current IBC, are listed in chapter 35 of that document.~~

~~AASHTO (American Association of State Highway and Transportation Officials)~~	
~~T 96~~	~~Standard Method of Test for Resistance to Degradation of Small-Size Coarse Aggregate by Abrasion and Impact in the Los Angeles Machine~~
~~T 104~~	~~Standard Method of Test for Soundness of Aggregate by Use of Sodium Sulfate or Magnesium Sulfate~~
~~T-106~~	~~Standard Method of Test for Compressive Strength of Hydraulic Cement Mortar (Using 50-mm or 2-in. Cube Specimens)~~

T-176	Standard Method of Test for Plastic Fines in Graded Aggregates and Soils by Use of the Sand Equivalent Test
T-180	Standard Method of Test for Moisture-Density Relations of Soils Using a 4.54-kg (10-lb) Rammer and a 457-mm (18") Drop
ACI (American Concrete Institute)	
306R-88	Cold Weather Concreting
318	Building Code Requirements for Structural Concrete and Commentary
ASCE (American Society of Civil Engineers)	
7-10	Minimum Design Loads for Buildings and Other Structures
ASTM (American Society for Testing and Materials)	
C150/C150M	Standard Specification for Portland Cement
C172-99	Standard Practice for Sampling Freshly Mixed Concrete
C270	Standard Specification for Masonry Construction
C270-12A	Standard Specification for Mortar for Unit Masonry
C780	Standard Test Method for Preconstruction and Construction Evaluation of Mortars for Plain and Reinforced Unit Masonry
D1557	Standard Test Methods for Laboratory Compaction Characteristics of Soil Using Modified Effort (56,000 ft-lbf/ft 3) (2,700 kN-m/m 3)
D2419-09	Standard Test Method for Sand Equivalent Value of Soils and Fine Aggregate
IBC (International Building Code)	
Sec 1702	Structural Observation

LCMC (Las Cruces Municipal Code)		
Chapter 30	Buildings and Building Regulations	
	Article II, Division 2	Building Permit and Inspection Process Secs. 30-170 thru 30-722
	Article II, Division 3	Types of Construction Not Requiring a Permit Sec. 30-301 – Exempt Building Permits
Chapter 32	Design Standards	
	Article V	Standards for Erosion Control Sec. 32-301 – Soil Erosion Control Sec. 32-302 – Wind Erosion Control
Chapter 34	Drainage and Flood Control	
Chapter 38	Zoning	

	Article VI	Special Provisions Sec. 38-60—Walls and Fences Sec. 38-62—Exceptions and Modifications
	Article VII	Nonconforming Uses, Structures and Property Secs. 38-70 thru 38-73
OSHA (Occupational Safety and Health Administration) Regulations		
29 CFR, Part 1926	Safety and Health Regulations for Construction, Subpart P—Excavations	
1926.650	Scope, application and definitions applicable to this subpart.	
44 CFR	Emergency Management and Assistance	

(Ord. No. 2804, §§ I, II(Exh. A), 2-6-17)

Secs. 32-146—32-175. Reserved.

DIVISION 4. SOILS TESTING

Sec. 32-176. Specific standards.

(a) *Utilities.* Under this division, construction permits shall be applied for and issued to the contractor responsible for the actual placement of the utility in order that the city will be properly informed of the exact dates and times of construction activity. Test requirements shall include the following:

(1) Trenching.

a. Pipe bedding. One field density per 150 linear feet (lf).

b. Backfill. One field density per 150 linear feet (lf) per two feet depth of backfill (each side).

(2) Services. Service stubouts: One field density per every third service (not per lift).

(3) Manholes.

a. Soil density tests.

b. One field density per footing to be poured.

c. One field density per 24 inches of backfill around the manhole.

d. Materials tests.

e. One mortar test per manhole per day.

f. One concrete test per manhole per day.

(4) Miscellaneous concrete structures.

a. One field density per structure.

b. One concrete test per structure.

Densities are per ASTM D-2922, D-1556 or D-2167.

(b) *Moisture density relationship of soils.* Moisture-density relationship of soils shall meet AASHTO-T180 or ASTM D-1557 as required by changes in materials.

(c) *Street construction test requirements.* Test requirements for street construction shall be as follows:

(1) *Field densities.*

a. *Subgrade.* One field density per 150 lf per eight-inch lift.

b. *Curb and gutter.* One field density per 125 lf or per placement.

c. *Sidewalk.* One field density per 150 lf or per placement.

d. *Base course.* One field density per 125 lf.

e. *Miscellaneous backfill.* One field density per eight-inch lift or as directed by the chief engineer.

(2) *Gradations.*

a. Gradations shall include fractured faces, liquid limit and plasticity index.

b. Base course. One per 300 lf or per project. Additional tests may be required by the chief engineer.

(3) *Modified proctors.* As required by change in materials.

(4) *L.A. wear and soundness.* One test per source per six months.

(5) *Special notes.*

a. Moisture limits on field density two percent.

b. High volume change soils. Thirty-five percent or more of the material passing the No. 200 sieve shall be compacted to 90 percent of modified proctor.

c. Compaction effort. Ninety-five percent for in situ soils.

d. Types of material allowed for backfill shall meet the following specifications unless otherwise authorized by the public works director:

1. Backfill material shall be free of any organic or deleterious substances and shall not contain cobbles or lumps over four inches in greatest dimension.

2. Backfill materials shall contain not more than 60 percent by weight of material larger than a No. 4 sieve and in addition shall be uniformly graded with not more than 40 percent passing a No. 40 sieve nor more than 15 percent passing a No. 200 sieve. The material shall show low shrinkage or swelling and it shall be nonplastic.

(d) *Hot mix asphaltic concrete (HMAC).*

(1) One gradation, extraction and briquette and two field densities per block (350 lf) or as required by community development department personnel.

(2) Establishment of a rolling pattern is recommended at time of job startup.

(3) Testing of materials from hot bins and sand equivalence testing shall be accomplished at job startup in conformance with the city standard specifications for roadway construction or as outlined by the public works director.

(e) *Concrete.* One slump test, set of cylinders (three minimum), and air content determination, if required, per 50 cubic yards placed or fraction thereof, per day.

(f) *Grout and mortar.* Tests for mortar and grout used in construction of manholes, rockwalls, and rock retaining walls shall be as determined by the inspector.

(g) *Concrete paving.* One slump test, one air content determination, one set of cylinders (three minimum per set) and one set of beams (three minimum per set), per 150 cubic yards placed or fraction thereof, per day.

(Ord. No. 949, § 3.3A, 9-8-87; Ord. No. 1224, § 1, 3-18-91; Ord. No. 1929, §§ I, II, 8-5-02)

Secs. 32-177—32-235. Reserved.

DIVISION 5. DETAILS[4]

Sec. 32-236. Details.

The details referred to in this article include the following:

Title	No.
Vehicle access ramp	D-1
Typical channel lining	D-2
Typical toe-down detail (end of channel)	D-3
Access road detail	D-4
Curb inlet plan (modified)	D-5
Curb inlet section A-A (modified)	D-6
Curb inlet elevation (modified)	D-7
Curb inlet details (min. standard)	D-8
Drop inlet details (min. standard)	D-9
Standard manhole section	D-10
Manhole details	D-11
Typical storm drain installation	D-12
100-year rainfall patterns	D-23

(Ord. No. 949, § 3.5, 9-8-87)

Secs. 32-237—32-265. Reserved.

ARTICLE IV. DEVELOPMENT STANDARDS FOR LANDSCAPING

[4]Editor's note(s)—Ord. No. 1789, § II, adopted April 3, 2000, repealed division 5, sections 32-206, 32-207, in its entirety and renumbered division 6, section 32-236, as new division 5. Former division 5 pertained to erosion control and derived from Ord. No. 949, §§ 3.4A, B, adopted Sept. 8, 1987; Ord. No. 1048, adopted Jan. 17, 1989; and Ord. No. 1224, § 1, adopted March 18, 1991.

Sec. 32-266. Scope of article.

(a) The city wishes to promote and preserve visually attractive and pleasing surroundings, reduce erosion and runoff, and improve the quality of the environment. The city desires to have development in an attractive and high quality manner. Therefore, landscaping shall be provided and maintained as set forth in this article.

(b) The style of landscape is not described; however, indigenous or drought tolerant plants are recommended.

(c) For purposes of this article, the term "site" will be defined as the lot included within the application for which the permit is sought and upon which the landscape obligations of this article are imposed.

(d) It is important to note that the guidelines in this article are minimum acceptable standards.

(e) The standards in this article shall apply to public and private property in the following circumstances:

(1) All new construction within the M-2, M-1, C-2, C-1, R-4, R-3, and R-2 zoning districts shall require landscaping. The parking area will determine the amount of landscaping required for the site. A minimum area equal to 15 percent of the total parking area shall be landscaped. For the purposes of this article, the parking area includes the entire tract of land except for the building pad and fenced-in storage area. Properties that are occupied by single-family residences, townhouses, or duplexes located on individual lots are exempt from these requirements. Up to one-third of the required landscaping may be located in the public right-of-way.

(2) Additions or structural modification to existing buildings with a value of $25,000.00 or over and all new parking lots being paved within the M-2, M-1, C-2, C-1, R-4, R-3, and R-2 zoning districts shall require landscaping. The parking area will determine the amount of landscaping required for the site. A minimum area equal to 15 percent of the total parking area shall be landscaped. For the purposes of this article, the parking area includes the entire tract of land except for the building pad and fenced-in storage area. Also, all areas that are currently being used as parking that are unpaved and are being paved shall require an area that is equal to not less than 15 percent of the site's parking area, as defined in this subsection, to be landscaped. Properties that are occupied by single-family residences, townhouses, or duplexes located on individual lots are exempt from this requirement. Up to two-thirds of the required landscaping may be located in the public right-of-way. Any building to be structurally modified, but not enlarged, that does not have area to landscape due to parking and other requirements may be exempted from these requirements administratively after review during the permitting process shows an inability to comply.

(3) All uses requiring special use permits, as defined by chapter 38, shall require an area that is equal to not less than 15 percent of the site's parking area, as defined in this subsection, to be landscaped. Up to one-third of the required landscaping may be located in the public right-of-way.

(4) For the protection and enhancement of our native environment, in calculating the required area to be landscaped the owner may include naturalized vegetation on the site which is undisturbed by clearing of the site, provided that tumbleweed, snakeweed, and bursage will not be considered naturalized vegetation for this purpose. Only areas of undisturbed naturalized vegetation may also be exempted from installation of an irrigation system if the owner so desires; however, 15 percent of the parking area, as defined by this subsection, must be reserved for landscaping. This area must be shown in the first phase of development.

(5) All auto sales lots, mobile home sales lots and other vehicle sales lots shall provide ten percent of the parking area, as defined in this subsection, to be landscaped.

(Ord. No. 978, §§ 4.1, 4.1.A, 6-20-88; Ord. No. 1095, §§ 4.1, 4.1.A, 9-18-89; Ord. No. 1221, 2-4-91)

Sec. 32-267. Definitions.

(a) 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:

Groundcover means grass, low shrubs or flowers, but does not include asphalt, concrete or soil which is exposed and untreated located throughout the required landscaped area. One hundred square feet of groundcover or ten one-gallon size plants shall be provided for every 1,000 square feet of required landscaped area. Gravel and decorative stone shall be considered an additional groundcover if used with the required plant material specified in this article.

Irrigation system consists of an underground system, automatic or manual, that includes a reduced principle backflow preventor, pipes, valves, and heads and that shall be of an adequate size to properly irrigate the proposed planting.

Landscape means trees, shrubs, and groundcovers, all of which are defined in this section. Also included shall be an irrigation system which is defined in this section.

Shrubs means five-gallon size, to follow nurseryman standards, which are approximately one foot in height and one foot in width at the time of planting located throughout the required landscaped area. A minimum of 20 live shrubs shall be provided for every 1,000 square feet of required landscaped area.

Trees means deciduous or conifer trees having a two-inch to 2¼-inch caliper at the time of planting located throughout the required landscaped area. A multitrunk tree shall have no less than three one-inch caliper trunks. A minimum of one live tree shall be provided for every 1,000 square feet of required landscaped area.

(b) Substitution of plant materials may be made according to the following ratios:

(1) Every one two-inch tree required equals ten five-gallon shrubs.

(2) Every one five-gallon shrub required equals five one-gallon shrubs.

(3) Every one two-inch tree required equals 30 one-gallon shrubs.

(Ord. No. 978, § 4.1.B, 6-20-88)

Cross reference(s)—Definitions generally, § 1-2.

Sec. 32-268. Locational criteria.

(a) Of the total area required to be landscaped under this chapter, one-half shall be located within the front portion of the property. For purposes of this article, the front of the property shall be defined as the area between the street curb and the principal structure (see figure 1).

(b) Where buildings occupy corner lots, double fronting lots or triple fronting lots, the owner shall locate a minimum of one-fourth of the required landscape percentage within each front.

(c) All new parking lots with more than 100 spaces that are required to landscape shall locate some of the plant material in the parking lot for shade and visual relief.

(Ord. No. 978, § 4.2, 6-20-88)

Sec. 32-269. City-owned property or property dedicated to city.

(a) The city has adopted landscape themes for medians that shall act as a guide for development of medians.

(b) All owners who dedicate land to the city and who choose to include landscape improvements in addition to the mandatory requirement, such as medians, subdivision entrances, drainageways and rights-of-way, shall submit plans for planting and irrigation for the approval of the community development and facilities departments, affected utilities and the state highway department, if appropriate, prior to construction. Any such dedication of land shall be in addition to the requirements for dedication of park land or fees in lieu thereof as stated in chapter 37.

(c) Design guidelines for properties that are to be dedicated to the city shall be as follows:

(1) Grassed areas shall have a maximum design slope of 5:1, that is, five feet horizontal distance for every one foot vertical. Mounded groundcover areas shall have a maximum design slope of 3:1, that is, three feet horizontal distance for every one foot vertical.

(2) Pedestrian crossing areas shall be surfaced with a hard paving suitable for foot and wheelchair traffic.

(3) An irrigation system with an automatic controller shall be installed.

(d) All medians shall contain a minimum two-inch water stubout. Those medians in a series under one development shall contain one two-inch stubout and one two-inch conduit between medians which is suitable for electricity and water. The conduit shall be a minimum of two-inch schedule 40 PVC and shall be placed a minimum of 24 inches underground.

(e) All drainage, retention and detention areas shall be buffered in accordance with table 1.

(f) If a resident landscapes any property that is dedicated to the city, such resident is responsible for maintenance of that area in accordance with sections 32-273 and 32-274 until a written agreement is made to the contrary with the city.

(Ord. No. 978, § 4.3, 6-20-88; Ord. No. 1224, § 1, 3-18-91; Ord. No. 1929, §§ I, II, 8-5-02)

Sec. 32-270. Buffers and screens.

(a) All owners of property required to be landscaped under section 32-266 or otherwise under chapter 38 shall buffer their property lines in accordance with table 1. The type of screening required is determined by the zoning classification of the property.

(b) The installation of the screening is the responsibility of the applicant prior to issuance of a building permit.

	Adjacent Property Zoning District						
Subject Property (Building Permittee)	R-1, R-2, R-3	R-4	O-1	C-1	C-2	M-1	M-2
R-1, R-2, R-3	C						
R-4	C	C					
O-1	B	B	C				
C-1	B	B	B				
M-1	A	A	A	A	B		
M-2 detention, retention, drainage facilities	A	A	A	A	A	C	

TABLE 1

Type A = Opaque screen

Type B = Semiopaque screen

Type C = Broken screen

Definitions of these types follow in subsection (c) of this section.

(c) The types of buffers or screens described in table 1 are as follows:

(1) *Opaque screen, type A.* A type A opaque screen is a screen that is opaque from the ground to the height of at least six feet with intermittent visual opening from the opaque portion to a height of at least 20 feet. An opaque screen is intended to exclude all visual contact between uses and to create a strong impression of spacial separation. The opaque screen may be a combination wall, fence, landscaped earth berm, planted and existing vegetation. All landscaping in the buffer area must have an irrigation system. Trees and shrubs shall be located so that their outermost limbs touch at the time of maturity. Suggested planting patterns that will achieve this standard are included below.

(2) *Semiopaque screen, type B.* A type B semiopaque screen is a screen that is opaque from the ground to a height of three feet, with intermittent visual openings from above the opaque portion to a height of at least 20 feet. The semiopaque screen is intended to partially block visual contact between uses and to create a strong impression of the separation of spaces. The semiopaque screen may be composed of a combination wall, fence, landscaped earth berm, planted and existing vegetation. All landscaping in the buffer area must have an irrigation system. Trees and shrubs will be located so that their outermost limbs touch at the time of maturity. Suggested planting patterns that will achieve this standard are included below.

(3) *Broken screen, type C.* A type C broken screen is a screen composed of intermittent visual obstructions from the ground to a height of at least 20 feet. The broken screen is intended to create the impression of a separation of spaces without necessarily eliminating visual contact between the spaces. It may be composed of a combination wall, fence, landscaped earth berm, planted vegetation, or existing vegetation. All landscaping in the buffer area must include an irrigation system. Trees and shrubs shall be located so that their outermost limbs touch at the time of maturity. Suggested planting patterns which will achieve this standard are included below.

(Ord. No. 978, § 4.4, 6-20-88)

Sec. 32-271. Site plan review.

Under this article, a landscape plan indicating the type, size and location of landscaping along with topography and an irrigation plan showing type and size of pipes and heads shall be submitted in conjunction with the application for the building permit. All plans shall be at a scale of one inch equals ten feet or one inch equals 20 feet.

(Ord. No. 978, § 4.5, 6-20-88)

Sec. 32-272. Installation.

Under this article, the irrigation system and the landscaping shall be installed before the completion of building construction and prior to the issuance of a certificate of occupancy unless a written agreement has been made with the city. Such agreements extending the time of installation will be for a maximum period of nine months.

(Ord. No. 978, § 4.6, 6-20-88)

Sec. 32-273. Maintenance.

The owner of the landscaped property shall be responsible for maintaining it in a healthy, clean, trimmed, weed-free and litter-free condition. Dead plant material shall be replaced with new plant material immediately. All plant growth in required landscaped areas shall be controlled by pruning or trimming so that it will not interfere with the installation, maintenance or repair of any public utility, nor shall it restrict pedestrian or vehicular traffic or constitute a traffic hazard.

(Ord. No. 978, § 4.7, 6-20-88)

Sec. 32-274. Enforcement.

Failure to abide by the maintenance standards of this article will be considered a nuisance subject to abatement, as provided in chapter 18.

(Ord. No. 978, § 4.8, 6-20-88)

Sec. 32-275. Variances.

(a) *Definition.* For the purpose of this section, a variance shall be defined as the unavailability of sufficient land available for required landscaping.

(b) *Authority.* Where it can be shown that strict compliance with the requirements of this article cannot be met, due to unavailability of sufficient land, a variance may be sought.

(c) *Procedure.* The owner shall submit in writing a request for variance at the time application is made for a building permit. The request for variance shall detail the reasons for such a request.

(d) *Administrative variances.* A 15-percent variance to the requirements of this article may be granted by the community development department director. Any building to be structurally modified but not enlarged that does not have area to landscape due to parking and other requirements may be exempt from these requirements administratively after review during the permitting process shows an inability to comply. In all cases where an administrative variance is granted, the name and address of the applicant, address or location of the variance, and date and description of the variance shall be kept as a permanent record of the community development department, and a certificate of administrative variance shall be issued and accompany any subsequent building permit application.

(e) *Planning and zoning commission.* If more than a 15-percent variance is requested, it shall be considered by the planning and zoning commission. All variance requests and appeals from administrative variance requests shall be considered by the planning and zoning commission.

(f) *Notice of decision.* A notice of the decision of the planning and zoning commission shall be sent by mail to all applicants no later than ten days after the decision is made.

(g) *Appeal of city council.* An appeal to the city council if so desired must be initiated in writing within 15 days of mailing of the decision of the planning and zoning commission.

(h) *Fees.* Fees for all variance requests and appeals to the city council shall be as prescribed by Ordinance No. 85-041 for other variances and appeals.

(Ord. No. 978, §§ 4.9—4.14, 6-20-88; Ord. No. 1224, § 1, 3-18-91; Ord. No. 1929, §§ I, II, 8-5-02; Ord. No. 2279, § I, 2-27-06)

Sec. 32-276. Building permit required.

A variance from the requirements of this article shall be automatically revoked if a building permit for the project containing the approved variance has not been obtained within one year or construction has not been completed within one year after the building permit has been issued. The planning and zoning commission or city council may grant a one-year extension as deemed appropriate upon application made prior to expiration of the specified period.

(Ord. No. 978, § 4.15, 6-20-88; Ord. No. 2279, § I, 2-27-06)

Sec. 32-277. Plant materials.

(a) *Recommended plant materials.* Under this article, recommended plant materials shall be as follows:

(1) *Trees.*

Ash (Fraxinus species).

Chinese pistache (Pistacia chinensis).

Sycamore (Platanus species).

Desert willow (Chilopsis linearis).

Honey locust (Gleditsia triacanthos).

Locust (Robinia species).

Pecan (Carya illinoensis).

Oak (Quercus species).

Mesquite (Proposis species).

Mexican elder (Sambucus mexicana).

Mimosa (Albizia julibrissin).

Russian olive (Elaegnus angustifolia).

Vitex (Vitex agnus-castus).

Flowering pear (Pyrus species).

Willow (Salix species).

Arizona cypress (Cupressus glabra).

Pine (Pinus species).

Juniper (Juniperus species).

Flowering crabapple (Malus Species).

Netleaf hackberry (Celtis reticulata).

Arizona walnut (Juglans major).

Goldenball lead tree (Leucaena retusa).

Flowering plum, peach, etc. (Prunus species).

Deodar cedar (Cedrus deodara).

~~Yaupon holly (Ilex vomitoria).~~

~~Texas umbrella, chinaberry (Melia species).~~

~~Golden rain tree (Koelreuteria species).~~

~~Cottonwood (Populas species).~~

~~Cresote (Larrea species).~~

~~(2) *Shrubs.*~~

~~Acacia (Acacia species).~~

~~Indigo bush (Amorpha fruticosa).~~

~~Smooth bouvardia (Bouvardia glaberrima).~~

~~Winter fat (Ceratoides lanata).~~

~~Rubber rabbit bush (Chysothamnus nauseosus).~~

~~Pea broom (Dalea scoparia).~~

~~Sotol (Dasylirion wheeleri).~~

~~Mormon tea (Ephedia nevadensis).~~

~~New Mexico privet (Foresteria neomexicana).~~

~~Red brush (Lippia gravedensis).~~

~~Pale wolfberry (Lycium graveolens).~~

~~Rosemary mint (Paleomintha incana).~~

~~Sumac (Rhus species).~~

~~Woods rose (Rosa woodsii).~~

~~Sage (Salvia species).~~

~~Arborvitae (Thuja orientalis).~~

~~Bird of paradise (Caesalpinia gilliesi).~~

~~Desert broom (Baccharis sarothroides).~~

~~Juniper (Juniperus species).~~

~~Lilac (Syringa persica).~~

~~Nandina (Nandina species).~~

~~Pampas grass (Cortaderia selloana).~~

~~Photinia (Photinia fraseri).~~

~~Pyracantha (Pyracantha species).~~

~~Saltbush (Atriplex canescens).~~

~~Silverberry (Elaeagnus species).~~

~~Spanish broom (Spartium junceum).~~

~~Texas sage (Leucophyllum species).~~

~~Yucca (Yucca species).~~

~~Abelia (Abelia grandiflora).~~

~~Agave (Agave species).~~

~~Apache plum (Fallugia paradoxa).~~

~~Barberry (Berberis species).~~

~~Barrel cactus (Ferocactus species).~~

~~Bear grass (Nolina texana).~~

~~Cholla, prickly pear cactus (Opuntia species).~~

~~Cotoneaster (Cotoneaster species).~~

~~Coyote bush (Baccharis species).~~

~~Boxwood (Buxus microphylla).~~

~~Flowering quince (Chaenoimeles species).~~

~~Forsythia (Forsythia species).~~

~~Holly (Ilex species).~~

~~Crape myrtle (Lagerstroemia indica).~~

~~Dusty miller (Senecio cineraria).~~

~~Euonymus (Euonymus species).~~

~~Gaillardia (Gaillardia species).~~

~~Gazania (Gaziania rigens).~~

~~Hedgehog cactus (Echinocereus).~~

~~Honeysuckle (Loicera japonica).~~

~~Lantana (Lantana species).~~

~~Penstemon (Penstemon species).~~

~~Privet (Ligustrum species).~~

~~Red yucca (Hesperaloe sarviflore).~~

~~Rose (Rosa species).~~

~~Rosemary (Rosemarinus officinalis).~~

~~Santolina (Santolina species).~~

~~Turpentine bush (Haplppappus laricifolis).~~

~~Pittosporum (Pittosporum species).~~

~~Indian hawthorn (Raphiolepsis indica).~~

~~Yellow bell (Tecoma Stans).~~

~~Arizona rosewood (Vauquelinia californica).~~

~~(3) *Groundcovers.*~~

Blackfoot daisy (Melampodium leucanthum).

Ice plant (various).

Lantana (Lantana species).

Verbena (Verbena species).

Vinca (Vinca species).

Dwarf coyote bush (Baccharis species).

Cotoneaster (Cotoneaster species).

English ivy (Hedra helix).

Germander (Tucrium species).

Centennial (Baccharis species).

(4) *Vines.*

Banks rose (Rosa banksiae).

Queen's wreath (Antigonon leptopus).

Trumpet vine (Campsis radicans).

Virginia creeper (Parthenocisus quinquefolia).

Ivy (Hedra helix).

Wisteria (Wisteria species).

(5) *Grasses and low groundcovers.*

Bermuda grass (Cynodron dactylon).

Rye (Lolium species).

(b) *Not recommended plant materials but allowed.* The following are plant materials that are not recommended but are allowed:

(1) *Trees.*

Mulberry (Morus alba).

Magnolia (Magnolia species).

Palms (Washintonia species).

(2) *Shrubs.*

Oleander (Nerium oleander).

Senna (Senna species).

(3) *Groundcovers.*

(4) *Vines.*

(5) *Grasses and low groundcovers.*

Fescue (Festuca species).

Clover (Trifolium species).

Dichondra (Dichondra species).

(Ord. No. 978, § 4.16, 6-20-88)

Sec. 32-278. Compliance.

Under this article, all landscaping shall conform to any requirements set forth in other sections of this Code that are applicable.

(Ord. No. 1095, § 4.17, 9-18-89)

Sec. 32-279. Public sites and open spaces.

(a) For the purposes of this article, the developer of land within the city limits shall provide for park and recreational facilities for the future of the city by the payment of fees or the deeding of land.

(b) The fees to be paid shall be as follows:

(1) The developer shall pay a set park fee per dwelling unit within any zone classification that permits residential development.

(2) If the subdivision contains more than 300 dwelling units, the developer may deed the land to the city. The decision to accept land in lieu of fees shall rest with the city.

(3) Park fees shall be paid at the time of application for a building permit for each residential structure, residential unit, or mobile home park.

(4) All fees received under this subsection shall be placed in a special public park development fund and shall be used by the city only for acquisitions, development, and improvement of parks and recreational facilities to serve the particular park management areas from which the fees were paid. The city adopts the park fee fund and amount as is specified in the fee resolution and management areas map as city policy concerning disposition of park fees collected and specifying areas where these funds can be spent.

(c) The minimum acreage acceptable is 2.5 acres.

(1) The developer shall deed to the city a portion of such land both suitable and usable for park and recreational facilities. Suitability shall be determined by the city facilities department.

(2) All improvements which front on park acreage such as utilities stubouts, curb and gutter, paving and flood control shall be provided by the developer.

(3) Land shall be deeded to the city prior to release of the plat for filing.

(Ord. No. 1270, § I (4.18), 3-16-92; Ord. No. 1929, §§ I, II, 8-5-02)

Sec. 32-280. University Avenue corridor overlay zone district.

(a) Landscaping standards are established for the University Avenue corridor overlay zone district to promote the use of quality landscaping materials in such a manner as to create a more uniformly landscaped district.

(b) Landscaping for new development within the district shall be provided to cover 20 percent of the parking area for each parcel. Parking area shall be defined as the surface area of a parcel, excluding building area.

(c) Of the total area required to be landscaped, one-half shall be located within the front setback of the property. The front setback of the property shall be defined as the area between the front street curb and

the property's principal structure. Landscaping for corner lots, double or triple fronting lots shall follow city design standards specifications. Businesses offering outdoor seating on their front setbacks may provide only one-quarter of the required landscaping on the front setback, subject to review by the city and the citizen's design review committee.

(d) In addition to the required landscaping percentage specified in subsection (b) of this section, all commercial, office, duplex and garden apartment developments shall be required to plant trees within parking lots for shade and visual relief. One tree shall be planted for every five parking spaces within parking lots as they pertain to the uses listed for each area.

(e) Materials for frontage landscaping and all area landscaping should be arranged so as to reflect the informal, garden-like urban landscape style of the NMSU campus.

(f) Landscape shall be defined as: One two-inch caliper tree, 15 five-gallon shrubs and a choice of either five one-gallon shrubs or 50 square feet of groundcover, for every 500 square feet of lot area excluding building area and parking lot area. The following is a list of recommended plant material for landscaping:

(1) *Trees:*

Arizona cypress.

Italian cypress.

Pines.

Chinese pistache.

Mexican fan palm.

Mesquite.

Sycamore.

Pecan.

Ash.

(2) *Shrubs:*

Spanish broom.

Pyracantha.

Pampas grass.

Juniper.

Silverberry.

Texas sage.

Euonymus.

(3) *Groundcovers:*

Bermuda.

Vinca.

(g) Landscaping gravel and/or decorative stone shall be considered an acceptable additional groundcover, provided all other landscaping requirements as established in this section are fulfilled.

(h) Other organic landscaping materials may be used for landscaping within the district, provided that such materials blend visually with district landscaping material and planting style standards.

(Ord. No. 1284, exh. C(4.17), 10-19-92)

Sec. 32-281. Landscaping of parkways and medians.

(a) *Purpose and intent of this section.* To promote and preserve visually attractive streetscapes and thoroughfares throughout the city via landscaped parkways and medians. Such landscapes are to be of high quality design and construction to adhere to a sustainable and environmentally sensitive objective.

(b) *Applicability.* The provisions of this section shall supersede other landscaping requirements within this article, where conflict in regulation exists, as it applies to the landscaping of parkways and medians only.

1. All new development requires landscaping of adjacent medians and parkways including but not limited to residential, commercial, office, industrial construction as well as subdivision and thoroughfare or roadway construction.

2. All additions, rehabilitation, remodeling or structural modifications to existing buildings with a value of $100,000 or more, including residential, commercial, office, industrial construction, including all new parking lots require parkway and median landscaping.

(c) *Maintenance.*

1. Landscape in parkways shall be maintained by the property owner of the contiguous property.

2. Landscape in medians may be maintained by the city, adjacent property owner(s), homeowners association and/or other arrangement approved by the city.

   a. *Exemptions:* Parkways that abut the rear property line of residential development and are a part of a major thoroughfare may be maintained by the city.

3. Maintenance includes keeping all landscaped areas free of litter and weeds at all times. Proper irrigation, pruning, fertilizing and pest management are also included as maintenance.

4. All tree canopies must be maintained with a minimum lower branch height of six feet to meet the clear sight requirements.

5. All trees, shrubs or other plantings must be trimmed and maintained on the parkway and the median so that they do not encroach on or obstruct passage upon the adjacent street or sidewalk.

6. All shrubs within a clear sight triangle, if any, must be maintained at a height lower than three feet.

(d) *Definitions.*

1. Contiguous - sharing an edge or boundary; touching.

2. Adjacent - having a common boundary or edge; abutting; not necessarily touching.

3. Caliper - the diameter of a tree at approximately eight inches above the top of the rootball of the tree.

4. Swale - a shallow trough-like depression that carries and/or stores water mainly during rainstorms.

5. Groundcover - for the purposes of this section only, means gravel, crusher fine, cobble stone, rock, organic mulch or native grass and low, out-flowing shrubs that overlays the at grade surface for dust and erosion control as well as aesthetic purposes.

(e) *Required landscaping.*

1. Parkways contiguous to a property/site.

2. Medians adjacent to a property/site.

3. Subdivision development that contains thoroughfare medians and parkways.

4. Development entranceway medians and parkways.

5. Unused public rights-of-way or other spaces associated with roadways or other facilities within development.

a. *Exemptions:* Up to ⅓ of the regular landscape requirement for new construction on a property/site may be met by the landscape in the parkway and/or median, subject to city approval. Up to ⅔ of the regular landscape requirement for additions, rehabilitations, remodels or structural modifications on a property/site may be met by the landscape in the parkway and/or median, subject to city approval.

b. Flexibility in the regular landscape requirement may be granted if additional median and/or parkway area is designated for landscape enhancement over and above the ⅓ or ⅔ exemption detailed above.

c. Payment in lieu of landscaping medians and parkways may be approved by the director of the facilities or designee subject to current costs of design, construction, taxes and contingencies.

(f) *Landscape standards.*

1. Irrigation systems are required for all landscaping within parkways and medians.

a. *Must be automatic, bubbler or subsurface irrigation.* All pipe for bubblers must be Schedule 40 PVC. All bubblers must be sized appropriately and of specifications acceptable to the city for the plant material to be irrigated. All remote control valves and controllers must also be specifications acceptable and compatible with those in use by the city parks section at the time of installation. All valves and controllers must be located in locking boxes. All backflow prevention devices must be specification acceptable reduced pressure assemblies located in locking insulated hot boxes installed on concrete pads. All subsurface irrigation systems must have appropriate filters and pressure reducers built in to the system. Subsurface irrigation systems must be included self-cleaning emitters banded inside polyethylene tubing, a flush valve, an air/vacuum relief valve and impregnated root growth inhibitor. Controller must be accessible to the maintenance entity.

b. *Installation must be per approved design.*

c. *Exemptions:* In particular situations, an irrigation system may be omitted or a temporary irrigation system installed to establish the plantings and then removed from the parkway or median once plant material is established.

2. *Planting requirements for all parkways and medians.*

a. Minimum 20 trees per 10,000-square foot median area.

b. Minimum three trees per 1,000 lf parkway frontage/length.

c. Minimum 20 shrubs per 10,000-square foot median area.

d. Minimum ten shrubs per 1,000 lf parkway frontage/length.

e. All trees must be a minimum caliper of 1½-inch for single trunk trees and 1¼-inch caliper for each trunk of multi-trunk trees.

f. All shrubs and ornamental grasses must be planted from a five-gallon minimum size nursery container.

g. All planting and irrigation installation must be generally located within the center of the median to avoid future potential widening of the roadways, additional or expanded turning lanes or other modifications to the median.

h. All plant material shall be drought tolerant and compatible with the local environment. Emphasis on plants native to the Chihuahuan Desert shall be expected; ensuring drought tolerant, heat and pollution reducing, full sun tolerance among other sustainable characteristics are met.

i. Appropriate clear-sight triangles must be maintained at ends of all medians and at corners of all parkways. Plant material should therefore be designed outside of said clear-sight triangle areas.

j. Turf, other than native grasses is not permitted.

k. Groundcover is required for the entire area to be landscaped. Said groundcover shall be appropriately sized to avoid displacement by stormwater runoff or vehicle splash. This requirement may be phased into the overall construction of medians and parkways within a particular development due construction build out. For instance, installation of groundcover may be delayed until properties immediately adjacent to the median or parkway are developed. Predetermined and city approved dust and erosion control measures appropriate for the planned landscaped areas shall be required until the groundcover is in place.

l. All median and parkway areas to be landscaped must be graded such that all stormwater runoff is initially retained on the median or parkway. Swales and small retention areas must be incorporated into the design such that stormwater runoff may be available to the trees and shrubs in addition to the irrigation water.

m. All median and parkway areas to be landscaped must be graded such that the finish grade of the groundcover will be one-half inch to one inch below the back of curb or back of sidewalk.

n. Boulders may be included as accents. All boulders must be three feet or less in diameter at their largest measurement.

o. Short walls, curbs, planters, signage, and lighting may be included.

p. Artificial turf may be considered for installation in parkways and medians.

q. Median noses which are five feet to ten feet wide (back of curb to back of curb) must not be planted. Only groundcover or patterned and colored concrete may be installed in these areas.

r. Median noses which are less than five feet wide (back of curb to back of curb) must be covered with patterned, colored concrete. Patterns may be score joint, broomed finish, or stamped, or a combination thereof. Colors must be appropriate to a public streetscape and must not be red.

s. Parkways which are three feet wide or less must not be planted. Only groundcover may be installed in these areas.

3. Property owner, builder and/or developer recognition signage may be installed within the medians to acknowledge the efforts in beautifying the city. Sign specifications and its location in the median or parkway must be approved by the director of the facilities or designee.

(g) *Design.* Sustainable and environmentally sensitive design shall focus on appropriate plant material, efficient use of irrigation and stormwater runoff, vehicular and pedestrian safety and maximizing aesthetic value of landscape features. Landscape and irrigation plans must be submitted to the city as a part of the subdivision construction and/or building permit process. Overall design must be reviewed and approved by the director of facilities or designee. The city will produce and regularly update guidelines for median and parkway landscape design. Issues to be addressed include but are not limited to plant selection, mulch, grading, hardscape elements, layout of landscape elements, clear sight triangles, clustering of plant material, maintenance issues, and efficient irrigation system features.

(h) *Deviation, waiver and/or exemptions.* The director of facilities or designee may consider and approve deviations, waivers and/or exemptions to this section subject to unique conditions or circumstances that

prohibit full compliance with this section. No deviations, waivers or exemptions will be approved to the requirements to maintain clear sight triangles or lines.

(Ord. No. 2479, § I, 11-17-09)

Secs. 32-282—32-300. Reserved.

ARTICLE V. STANDARDS FOR EROSION CONTROL[5]

Sec. 32-301. Soil erosion control.

(a) *Introduction.* Intense and sporadic rainfall or wind are typically the culprits of soil erosion in this region. When rain impacts the earth, water runoff transports loose soil through hydrologic actions, while soil and dust are moved by their inclusion in adjacent wind. These items compose the primary forces that cause sediment erosion of our soils. To prevent this erosion, there are different sediment control measures available to minimize and control these erosions.

(b) *Purpose and intent of this section.* The purpose of this section is to comply with all federal, state and local codes and regulations in order to protect upstream and downstream properties, the city's MS4 system, and all natural waterways from erosion.

(c) *Erosion control.* Erosion control is necessary on any location where contaminated flowing water or blowing soil/dust may threaten the health and safety of the adjacent areas and its occupants. Control measures shall be implemented and maintained to minimize and/or prevent entrainment of soil into water runoff or wind from both disturbed and undisturbed areas. Control measures for any development within the city limits shall conform to the provisions set forth in chapter 32 and chapter 34 of the Las Cruces Development Code.

(Ord. No. 2657, § I(exh. A), 7-16-12)

Sec. 32-302. Wind erosion control.

(a) *Purpose and intent of this article.*

(1) The purpose of this section is to protect and maintain the natural environment and to reduce the health effects caused by the creation of fugitive dust, equal or greater than PM10, consistent with the policies of the city's comprehensive plan and the natural events action plan for Dona Ana County. In addition, the ordinance attempts to limit property damage due to blowing sand and particulate matter caused by anthropogenic (manmade) activities. This article shall accomplish the requirements of these planning documents by requiring mitigation measures for activities that create fugitive dust.

(2) The intent of this section is to minimize the contribution of manmade dust production on a regular basis. This chapter is also intended to realize that fugitive dust creation does occur due to the natural environment and natural events however when careful and effective dust control measures are

[5]Editor's note(s)—Ord. No. 2657, § I(exh.A), adopted July 16, 2012, repealed the former art. V., §§ 32-301, 32-302, and enacted a new art. V as set out herein and became effective Oct. 1, 2012. The former art. V pertained to similar subject matter and derived from: Ord. No. 1789, § I, adopted Apr. 3, 2000; and Ord. No. 1929, §§ I, II, adopted Aug. 5, 2002.

implemented on those sources which by their nature are prone to dust creation, the overall impact from these natural events can be minimized.

(b) *Applicability*. The provisions of this article shall apply to any activity, equipment, operation and/or practice, manmade or man-caused, capable of generating fugitive dust or windblown particulate matter.

(1) *Exemptions:* The following activities are automatically exempted from the provisions of this article:

a. Regular agricultural operations; including home gardening, including cultivating, tilling, harvesting, growing, the raising of farm animals or fowl, excluding unpaved roads associated with such operations.

b. Governmental activities during emergencies, life threatening situations or in conjunction with any officially declared disaster or state of emergency.

c. Operations conducted by essential service utilities to provide electricity, natural gas, oil and gas transmission, cable television, telephone, water and sewage during service outages and emergency disruptions.

d. This article shall not apply to the generation of airborne particulate matter from undisturbed lands.

(c) *Application for exclusions.* Waiver from specific requirements of this article shall be made to the building official or designee for approval. Requests shall include a documented justification statement including full description of reasons for the waiver and the concurrence of the waiver by adjacent downwind (historic wind directions) development(s) and occupants within a reasonable affected distance. The distance shall be determined on a case by case basis dependent on the scope and scale of the project/activity seeking the waiver.

(d) *Definitions.* Terms and words used in this article shall have the following meanings except where any narrative portion specifically indicates otherwise:

"Activity" or *"activities"* means any land stripping, earthmoving, trenching, road construction and demolition or renovation of manmade facilities.

"Air contaminant" means smoke, vapor, charred paper, dust, soot, grime, carbon, fumes, gases, odors, particulate matter, windborne matter, or any other material in the outdoor atmosphere.

"Anthropogenic" means created or caused by human activity.

"Chemical/organic stabilizer" means any nontoxic chemical or organic dust suppressant other than water which meets any specifications, criteria, or tests required by any federal, state or local water agency and is not prohibited for use by the U.S. Environmental Protection Agency or any applicable law, rule or regulation.

"Construction and demolition activities" means any on-site activities preparatory to or related to building alteration, rehabilitation, removal or razing, or improvement on real property, including the placement and upkeep of mobile or manufactured homes or buildings. "Construction" also means construction of roadway systems including, arterials, expressways, interstates, tunnels, overpasses, bridges, interchanges, residential and commercial streets within a subdivision, and airport runway improvements.

"Control measures" (CM's) means techniques or methods specifically identified within the construction documents or wind erosion control plan used to prevent or reduce the emission and/or airborne transport of fugitive dust and dirt.

"Disturbed area" means any area in which the soil will be altered by grading, leveling, scraping, cut and fill activities, excavation, brush and timber clearing, grubbing, and unpaved soils on which vehicle operations and/or construction activities will occur.

"Dust" or *"dust emissions"* means the finest particulates within the soil that may be transported and deposited by a blowing wind initiated by a surface disturbance that could present a health or safety hazard to the adjacent area or its occupants.

"Dust generating operation" means any activity capable of generating fugitive dust, including, but not limited to, activities associated with creating a disturbed area, construction and demolition activities, and the movement of vehicles on unpaved roadways or parking areas.

"Dust suppressant" means a chemical compound or mixture of chemical compounds added with or without water to a dust source for purposes of preventing air entrainment.

"Emission" means an air contaminant, or the act of discharging an air contaminant, visible or invisible that could cause a health and safety hazard to the adjacent area and its occupants.

"Erosion" means the inclusion and transportation of the soil surface particles by wind or water.

"Fugitive dust" means particles lifted into the ambient air by manmade and natural disturbance activities such as the movement of soil, vehicles, equipment, blasting and wind.

"Grading" means the construction process consisting of stripping, excavating, filling, stockpiling or combination thereof, including the land in its excavated or filled condition.

"Haul road" means a road constructed for, or used for, the purpose of hauling construction materials, or to provide access to one or more construction sites or industrial operations.

"High wind event" means a climatological occurrence in which the average wind speed exceeds a threshold in which fugitive dust will be generated from undisturbed areas, naturally covered areas, disturbed areas, and construction sites, regardless of reasonably available control measures implementation. The average wind speed for high wind events is a sustained wind speed of 25 miles per hour or greater.

"Inactive disturbed area" means any disturbed surface area on which active operations have been suspended.

"Land stripping" or *"land stripping activity"* means removal of all or any portion of existing vegetation, or natural soil surfacing, from parcels of land by various means.

"Maintenance" means the checking, repairing, and replacement of various dust CM's to insure their continued workability.

"MS4 utility" municipal separate storm sewer system; is a stormwater conveyance or system or conveyances that are owned by a state, city, town, village, or other public entity that discharges into waters of the U.S.

"Natural cover" means any vegetation, or natural ground surface, which exists on the property, prior to any construction activity. This includes areas which have been previously restored to undisturbed conditions.

"Owner" or *"operator"* means any person or entity who owns, leases, operates, controls, or supervises an affected facility or a stationary source of which an affected facility is a part.

"Palliative" means any agent used to lessen or reduce dust emissions.

"Particulate matter" (PM), are tiny particles of solid matter suspended in the air.

"$PM_{2.5}$" means particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers.

"PM_{10}" means particulate matter with an aerodynamic diameter less than or equal to a nominal ten micrometers (smaller than the diameter of a human hair).

"PM_{10}emissions" means finely divided solid or liquid material, with an aerodynamic diameter less than or equal to a nominal ten micrometers emitted to the ambient air.

"Sand" means small loose grains of disintegrated rock. Sand is finer than a granule and coarser than silt, with grains between 0.06 and 2.0 millimeters in diameter.

"Silt" means small loose grains of disintegrated rock, finer than sand with grains between 0.004 and 0.06 millimeters in diameter. These particles are typically easily transported by surface breezes.

"Silt fence" means a temporary sediment control device consisting of a synthetic filter fabric stretched across and attached to supporting posts and entrenched along its bottom. Typically these fences are primarily designed for water erosion control.

"SWPPP" stormwater pollution prevention plan, means a document that defines the construction activities and best practices/control measures are to being installed to retain the stormwater pollution and prevents it from leaving a construction site.

"Track-out control" means a device to remove mud or soil from a vehicle before the vehicle enters a paved public road and prevent contamination into an adjacent MS4 city utility(s).

"Undisturbed" means land or property which is in its natural condition and has not been stripped or graded. Exception is if the property has been revegetated and the soil and vegetative groundcover is now mature.

"Unpaved road" means a road which is not paved with a formal hardened surfacing but instead has a running surface of either crushed gravel or native soil. Such roads are typically for low use and slow traffic. Their ability to produce dust from traffic is well known.

"Vacant lot" means a subdivided or unsubdivided parcel of land which contains no buildings or structures of a temporary or permanent nature, excluding perimeter walls or fences.

"Visible emissions" means any emission which contains particulate matter which are visually detectable without the aid of instruments.

"Wind erosion control plan" (WECP) means a document used to list control measures to be used for the activities being undertaken to prevent fugitive dust or windblown particulate matter and mitigate the escape of these materials beyond the property lines(s) of the originating site(s).

"Wind fence" means a fence made of small, evenly spaced wooden slats (similar to a snow fence) or fabric. They are erected to reduce wind velocity and to trap blowing sand. They may be used as perimeter controls around open construction sites to keep sediments from being blown off site. The spaces between the fence slats allow wind and sediment to pass through but reduce the wind's speed, allowing transported soil particles to deposit along the fence.

"Wind speed" means the average wind velocity, or gusts regardless of direction, felt on the surface of a soil surface. A hand-held anemometer or an established station may be used to measure the ground surface wind speed at a specific point within a specific site.

"Wind speed test" means an on-site test of the wind speed measured at zero to two feet above the ground surface. This test is taken and certified by a City of Las Cruces construction inspector or codes enforcement officer using a portable hand-held anemometer standing at a specific approved point within the development (+/- 2 feet).

(c) *Wind erosion control plan (WECP) requirements.* In addition to standards established in subsequent sections of this article, any construction or demolition operation that is subject to this article, a WECP shall be required, excluding general property maintenance e.g., weed management. The WECP shall be designed by the project design engineer for subdivisions, larger scale commercial and industrial projects or infrastructure projects to specifically counter the potential of the sites' soil wind erosion. The contractor or property owner may prepare WECP in other situations. The WECP outlines the potential activities that may create dust and the mitigation steps to be taken for an existing or proposed activity. This WECP is a flexible and dynamic document which may be amended throughout the project to reflect the correct control measures used on

the site or project. The initial WECP shall be submitted as a separate document along with the required construction plans for the proposed activity. The following shall constitute the minimum information required within the WECP and description for control measures as part of any activity:

(1) Name(s), addresses and phone number(s) of person(s) responsible for the preparation, submittal and implementation of the control plan and responsible for the dust generating operations.

a. Copies of the general liability insurance policy for the property owner and contractor(s) responsible for dust generating operations.

(2) A plot plan or plat of survey of the site which describes:

a. The total area of land surface to be disturbed and the total area of the entire project site, in acres or square feet, depending on scale;

b. The operation(s) and activities to be carried out on the site;

c. All actual and potential sources of fugitive dust emissions on the site;

d. Delivery, transport and storage areas for the site, including types of materials stored and size of piles.

(3) A description of control measures (CM's) or combination thereof to be applied during all periods of dust generating operations and periods of inactivity to each of the fugitive dust sources described on the plot plan or plat. For each source identified a primary and contingency control measure must be identified and at least one control measure must be implemented. The same control measure(s) may be used for more than one dust generating activity. Specific details must include:

a. Listing by the design engineer, or preparer of the wind erosion containment alternatives that could be used on the specific project;

b. Locate projected application areas on the construction site for specific erosion control treatments;

c. If dust suppressants are to be applied, then the type of suppressant, method, frequency, and intensity of application, the number and capacity of application equipment to be used, and any pertinent information on environmental impacts and/or certifications related to appropriate and safe use for ground applications;

d. The specific surface treatment(s) and/or other CM's utilized to control material track-out and sedimentation where unpaved and/or access points join paved surfaces; and

e. For each fugitive dust source at least one CM shall be designated as a contingency measure in the original control plan. Should the original CM prove ineffective, immediate and effective implementation of the contingency measure(s) shall be required. Any change in the application of a CM must be immediately, or as soon as practicable, forwarded to the building official or designee for review and approval.

(f) *Wind erosion control plan review and approval.* Review and approval of the WECP and proposed CM's shall be the responsibility of the building official or designee. Approval may be conditioned to require additional measures, actions, or other activities, in addition to those actions proposed within the control plan documentation.

(g) *Implementation.* Approval and issuance of the building and/or subdivision construction permit(s) and the approval of all outlined CM's contained within the WECP or description shall mandate the implementation of listed CM's by the developer, contractor, builder, owner, and/or agents as part of construction activities.

(h) *Other violation prohibited.* Implementation of CM's shall not allow the creation of other violations of these standards or other provisions of the Municipal Code.

(i) *General activity standards.* No person shall cause, allow, or permit diffusion of visible emissions of fugitive dust or windblown dirt/sand beyond the property boundary line within which the emissions become airborne, without taking necessary and feasible precautions to control the generation of airborne or windblown particulate matter. The operation(s) which is causing or contributing to the emissions may be required to temporarily cease the activity or operation until necessary and feasible precautions are taken.

(1) *Groundcover removal is prohibited.* No person shall disturb the topsoil or remove groundcover on any property within the city limits and thereafter allow the property to remain vacant or undeveloped unless listed readily available CM's have been placed to prevent generation of windblown dust or soil in accordance with this section.

(2) *Soil moving activities shall cease when wind speeds exceed 25 mph.* Soil moving activities may recommence when either the wind speeds decrease or as soon as effective control measures are implemented during the high wind event which contain the emissions.

(3) *Vacant land—Weed management.*

a. For all vacant or undeveloped lots or parcels, weed eradication is limited to the removal of weeds only by mowing or individual hand digging. Adjacent natural vegetation should not be removed.

b. Clearing of the entire property is prohibited.

c. All mature trees and major shrubs shall be protected from damage to continue their role in the prevention of soil erosion.

(4) *Storage of materials and material transport.* No person shall cause, allow, or permit dust producing material to be stacked, piled, or otherwise stored for a period exceeding 24 hours or permit transportation of materials likely to give rise to airborne dust without taking precautions to prevent the creation of fugitive dust. Actions shall be taken to ensure that such areas or uses shall be covered, moistened, compacted, or applied with a chemical dust suppressant, or other applicable CM's to prevent fugitive dust creation.

a. Earth or other material deposited from trucks or earth moving equipment shall be removed from paved streets by the person responsible for such deposits.

b. Stockpiling materials in paved streets, public or private, is prohibited.

(5) *Parking time delay agreements.* For businesses that have an approved parking time delay agreement and corresponding business license with the city, the agreement shall include submittal of a WECP and implementation of CM's during the approved delay period prior to pavement installation. All parking areas with an approved parking time delay must be surfaced in accordance with the provisions of chapter 38 of the Las Cruces Municipal Code.

(6) *Continuous activity operations.* For existing, on-going, and/or permanently-sited institutional, governmental, commercial and/or industrial facilities or operations which may continuously generate fugitive dust or windblown particulate matter, individual WECP's with corresponding CM's shall be submitted to the community development department for approval. Approval shall be made by the building official/community development director or designee and shall be communicated in writing to the property/business owner. Letters of approval and approved control plans shall be kept at the property subject to this provision. A new WECP shall be submitted every three years and reviewed for effectiveness. The provisions of the approved WECP shall be implemented as needed to eliminate the creation of airborne fugitive dust or particulate matter.

(j) *Construction activity standards.* These standards shall apply for all design and construction activities on property within the city limits including, but not limited to, subdivisions, large lot residential, office, commercial and industrial construction:

(1) No person shall cause, allow, or permit a building or its appurtenances, or a building or subdivision site to be constructed, used, altered, repaired, demolished, cleared, leveled, or the earth to be moved or excavated, without taking precautions to limit excessive amounts of particulate matter from becoming airborne. Dust or windblown soil and sand shall be kept to a minimum by the application of good practices such as approved dust suppressant or soil stabilizer, paving, compaction, covering, landscaping, continuous wetting, controlling access and vehicle speeds, or other approved CM's.

(2) Track-out control is required to be placed at the exits onto a paved road for any development or construction site that is one acre or greater, or in which any material is being hauled on- or off-site. Track-out controls may be provided using the following:

a. Gravel pad, consisting of a layer or layers of washed gravel, rock or crushed rock at least one inch in diameter, 20 feet wide, 50 feet long (or as long as the longest haul truck).

b. Grizzly, at least 20 feet long with bars being at least three inches tall and spaced six inches apart.

c. Wheel washers or pressure sprayers.

d. Other approved method.

Track-out devices shall be routinely cleaned or replaced as necessary to maintain effectiveness. Any bulk material or dirt tracked onto a paved right-of-way, public or private, shall be cleaned up as soon as practical but in no instance longer than 24 hours to prevent it from entering a MS4 utility.

(3) *Subdivision requirements.*

a. For all subdivisions, a WECP shall be prepared, submitted and reviewed for approval as part of the overall construction permit application of the subdivision construction drawings through the community development department.

b. Developers of the subdivision shall be allowed to grade for the subdivision only after complete subdivision construction drawing approval and permit issuance. No separate grading permit shall be allowed nor shall any grading be allowed beyond the phase of the development that is under construction.

c. The developer shall construct and maintain a perimeter wind fence or dust barrier with a minimum height of three feet along the perimeter of the area of disturbance where the activity or construction could impact downwind developed areas. In addition, all interior yard walls that run predominantly north-south should be constructed, or replaced by maintained wind fences, during the initial project construction phase to create additional wind breaks and buffers.

(4) *Grading requirements.*

a. A SWPPP, erosion control plan and WECP must be submitted, reviewed and approved by the city prior to any site disturbance or construction activities that equal one acre or more of land. All site erosion control measure must correspond with the erosion control and/or the SWPPP document, and be property maintained for the duration of construction or until final site stabilization has been established.

b. Clearing, except that necessary to establish CM's, shall not begin until all required CM's have been installed and the site has been inspected.

c. Phasing shall be required on all sites disturbing greater than 30 acres, with the size of each phase to be established at plan review and as approved by the City of Las Cruces. A detailed sequence of construction of the project site, including stripping and clearing; rough grading; construction of utilities, infrastructure, and buildings; and final grading and landscaping must be submitted. Sequencing shall identify the expected date on which clearing will begin, the estimated duration of exposure of cleared areas, areas of clearing, installation of temporary erosion and sediment

control measures, and establishment of permanent vegetation. All areas that have been cleared of significant portions of its vegetative cover and will remain so for 30 days or longer without appreciable construction activity shall be seeded and mulched within 14 days of being disturbed. If seeding or another vegetative erosion control method is used, germination shall be evident within two weeks or the city may require the site to be reseeded or a nonvegetative option employed. Irrigation may be required to establish vegetative cover.

(5) *Large lot residential, office, commercial and industrial requirements.* For all large lot residential properties, in which the total area is one-half acre or greater, and for all office, commercial, industrial, institutional or governmental construction activities, a WECP shall be prepared, submitted and reviewed as part of the building permit submittal by the community development department.

a. Grading activities shall only be allowed to commence after building plan approval and permit issuance. Site improvement only development permits may be considered based on all of the following:

1. The site is three acres or less; and

2. Dust emissions on the affected lot must be permanently suppressed by providing the required landscaping and paving all required parking areas and driving aisles. All disturbed building pads must be suppressed as to prevent the creation of fugitive dust until such time as building placement occurs; and

3. The anticipated amount of time between site development and building construction is 30 days or less. If more than 30 days passes the building pad shall be re-vegetated or fenced off with a minimum three-foot high wind fence capable of controlling fugitive emissions.

(6) *Cessation of operations.* Once construction has commenced, stabilization measures must be immediately installed to ensure that fugitive dust and windblown particulate matter creation is suppressed during the approved construction phase, including weekends, after-hours and holidays. A permanent stabilization via re-vegetation, landscaping, paving or the application of dust suppressants or wetting shall be required for projects once the inactive period exceeds 60 days.

(7) *City construction projects.* Construction activities by the city shall require the provision of a WECP with the construction drawings. This applies to those projects not part of a subdivision i.e., road construction or utility replacements, or buildings not issued building permits by the city i.e., new city buildings or utility substations. Compliance with both the WECP and outlined CM's shall be the responsibility of the contractor and subject to verification by the public works department, utilities department or community development department's building/project inspectors or the city project management staff.

(k) *Control measures.* Control measures are methods which can be utilized to limit the creation of fugitive dust or windblown particulate matter. CM's are to be identified within the WECP and once approved need to be implemented in accordance with this article for all dust or windblown particulate matter generating activities within the city limits. CM's shall include, but not be limited to:

(1) Designing subdivisions or building sites to utilize existing, pre-development grades;

(2) Watering disturbed areas on a regular basis throughout the daily construction activities, including periods of inactivity;

(3) Applying palliatives or chemical soil suppressant/stabilizer for idle construction periods;

(4) Constructing and maintaining wind barrier fences. Such fencing should be a minimum of three feet in height with 50 percent or less porosity and be placed adjacent to roadways or property boundaries to reduce the amount of windblown material leaving a site. The barriers may also be placed within a site to create wind buffers;

(5) Re-seeding or re-vegetation of graded or disturbed areas along with associated watering until mature vegetation is established;

(6) Grading for street and utility placement only as part of subdivision construction;

(7) Building all interior and perimeter cinder block, rockwalls, and retaining walls as part of the overall construction of subdivisions and not part of the individual building permit for each lot. Walls shall serve as wind breaks and help to reduce the entrainment of dust and the spread of windblown particulate matter;

(8) Grading the building pad site only plus five feet in all directions of the pad site;

(9) Retaining natural vegetation during the construction phase of building excluding the building pad site;

(10) Utilizing existing or natural vegetation as part of the required landscaping for the site as elsewhere required within these design standards, to limit grading activities, to promote water conservation, and to reduce dust generation;

(11) Installing non-natural landscaping or vegetation in the latter part of construction to reduce the amount of disturbed area and the potential for dust generation;

(12) Implementing any other proposed dust suppressing agent or activity approved by the building official or designee, especially those that have been developed to be effective in our particular area;

(13) Combining any two or more of the above items;

(14) Inspections: The City of Las Cruces through its designated agent(s) shall make inspections as required and either shall approve that portion of the work completed or shall notify the permittee that the work fails to comply with the WECP as approved. A copy of the City of Las Cruces approved WECP shall be maintained at the site during the progress of the work. To obtain inspections, the permittee shall notify the applicable City of Las Cruces department.

(l) *Corrections, effective date and enforcement.*

(1) *Correction of condition.* If the community development department, code enforcement section of the police department, or other city personnel document that a person is in noncompliance with any of the provisions contained within the article above, he or she will notify the person, in writing, by phone or in person, of that fact and specify a period of time in which the person must achieve compliance. Failure to comply within the timeframe determined by the city constitutes grounds for a notice of violation per the city's enforcement ordinances. Correction of condition may include the amendment of plans to reflect additional or new control measures to be taken in the event that original measures prove to be insufficient or ineffective. Nothing herein shall prevent separate enforcement being taken in accordance with chapter 18 (Nuisances), LCMC.

(2) *Remedial action.* The city community development department, its designated agent and any other authorized city representative, after proper notice, may enter upon any real property where dust or windblown particulate matter is being generated and take such remedial and corrective action as he or she deems necessary when the owner, occupant, operator, or any tenant, lessee, or holder of any possessory interest or right in the involved land fails to do so.

(3) *Costs.* Any costs incurred in connection with any remedial or corrective action taken by the city, pursuant to this section, shall be assessed against the owner of the property involved. Failure to pay the full amount of such incurred costs shall result in a lien against the property. The lien shall remain in full force and effect until all costs have been fully paid, which may include costs of collection and reasonable attorney fees.

(4) *Effective date.* For all existing emission sources governed by this article, the activity must be completed within six months of the effective date or be brought into full compliance. For existing, on-going,

and/or permanently-sited institutional, governmental, commercial and/or industrial facilities or operations, the wind erosion control provisions of this article shall be submitted in writing, approved, and implemented within six months of the effective date of this article.

(5) *Liability.* All persons owning, operating, or in control of any equipment or property who shall cause, permit, or participate in any violation of this article shall be individually and collectively liable to any penalty or punishment imposed by and under the Municipal Code for the city.

(6) *Offenses.* Any person who violates any provision of this article, including, but not limited to, any application requirement; any permit condition; any fee or filing requirement; any duty to allow or carry out inspection, or any requirements by the city is guilty of a petty misdemeanor and shall pay a fine of not more than $500.00 as levied by the municipal court. Each day of violation may constitute a separate offense.

(Ord. No. 2657, § I(exh. A), 7-16-12)

Secs. 32-303—32-399. Reserved.

ARTICLE VI. TRAFFIC STANDARDS[6]

Sec. 32-400. Purpose.

The purpose of this document is to regulate the various traffic-related issues associated with public and private development such as access and median regulations, placement and implementation of traffic calming devices, installation of street lighting, placement of traffic control devices, and preparation of traffic impact studies.

(Ord. No. 2663, § I(exh. A), 9-4-12)

Sec. 32-401. Definitions.

ADA ramps. A graded incline to provide access to the physically challenged from one level to another level.

Arterial. A major street not less than 48 feet from face of curb to face of curb, with not less than four lanes of through traffic. For principal arterials, the average daily traffic is generally greater than 10,000 vehicles per day. Minor arterials carry moderate to large volumes of traffic and limit direct access to individual properties. They often carry 5,000 to 15,000 vehicles per day.

Association of American State Highway and Transportation Officials. A standards setting body which publishes specifications, test protocols and guidelines which are used in highway design and construction throughout the United States.

Clear sight triangle. An area of unobstructed vision at street intersections, entrances/exists, permitting a vehicle driver to see approaching vehicles to the right or left. At street intersections, nothing over three feet in height measured from the top of curb, shall be permitted to obstruct a sight line within the triangle formed by the street intersection, created by the property line of each street, extended to a point, and a line drawn between two

[6]Editor's note(s)—Ord. No. 2663, § I(exh. A), adopted Sept. 4, 2012, repealed the former art. VI, §§ 32-400—32-412, and enacted a new art. VI as set out herein. The former art. VI pertained to similar subject matter and derived from: Ord. No. 2169, § II, adopted Feb. 22, 2005.

points on the property line of each street which form a triangular section. If no curb exists, three-foot height requirement shall be established from finished elevation at edge of paved roadway.

Collector. A major street not more than 48 feet from face of curb to face of curb, with an average daily traffic of typically 5,000 vehicles or more.

Conduit. An underground, nonmetallic, waterproof enclosure for voltage-carrying street light circuits.

Critical turning movements. Movements at an intersection causing the greatest delay or possible conflict usually left turn movements or crossing maneuvers.

Cul-de-sac. A minor street which culminates at a turn-around, and has only one outlet.

Driveway apron. The drivable portion of the driveway approach extending from the property side of the curb to the sidewalk section and lying between the end slopes of the driveway approach.

Foundations. An underground concrete base for mounting and supporting an above ground metal pole, arm and street light fixtures.

Influence area. The area around an intersection of two streets defined by the minimum allowable distance from a driveway to the intersection measured from edge of the driveway apron to the centerline of the intersection. Influence area varies based on classification of both intersecting streets (reference Figure 1).

Intersection. A point where two or more streets intersect.

Left turn bay storage length. The length of the left turn lane used to hold queued left turning vehicles at a median opening or intersection.

Level of service (LOS). Is a measure used by traffic engineers to determine the effectiveness of operation of elements of transportation infrastructure ranging from LOS A (highest) to LOS F (lowest).

Local street. A minor residential street, not less than 36 feet wide or more than 42 feet, depending on parking requirements which can carry traffic volumes of up to 2,500 vehicles per day.

Major local street. A minor street with optional designs that facilitate safe and direct access to properties that have industrial or commercial uses on either or both sides and with access to or connecting collector or arterial streets. Average daily traffic is typically 3,000 to 5,000 vehicles per day.

Manual on Uniform Traffic Control Devices (MUTCD). A document issued by the Federal Highway Administration (FHWA) of the United States Department of Transportation (USDOT) to specify the standards by which traffic signs, road surface markings, and signals are designed, installed, and used.

Peak hour. The highest consecutive four, 15-minute periods where traffic flow is heaviest on a particular road segment or intersection.

Pull box. A nonmetallic box of a size specified, installed underground at surface level, and used as a junction point for connecting conduit, and as a pull point for electrical circuits.

Queue. A line of waiting vehicles.

Right-of-way. The total area of land deeded, reserved by plat, or otherwise acquired by the city, the county, or the State of New Mexico.

Speed study. A study to measure, collect, and statistically analyze the speeds of vehicles on a particular street.

Street light circuits. An underground facility consisting of street light foundations, 1-½ inch connecting conduit, pull boxes, stub-outs and junction points for electrical service.

Taper length. The measured length to transition from a travel lane into an adjacent auxiliary lane i.e., left turn bay, deceleration lane, etc.

Traffic control device. A sign, signal, marking, or other device used to regulate, warn, or guide traffic, placed on, over, or adjacent to a street, highway, pedestrian facility, or shared-use path by authority of a public agency having jurisdiction.

Traffic count. A manual or automated count of the number of vehicles traversing a particular street in a given time period.

Traffic calming device. Any modification designed to reduce the speed of traffic on a particular street.

Traffic calming study. An appraisal of existing traffic conditions and the development of a plan for implementing one or more traffic calming devices in a residential neighborhood.

Utility easement. A grant of a strip or area of land by the property owner, or general public, for the specific purpose of locating or maintaining utility systems.

(Ord. No. 2663, § I(exh. A), 9-4-12)

Sec. 32-402. Roadway classification and function.

This section defines and characterizes City of Las Cruces street facilities, based on the intended function of the roadway. The function of a particular class of roadway is defined in terms of service to through traffic movements versus access to abutting properties. Access point design should be compatible with the function of the roadway since the number, spacing, type and location of access points has a significant effect on capacity, speed and safety. Construction of all access points, regardless of existing curbs or curb cuts, requires a site plan which shall be provided to community development and traffic engineering for approval prior to a building permit being issued by the City of Las Cruces Community Development Department.

The approval of access permits may be granted if both the design and the construction of driveways and median openings are compatible with the intended function of the roadway facility, as defined in this section. Designation of a particular street shall be determined by the classification in accordance with the "Metropolitan Planning Organization's Major Thoroughfare Plan."

(1) *Arterials:* The primary function of an arterial is to provide high levels of mobility with limited or restricted access to abutting properties. Because mobility is the primary function of arterials, partial access control is highly desirable. They are usually located one mile apart, designed to limit individual property access, and serve multiple transportation modes.

(2) *Collectors:* Collectors provide access from local streets through neighborhoods to arterials. They are used for short trips within a small geographical area rather than across the region.

(3) *Local streets:* Local streets by far make up the majority of roadways within the City of Las Cruces. The primary function is to provide neighborhood traffic circulation and property access. There are more miles of local streets in a roadway network, however they carry the least amount of traffic.

(Ord. No. 2663, § I(exh. A), 9-4-12)

Sec. 32-403. Driveway classifications.

Driveway classifications on city streets are as follows:

(1) *Residential driveway.* A residential driveway is an entrance to and/or exit from a residential dwelling or dwelling adjacent to a dedicated city street, for the exclusive use and benefit of the residents.

(2) *Commercial driveway.* A commercial driveway is an entrance to and/or exit from any commercial/industrial/institutional/office business, or similar type of establishment providing access by employees and/or the public adjacent to a dedicated city street.

(Ord. No. 2663, § I(exh. A), 9-4-12)

Sec. 32-404. Driveway design elements.

Required design criteria are presented in this section to define access widths, spacing and offsets.

(1) *Residential driveways.*

a. Applicable in all residential areas which shall include all dwelling units to include single-family homes and apartments.

b. Driveway widths shall be measured on the property line.

c. The minimum width of driveway apron shall be 12 feet and the maximum width shall be 27 feet.

d. A minimum of 22 feet of standing curb must remain between any two driveways located on the same lot or single parcel of land.

e. No double or circle driveways shall be installed or maintained, unless the property has a minimum of 60 feet frontage on the affected residential street.

f. Corner property driveway apron shall be no closer than 35 feet from the property line at the intersecting local street, 50 feet to the property line along collector streets, and 75 feet to the property line along arterial streets. Under no condition shall driveways encroach on corner curb returns of intersections or within five feet from handicap access ramps.

g. No driveway apron shall be closer than six feet from side property lines, except when serving adjacent properties.

(2) *Commercial driveways.*

a. Applicable to all commercially and industrially zoned properties which shall include commercial businesses, offices and industrial areas.

b. Driveway widths shall be measured on the property line.

c. The width of two-way driveway aprons shall be based on the classification of roadway which is being accessed.

Street Accessed	Maximum	Minimum
Arterials	40 feet	30 feet
Collectors	40 feet	27 feet
Local Streets	35 feet	27 feet

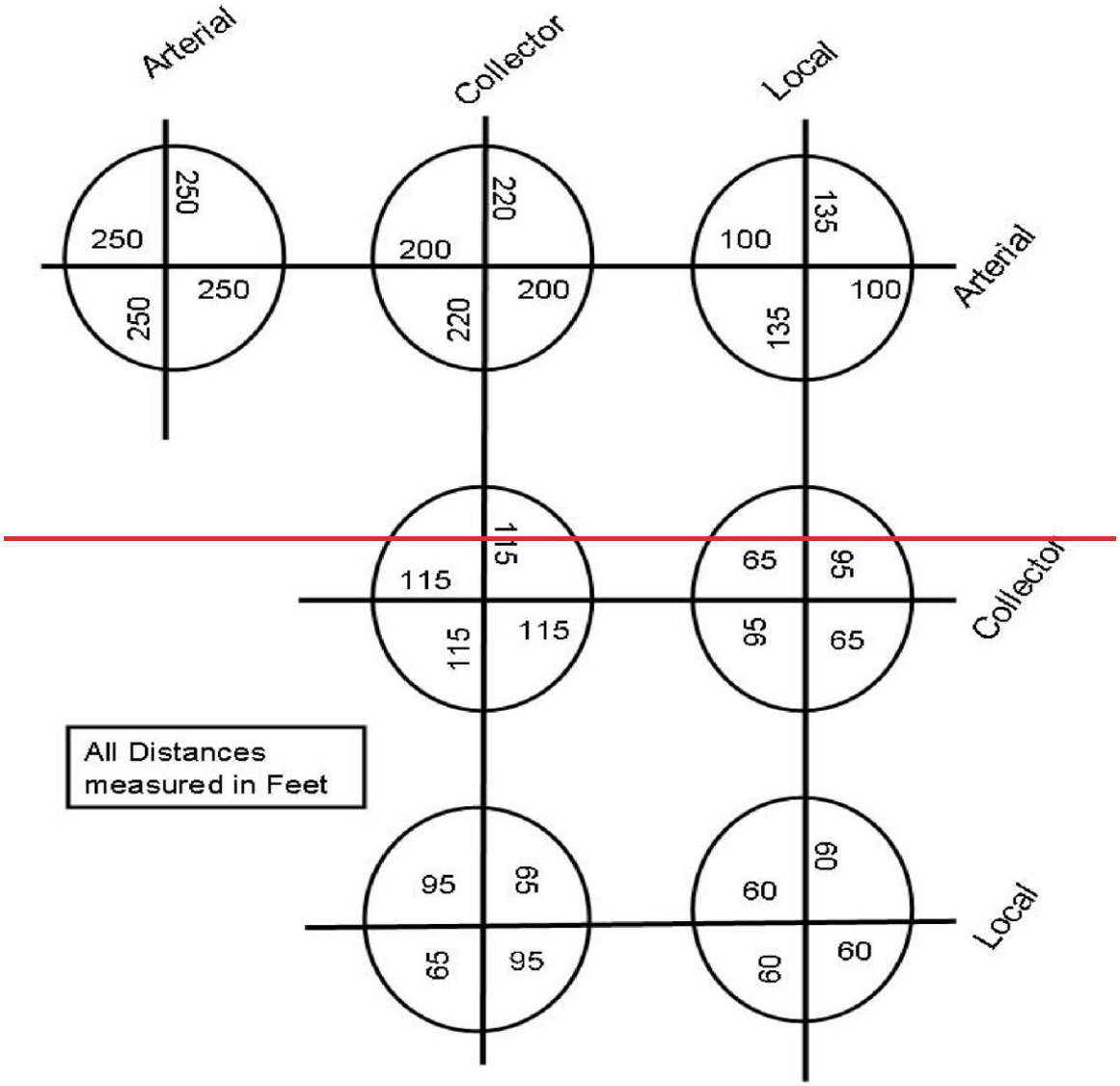
d. A minimum of 50 feet of standing curb must remain between any two, two-way driveway aprons located on the same lot or single parcel of land.

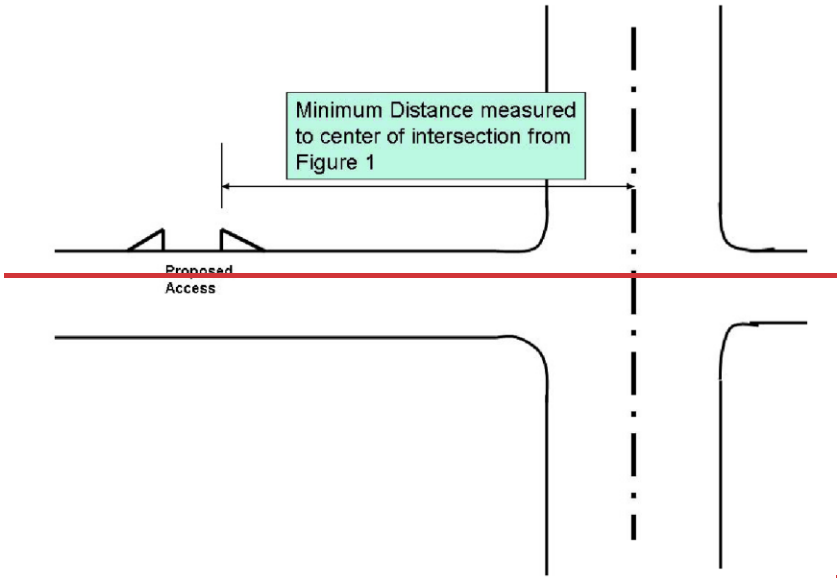
e. The width of one-way driveway aprons shall be a minimum of 15 feet per access lane.

f. A minimum of five feet of standing curb must remain between one-way curb cuts.

g. Driveway distances to adjacent intersections shall meet the minimum requirements, measured in feet, as shown in Figure 1 based on classification of both intersecting streets. The "influence area" is the distance measured from the center of the intersection to the edge of the driveway apron closest to that intersection. These should be considered minimum values whereby longer distances may be required if justified by an engineering study and queuing analysis. (Note that if access is along a highway under the authority of the New Mexico State Transportation Department, criteria in accordance with the State Access Management Manual, shall apply.)

Figure 1





h. No driveway shall be closer than ten feet from side property lines, except when serving adjacent properties.

i. The location of driveways serving adjacent properties will be reviewed to ensure that they do not create conflicting traffic movements or pose sight distance problems for turning traffic. Where feasible, driveways that serve adjacent properties should be combined into one driveway. Developer must show, in plans, all existing or planned driveways on adjacent properties.

j. The access turning radii shall accommodate the turning radius of the largest design vehicle to routinely use the access. Pedestrian safety across the curb cut also needs to be considered for significantly wide access points.

k. A 50-foot minimum turning radius shall be used for an access when combination trucks or single unit vehicles exceeding 30 feet in length are intended to use the access on a daily basis.

l. Construction of all driveways is to comply with City of Las Cruces Design Standards, as amended, City of Las Cruces Standard Specifications for Road Construction, as amended, as well as accessibility standards in place at time of building permit issuance.

(3) *Construction costs for driveways.* The permittee is responsible for all costs associated with placement and/or removal of driveways accessing public right-of-way. This is to include restoration of existing landscaping, road surfacing, and sidewalk area.

(4) *Deceleration and acceleration lanes.* Warrants for deceleration and acceleration lanes along with the associated design dimensions at driveway locations shall be in conformance with criteria from the New Mexico Department of Transportation's State Access Management Manual, current edition.

(Ord. No. 2663, § I(exh. A), 9-4-12)

Sec. 32-405. Median openings.

The location of openings in a median, to allow left-turn ingress and egress movements at a driveway or local street, will be based on the type and operating speed of the roadway, the volume of traffic expected to make the left-turn movements, and the location relative to other intersecting streets, driveways, and median

openings. All requests for median cuts or alterations shall be made at the time of request for a building permit, and shall be included on the construction plans.

(1) *Median opening priority.* All median openings for city street intersections shall take priority over commercial access in determining location of median openings.

(2) *Traffic analysis of median opening.* To justify a new median opening, a traffic impact study which defines the ability of the roadway and the driveway to accommodate the opening shall be prepared by a professional engineer in the State of New Mexico, retained by the firm or individual requesting the median opening. The analysis shall include, but not be limited to the following information:

a. The impact(s) to the operation of adjacent signalized and un-signalized intersections within 500 feet of the proposed opening shall be considered in the analysis.

b. Adequate sight distance requirements for intersections, based on AASHTO criteria.

c. Analysis of potential conflicting vehicular movements with recommendations for eliminating those conflicts.

Shared access points for two or more adjacent individual parcels are highly encouraged. Consideration to future development of adjacent parcels must be considered in determining the opening location.

(3) *Minimum median opening design standards (reference Exhibit II).*

a. *Minimum spacing.* A minimum median spacing of 300 feet from adjacent openings shall be required on all collector streets. On arterial streets, spacing shall be as follows:

From Intersection with Arterial or Collector	500 feet
All Other Openings	300 feet

This distance shall be measured from face of curb to face to curb. Variance requests to the 500-foot requirement can be submitted to allow openings as close as 300 feet to arterial or collectors, if justified.

b. *Taper length.* A minimum deceleration taper of 100 feet shall be required on all median openings

c. *Storage length.* A minimum storage length of 60 feet shall be required on all median openings on city streets, unless the city traffic engineer or findings from a prepared traffic impact analysis requires additional storage length.

d. *Commercial access requirements.* In order for median openings to be considered for commercial access, the median opening must generate traffic, as demonstrated by a projected trip generation, of not less than 25 left-turn ingress or 25 egress vehicles during the peak hour.

(4) *Median opening approval.*

a. New median openings and associated left-turn storage may be approved by the city traffic engineer upon receipt of a traffic impact study justifying the need for the median opening; the meeting of the minimum requirements in subsection 32-404(2); and, a determination that the opening will not otherwise create a safety hazard.

b. Widening, relocating, or other alterations proposed to change or modify an existing median opening, for any reason, must be approved by the city traffic engineer, and must meet the requirements outlined in this section. All future median installations shall conform to this policy and shall be approved by the traffic engineer.

(5) *Construction costs for median openings.*

a. In existing medians, the cost of constructing a new median opening for private access, for any reason, shall be paid by the party requesting the opening.

b. In existing medians, the cost of widening, relocating or otherwise changing or altering an existing opening, for any reason, shall be paid by the party requesting the alteration.

c. In existing medians, the cost of constructing a new median opening for access to dedicated public right-of-way, for any reason, shall be paid by the city.

d. In existing medians, the cost of constructing a new median opening for access to a new subdivision, for any reason, shall be paid by the developer.

(6) *Landscaping consideration for median openings.* In the event a median opening is approved by the city traffic engineer, and the existing median is landscaped, the traffic engineer shall notify the following city staff in writing:

a. City manager.

b. Public works department director.

c. Transportation department director.

d. City of Las Cruces landscape architect.

The party requesting the median opening shall provide plans for review showing existing conditions and proposed alterations.

- Landscape and irrigation plans must be submitted.
- Quantity and quality of plant and other materials must remain essentially unchanged and or improved.
- Irrigation plan must clearly show existing irrigation components to remain and new irrigation components to be installed. Locations must be accurate.
- All irrigation piping proposed for installation under hardscape or paving must be placed in PVC sleeves of diameter equal to or in excess of two times the diameter of the enclosed pipe.
- Public works director and City of Las Cruces landscape architect approvals must be obtained prior to start of demolition or construction.

The party requesting the median opening shall be responsible for contacting either the City of Las Cruces Parks and Recreation Department, business or individual responsible for maintaining the landscaping on the median, and securing written approval from both the public works director and director of parks and recreation after providing a landscaping plan and a financial guarantee of performance, prior to beginning any construction on the median opening. See median requirements within landscaping section of this Code.

All design and demolition and construction costs are the responsibility of the party requesting the median opening.

(7) *Appeals.* In the event any applicant is aggrieved by the refusal of the traffic engineer to grant any permit for a driveway or a median opening or a variance to the clear sight triangle requirements of this Code, or in the event any owner or occupant is aggrieved by receipt of the notice of proposed revocation provided for in subsection 32-404(8), said applicant, owner, or occupant may, within 30 calendar days after denial of said application or receipt of said notice, appeal the decision of the traffic

engineer to the transportation director by filing written notice of appeal with the city clerk within said time period.

(8) *Abandoned driveways and median openings.* If any vehicular crossing, other sidewalk crossing, or median opening is clearly abandoned as a crossing, or is no longer used for its intended purpose, any permit previously or hereafter granted for said crossing or median opening as such shall be subject to revocation by the city traffic engineer, only after 30 calendar days written notice of such proposed revocation has been given to the owner of the property to which the crossing or median opening is appurtenant. The owner's name and address will be determined from the Assessor's Office of Dona Ana County. Written notice also will be given to the occupant of said premises, if any, if such occupant is other than the owner. It shall be sufficient notice under the provisions of this and the following section to mail said notices by certified mail with return receipt requested. In the event the name and address of the owner cannot be reasonably ascertained from the assessor's office, and the premises are unoccupied, it shall be sufficient notice to publish said notice in a newspaper of general circulation in the City of Las Cruces, once a week for four consecutive weeks. In the event the owner of the property is aggrieved by the revocation of any driveway or median opening, the owner may appeal as outlined in subsection 32-404(7).

(9) *Removal and restoration requirements.* In the event the traffic engineer has revoked any permit for a driveway, use of a sidewalk crossing or median opening under the provisions of subsection 32-404(8) above, due to changes taking place within said property, crossing or median opening shall be removed at the expense of the owner of the property. The written notice of revocation shall also set forth requirements for the removal and proper restoration of the curb, sidewalk or median opening. The time allowed for removal and restoration by the owner or occupant shall be 30 days after notice in the cases provided for in subsection 32-404(8); provided, however, that upon resolution duly passed by the City Council of the City of Las Cruces, that a traffic hazard exists at a nonconforming driveway or median opening which causes imminent danger to life and safety of property, then conformance may be required within a lesser period of time as set by the city council, but in no event less than 30 days. Each day's delay of the owner in complying with such notice, after the expiration of the time specified, shall constitute a separate violation of this article. If conformance is not attained within the time allotted, the city may make the necessary removal and restoration and the cost thereof shall constitute a lien on said property.

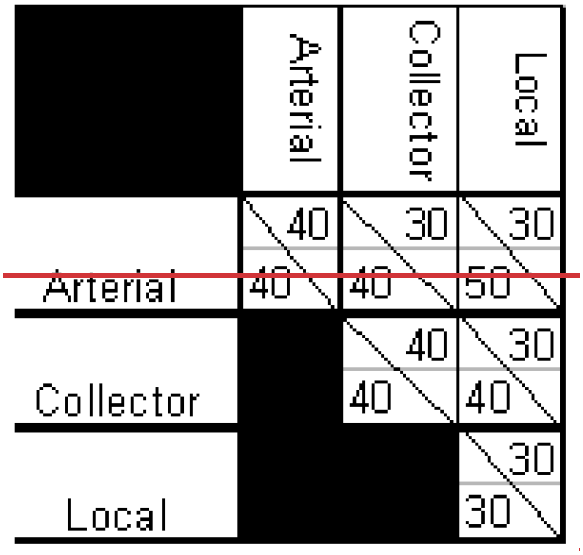
(10) *Construction specifications.* All construction of driveways or median openings permitted under this article shall be done in a manner as defined herein, and as per City of Las Cruces Standard Specifications for Road Construction, as amended. All construction of driveways shall be at the expense of the owner of the abutting property, unless such construction is a part of a major city-funded capital improvement project and/or ADA/sidewalk maintenance program. Construction of median openings shall be paid for as set forth in subsection 32-404(5).

(Ord. No. 2663, § I(exh. A), 9-4-12)

Sec. 32-406. Definition of clear sight triangle.

(a) The clear sight triangle is an area of unobstructed vision at street intersections, entrances/exists, permitting a vehicle driver to see approaching vehicles to the right or left. At street intersections, nothing over three feet in height measured from the top of curb shall be permitted to obstruct a sight line within the triangle formed by the street intersection, created by the property line of each street, extended to a point, and a line drawn between two points on the property line of each street which form a triangular section. If no curb exists, three-foot height requirement shall be measured from finished elevation at edge of paved roadway. Figure 2 shall establish the minimum dimensions (in feet) of the clear sight triangle measured along the right-of-way line of the respective roadway based on its defined classification.

~~Figure 2~~



~~(b) These values are considered minimums. Larger clear sight triangle areas may be needed as determined by the city's traffic engineer, based on horizontal and vertical curvature of roadways in question with appeal to the development review committee allowed.~~

~~(c) Any existing trees located within the clear sight triangle will be allowed to remain if all branches are trimmed to a height of eight feet above the point where the pavement meets the edge of the gutter pan on the street immediately adjacent to the tree(s) in question.~~

~~(d) No single post or column or combination of obstructions to view within the designated triangle shall exceed 12 inches in thickness at its greatest cross-section dimension.~~

~~(e) For all private driveways accessing a public street, a clear sight triangle shall be formed by a line 20 feet on the front street property line and a line ten feet perpendicular to the front street property line on either side of the entrance/exit and a line connecting these points. The ten-foot × twenty-foot clear sight triangle shall be maintained clear with the same height requirements as stated in this section.~~

~~(Ord. No. 2663, § I(exh. A), 9-4-12)~~

~~Sec. 32-407. Preparation of traffic impact analyses (TIA's).~~

~~Warranting criteria to determine the need for a traffic impact analysis.~~

~~(1) A traffic impact analysis will be required from the developer/subdivider where 100 or more new inbound and/or outbound trips are generated by the development during an adjacent street's peak hour or at the discretion of the city's development review committee and with input from the traffic engineer. Smaller developments may warrant a study if there are issues, as determined by the traffic engineer, over traffic safety or the development is located in an already congested (LOS D) area. For the purposes of this plan, the development of 160 single-family dwelling units; 220 multi-family dwelling units; 10,000 sq. ft. (gross) retail; 60,000 sq. ft. (gross) office; or 135,000 sq. ft. (gross) manufacturing or a combination thereof to equal or surpass 100 peak hour trips will require a study. Traffic impact analyses will be overseen by the city traffic engineer and have consultation with the Las Cruces Metropolitan Planning Organization. The analysis will consist of the following:~~

a. Methodologies shall be based upon the Highway Capacity Manual and the latest edition of the ITE Trip Generation Manual or more recent trip generation study(s) recognized by the Institute of Transportation Engineers (ITE).

b. Existing traffic volume for both site and non-site traffic shall be used in the analysis. Traffic conditions surrounding the development shall be first analyzed for existing AM, noon, and PM peaks, then existing peak conditions with site traffic.

c. Future traffic volume shall be based on a ten-year forecast horizon. Forecasts shall be based upon locally adopted zoning, land use and transportation plans and demographic forecasts. It will consider background growth as well as build out of adjacent sites and/or the general vicinity possibly up to a mile away as determined by the city traffic engineer. Future traffic conditions surrounding the development shall be analyzed for AM, noon, and PM peaks without the site development, in comparison to peak conditions with site development traffic included.

d. Critical turning movements shall be analyzed at both on-site and off-site intersections at access points affected by the development.

e. Level of service (LOS) shall be calculated both with and without the site traffic and with any proposed improvements for the existing and the forecast year.

f. Improvements justified through the study shall be identified which will bring the adjacent and/or nearby transportation facilities up to a LOS D for that portion of traffic added to the transportation network as a result of the development. Other traffic demand reduction measures may also be considered.

g. Financing methods and financial responsibility for any proposed improvement shall also be identified in the report, such as development fees or special assessment districts requiring on-site or off-site improvements. Additional right-of-way (ROW) may be dedicated for public use in lieu of improvements if agreed to by the city. Otherwise, all improvements to the transportation network, whether on or off-site, as a result of the proposed development, are the financial responsibility of the person, company, or agency responsible for the development. The city may participate in a pro-rata share to accommodate city-wide growth predicted over a 20-year horizon.

Traffic impact analyses shall be prepared under the supervision of a qualified and experienced professional engineer who has training in traffic engineering. All traffic impact analyses shall be certified and stamped by a New Mexico registered professional engineer.

(Ord. No. 2663, § I(exh. A), 9-4-12)

Sec. 32-408. Modifications to traffic signals, traffic control signs, street lights and/or roadways.

Any request to relocate an existing city-owned street light, traffic signal or traffic control sign must be approved by the city's traffic engineer prior to construction, and will be relocated, upon receipt of permission, at the requesters' expense. All sign work shall be performed by a qualified signs and markings technician holding an International Municipal Signal Association (IMSA) level one or better certification or a pre-approved certification equivalent to IMSA. Signal work shall be performed by a qualified traffic signal technician holding an IMSA level two or better certification or a pre-approved certification equivalent to IMSA. All electrical work shall be performed by a journeyman electrician, licensed in the State of New Mexico, working under a New Mexico licensed electrical contractor. All work shall comply with the City of Las Cruces standards and specifications, National Electrical Code and Manual on Uniform Traffic Control Devices and shall be coordinated with the City of Las Cruces Traffic Engineering section.

(1) When new development increases the traffic on an existing signalized or non-signalized intersection, the following actions may be required:

a. A non-signalized intersection may have to be signalized.

b. An existing signalized intersection may have to be modified.

c. A signalized or non-signalized intersection's geometry may have to be modified.

d. The intersection may have to be reconstructed.

(2) The signal maintenance shall be the responsibility of the City of Las Cruces.

(3) When traffic volumes increase on an existing roadway due to new development or increased land use density, the following actions may be required:

a. The roadway may need to be reconstructed.

b. The roadway may need to be widened.

c. Additional turn lanes may need to be constructed.

d. Additional roadways for ingress/egress may need to be constructed.

(4) If a modification to an intersection or roadway is required, the permittee will be required to provide all or a portion of the funding for the improvements. The funding requirements shall be determined by the city's public works director and will generally be a pro-rata share based on additional traffic loading being proposed.

(5) Acceptable construction of all roadway or intersection modifications must be constructed before the development's acceptance by the City of Las Cruces.

(6) A traffic signal warrant study per the Manual of Uniform on Traffic Control Devices performed by a New Mexico registered professional engineer shall be required when the traffic impact analysis shows a drop in level of service below "B" on an intersection and/or intersections.

(7) The city shall review the traffic impact analysis and the traffic signal warrant study to determine if a signal and/or modification to the roadway system is required.

(Ord. No. 2663, § I(exh. A), 9-4-12)

Sec. 32-409 Audible pedestrian traffic signals.

Audible pedestrian signals are to be installed as part of the traffic signal equipment when one of the following warrants is met:

(1) Existing or projected pedestrian volumes crossing at the intersection exceed 20 persons per hour over a minimum of four hours during a typical day.

(2) A facility which serves the visually challenged community is within 200 feet of the intersection in question.

(3) Geometry at the intersection makes pedestrian crossing maneuvers difficult (i.e., skewed intersections, exceptionally wide roadways greater than 100 feet, etc.).

(Ord. No. 2663, § I(exh. A), 9-4-12)

Sec. 32-410. Street lighting procedures.

The purpose of this section is to establish uniform guidelines and rules for street lighting based on the need to provide for and to improve public safety on all streets open to traffic in the City of Las Cruces.

(1) *General.*

a. Street lighting can provide safety, security and convenience. However, street lights are expensive to install and maintain and use significant amounts of energy. Energy savings cannot be justified when the trade-off impacts reduced pedestrian or vehicle safety. Convenience, as the sole justification for lighting, may have to be sacrificed to energy conservation, especially in low density settings. To conserve energy, street and multi-use path lighting should be selected to have a high illuminating efficiency, and to provide no more illumination than necessary.

b. The guidelines for street lighting designs, area lighting for recreational facilities, and area with high density nighttime activities shall be based on the minimum surface lighting requirements, as recommended by the Illuminating Engineering Society and International Commission on Illumination.

c. Any request to relocate an existing city-owned street light must be pre-approved by the city's traffic engineer prior to construction, and will be relocated at the requesters' expense. All electrical work shall be performed by a journeyman electrician licensed in the State of New Mexico working under a New Mexico licensed electrical contractor. All work shall comply with the City of Las Cruces standards, NEC and MUTCD, and shall be coordinated with the City of Las Cruces Traffic Engineering section.

(2) *General guidelines.*

a. Street lighting and multi-use path lighting should be located and mounted to prevent light shining upon residential windows, or into the eyes of drivers, pedestrians and bicyclists.

b. Street lighting fixtures shall be designed and installed to comply with the City of Las Cruces Lighting Ordinance.

(3) *Authority.* All lighting designs, pole designs, luminaire designs, and location of poles for all street lighting shall be considered for approval by the city traffic engineer.

(4) *Underground light circuits for subdivisions.*

a. In existing subdivisions where all utilities are presently placed underground, and no street lights exist, the City of Las Cruces is responsible for installation of underground street light circuits.

b. In new subdivisions, all street lighting shall be installed by the developer concurrently with other associated infrastructure improvements.

c. In subdivisions where utilities exist overhead and the property owners choose to place these overhead utilities underground, the property owners will be responsible for underground street light circuit installation.

d. In new subdivisions under development within the City of Las Cruces, all street light circuits are to be placed underground.

e. All new street lights and associated components shall meet City of Las Cruces lighting specifications.

f. Any existing street lighting systems annexed into the City of Las Cruces shall be subject to review for compliance with applicable electrical standards. Failure to meet the requirements of those standards could result in possible condemnation; and lighting which does not meet the standards

may be scheduled to be replaced with City of Las Cruces standard street lights as funds become available.

(5) *Warrants for street lights.*

a. *Limited access facilities.*

1. The City of Las Cruces shall be responsible for lighting major streets going over or under a freeway that has been approved by the City of Las Cruces. The City of Las Cruces shall pay the monthly power bill for these lights.

2. The City of Las Cruces is not responsible for necessary lighting of structures or interchanges intersecting with local streets.

3. The City of Las Cruces may install street lights at the intersection of local streets with frontage roads. The freeway frontage road is deemed to terminate at its approach to an off-ramp and begin at its connection to an on-ramp.

b. *Arterial streets.*

1. Street lighting may be installed along arterial streets when traffic volumes, nighttime crashes, nighttime pedestrian use, and/or roadway hazards show a need for improved lighting.

2. Minimum warrant considerations for arterial streets would be an average daily traffic in excess of 10,000 vehicles, and an 85th percentile speed of 40 miles per hour, or greater based on an engineering study.

c. *Collector streets.*

1. Street lighting may be installed along collector streets when traffic volumes, nighttime crashes, nighttime pedestrian use, and/or roadway hazards show a need for improved lighting.

2. Minimum warrant considerations for collector streets would be an average daily traffic in excess of 5,000 vehicles, and an 85th percentile speed of 35 miles per hour or greater, based on an engineering study.

(6) *Mid-block street lighting.*

a. Mid-block street lighting may be installed bordering schools, parks, large community centers, churches, housing projects and other civic facilities where a study demonstrates a need and the location satisfies the requirements of this section.

b. Residential mid-block lighting may be installed upon petition of owners of property adjacent to the proposed site for a distance of approximately 250 feet each side of the proposed light.

c. Residential mid-block lighting shall be spaced at an average distance of 400 feet apart, but not less than 250 feet, to provide an acceptable light level as defined by the Illuminating Engineering Society.

d. In new subdivisions, all mid-block lighting shall be installed concurrently by the developer with other improvements.

(7) *Street lighting spacing.*

a. *Local streets:* Lighting will be on one side only. Average spacing will be generally 250—400 feet using high-pressure sodium lighting, light emitting diodes (LEDs) or other preapproved lamp type.

b. *Collector:* Lighting will be installed on both sides preferably using staggered spacing (spacing which alternates spacing pattern relative to each side of the street). Spacing will be 250—300 feet using high pressure sodium lighting. If another lamp type is proposed, i.e., light emitting diodes (LEDs), metal halide, etc., a lighting design showing IES accepted average illumination levels must be provided.

c. *Arterial:* Lighting will be installed on both sides using staggered spacing. Spacing on each side will be 250—300 feet using high pressure sodium lighting. If another lamp type is proposed, i.e., light emitting diodes (LEDs), metal halide, etc., a lighting design showing IES accepted average illumination levels must be provided.

(8) *Street lighting location.*

a. *Improved streets.*

1. Consideration must be given to the effect pole placements have on abutting properties. In view of this, the city will make a reasonable concession in a lighting pattern, to avoid placing a pole at a point where it would have a detrimental effect on the abutting property. The city's intent is to focus such concessions primarily on residential properties. In most cases, the pole should be located adjacent to the property line but more importantly lateral placement should conform to the specifications of both street light pole and light head design.

2. Once the permit to use the right-of-way is issued, adherence to approved pole locations is expected. Exceptions are hereby granted for longitudinal shifts up to +/- ten feet, measured parallel to the roadway, where unforeseen underground obstructions are encountered at the time of construction, providing such a shift does not interfere with driveways.

3. Street lighting may be installed on a cul-de-sac street/local street intersection if the center of the radius of cul-de-sac to centerline of intersecting local street is greater than 300 feet. When this condition is met, the street light is considered as an intersection light. If the distance described above is less than 300 feet, the intersection of the cul-de-sac with the local street shall be considered a mid-block location for street lighting purposes. The placement of a street light at the end of the cul-de-sac shall be treated as a mid-block light.

4. Street light placement shall not interfere with pedestrian use of the ADA ramps, sidewalks, driveways, multi-use paths, or utility infrastructure. A 36-inch minimum width must be maintained free and clear of all obstructions on all sidewalks.

b. *New street construction.*

1. Two sets of drawings of proposed street construction shall be furnished to the city's community development department through the building permit application process for the purpose of locating street lights. One set of drawings, showing street light locations and power sources, shall be submitted to El Paso Electric Company by subdivision developer, along with installation information and instructions. El Paso Electric Company will provide the city with one set of drawings showing the proposed construction. All efforts will be made to avoid conflicts and duplications, and to coordinate construction efforts.

2. Preliminary plans for local and collector streets will show an accurate survey tie to all poles (i.e., stationing and offsets) and plans for new construction should show utility easements.

3. All plans will be reviewed by the city for proposed paving width and alignment, prior to submittal to the individual utility companies.

c. *Company-initiated construction.* If a utility company wants to make a change in a pole location, reference should be made to station numbers on the project plans. All poles, both existing and proposed, shall be shown on plans. Existing poles which are to remain shall be noted. Standard utility symbols shall be applied to denote poles existing, proposed, or to be removed.

(9) *Street light location at intersections.*

a. The most important aspect of one-side lighting design is to light the intersections with the desired pole location behind the sidewalk at the center of curve at the corner radius. In an effort to achieve reasonable uniformity, deviations away from the center of curve may be permitted up to 15 feet. This applies to intersections on major streets and minor locals.

b. All intersections within the city with curb, gutter and paved street may be lighted, when warranted.

(10) *Street light replacement and relocation.* The following policy is to establish uniform guidelines, and is not intended to supersede or conflict with any provisions of the existing franchise agreement between the El Paso Electric Company and the City of Las Cruces, New Mexico, Dona Ana County.

Arterial or collector streets:

a. Poles will be relocated to the standard utility location behind proposed or existing sidewalk, where normal right-of-way exists. Desired exception to standard location is to be requested on a case by case basis.

b. Where a pole line has been established behind the curb face, and it is necessary for one or two poles be relocated, the city will not require these poles to be placed behind the sidewalk area if ADA requirements can be accommodated or maintained.

c. When transmission or distribution facilities are installed on major or collector streets, consideration should be given to spacing the poles to accommodate future street lights. Poles located at intersections should be located so as to allow for future street lights. Poles located at intersections should be located so as to allow for future traffic control devices. Along collector and residential streets where residences or building fronts do not face the street and where poles for new or reconstructed transmission or major distribution lines can be spaced from alley to alley or rear property (future or existing), intersection street lights may be located or relocated at an intersection corner on the opposite side of the street from the distribution line, in order to improve the entire appearance of the residential area.

(11) *Street light procedures for new subdivisions.*

a. *Preliminary review.* The developer, or a representative, shall submit to the transportation department, streets and traffic operations section a master utility plan of a proposed subdivision, showing the electrical utility location runs and service points, either underground or above ground. Also, the master utility plan shall contain location of all utility lines (gas, water, sewer, fire hydrants, street lighting, etc.). Also, show location, botanical and common name, and mature size of trees and shrubs in the parkways and medians to be retained as part of the final parkway and median landscape plan. The transportation department will review the plan for street light locations, and connecting conduit runs to electrical service points. The plan shall be returned to the developer with any comments, for review by the developer's registered New Mexico professional engineer. Upon satisfactory acceptance of the changes by city staff, said changes then shall be incorporated into the construction plans.

b. *Developer responsibility.*

1. If the developer, upon approval of the subdivision plat, elects to indemnify the improvements, he shall include the street lighting in the indemnity agreement. If the

developer elects to proceed with the installation of the improvements without an indemnity agreement, the city shall hold the subdivision plat. In either case, the building permit will be issued based on the approved plans, and the developer's portion of the street lighting will be inspected as part of the roadway improvements.

2. The developer shall be required to construct the entire street light system within the local street system as well as on arterials and collectors associated with the development of the subdivision, complete in place. Costs associated with installing light standards/luminares, wiring, and service meters associated with lighting on designated collectors or arterials as part of the new development will be shared equally between developer and the City of Las Cruces. This includes, but is not limited to, all underground connecting conduits, wires, concrete foundations, poles, luminaries, fuses, fuse holders, ground rods, pull boxes, electrical service and controls. All street lights and associated components shall comply with the City of Las Cruces traffic standards and applicable electrical codes. All electrical work shall be performed by a journeyman electrician licensed in the State of New Mexico working under a New Mexico licensed electrical contractor. Energizing flat-rated street lighting systems will be the responsibility of the City of Las Cruces as demand warrants based primarily on number of occupied homes within the subdivision.

c. *City of Las Cruces transportation/street and traffic operations' responsibility*. Upon request from the developer, the city traffic engineer shall provide the bolt circle template for street light foundations, as shown on the approved construction drawings.

d. *Contractor/developer information contact*. For information concerning the below items, contractor is to contact the subdivision's designated public works project manager who will in turn consult with transportation department/streets/traffic operations personnel, as needed:

1. Information concerning design specifications.

2. Any conflict of street light locations, requiring relocation as a solution.

3. Any changes or rerouting of conduit runs.

4. Request for additional street lights, within the scope of the City of Las Cruces Outdoor Lighting Ordinance.

5. Request to omit a street light, as shown on the plans.

6. All other items concerning street lights which are not shown above.

(12) *Joint use of underground trench*. Joint use of a trench for the installation of electrical service by El Paso Electric Company, or for street light circuits, is acceptable when approved by the city public works department, transportation department, and El Paso Electric Company.

(Ord. No. 2663, § I(exh. A), 9-4-12)

Sec. 32-411. Placement of traffic control devices.

(a) The most current edition of the Manual on Uniform Traffic Control Devices (MUTCD) shall govern the use and placement of traffic control devices, whether temporary or permanent, within public right-of-way.

(b) All traffic control devices shall be installed complete and in place before any street or road is opened to public access. All traffic control devices shall be installed by a qualified signs and markings technician holding an IMSA Sign Level I or better certification (or a pre-approved certification equivalent to IMSA).

(c) An approved traffic control plan for establishing temporary traffic control is required for any agency or qualified persons working within or next to any driving lane, sidewalk, multi-use path or at any other place

that would impede the movement of other pedestrians or vehicles within the City of Las Cruces public right-of-way. This includes but not limited to, any work that requires the use of any kind of traffic control devices such as cones, barrels, channeling devices, barricades, etc., being placed within the public right-of-way.

(d) All temporary traffic control devices shall be furnished, erected and maintained by the contractor or qualified responsible party. All traffic control devices shall only be erected and maintained by a qualified person certified in work zone safety (or a pre-approved certification equivalent to IMSA.)

(e) A traffic control plan shall be submitted to the City of Las Cruces Public Works Department through the formal plan review process prior to placement on any street under City of Las Cruces jurisdiction. All plans shall comply with the most current edition of the MUTCD indicating dates, times and duration of work, traffic devices to be used, placement of devices, and the order that devices are to be placed and removed. An approved traffic control plan is required before any part of the public right-of-way is blocked or any traffic control device is placed within the public right-of-way (this includes all traffic, vehicular, pedestrian, bikes, etc.) The approved traffic control plan must remain on-site or be immediately available and presented to City of Las Cruces Public Works inspection staff, Risk Management staff, or Codes Enforcement for review to insure the work zone is set up per plan. An emergency contact number for the contractor must also be provided. Failure to comply with this requirement may result in work stoppage, removal of traffic devices at the violators' expense, and citations per applicable Las Cruces Municipal Code.

(f) Any request to install or relocate an existing city traffic control device must be pre-approved by the city streets and traffic operations section prior to construction and will be at the requesters' expense. All sign work shall be performed by a qualified signs and markings technician holding an IMSA Level I certification or better (or a pre-approved certification equivalent to IMSA).

(1) *Temporary traffic control devices:* All traffic control plans for placement of temporary traffic control devices within city right-of-way are required to be submitted to the public works department and transportation department for approval. Traffic control plans shall include, but not be limited to the following information:

a. Spacing of appropriate signage shown in feet.

b. Calculation of taper lengths per the MUTCD.

c. Sign code references per the MUTCD.

d. Phasing of traffic control placement, as necessary.

e. Dates and times of day for short duration lane closures of ten working days or less.

Contractor is required to adhere to the approved traffic control plan regarding setup and duration of lane closure(s).

(2) *Permanent traffic control devices:* In private developments, placement of all new signing and/or markings shall be the responsibility of the developer or owner. Placement shall be in accordance with the submitted sign plan as approved by the city's traffic engineer.

(Ord. No. 2663, § I(exh. A), 9-4-12)

Sec. 32-412. Variance process.

Formal variances requested to this article must be submitted through the city traffic engineer for approval by the city transportation director. Upon receipt of the request, the traffic engineer will conduct a site visit which may also include a complete study of traffic volumes, pedestrian volumes, and traffic impacts on existing facilities. If the request does not create a traffic safety problem in the judgment of the traffic engineer, a variance may be granted.

(Ord. No. 2663, § I(exh. A), 9-4-12)

Sec. 32-413. City of Las Cruces traffic calming policy and devices.

(a) *Purpose.* This policy provides a procedure to evaluate and implement requests for traffic calming measures on residential streets in the City of Las Cruces

(b) *Terminology.*

(1) *Speed study.* A study to measure, collect, and statistically analyze the speeds of vehicles on a particular street.

(2) *Traffic calming device.* Any modification designed to reduce the speed of traffic on a particular street.

(3) *Traffic calming study.* An appraisal of existing traffic conditions and the development of a plan for implementing one or more traffic calming devices in a residential neighborhood.

(4) *Traffic count.* A manual or automated count of the number of vehicles traversing a particular street in a given time period.

(c) *Warranting criteria for placing traffic calming devices.*

(1) *Street type.* Limited to residential streets classified as collector or local.

(2) *Speed limit.* The posted speed limit may not be more than 30 miles per hour.

(3) *Lanes of traffic.* Limited to streets having only one lane of moving traffic in each direction.

(4) *Traffic volumes.* Three thousand vehicles per day is the maximum volume for consideration of traffic calming devices.

(d) *Initiation of study.*

(1) *Petition.* A study may be initiated upon receipt of a petition signed by property owners of at least 75 percent of the residents fronting on the street where the traffic calming study is requested. A block shall consist of every developed property having frontage on the street to be studied between successive intersecting streets.

(2) *City council recommendation.* A traffic calming study may be initiated at the direction of the city council.

(3) *Recommendation of the traffic engineer.* A study can be initiated if determined warranted by the city's traffic engineer.

(e) *Data collection and coordination with neighborhood.*

(1) *Data collection phase.* The following data and information shall be collected by the city staff:

a. Street classification.

b. Traffic volumes (average weekday for each street).

c. Traffic speeds (average weekday for each street).

d. Posted speed limits (for each street).

e. Physical data (for each street including the number of lanes, width, grade, and alignment).

f. Crash data reports (for each street being studied).

g. Community facilities and schools.

h. Emergency vehicle routes.

i. Transit bus routes.

j. Through truck routes.

(2) *Neighborhood meeting.* Upon completion of the data collection, a neighborhood meeting may be conducted. The meeting shall include an overview of traffic calming, what it is intended to do, what criteria are used in selecting traffic calming devices and their location(s) and an opportunity for residents to provide comments and questions.

(f) *Establishing location priorities and design criteria.*

(1) *Priority criteria.* The following criteria shall be used in establishing priorities for installing traffic calming devices in a residential neighborhood:

a. Priority will be given to streets demonstrating high traffic volumes.

b. Traffic speed. Priority shall be given to streets where the speed limit is exceeded by the highest recorded vehicle speed and by the most number of vehicles exceeding the posted speed.

c. Capital projects. Streets with planned capital projects scheduled within two years shall have the traffic calming device installed in conjunction with this project. Streets with planned capital projects scheduled in excess of two years may have the traffic calming device installed prior to the commencement of the project.

d. The following roadway characteristics will also be considered:

1. Emergency vehicle access.

2. Roadway grades.

3. Sight distance.

4. School and/or community facility access and/or truck.

5. Bus routes.

6. Pedestrian and/or bicycle safety.

7. Drainage.

(2) *Traffic safety.* The traffic volume and speed criteria may be modified if a crash problem exists and such crash problem would be corrected by placement of the traffic calming device.

(3) *Design criteria.* The latest edition of the City of Las Cruces Road Design Standards shall be used, where applicable.

(4) *Approved traffic calming devices.* The city shall develop and maintain a list and description of approved traffic calming devices for use within the city. Such a list shall be an appendix to this policy and be amended from time to time as various devices are introduced or tested within the city.

(g) *Project implementation.*

(1) *Scheduling.* A traffic calming plan shall be scheduled for project implementation upon identification of the funding source.

(2) *Project completion.* Completion of the project shall be subject to work crew schedules, availability of funding, and scheduling of road construction projects.

(h) *Installation of traffic calming devices (TCD).*

(1) At a minimum, the following items should be reviewed prior to construction for each TCD installation:

a. *Geometric:*

1. Alignment.

2. Turning radius.

3. Horizontal and vertical curves.

4. Super-elevation.

5. Major geometric features, such as sidewalks, curbs, etc.

6. Roadway width.

7. Sight distances.

b. *Safety:*

1. Channelization.

2. Illumination.

3. Signing.

4. Safety zone (clearance of obstructions from traveled roadway).

5. Crosswalk locations.

c. *Utilities:*

1. Water, wastewater and gas.

2. Franchise utilities (such as telephone, etc.).

3. Storm drainage.

4. Location of fire hydrants.

d. *Design vehicles:*

1. Local emergency vehicle characteristics.

2. Minimum design vehicle (bus, single-unit truck or passenger car).

3. Public transit and school bus stops and routes.

4. Bicycles and wheelchairs.

e. *Other:*

1. Landscaping.

2. Pedestrians and bicycles.

3. Handicapped access.

4. Parking.

5. Mail delivery routes.

6. Emergency access.

(i) *Project evaluation-modification, removal.*

a. *Evaluation.* The traffic engineering staff shall evaluate the traffic calming project from a safety standpoint within a one-year period after installation. The evaluation will include, at a minimum, a review of traffic volumes, speeds and crashes.

b. *Modification or removal.* If, upon evaluation by city staff, it is deemed that a hazardous situation or condition is created by the traffic calming project, such situation or condition shall be

immediately corrected through modification or removal of the traffic calming device(s). Residents of the affected area may, upon submission of a petition signed by property owners of 75 percent of the households facing on the block of the street on which the traffic calming project is located, request removal or modification of a traffic calming device or devices.

(Ord. No. 2663, § I(exh. A), 9-4-12)

Appendix A: City of Las Cruces' Approved Traffic Calming Devices

STREET TREES:

May be included as part of choker, traffic circle, crosswalk refuge, chicane to give a visual perception of a narrower roadway. An irrigation system would also have to designed.

YARD SIGN PROGRAM:

a. *Definition.*

Motorist awareness program whereby yard signs are erected by residents and displayed with message ("RESPECT OUR NEIGHBORHOODS AND PLEASE DRIVE 25!") for other residents and drivers.

b. *Placement.*

Yard signs should only be placed on your private property. Place yard signs at least ten feet from the edge of street, out or the public right-of-way. Yard signs are not to be nailed, stapled, taped, or fastened in any form to any street sign pole or utility device, city or private. Provided free of charge to any resident living within city limits, by the transportation department.

c. *Advantages.*

Demonstrates concern by area residents for speeding vehicles in their neighborhood.

The more signs that are displayed, the more effect they have in reducing speeds.

Helps to more effectively address localized speeding problems.

d. *Disadvantages.*

Short-term solution.

RADAR DOLLY PROGRAM:

a. *Definition.*

Radar Dolly is a variable speed messaging unit that detects and displays the speed at which the driver is traveling. Unit is posted at 25 mph.

b. *Placement.*

Radar Dolly shall be placed on a resident's property and is secured to a permanent structure. Unit is signed out to resident for use for up to three business days.

c. *Advantages.*

Make drivers better aware of their driving speed while in the neighborhood area.

Demonstrates concern by area residents for speeding vehicles in their neighborhood.

d. *Disadvantages.*

Short-term solution to address speeding.

~~**CHOKER:**~~

~~a. *Definition.*~~

~~A physical constriction built at the curbside of the roadway effectively reducing the width of the travel lane.~~

~~b. *Placement.*~~

~~Normal turning radii should be accommodated. Visibility should be a key design consideration with features such as advance warning signs, reflective channelization, reflectors on curbs and elevated landscape elements.~~

~~c. *Advantages.*~~

~~Effective lane narrowing results in lower speeds, provides parking protection, and shortens pedestrian crossing distance.~~

~~With landscape enhancements, improves aesthetic value of intersection.~~

~~d. *Disadvantages.*~~

~~Potential drainage problems; increases maintenance costs.~~

~~**RAISED CROSSWALK:**~~

~~a. *Definition.*~~

~~A raised hump (a pavement undulation) in the roadway with an eight-foot to ten-foot' wide flat top, extending across the road perpendicular to the direction of traffic flow. The top is typically striped with MUTCD-compliant crosswalk markings.~~

~~b. *Placement.*~~

~~Where significant number of pedestrians (ten—20 per hour in a minimum four-hour period of a typical day) cross the roadway with 85th percentile speeds greater than 30 mph, speed hump placing considerations apply.~~

~~c. *Advantages.*~~

~~Effectively reduces speeds, provides improved visibility for crossing pedestrians.~~

~~d. *Disadvantages.*~~

~~Slows emergency vehicles and buses; increases noise and maintenance cost.~~

~~**TRAFFIC CIRCLE:**~~

~~a. *Definition.*~~

~~A circular intersection which provides counter-clockwise, one way operations by placing an elevated area in the middle of the intersection. Approaching vehicles yield to traffic already in the circle.~~

~~b. *Placement.*~~

~~Street grades approaching the intersection should not exceed ten percent.~~

~~c. *Advantages.*~~

~~Effectively reduces speeds, fewer left-turn crashes, can be visually attractive.~~

~~With landscape enhancements, improves aesthetic value of intersection.~~

~~d. *Disadvantages.*~~

~~Placement of circle may require parking removal.~~

~~**CROSSWALK REFUGE:**~~

~~a. *Definition.*~~

~~A physical constriction (a median) built in the middle of the roadway with a cut provided for the crosswalk.~~

~~b. *Placement.*~~

~~Where significant number of pedestrians (minimum of ten—20 pedestrians per hour for a minimum four hours of a typical day) cross the roadway. Special consideration can be given to designated school walking routes.~~

~~c. *Advantages.*~~

~~Provides refuge for pedestrians when crossing the roadway; effective lane narrowing results in lower speeds. May allow space for landscape enhancements with increased aesthetic value of the crossing point.~~

~~d. *Disadvantages.*~~

~~Increases maintenance cost.~~

~~**CHICANE:**~~

~~a. *Definition.*~~

~~Physical constrictions (three/set) built at the curbside of the roadway to create a 45-degree bend in a formerly straight street. This forces cars to negotiate the narrowed street in a snake-like fashion. The 45-degree bend can also be achieved by alternating parking from one side of the street to the other.~~

~~b. *Placement.*~~

~~Normal turning radii should be accommodated. Chicane sets are to be placed 400—600 feet apart. Visibility should be a key design consideration with features such as advance warning signs, reflective channelization, curb-mounted reflectors, and elevated landscape.~~

~~c. *Advantages.*~~

~~The snake-like alignment and the lane narrowing result in lower speeds provide parking protection, shorten pedestrian crossing distance.~~

~~With landscape enhancements, improves aesthetic value of street.~~

~~d. *Disadvantages.*~~

~~May contribute to head-on collisions, potential drainage problems and higher maintenance costs.~~

~~**DIVERTER:**~~

~~a. *Definition.*~~

~~Physical barrier constructed to completely restrict passage of traffic and/or disallow certain movements through an intersection.~~

~~b. *Advantages.*~~

~~Effective control in reducing traffic volumes.~~

~~c. *Disadvantages.*~~

~~Placement of diverters can have an adverse impacts to local traffic.~~

~~**STREET TREES:**~~

~~Street trees planted along both sides of the street ROW can make the street appear narrower than it is and can result in traffic calming. Landscaping and street trees have been shown to reduce traffic speeds by creating a more pedestrian-friendly and enclosed environment. Vertical elements such as street trees serve to alert vehicles to the presence of pedestrians, and cause them to reduce their speeds. Street trees and a landscaping strip are often used in conjunction with other traffic calming techniques such as traffic diverters and chicanes.~~

~~(Ord. No. 2663, § I(exh. A), 9-4-12)~~

Chapter 33 DEVELOPMENT IMPACT FEE[1]

Sec. 33-1. Short title.

This chapter may be cited as the "Las Cruces Development Impact Fee Ordinance."

(Code 1988, § 25-51)

Sec. 33-2. 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:

Affordable housing means any housing development built to benefit those whose income is at or below 80 percent of the area median income; and who will pay no more than 30 percent of their gross monthly income towards such housing or as may be defined in accordance with New Mexico State Statute, § 5-8-2, NMSA, 1978, as may be amended in the future.

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

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 chapter 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

[1]Cross reference(s)—Finance, § 2-1181 et seq.; licenses, taxation and miscellaneous business regulations, ch. 16; streets and sidewalks, ch. 26; utilities, ch. 28; buildings and building regulations, ch. 30; design standards, ch. 32; drainage and flood control, ch. 34; excavations and curb cuts, ch. 35; signs, ch. 36; subdivisions, ch. 37; zoning, ch. 38.

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.

(Code 1988, § 25-52; Ord. No. 2443, § I, 5-5-08)

Cross reference(s)—Definitions generally, § 1-2.

Sec. 33-3. 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 chapter and the Development Fees Act.

(c) The city may waive impact fee requirements for affordable housing or may pay impact fees for affordable housing projects or qualifying economic development projects, except as prohibited by other city ordinances due to other obligations or cost of service methodologies. Water and wastewater development impact fees may not be waived due to bond obligations, but may be paid from other non-utility funding sources other than any cost-of-service or rate-based funding.

(1) The city shall establish those procedures related to the waiver of development impact fees for affordable housing projects in accordance with the Affordable Housing General Oversight Ordinance

and the Affordable Housing Impact Fee Waiver Ordinance established in chapter 13 of the Las Cruces Municipal Code (LCMC), 1997, as amended.

(2) The city may also establish the payment of impact fees, not waived by this chapter or other ordinances of the city, from other sources in accordance with this section of this chapter, primarily for the payment of impact fees for water and wastewater impact fees or other future development impact fees from other non-utility sources, including for affordable housing projects or for qualifying economic development projects in accordance with the city's adopted local economic development plan and ordinance.

(Code 1988, § 25-53; Ord. No. 2443, § I, 5-5-08)

Sec. 33-4. 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.

(Code 1988, § 25-54)

Sec. 33-5. 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 33-4; 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 33-2.

(Code 1988, § 25-55)

Sec. 33-6. 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 council is responsible for supervising the implementation of the capital improvements plan in a timely manner.

(Code 1988, § 25-56)

Sec. 33-7. 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.

(Code 1988, § 25-57)

Sec. 33-8. 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 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 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.

(Code 1988, § 25-58)

Sec. 33-9. Additional fees prohibited; exception.

Except as provided in subsection 33-8(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.

(Code 1988, § 25-59)

Sec. 33-10. 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 chapter.

(Code 1988, § 25-60)

Sec. 33-11. 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 33-17.

(Code 1988, § 25-61)

Sec. 33-12. 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.

(Code 1988, § 25-62)

Sec. 33-13. 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.

(Code 1988, § 25-63)

Sec. 33-14. Effect on governmental entities.

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

(Code 1988, § 25-64)

Sec. 33-15. 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:

(1) Land for parks and recreational areas, open space, trails and related areas and facilities or payments in lieu of that dedication; and

(2) Rights-of-way or easements or construction or dedication of on-site water distribution, wastewater collection or drainage facilities, or streets, sidewalks or curbs.

(Code 1988, § 25-65)

Sec. 33-16. 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 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 and service area identified as provided in subsection (a) of this section.

(Code 1988, § 25-66)

Sec. 33-17. 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 33-11 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 33-11(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 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.

(Code 1988, § 25-67)

Sec. 33-18. City compliance required.

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

(Code 1988, § 25-68)

Sec. 33-19. 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.

(Code 1988, § 25-69)

Sec. 33-20. Capital improvements plans.

Under this chapter, after the city council approves the land use assumptions, 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 33-6.

(Code 1988, § 25-70)

Sec. 33-21. Advisory committee comments.

(a) The capital improvements advisory committee 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 capital improvements committee 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.

(Code 1988, § 25-71)

Sec. 33-22. 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 chapter, 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 chapter.

(Code 1988, § 25-72)

Sec. 33-23. 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 33-19 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.

(Code 1988, § 25-73)

Sec. 33-24. Periodic update of land use assumptions and capital improvements plan.

(a) Under this chapter, 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 chapter.

(Code 1988, § 25-74)

Sec. 33-25. Approval of amendments.

(a) Under this chapter, 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 chapter.

(Code 1988, § 25-75)

Sec. 33-26. Determination that no update of land use assumptions, capital improvements plan or development impact fee is needed.

(a) When an update under section 33-24 is required, if the city council 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 capital improvements advisory committee 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 chapter.

(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 chapter.

(Code 1988, § 25-76)

Sec. 33-27. 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 council 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.

(Code 1988, § 25-77)

Sec. 33-28. Records of hearings.

A record shall be made of any public hearing required by this chapter. 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.

(Code 1988, § 25-78)

Sec. 33-29. Effect of prior fees.

An impact or development fee that is in place on the effective date of the ordinance from which this chapter derives shall be replaced by a fee imposed under this chapter by July 1, 1995. If the city has an impact fee that has not been replaced under this chapter by July 1, 1995 it shall be liable to any party who, after July 1, 1995, pays an impact fee that exceeds the maximum permitted under this chapter by more than ten percent for an amount equal to two times the difference between the maximum impact fee allowed and the actual impact fee imposed, plus reasonable attorneys' fees and court costs.

(Code 1988, § 25-79)

Sec. 33-30. 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.

(Code 1988, § 25-80)

Sec. 33-31. Authorization to approve a parks capital improvements plan.

(a) The city shall approve a parks capital improvements plan by resolution on or before July 1, 1995.

(b) The city may modify the plan by resolution after periodic updates and compliance with this chapter.

(Code 1988, § 25-81)

Sec. 33-32. Authorization to impose park development impact fees.

(a) The city shall impose park development impact fees by resolution on or before July 1, 1995. For the initial period, which shall not exceed five years, the fees shall be paid solely by residential development.

(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.

(Code 1988, § 25-82)

Sec. 33-33. Authorization to approve wastewater system capital improvements plan.

(a) The city shall approve a wastewater system capital improvements plan on or before July 1, 1995.

(b) The city may modify the plan by resolution after periodic updates in compliance with this chapter.

(Code 1988, § 25-83)

Sec. 33-34. Authorization to impose wastewater system development impact fees.

(a) The city shall impose wastewater system impact fees by resolution on or before July 1, 1995. 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.

(Code 1988, § 25-84)

Sec. 33-35. Authorization to approve water system capital improvements plan.

(a) The city shall approve a water system capital improvements plan on or before July 1, 1995.

(b) The city may modify the plan by resolution after periodic updates in compliance with this chapter.

(Code 1988, § 25-85)

Sec. 33-36. Authorization to impose water system development impact fees.

(a) The city shall impose water system development impact fees by resolution on or before July 1, 1995. 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.

(Code 1988, § 25-86)

Sec. 33-37. 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 chapter. The city may thereafter modify the plan by resolution after periodic updates in compliance with this chapter.

(b) The city may impose by resolution any other development impact fee authorized by and in compliance with this chapter. 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.

(Code 1988, § 25-87)

Chapter 34 DRAINAGE AND FLOOD CONTROL[1]

ARTICLE I. IN GENERAL

Sec. 34-1. Community ditches.

The maintenance, cleaning, weed and grass removal, upkeep and repair of community ditches and parkways within the City of Las Cruces shall be the responsibility of the owners of the abutting property, whether or not such persons are users of water in the community ditch.

(Code 1988, § 11-1; Ord. No. 2785, § II(Exh. B), 7-5-16)

Secs. 34-2—34-30. Reserved.

ARTICLE II. FLOOD DAMAGE PREVENTION[2]

DIVISION 1. GENERALLY

Sec. 34-31. Definitions.

Words or phrases used in this article, unless specifically defined below, shall be interpreted to give them the meaning they have in common usage and to give this article its most reasonable application. 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 the 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.

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[1]Cross reference(s)—Streets and sidewalks, ch. 26; buildings and building regulations, ch. 30; design standards, ch. 32; design standards for drainage, § 32-71 et seq.; development impact fee, ch. 33; excavations and curb cuts, ch. 35; subdivisions, ch. 37; zoning, ch. 38; A-1 flood control district, § 38-1051 et seq.; drainage plans required for development over one acre, § 38-1912.

State law reference(s)—Municipal home rule, Const. art. X, § 6; NMSA 1978, § 3-15-13; Las Cruces Arroyo Flood Control Act, NMSA 1978, § 72-17-1 et seq.

[2]Editor's note(s)—Ord. No. 2785, § II(Exh. B), adopted July 5, 2016, repealed and reenacted article II in its entirety to read as herein set out. Formerly, article II pertained to similar subject matter, and derived from the Code of 1988, §§ 11-21—11-33, 11-41—11-44, 11-51—11-54; Ord. No. 1929, §§ I, II, adopted August 5, 2002, and Ord. No. 1933, § I, adopted August 19, 2002.

Appeal means a request for a review of the floodplain administrator's interpretation of any section of this article or a request for a variance.

Appurtenant structure means a structure which is on the same parcel of property as the principal structure to be insured and the use of which is incidental to the use of the principal structure.

Area of shallow flooding means a designated AO, AH, or VO zone on the City of Las Cruces'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 is the land in the floodplain within the City of Las Cruces 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 Boundary Floodway Map (FBFM). After detailed rate-making 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 equaled or exceeded in any given year.

Base flood elevation (BFE) means the elevation shown on the Flood Insurance Rate Map (FIRM) and found in the accompanying Flood Insurance Study (FIS) for zones A, AE, AH, A1-A30, AR, V1-V30, or VE that indicates the water surface elevation resulting from the flood that has a one-percent chance of equaling or exceeding that level in any given year - also called the Base Flood.

Basement means any area of the building having its flood sub-grade (below ground level) on all sides.

Breakaway wall means a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces, without causing damage to the elevated portion of the building or supporting foundation system.

Community development director means the director of the City of Las Cruces Community Development Department.

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

Elevated building means a building without a basement that has its lowest floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

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 the City of Las Cruces.

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 of surface waters from any source.

Flood elevation study means an examination, evaluation, and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation, and determination of mudslide (e.g., mudflow) or other flood-related erosion hazards.

Flood insurance rate map (FIRM) means the 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 (FIS) is the official report provided by the Federal Emergency Management Agency. The report contains flood profiles, the water surface elevation of the base flood, as well as the Flood Boundary Floodway Map.

Floodplain or *floodprone area* means any land area susceptible to being inundated by flooding.

Floodplain management means the operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works and floodplain management regulations.

Floodplain management regulations means zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinance (such as a floodplain ordinance, grading ordinance and erosion control ordinance) and other applications of police power. The term describes such federal, state or local regulations, in any combination thereof which provide standards for the purpose of flood damage prevention and reduction.

Flood proofing means any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

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 the City of Las Cruces 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.

Floodway (regulatory floodway) means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot cumulatively.

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

Highest adjacent grade means the highest natural elevation of the ground surface next to a finished structure's walls or, if the structure has not been constructed, next to the proposed walls of the structure.

Historic structure means any structure that is:

(1) 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;

(2) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the secretary to qualify as a registered historic district;

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

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

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

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

Levee 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 to provide protection from temporary flooding.

Levee system means a flood protection system which consists of at least one levee 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 of a structure, including the basement. An unfinished enclosure, usable solely for parking or vehicles, building access or storage in an area other than a basement, 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. For floodplain management purposes, the term "manufactured home" also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days. 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, North American Vertical Datum of 1988 (NAVD 1988) or other datum, to which base flood elevations shown on the City of Las Cruces's Flood Insurance Rate Map are referenced.

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

Public Works Director means the director of the City of Las Cruces Public Works Department.

Recreational Vehicle means a vehicle which is:

(1) Built on a single chassis;

(2) 400 square feet or less when measured at the largest horizontal projections;

(3) Designed to be self-propelled or permanently towable by a light duty truck; and

(4) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

Start of construction, for other than new construction or substantial improvements under the Coastal Barrier Resources Act (PL 97-348), includes substantial improvement and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, 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 portion of a structure on a site, such as the pouring of 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 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 the 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 repair, reconstruction, or 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 (see the definition of start of construction). This includes structures which have incurred "substantial damage," regardless of the actual repair work performed (see the definition of substantial damage). For purposes of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include either:

(1) Any project for improvement of a structure to correct existing violations of federal, 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 is a grant of relief to a person from the requirements of this ordinance when specific enforcement would result in unnecessary hardship. A variance, therefore, permits construction or development in a manner otherwise prohibited by this ordinance. 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 North American Vertical Datum (NAVD) of 1988 or (other datum, where specified), of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

(Ord. No. 2785, § II(Exh. B), 7-5-16; Ord. No. 3051, § (I)(Exh. A), 11-20-23)

Cross reference(s)—Definitions generally, § 1-2.

Sec. 34-32. Statutory authorization.

The Legislature of the State of New Mexico has in New Mexico Statutes Annotated 1978, § 3-18-7 delegated the responsibility to local governmental units to adopt regulations designed to minimize flood losses, and it is determined to be in the public interest and in the best interest of the health, welfare and morals of the City of Las Cruces to establish the flood control damage prevention regulations in this ordinance.

(Ord. No. 2785, § II(Exh. B), 7-5-16)

Sec. 34-33. Findings of fact.

(1) The flood hazard areas of the City of Las Cruces are subject to periodic inundation which could result 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.

(2) 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.

(Ord. No. 2785, § II(Exh. B), 7-5-16)

Sec. 34-34. 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:

(1) Protect human life and health;

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

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

(4) Minimize prolonged business interruptions;

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

(6) 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

(7) Ensure that potential buyers are notified that property is in a flood area.

(Ord. No. 2785, § II(Exh. B), 7-5-16)

Sec. 34-35. Methods of reducing flood losses.

In order to accomplish its purposes, this article is intended to reduce flood losses by methods designed to:

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

(2) Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction.

(3) Control the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of floodwaters.

(4) Control filling, grading, dredging and other development which may increase flood damage.

(5) Prevent or regulate the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards to other lands.

(Ord. No. 2785, § II(Exh. B), 7-5-16)

Sec. 34-36. Applicability of article.

This article shall apply to all areas of special flood hazard within the jurisdiction of the city.

(Ord. No. 2785, § II(Exh. B), 7-5-16)

Sec. 34-37. Basis for establishing the areas of special flood hazard.

The areas of special flood hazard identified by the Federal Emergency Management Agency in the current scientific and engineering report entitled, "The Flood Insurance Study (FIS) for the City of Las Cruces, Dona Ana County, NM, dated July 6, 2016, with accompanying Flood Insurance Rate Maps (FIRM) dated July 6, 2016 and any revisions thereto are hereby adopted by reference and declared to be a part of this ordinance.

(Ord. No. 2785, § II(Exh. B), 7-5-16)

Sec. 34-38. Establishment of development permit.

A development permit shall be required to ensure conformance with the provisions of this ordinance prior to the commencement of any development activities.

(Ord. No. 2785, § II(Exh. B), 7-5-16)

Sec. 34-39. Compliance.

No structure or land shall hereafter be located, altered, or have its use changed without full compliance with the terms of this ordinance and other applicable regulations.

(Ord. No. 2785, § II(Exh. B), 7-5-16)

Sec. 34-40. Abrogation and greater restrictions.

This ordinance is not intended to repeal, abrogate, or impair any existing regulations, ordinances, easements, covenants, or deed restrictions. However, where this ordinance and the provisions of other regulations or ordinances conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

(Ord. No. 2785, § II(Exh. B), 7-5-16)

Sec. 34-41. Interpretation.

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

(1) Considered as minimum requirements;

(2) Liberally construed in favor of the City Council; and

(3) Deemed neither to limit nor repeal any other powers granted under State Statutes.

(Ord. No. 2785, § II(Exh. B), 7-5-16)

Sec. 34-42. Warning and disclaimer of liability.

The degree of flood protection required by this ordinance 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 ordinance 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 ordinance shall not create liability on the part of the city or any officer or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made thereunder.

(Ord. No. 2785, § II(Exh. B), 7-5-16)

Sec. 34-43. Lands to which this ordinance applies.

The ordinance shall apply to all areas of special flood hazard within the jurisdiction of the City of Las Cruces, New Mexico.

(Ord. No. 2785, § II(Exh. B), 7-5-16)

Sec. 34-44. Determination of substantially improved or substantially damaged existing buildings and structures in flood hazard areas.

For applications for reconstruction, rehabilitation, repair, alteration, addition or other improvement of existing buildings or structures located in flood hazard areas, the floodplain administrator shall determine if the proposed work constitutes substantial improvement or repair of substantial damage. Where the floodplain administrator determines that the proposed work constitutes substantial improvement or repair of substantial damage, and where required by this code, the building official shall require the building to meet the requirements. The cost used in the substantial improvement determination shall be the cumulative costs of all previous improvements for a specific building or structure occurring during the immediate past five-year period.

(Ord. No. 3051, § (I)(Exh. A), 11-20-23)

Secs. 34-45—34-70. Reserved.

DIVISION 2. ADMINISTRATION[3]

Sec. 34-71. Designation of the floodplain administrator.

The community development director hereby appoints a floodplain administrator who is certified to administer and implement the provisions of this article and other appropriate sections of 44 CFR (National Flood Insurance Regulations) pertaining to floodplain management.

(Ord. No. 2785, § II(Exh. B), 7-5-16; Ord. No. 3051, § (I)(Exh. A), 11-20-23)

Cross reference(s)—Officers and employees, § 2-56 et seq.

Sec. 34-72. Duties and responsibilities of the certified floodplain administrator.

Duties and responsibilities of the certified floodplain administrator under this article shall include but not be limited to:

(1) Maintaining and holding open for public inspection all records pertaining to this ordinance;

(2) Reviewing permit applications to determine whether a proposed building site, including the placement of manufactured homes, will be reasonably safe from flooding;

(3) Reviewing and then approving or denying all applications for development permits required by this ordinance;

(4) Reviewing permits for proposed development to ensure 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 USC 1334) from which prior approval is required);

(5) Making the necessary interpretation 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);

(6) Notify, in riverine situations, adjacent communities and the State Coordinating Agency, which is the New Mexico Department of Homeland Security and Emergency Management (NMDHSEM), prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency;

(7) Assuring that the flood-carrying capacity within the altered or relocated portion of any watercourse is maintained;

(8) Obtaining, reviewing, and reasonably utilizing any base flood elevation data and floodway data available from a federal, state, local, or other source in order to administer the provisions of sections 34-101 through 34-105 when base flood elevation data has not been provided, in accordance with section 34-37;

(9) Requiring that, when a regulatory floodway has not been designated, that no new construction, substantial improvements or other development, including fill, shall be permitted within zones A1-30

[3]Cross reference(s)—Administration, ch. 2.

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; and

(10) Assuring that, under the provisions of 44 CFR Chapter 1, Section 65-12, of the National Flood Insurance Program regulations, the City of Las Cruces may approve certain development in Zones A1-30, AE, AH, on the community's FIRM which increases the water surface elevations of the base flood by more than one foot, provided that the community first applies for a conditional FIRM revision through FEMA (Conditional Letter of Map Revision).

(Ord. No. 2785, § II(Exh. B), 7-5-16)

Sec. 34-73. Permit procedures.

(1) Application for a development permit required under this ordinance shall be presented to the floodplain administrator on forms furnished by the property owner or the property owner's representative and may include, but is not limited to, plans in duplicate drawn to scale showing the location, dimensions, and elevation of proposed landscape alterations, existing and proposed structures, including the placement of manufactured homes, and the location of the development in relation to areas of special flood hazard. Additionally, the following information is required:

(a) Where base flood elevations have not been provided by the Federal Emergency Management Agency, a drainage study prepared and certified by a professional engineer registered in the state. The drainage study shall include:

(i) An aerial photo of the area to be developed and contributing watershed;

(ii) An up-to-date contour map of the site to be developed at a scale of one inch equals 100 feet and contour lines at intervals of no more than one foot and spot elevations at all breaks in grade along all drainage channels or swales and at selected points not more than 100 feet apart in all directions;

(iii) A contour map identifying the site to be developed and the entire watershed that contributes storm runoff to the development site;

(iv) Calculations showing the peak discharge and volume of runoff that will pond or pass through the development site from a one percent (100 year) storm; and

(v) Calculations showing the one percent (100 year) storm (base flood) elevation in relation to mean sea level on the site to be developed.

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

(c) Elevation in relation to mean sea level to which any nonresidential structure shall be floodproofed;

(d) A certificate from a professional engineer or architect registered in the state that the nonresidential floodproofed structure shall meet the floodproofing criteria of subsection 34-102(2);

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

(f) Maintenance of a record of all such information in accordance with subsection 34-72(1).

(2) Approval or denial of a development permit by the Floodplain Administrator shall be based on all of the sections of this ordinance and the following relevant factors:

(a) The danger to life and property due to flooding or erosion damage;

(b) The susceptibility of the proposed structure 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; and

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

(Ord. No. 2785, § II(Exh. B), 7-5-16)

Sec. 34-74. Variance procedures.

(1) The city council shall hear and render judgment on request for variances from the requirements of this ordinance.

(2) The city council 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 city council may appeal such decision to the district court within 30 days of the rendering of the decision.

(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 ordinance.

(6) Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing the relevant factors in subsection 34-73(2) have been fully considered. As the lot size increases beyond one-half acre, the technical justification required for issuing the variance increases.

(7) Upon consideration of the factors noted in this ordinance and the intent of this ordinance, the city council may attach such conditions to the granting of variances as it deems necessary to further the purpose and objectives of this article stated in sections 34-34 and 34-35.

(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 repair or rehabilitation will not preclude the structures 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 shall be as follows:

(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:

(i) Showing of a good and sufficient cause;

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

(iii) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, and extraordinary public expense, and 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 of the permitted elevation of the lowest floor of the structure to be built, which shall not be more than two feet below the base flood elevation. 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 the City of Las Cruces 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 subsections (1) through (10) 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.

(Ord. No. 2785, § II(Exh. B), 7-5-16)

Sec. 34-75. Substantial improvement and substantial damage determinations.

For applications for building permits to improve buildings and structures, including alterations, movement, repair, additions, rehabilitations, renovations, substantial improvements, repairs of substantial damage, and any other improvement of or work on such buildings and structures, the floodplain administrator, in coordination with the building official, shall:

(1) Estimate the market value, or require the applicant to obtain a professional appraisal prepared by a qualified independent appraiser, of the market value of the building or structure before the start of construction of the proposed work; in the case of repair, the market value of the building or structure shall be the market value before the damage occurred and before any repairs are made.

(2) Compare the cost to perform the improvement, the cost to repair the damaged building to its pre-damaged condition, or the combined costs of improvements and repairs, where applicable, to the market value of the building or structure.

(3) Determine and document whether the proposed work constitutes substantial improvement or repair of substantial damage.

(4) Notify the applicant when it is determined that the work constitutes substantial improvement or repair of substantial damage and that compliance with the flood resistant construction requirements of the building code is required and notify the applicant when it is determined that work does not constitute substantial improvement or repair of substantial damage.

(Ord. No. 3051, § (I)(Exh. A), 11-20-23)

Secs. 34-76—34-100. Reserved.

DIVISION 3. FLOOD HAZARD REDUCTION

Sec. 34-101. General standards.

In all areas of special flood hazards, the following 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, and air conditioning equipment and other service facilities that are designed 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 flood waters into the system and discharge from the systems into flood waters.

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

(8) Floodplain development shall follow the Federal Emergency Management Agency's letter of map change (LOMC) process (e.g., LOMA, LOMR, LOMR-F, CLOMR, CLOMR-F) as specified in 44 CFR. Floodplain information shall be required along with a Conditional Letter of Map Revision (CLOMR and CLOMR-F) and a Letter of Map Revision (LOMR and LOMR-F) for one-percent chance for storm flows of greater than 250 cubic feet per second (2.83 meters cubed per second), developments of five acres and larger, developments with 50 or more lots, and/or developments with any changes to the existing flow path in flood hazard zones AE, A, AH, AO, and D upon the submittal of any on preliminary and/or final drainage drawings for review. Information shall include peak discharges for the ten percent, two percent, one percent, and two-tenth percent chance storms for the floodplain inundation area and anticipated depth of floodwaters one foot and deeper. Standard step backwater models shall be used for flood depth determination. The Hydrologic Engineering Centers HEC-2 analysis method may be required. Improvements and subdivisions will not be accepted by the City until the flood study has been approved by the Federal Emergency Management Agency.

(a) A CLOMR will be submitted for review by the city and submitted to the Federal Emergency Management Agency prior to plan and/or final plat approval.

(b) A LOMR will be submitted for review by the city and submitted to the Federal Emergency Management Agency before acceptance by the city and before the issuance of any certificate of occupancy. Costs incurred for the preparation of materials and fees paid to the Federal Emergency Management Agency will be borne by the developer.

(Ord. No. 2785, § II(Exh. B), 7-5-16)

Sec. 34-102. Specific standards.

In all areas of special flood hazards where base flood elevation data has been provided as set forth in section 34-37, subsection 34-72(8) or subsection 34-103(3), the following are required:

(1) *Residential construction.* All new construction and substantial improvements of any residential structure shall have the lowest floor, including basement, all electrical and mechanical equipment and ductwork, elevated at least one foot above the base flood elevation. A registered professional engineer, architect, or land surveyor shall submit a certification to the floodplain administrator that the standard of this subsection as proposed in subsection 34-73(l)(a) is satisfied.

(2) *Nonresidential construction.* All new construction and substantial improvements of any commercial, industrial or other nonresidential structure shall either have the lowest floor, including basement, all electrical and mechanical equipment and ductwork, elevated at least one foot above the base flood elevation or, together with attendant utility and sanitary facilities, be designed so that below the base flood level plus one foot of freeboard the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. A registered professional engineer or architect shall develop and/or review structural design, specifications, and plans for the construction and shall certify that 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 issued by the certifying professional to the floodplain administrator and be maintained by the floodplain administrator.

(3) *Enclosures.* New construction and substantial improvements, with fully enclosed areas below the lowest floor that are useable solely for the 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 all of 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; and

(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.* Manufactured homes are subject to the following regulations.

(a) All manufactured homes to be placed within zone A on a community's FIRM shall be installed using methods and practices which minimize flood damage. For the purpose of this subsection, 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 frame ties to ground anchors. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces.

(b) Manufactured homes in the following categories that are placed or substantially improved within zones Al-30, AH, and AE on the community's FIRM must be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated at least one foot above the base flood elevation and shall be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movements in accordance with subsection (4)(d) of this section:

(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.

(c) Manufactured homes to be placed or substantially improved on sites in an existing manufactured home park or subdivision with zone Al-30, AH, and AE on the community's FIRM that are not subject to the provision of paragraph (4)(b) of this section must be elevated so that it meets the greater of either:

(i) The lowest floor of the manufactured home is elevated at least one foot 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 is securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement whichever is higher.

(d) Ground anchoring systems shall meet the requirements outlined in the city manufactured housing installation code. Anchors and anchoring systems that do not meet these requirements shall be designed by a professional engineer registered in the state and approved by the floodplain administrator.

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

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

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

(c) Meet the permit requirements of subsection 34-73, (1)(b), 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.

(Ord. No. 2785, § II(Exh. B), 7-5-16; Ord. No. 3051, § (I)(Exh. A), 11-20-23)

Sec. 34-103. Standards for subdivision proposals.

(1) All subdivision proposals, including the placement of manufactured home parks and subdivisions, shall be consistent with sections 34-33 through 34-35.

(2) All proposals for the development of subdivisions, including the placement of manufactured home parks and subdivisions, shall meet development permit requirements of sections 34-38 and 34-73, of this section.

(3) Base flood elevation data shall be generated for subdivision proposals and other proposed development, including the placement of manufactured home parks and subdivisions, which is greater than 50 lots or five acres, whichever is less, if not otherwise provided pursuant to section 34-37 or subsection 34-72(8).

(4) All subdivision proposals, including the placement of manufactured home parks and subdivisions, shall have adequate drainage provided to reduce exposure to flood hazards.

(5) All subdivision proposals, including the placement of 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.

(6) All proposals for the development of subdivisions shall meet development permit requirements of sections 34-38 and 34-73, and this division, as well as the requirements of section 37-112.

(7) All preliminary and final plats submitted for approval must have floodplain clearly graphically delineated and noted.

(8) When developing property that extends into the city's regulatory floodplain, the floodplain shall be dedicated to the city in fee, as a flood water conservation easement, or as open space, as appropriate under the circumstances as determined by the community development director. This area shall be shown on the subdivision map.

(Ord. No. 2785, § II(Exh. B), 7-5-16; Ord. No. 3051, § (I)(Exh. A), 11-20-23)

Sec. 34-104. Standards for areas of shallow flooding (AO/AH zones).

Located within the area of special flood hazard as established in section 34-37 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 apply to AO and AH zones:

(1) All new construction and substantial improvements of residential structures shall have the lowest floor, including basement, elevated above the highest adjacent grade at least as high as the depth number specified in feet on the community's FIRM plus one foot of freeboard (at least three feet if no depth number is specified).

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

(a) 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 plus one foot of freeboard (at least three feet if no depth number is specified); or

(b) Together with attendant utility and sanitary facilities, be designed so that below the base flood level plus one foot of freeboard 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 subsection 34-73(1)(a), are satisfied.

(4) Adequate drainage paths around structures on slopes shall be required to guide floodwaters around and away from proposed structures.

(Ord. No. 2785, § II(Exh. B), 7-5-16; Ord. No. 3051, § (I)(Exh. A), 11-20-23)

Sec. 34-105. Floodways.

Floodways located within areas of special flood hazard established in section 34-37 are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles and erosion potential, the following provisions shall apply to the floodway:

(1) Encroachments are prohibited, including fill, new construction, substantial improvements and other development within the adopted regulatory floodway unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in flood levels within the community during the occurrence of the base flood discharge.

(2) If subsection (1) above is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of section 34-101, section 34-102, section 34-103, section 34-104.

(3) Under the provisions of 44 CFR Chapter 1, Section 65.12, of the National Flood Insurance Regulations, the City of Las Cruces may permit encroachments within the adopted regulatory floodway that would result in an increase in base flood elevations, provided that the community first applies for a conditional FIRM and floodway revision through the Federal Emergency Management Agency.

(Ord. No. 2785, § II(Exh. B), 7-5-16)

Sec. 34-106. Severability.

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

(Ord. No. 2785, § II(Exh. B), 7-5-16)

Sec. 34-107. Penalties for non-compliance.

No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this ordinance and other applicable regulations. Violation of the provisions of this ordinance by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions) shall constitute a misdemeanor. Any person who violates this ordinance or fails to comply with any of its requirements shall upon conviction thereof be fined not more than $10,000.00 for each violation, and in addition shall pay all costs and expenses involved in the case. Nothing herein contained shall prevent the Las Cruces City Council from taking such other lawful action as is necessary to prevent or remedy any violation.

(Ord. No. 2785, § II(Exh. B), 7-5-16)

Secs. 34-108—34-124. Reserved.

ARTICLE III. STORMWATER MANAGEMENT

Sec. 34-125. Purpose.

The purpose of this article is to promote the elimination or reduction of pollutants from entering the city's municipal separate storm sewer system and for control over discharges to and from the system. It shall also be the purpose of this article to:

(1) Maintain and improve the quality of surface water and groundwater within the city limits;

(2) Prevent the discharge of contaminated stormwater runoff from industrial, commercial, residential, and construction sites into the municipal separate storm sewer system (MS4), as defined in section 34-130, and natural waters and water courses within the city;

(3) Promote public awareness of the hazards involved in the improper discharge of hazardous substances, petroleum products, household hazardous waste, industrial waste, sediment from construction sites, pesticides, herbicides, fertilizers, and other contaminants into the city's storm drains and into natural waters and water courses;

(4) Encourage recycling of used motor oil and safe disposal of other hazardous consumer products;

(5) Minimize destruction of the natural landscape by reducing erosion and sedimentation;

(6) Treat stormwater runoff as a valuable natural resource of the city, which is a community that is prone to drought, by encouraging water collection and infiltration on site;

(7) Control the adverse impacts associated with accelerated stormwater runoff on natural drainage ways and all structures due to increased development and creation of new impervious surfaces;

(8) Minimize erosion and degradation of arroyo channels and improve the condition of these channels where possible;

(9) Respect, protect, maintain, and restore natural drainage ways, wetlands, bosques, floodplains, steep slopes, riparian vegetation, and wildlife habitat areas that are within the city's jurisdiction;

(10) Integrate stormwater management measures into the landscape and site planning process;

(11) Provide aesthetically pleasing solutions to stormwater management and erosion control measures by integrating permanent measures into the overall landscape and site design;

(12) Facilitate compliance with state and federal standards and permits by owners and operators of construction sites within the city;

(13) Enable the city to comply with all federal and state laws, regulations and permits applicable to stormwater discharge;

(14) Protect the health and welfare of the citizens and residents of the city.

(Ord. No. 2146, § I, 11-1-04)

Sec. 34-126. Scope.

This article shall apply to any stormwater discharge associated with commercial and industrial activity including construction, as defined by 40 CFR, Section 122.26(b)(14).

(Ord. No. 2146, § I, 11-1-04)

Sec. 34-127. Administration.

The director of public works or designee shall administer and coordinate the implementation and enforcement of the provisions of this article.

(Ord. No. 2146, § I, 11-1-04)

Sec. 34-128. Duties and responsibilities of director of public works.

Duties and responsibilities of the director of public works or designee shall include, but are not limited to the following:

(1) Be the guardian of the MS4, including all dams, detention and retention basins, storm drains, outlet working channels and pumping stations;

(2) Maintain and hold open for public inspection all records pertaining to the provisions of this article;

(3) Review permit applications to determine whether proposed developments will eliminate or reduce the pollutants entering the MS4;

(4) Review, approve or deny all applications for development permits required by adoption of this article;

(5) Maintain supervision over the operation and maintenance condition of the MS4 to ensure its safe and effective functioning and notify the streets systems administrator of any required maintenance and/or repair work;

(6) Conduct an annual inspection of the MS4 and provide a written inspection report, including an assessment of the operational condition, safety, effectiveness and maintenance condition of the system, and a line item list of required special maintenance or repairs to the streets systems administrator;

(7) Establish and implement a program to locate and eliminate illicit discharges and improper disposals to the MS4;

(8) Establish and implement a program to prevent, contain and respond to spills that may discharge into MS4. This program shall be in conjunction with the fire department's hazardous materials division;

(9) Establish and implement a program to identify and control pollutants in stormwater discharges from any construction or commercial facility that the director of public works determines that is contributing a substantial pollutant loading to the MS4.

(Ord. No. 2146, § I, 11-1-04)

Sec. 34-129. Definitions.

(a) For the purpose of this article, the following words shall have the meaning set forth in this section.

(b) Terms.

Accelerated erosion: Erosion caused by development activities that exceeds the natural processes by which the surface of the land is worn away.

Agricultural stormwater runoff: Any stormwater runoff from orchards, cultivated crops, pastures, range lands, and other non-point source agricultural activities, but not discharges from concentrated animal feeding operations as defined in 40 CFR Section 122.23 or discharges from concentrated aquatic animal production facilities as defined in 40 CFR Section 122.24.

Best management practices: Schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent and/or reduce the pollution of waters of the United States. BMPs also include treatment requirements, operating procedures, and practices to control site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

Building permit: Any duly authorized permit for construction issued by the city or any authorization that includes soil disturbance.

Channel: A natural or artificial watercourse with a definite bed and banks that conducts continuously or periodically flowing water.

Clearing: Any activity which removes the vegetative surface cover. Includes grubbing or removal of subsurface stabilization such as roots.

Commencement of construction: The disturbance of soils associated with or clearing, grading, or excavating activities or other construction activities.

Damage of MS4: The introduction of any substance not entirely comprised of clean stormwater into the drainage system of the city.

Detention: The temporary storage of storm runoff in a stormwater management practice with the goals of controlling peak discharge rates and providing gravity settling of pollutants.

Detention facility: A detention basin or alternative structure designed for the purpose of temporary storage of stream flow or surface runoff and gradual release of stored water at controlled rates.

Discharge: Any addition or introduction of any pollutant, stormwater, or any other substance whatsoever into the MS4 or into waters of the United States.

Discharger: Any person who causes, allows, permits, or is otherwise responsible for, a discharge, including, without limitation, any operator of a construction site or industrial facility.

Domestic sewage: Human excrement, gray water (from home clothes washing, bathing, showers, dishwashing, and food preparation), other wastewater from household drains, and waterborne waste normally discharged from the sanitary conveniences free from industrial waste, to include commercial enterprise.

Drainage way: Any channel that conveys surface runoff throughout a site.

Environmental protection agency: The United States Environmental Protection Agency, the regional office thereof, any federal department, agency, or commission that may succeed to the authority of the EPA, and any duly authorized official of EPA or such successor agency.

Erosion: The wearing away of the ground surface as a result of the movement of gravity, wind, water or ice.

Erosion control: Measures that prevent erosion.

Erosion and sediment control plan: A plan indicating the specific measures and sequencing to be used controlling sediment and erosion on a development site both before, during and after construction. Same as "erosion control plan (ECP)."

Extremely hazardous substance: Any substance listed in the appendices to 40 CFR Part 355, Emergency Planning and Notification.

Facility: Any location where there is or may be a discharge of stormwater associated with industrial activity.

Fee in lieu: A payment of money in place of meeting all or part of the stormwater performance standards required by this article.

Fertilizer: Any substance or compound that contains an essential plant nutrient element in a form available to plants and is used primarily for its essential plant nutrient element content in promoting or stimulating growth

of a plant, improving the quality of a crop, or a mixture of two or more fertilizers. The term does not include the excreta of an animal, plant remains, or a mixture of those substances, for which no claim of essential plant nutrients is made.

Final stabilization: The status when all soil disturbing activities at a site have been completed, and a uniform perennial vegetative cover with a density of seventy percent of the cover for unpaved areas and areas not covered by permanent structures has been established, and/or equivalent permanent stabilization measures (such as the use of rip-rap, gabions, or geotextiles) have been employed.

Fire department: The city's fire department, or any duly authorized representative thereof.

Garbage: Putrescible animal and vegetable waste materials from the handling, preparation, cooking, or consumption of food, including waste materials from markets, storage facilities, and the handling and sale of produce and other food products.

Grading: Excavation or fill of material, including the resulting conditions thereof.

Harmful quantity: For purposes of this article, discharges of oil, motor fuel, or other substance or petroleum product of any quantities that the director of public works has determined may be harmful to the public health, public welfare, or harmful to the environment. To include discharges of such products that are of sufficient quantity to:

(1) Violate applicable water quality standards;

(2) Cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines;

(3) Cause any damage to the MS4; or

(4) Interfere with the operation of the MS4, such as sediment.

Hazardous household waste (HHW): Any material generated in a household (including single and multiple residences, hotels and motels, bunk houses, ranger stations, crew quarters, camp grounds, picnic grounds, and day use recreational areas) by a consumer which, except for the exclusion provided in 40 CFR section 261.4(b)(1), would be classified as a hazardous waste under 40 CFR part 261.

Hazardous substance: Any substance listed in table 302.4 of 40 CFR part 302.

Hazardous waste: Any substance identified or listed as a hazardous waste by the EPA in 40 CFR part 261.

Hazardous waste treatment, disposal, and recovery facility: All contiguous land, structures, other appurtenances and improvements on the land used for the treatment, disposal, or recovery of hazardous waste.

Herbicide: A substance or mixture of substances used to destroy a plant or to inhibit plant growth, as defined by the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Impervious cover: Those surfaces that do not effectively allow rainfall infiltration. (e.g., building rooftops, pavement, sidewalks, driveways, etc).

Industrial waste: Any waterborne liquid or solid substance that results from any process of industry, manufacturing, mining, production, trade, or commercial business, including transportation related activities.

Industrial activity: The categories of industries and activities identified in 40 CFR 122.26(b)(14), as amended, including, without limitation, construction activity including clearing, grading and excavation activities (except for operations that result in the disturbance of less than one acre of total land area which are not part of a larger plan of development or sale).

Infiltration: The process of percolating stormwater into the subsoil.

Infiltration facility: Any structure or device designed to infiltrate retained water to the subsurface. These facilities may be above grade or below grade.

Landowner: The legal or beneficial owner of land, including those holding the right to purchase or lease the land, or any other person holding proprietary rights in the land.

Maintenance agreement: A legally recorded document that acts as a property deed restriction, and which provides for long-term maintenance of stormwater management practices.

Motor vehicle fluid: Any vehicle crankcase oil, antifreeze, transmission fluid, brake fluid, differential lubricant, gasoline, diesel fuel, gasoline/alcohol blend, and any other fluid used in a motor vehicle.

Municipal landfill (or landfill): An area of land or an excavation in which municipal solid waste is placed for permanent disposal, and which is not a land treatment facility, a surface impoundment, an injection well, or a pile (as these terms are defined in regulations promulgated by the state environment department,).

Municipal separate storm sewer system (MS4): The system of conveyances (including roads with drainage systems, municipal streets, flood control dams, retention and detention basins, grate and/or curb inlets, curbs, gutters, ditches, man-made channels, arroyos, agriculture drains, storm drains or designated flow paths) owned, operated or controlled by the city and designed or used for collecting or conveying stormwater, and which is not used for collecting or conveying sewage.

NPDES general permit for stormwater discharges associated with industrial activity (or industrial general permit): The industrial general permit issued by EPA on August 27, 1992, and published in Volume 57 of the Federal Register at page 41304 on September 9, 1992, and any subsequent modifications or amendments thereto.

NPDES general permit for stormwater discharges from construction sites (or construction general permit): The construction general permit issued by EPA on August 27, 1992, and published in Volume 57 of the Federal Register at page 41217 on September 9, 1992, and any subsequent modifications or amendments thereto, or the state's construction general permit if program authority is transferred.

NPDES permit: A permit issued by EPA (or by the state under authority delegated pursuant to 33 USCS Section 1342 (b)) that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

Nonpoint Source: Any source of any discharge of a pollutant that is not a "point source."

Notice of intent (NOI): The document that must be filed with EPA, when required for either the industrial general permit or the construction general permit.

Notice of termination (NOT): The document that must be filed with EPA, when required, for either the industrial general permit or the construction general permit.

Oil: Any kind of oil in any form, including, but not limited to petroleum, fuel oil,, sludge, oil refuse, crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure and oil mixed with waste.

Off-site facility: A stormwater management measure located outside the subject property boundary described in the permit application for land development activity.

On-site facility: A stormwater management measure located within the subject property boundary described in the permit application for land development activity.

Operator: The person or persons who, either individually or taken together, meet the following two criteria;

(1) They have operational control over the facility specifications (including the ability to make modifications in specifications); and

(2) They have the day-to-day operational control over those activities at the facility necessary to ensure compliance with pollution prevention requirements and any permit conditions.

Owner: The person who owns a facility or part of a facility or who is an operator.

Person: Any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity, or any other legal entity; or their legal representatives, agents, or assigns or individual who has control over day to day activities. This definition includes all federal, state, and local governmental entities.

Pesticide: A substance or mixture of substances intended to prevent, destroy, repel, or mitigate any pest, or any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant, as defined by the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Petroleum product: A product that is obtained from distilling and processing crude oil and that is capable of being used as a fuel for the propulsion of a motor vehicle or aircraft, including motor gasoline, gasohol, other alcohol blended fuels, aviation gasoline, kerosene distillate fuel oil, and No. 1 and No. 2 diesel.

Petroleum storage tank (PST): Any one, or combination of, aboveground or underground storage tanks that contain petroleum products and any connecting underground pipes.

Phasing: Clearing a parcel of land in distinct phases, with the stabilization of each phase before the clearing of the next.

Point source: Any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leach ate collection system, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural stormwater runoff.

Pollutant: Dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical waste, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water. The term "pollutant" does not include tail water or runoff water from irrigation or rainwater runoff from cultivated or uncultivated range land, pasture land, and farm land.

Pollution: The alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any water in the state that renders the water harmful, detrimental, or injurious to humans, animal life, vegetation, or property, or to the public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.

Qualified personnel: Persons approved by the director of public works who possess the appropriate competence, skills, and ability (as demonstrated by sufficient education, training, experience, and, when applicable, any required certification or licensing) to perform a specific activity in a timely and complete manner consistent with the applicable regulatory requirements and generally accepted industry standards for such activity.

Recharge: The replenishment of underground water reserves.

Registered professional engineer: A person who has been duly licensed and registered by the state board of registration for professional engineers to engage in the practice of engineering in the state.

Release: Any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the MS4 or the waters of the United States or onto the ground in such a manner that a pollutant may be discharged into the MS4.

Reportable quantity (RQ): For any "hazardous substance," the quantity established and listed in table 302.4 of 40 CFR Part 302 and for any "extremely hazardous substance," the quantity established in 40 CFR Part 355 and listed in appendix A thereto.

Rubbish: Nonputrescible solid waste, excluding ashes, that consist of:

(1) Combustible waste materials, including paper, rags, cartons, wood, excelsior, furniture, rubber, plastics, yard trimmings, leaves, and similar materials; and

(2) Noncombustible waste materials, including glass, crockery, tin cans, aluminum cans, metal furniture, and similar materials that do not burn at ordinary incinerator temperatures (1,600 to 1,800 degrees Fahrenheit).

Sanitary sewer (or sewer): The system of pipes, conduits, and other conveyances which carry industrial waste and domestic sewage from residential dwellings, commercial buildings, industrial and manufacturing facilities, and institutions, whether treated or untreated, to the city sewage treatment plant (and to which stormwater, surface water, and groundwater are not intentionally admitted).

Septic tank waste: Any domestic sewage removed from holding tanks such as vessels, chemical toilets, campers, trailers, and septic tanks.

Service station: Any retail establishment engaged in the business of selling fuel for motor vehicles that is dispensed from stationary storage tanks.

Sewage (or sanitary sewage): The domestic waste and industrial waste that is discharged into the city sanitary sewer systems and passes through the sanitary sewer system to the city sewage treatment plant for treatment.

Site: The land or water area where any facility or activity is physically located or conducted, including land used in connection with the facility or activity such as borrow pits and storage areas and may include land adjacent to the site when utilized by the operator.

Solid waste: Any garbage, rubbish, refuse, or sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including, solid, liquid, semisolid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations, from community and institutional activities, and material from transportation related activities.

Also, solid waste resulting from or incidental to municipal, community, commercial, institutional, or recreational activities, and includes garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and other solid waste other than industrial waste.

Stop work order: An order issued which requires that all construction activity on a site be stopped.

Stormwater: Precipitation runoff, snow melt runoff, and surface runoff and drainage.

Stormwater discharge associated with industrial activity: The discharge from any conveyance which is used for collecting and conveying stormwater and which is directly related to manufacturing, processing, or raw materials storage areas at an industrial plant which is within one of the categories of facilities listed in 40 CFR Section 122.26 (b) (14), and which is not excluded from EPA's definition of the same term.

Stormwater management: The use of structural or non-structural practices that are designed to reduce stormwater runoff pollutant loads, discharge volumes, peak flow discharge rates and detrimental changes in stream temperature that affect water quality and habitat. Stormwater discharges associated with construction or other industrial activity at the facility.

Stormwater pollution prevention plan (SWPPP): A plan required by either the construction general permit or the industrial general permit and which describes and ensures the implementation of practices that are to be used to reduce the pollutant resulting from the activity the plan is designed for.

Uncontaminated: Not containing a harmful quantity of any pollutant.

Underlayment: A material used under landscaping for the purpose of weed control.

Used oil (or used motor oil): Any oil that has been refined from crude oil or a synthetic oil that, as a result of use, storage, or handling, has become unsuitable for its original purpose because of impurities or the loss of original properties but that may be suitable for further use and is recyclable in compliance with state and federal law.

Water in the state (or water): Any groundwater, percolating or otherwise, lakes, ponds, impounding reservoirs, springs, rivers, canals, streams, inside the territorial limits of the state, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or nonnavigable, and including the beds and banks of all watercourses and bodies of surface water, that are wholly or partially inside or bordering the state or inside the jurisdiction of the state. This includes dry washes or arroyos.

Water quality standard: The designation of a body or segment of surface water in the state for desirable uses and the narrative and numerical criteria deemed by the EPA to be necessary to protect those uses.

Water quality volume (WQv): The storage needed to capture and treat 90% of the average bi-annual stormwater runoff volume. Numerically (WQv) will vary as a function of long term rainfall statistical data.

Watercourse: A permanent or intermittent stream or other body of water, either natural or man-made, which gathers or carries surface water.

Waters of the United States: All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce including all waters which are subject to the ebb and flow of the tide; all interstate waters, including interstate wetlands; all other waters the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce; all impoundments of waters otherwise defined as waters of the United States under this definition; all tributaries of waters identified in this definition; all wetlands adjacent to waters identified in this definition; and any waters within the federal definition of "waters of the United States", at 40 CFR Section 122.2, including the Rio Grande River, dry washes, arroyos, but not including any waste treatment systems, treatment ponds, or lagoons designed to meet the requirements of the federal Clean Water Act.

Wetland: An area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetland generally includes swamps, marshes, bogs, and similar areas.

Yard waste: Leaves, grass clippings, yard and garden debris, and brush that results from landscaping maintenance and land-clearing operations.

(Ord. No. 2146, § I, 11-1-04)

Sec. 34-130. General prohibitions.

(a) No person shall introduce or cause to be introduced into the MS4 or waters within the jurisdiction of the city any discharge that is not composed entirely of stormwater.

(b) It is an affirmative defense to any enforcement action for violation of subsection (a) of this section that the discharge was composed entirely of one or more of the following categories of discharges:

(1) A discharge authorized by and in full compliance with an NPDES permit (other than the NPDES permit for discharges from the MS4);

(2) A discharge resulting from firefighting;

(3) Agricultural stormwater runoff;

(4) A discharge from water line flushing, but not including discharge from water line disinfected by super chlorination or other means unless it contains no harmful quantity of chlorine or any other chemical used in line disinfection;

(5) A discharge from residential lawn watering, residential landscape irrigation, or crop irrigation water;

(6) A discharge from a diverted stream flow or natural spring;

(7) A discharge from uncontaminated pumped groundwater or rising groundwater;

(8) Uncontaminated groundwater infiltration (as defined in 40 CFR section 35.2005(20)) to the MS4;

(9) Uncontaminated discharge from a foundation drain, crawl space pump, footing drain or sump pump;

(10) A discharge from a potable water source not containing any harmful substance or material from the cleaning or draining of a storage tank or other container;

(11) A discharge from air conditioning condensation that is unmixed with water from a cooling tower, emissions scrubber, emissions filter, or any other source of pollutant;

(12) A discharge from individual residential vehicle washing;

(13) An uncontaminated discharge from riparian habitat or wetland;

(14) A discharge from water used in street washing provided that the water is not contaminated with any harmful cleaning substance;

(c) No affirmative defense shall be available under subsection (b) of this section if the discharge or flow in question has been determined by the city to be a source of a pollutant or pollutants to the waters of the United States or to the MS4, and written notice of such determination has been provided to the discharger.

(Ord. No. 2146, § I, 11-1-04)

Sec. 34-131. Specific prohibitions and requirements.

(a) The specific prohibitions and requirements in this section are within but do not limit the general prohibition of all the discharges prohibited by the general prohibitions in section 34-130.

(b) No person shall introduce or cause to be introduced into the MS4 any discharge that causes or contributes to causing the city to violate a water quality standard, the city's NPDES permit, or any state or federal issued discharge permit for discharges from its MS4.

(c) No person shall release or cause, allow, or permit the introduction of any of the following substances into the MS4 or the waters within the jurisdiction of the city such that the substance may enter the air or groundwater:

(1) Any used motor oil, antifreeze, or any other motor vehicle fluid;

(2) Any industrial waste or wastewater;

(3) Any hazardous waste, including hazardous household waste;

(4) Any domestic sewage or septic tank waste, grease trap waste, or grit trap waste;

(5) Any wastewater from a commercial carwash facility, and from any commercial vehicle washing, cleaning, or maintenance at any new or used automobile or other vehicle dealership, rental agency, body shop, repair shop, or maintenance facility.

(6) Any wastewater from the commercial washing, cleaning, de-icing, or other maintenance of aircraft;

(7) Any wastewater from a commercial mobile power washer or from the washing or other cleaning of building exterior where the wastewater contains any cleaning substance;

(8) Any wastewater from commercial floor, rug, or carpet cleaning;

(9) Any wastewater from the wash down or other cleaning of pavement that contains any harmful quantity of any cleaning substance; or any wastewater from the wash down or other cleaning of any pavement where any spill, leak, or other release of oil, motor fuel, or other petroleum or hazardous substance has occurred, unless all quantities of such released material have been previously removed;

(10) Any effluent from a cooling tower, condenser, compressor, emissions scrubber, emissions filter, or the blow down from a boiler;

(11) Any ready-mixed concrete, mortar, ceramic, or asphalt base material or hydro mulch material, or runoff from the cleaning of commercial vehicles or equipment containing, or used in transporting or applying, such material;

(12) Any contaminated filter backwash from a swimming pool, fountain, or spa;

(13) Any fountain, swimming pool, or spa water, to include any filter backwash water;

(14) Any discharge from water line disinfected by super chlorination or other means, if it contains any harmful quantity of chlorine or any other chemical used in line disinfection;

(15) Any water from a water curtain in a spray room used for painting vehicles or equipment;

(16) Any contaminated runoff from a vehicle wrecking yard;

(17) Any substance or material that will damage, block, or clog the MS4;

(18) Any release from a petroleum storage tank (PST), or any leachate or runoff from soil contaminated by a leaking PST, or any discharge of pumped, confined, or treated wastewater from the remediation of any such PST release, unless the discharge complies with all state and federal standards and requirements.

(d) No person shall introduce or cause to be introduced into the MS4 or waters within the jurisdiction of the city any quantity of sediment, silt, earth, soil, or other material associated with clearing, grading, excavation or other construction activities, or associated with land filling or other placement or disposal of soil, rock, or other earth materials, in excess of what could be retained on site or captured by employing sediment and erosion control measures to the maximum extent practicable under prevailing circumstances.

(e) No person shall connect a line conveying sanitary sewage, domestic or industrial, to the MS4, or allow such a connection to continue.

(f) Regulation of pesticides, herbicides, and fertilizers.

(1) Any sale, distribution, application, labeling, manufacture, transportation, storage, or disposal of a pesticide, herbicide, or fertilizer must comply fully with all state and federal statutes and regulations including, without limitation, the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and all federal regulations promulgated pursuant to FIFRA; and any other state or federal requirement.

(2) No person shall use, or cause to be used, any pesticide or herbicide contrary to any directions for use on any labeling required by state or federal statute or regulation.

(3) No person shall dispose of, discard, store, or transport a pesticide, herbicide, or fertilizer, or a pesticide, herbicide, or fertilizer container, in a manner that the person knows, or reasonably should know, is likely to cause, or does cause, a harmful quantity of the pesticide, herbicide, or fertilizer to enter the MS4 or waters of the United States.

(g) Used oil regulation.

(1) No person shall:

a. Discharge used oil into the MS4 or a sewer, drainage system, septic tank, surface water, groundwater, or watercourse;

b. Knowingly mix or commingle used oil with solid waste that is to be disposed of in a landfill or knowingly directly dispose of used oil on land or in a landfill or knowingly discharge used oil onto the ground;

c. Introduce used oil into the environment by any method, including application of used oil to a road or land for dust suppression, weed abatement, or other similar use.

(2) A retail dealer who annually sells directly to the public more than five hundred gallons of oil in containers for use off-premises shall post in a prominent place a sign informing the public that improper disposal of used oil is prohibited by law. The sign shall prominently display the City of Las Cruces Recycling Center or any other local used oil disposal locations.

(h) No person shall install an impervious underlayment for landscaping related uses. All underlayment must allow 12 GPM/sq. ft. of water to pass. No underlayment shall be placed at the bottom of a detention or retention pond.

(i) Sites may be allowed to discharge into the MS4, upon mutual agreement with the operator of the MS4. The operator of the MS4 shall be allowed to assess a fee for expenses incurred to meet latest EPA standards for stormwater quality based on the two-year event.

(Ord. No. 2146, § I, 11-1-04; Ord. No. 2194, § I, 5-2-05)

Sec. 34-132. Release reporting and cleanup.

(a) The operator of any facility, vehicle, or other source of any spilling, leaking, pumping, pouring, emitting, emptying, discharging, escaping, leaching, dumping, disposing, or any other release of any of the following quantities of any of the following substances that may flow, leach, enter, or otherwise be introduced into the MS4 or waters of the United States, shall notify the fire department, the city public works department, and the city's floodplain administrator as soon as practicable concerning the incident:

(1) An amount equal to or in excess of a reportable quantity of any hazardous substance, as established under 40 CFR part 302;

(2) An amount equal to or in excess of a reportable quantity of any extremely hazardous substance, as established under 40 CFR part 355;

(3) An amount of oil that either:

a. Violates applicable water quality standards, or

b. Causes a film or discoloration of the surface of the water or an adjoining shoreline or causes a sludge or emulsion to be deposited beneath the surface of the water or upon an adjoining shoreline; or

(4) Any harmful quantity of any pollutant.

(b) The immediate notification required by subsection (a) of this section shall include the following information:

(1) The identity or chemical name of the substance released, chemical classification, and whether the substance is an extremely hazardous substance;

(2) The exact location of the release, including any known name of the waters involved or threatened and any other environmental media affected;

(3) The time and duration (thus far) of the release;

(4) An estimate of the quantity and concentration (if known) of the substance released;

(5) The source of the release;

(6) Any known or anticipated health risks associated with the release and, where appropriate, advice regarding medical attention that may be necessary for exposed individuals;

(7) Any precautions that should be taken as a result of the release;

(8) Any steps that have been taken to contain and clean up the released material and minimize its impacts; and

(9) The names and telephone numbers of the person or persons to be contacted for further information

(c) Within 14 days following such release, the operator of the facility, vehicle, or other source of the release shall submit a written report to the city public works department containing each of the items of information specified above in subsection (b) of this section, as well as the following additional information:

(1) The ultimate duration, concentration, and quantity of the release;

(2) All actions taken to respond to contain, and clean up the released substances, and all precautions taken to minimize the impacts;

(3) Any known or anticipated acute or chronic health risks associated with the release;

(4) Where appropriate, advice regarding medical attention necessary for exposed individuals;

(5) The identity of any governmental/private sector representatives responding to the release; and

(6) The measures taken or to be taken by the responsible person(s) to prevent similar future occurrences.

(d) Any release report required by a state or federal authority containing the information described in subsection (b) and (c) of this section, shall be adequate to meet the reporting requirements of subsection (c) of this section upon submittal to the city.

(e) The notifications required by subsections (b), (c), and (d) of this section shall not relieve the responsible person of any expense, loss, damage, or other liability which may be incurred as a result of the release, including any liability for damage to the city, to natural resources, or to any other person or property; nor shall such notification relieve the responsible person of any fine, penalty, or other liability which may be imposed pursuant to this article or to state or federal law.

(f) Any person responsible for any release as described in subsection (a) of this section shall comply with all state, federal, and any other local law requiring reporting, cleanup, containment and any other appropriate remedial action in response to the release.

(g) Any person responsible for a release described in subsection (a) of this section shall reimburse the city for any cost incurred by the city in responding to the release, within 30 days of being invoiced by the city.

(Ord. No. 2146, § I, 11-1-04)

Sec. 34-133. Stormwater discharge from construction activities.

(a) *Manual.* All operators of construction sites with a disturbed area of one (1) acre or more shall use the methodology on BMPs and SWPPP development from the state department of transportation "Storm Water Management Guidelines for Construction & Industrial Activities" 2002 manual, appendices, and all addenda. The city may, by resolution, adopt a stormwater quality best management practices for construction activities manual. Alternate BMPs may be submitted for consideration at any time.

(b) *Inspection.* Qualified personnel (provided by the operator of the construction site) shall inspect disturbed areas of the construction site that have not been finally stabilized, areas used for storage of materials that are exposed to precipitation, structural control measures, and locations where vehicles enter or exit the site, at least twice a month, (or as required by law) and within 24 hours of the end of a rainfall event that is 0.5 inches or greater. Disturbed areas and areas used for storage of materials that are exposed to precipitation shall be inspected for evidence of or the potential for pollutants entering the drainage system. Erosion and sediment control measures identified in the SWPPP shall be observed by the operator to ensure that they are operating correctly. Where discharge locations or points are accessible, they shall be inspected to ascertain whether erosion control measures are effective in preventing significant impacts to receiving waters or the MS4. Locations where vehicles enter or exit the site shall be inspected for evidence of off-site sediment tracking on a daily basis.

(c) *Erosion and sediment control plan.* All operators of sites of construction activity, including clearing, grading, and excavation activities, that result in the disturbance of one or more acres of total land area, or that are part of a common plan of development or sale within which one or more acres of total land area are disturbed, or who are required to obtain an NPDES permit for stormwater discharges associated with construction activity, shall include an erosion and sediment control plan in the plan set, 18" × 24" minimum.

(d) *Certification.* Any operator who is required to obtain coverage for stormwater discharges from a construction site under the NPDES general permit for stormwater discharges from construction sites ("the construction general permit") shall submit a signed copy of the following certification prior to commencement of work:

I certify under penalty of law that I understand the terms and conditions of the National Pollutant Discharge Elimination System (NPDES) Construction General Permit(63CFR 36506) that authorizes stormwater discharges associated with construction activity from the site identified as part of this certification. Prior to any earthwork or clearing a Notice of Intent (NOI) will be approved by EPA Region Six for this project and I understand I must keep a copy of my Stormwater Pollution Prevention Plan (SWPPP) on site, or posted location thereof, available for public viewing. I understand that my project shall not damage the city of Las Cruces' municipal stormwater system (MS4).

The certification must include:

(1) Address of site.

(2) Legal description of property.

(3) Property owner's name, address and phone.

(4) Contractor's name, address and phone number, if applicable.

(5) SWPPP preparer's name, address and phone.

(6) Start and end date of construction.

(7) Acreage of disturbed area.

(e) *Operator changes.* For stormwater discharges from construction sites where the operator changes, an NOI shall be accepted by EPA prior to the operator commencing work at the site. The NOI must be signed by an officer of the company.

(f) *Additional requirements.* Additional requirements which may be requested from operator could include:

(1) Location of all easements and rights-of-way;

(2) The delineation, if applicable, of the 100-year floodplain, including the flood fringe and floodway, if available, and any on-site or adjacent wetlands;

(3) Percolation test results for all areas with retention ponds or other facilities designed for infiltration and a description of techniques to be used to prevent the clogging of soil pores by fine sediment;

(4) A description of the approximate area of the watershed above the site, including the vegetative coverage and impervious surfaces;

(5) SWPPP;

(6) The NOI.

(g) *Denial and review.* The director of public works may deny approval of any building permit, grading permit, subdivision plat, site development plan, or any other city approval necessary to commence or continue construction, or to assume occupancy, on the grounds that the management practices described in the plans, or observed upon a site inspection by city personnel, are determined not to control and reduce the discharge of sediment, silt, earth, soil, and other materials associated with clearing, grading, excavation, and other construction activities to the maximum extent practicable. Together with written notification to the applicant that the approval sought is denied, the director of public works shall provide the applicant a written explanation of the reasons for the denial. The applicant may request review of the decision made by the director of public works by the development review committee. Any such request for review shall be made within ten days of the date the applicant receives notification of the decision by the director of public works. The decision whether or not to review the decision shall be within the sole discretion of the committee, and may be limited to written materials considered by the committee to be relevant.

(h) *Increase in minimum standards.* The director of public works may require implementation of more than the minimum stormwater standards if arroyos on-site or immediately downstream of a site show evidence of increased flooding, accelerated erosion, channel erosion of sedimentation, as a direct result of conditions on the site. Increased requirements shall be limited to the following on-site measures:

(1) Erosion control measures extended to a broader area of the site than the development area;

(2) Revegetation of highly eroded areas;

(3) Arroyo restoration or other erosion control measures within highly eroded channels; or

(4) A combination of the above measures.

(i) *Waivers.* If a waiver is granted by EPA, the operator will not be required to sign the certification for permit. However he must still comply with the general and specific prohibitions and may still be required to have a SWPPP. Specifically he must ensure no harmful substances are introduced into the MS4 or groundwater by mechanical means. It is the operator's sole responsibility to meet the requirements of the waiver. If the operator fails to meet the requirements of the waiver, he shall be required to comply with this section prior to expiration of the waiver. Failure to do so will constitute a knowing violation of this section.

(j) *Notification or permitting by other agencies.* Activities permitted by this section may also require notification or permitting by other agencies, including but not limited to written approval from the Elephant Butte Irrigation District or other official watercourse related organization, the federal Environmental Protection Agency, the United States Army Corps of Engineers, the Federal Emergency Management Agency (FEMA) and the state environment department. It is the responsibility of each applicant to determine whether additional notification or permitting is required.

(k) *Maintenance responsibilities for stormwater systems.*

(1) The stormwater management system shall be maintained in good condition and promptly repaired. Maintenance shall include the repair and restoration of all grade surfaces, walls, swales, drains, dams, ponds, basins, site restoration measures, associated vegetation, and any other stormwater measure constructed on site. Such maintenance shall be in accordance with the National Pollutant Discharge Elimination System Manual Storm Water Management Guidelines for Construction and Industrial Activities, latest version.

(2) All stormwater management measures and facilities shall be maintained by the fee simple owner of the property or a homeowners association, unless a dedication of the stormwater management system has been required or accepted by the city, in which case, the city shall be responsible for maintenance.

(3) Prior to project construction plan approval by the city, applicants must ensure implementation and maintenance of the BMPs. Applicants shall propose a maintenance agreement assuring that all permanent BMPs will be maintained throughout the "use" of the project site, satisfactory to the public works department.

(4) For all properties, the verification mechanism will include the applicant's signed statement, as part of the construction permit application, accepting responsibility for all permanent BMP maintenance, repair and replacement.

(l) *Maintenance agreement.* The maintenance agreement shall include the following:

(1) *Operation and maintenance (O&M) plan.* The applicant shall include an operation and maintenance (O&M) plan, prepared satisfactory to the city, with the approved maintenance agreement, which describes the designated responsible party to manage the stormwater BMP(s), employee's training program and duties, operating schedule, maintenance frequency, routine service schedule, performance bond up to 15 years, specific maintenance activities (including maintenance of storm drain inlet markers), copies of resource agency permits and any other necessary activities. At a minimum, maintenance agreements shall require the applicant to provide inspection and servicing of all permanent BMPs on an annual basis. The project proponent or city-approved maintenance entity shall complete and maintain O&M forms to document all maintenance requirements. Parties responsible for the O&M plan shall retain records for at least five years. These documents shall be made available to the city for inspection upon request at any time.

(2) *Access easement/agreement.* Unless the applicant accepts permanent maintenance responsibilities, the applicant shall execute an access easement, if needed, to the official maintenance entity that shall be binding on the land throughout the life of the project, until such time that the permanent treatment BMP requiring access is no longer required to be in use, satisfactory to the city.

(3) *Maintenance violations.* If, after notice by the city to correct a violation requiring maintenance work, satisfactory corrections are not made by the owner(s) or responsible party within a reasonable period of time, the city may perform all necessary work to place the facility in proper working condition. The owner(s) or responsible party of the facility shall be assessed the associated costs of the work and shall reimburse the costs for said work.

(Ord. No. 2146, § I, 11-1-04)

Sec. 34-134. Citizen participation.

(a) All citizens are encouraged to report to the city any spills, releases, illicit connections, other instances of anyone discharging pollutants into the MS4 or waters of the United States, and any other violation of this article of which they become aware.

(b) The director of public works, his designee, or city codes enforcement Department shall receive all such citizen reports by telephone, in writing, and in person. A written record of each citizen report will be prepared and kept on file for a period of three years, and a copy of the city's record of the report will be furnished to the reporting citizen upon request. Also upon request, the city will inform the reporting citizen of any action undertaken by the city in response to the citizen's report.

(c) The city shall establish a local telephone number for the reporting of such violations. The number shall be displayed at various locations throughout the city, as designated by the director of public works and city codes enforcement department.

(Ord. No. 2146, § I, 11-1-04)

Sec. 34-135. Authority to issue administrative warnings.

The director of public works, the director of community development and personnel under their supervision as well as city building and project inspectors shall be authorized to issue verbal as well as written administrative warnings to any person, operator or owner who allegedly violates any provision of this article. A written warning may include a stop work order which requires that all construction activity on a site be stopped.

(Ord. No. 2146, § I, 11-1-04)

Sec. 34-136. Criminal penalty.

(a) Any person violating any provision of this article shall be deemed guilty of a petty misdemeanor and upon conviction thereof shall be punished by a fine not exceeding $500.00, imprisonment for a term not exceeding 90 days, or both per violation. Each violation of a particular section of this article shall constitute a separate offense, and each day an offense continues shall be considered a new violation for purposes of enforcing this article.

(b) The imposition of a penalty does not prevent revocation or suspension of a license, permit or franchise or other administrative actions or equitable relief.

(Ord. No. 2146, § I, 11-1-04)

Sec. 34-137. Authority to issue criminal citations.

Officers with the city's codes department or police department shall be authorized to issue criminal citations to any person, operator or owner who allegedly violates any provision of this article.

(Ord. No. 2146, § I, 11-1-04)

Chapter 325 EXCAVATIONS AND CURB CUTS[1]

ARTICLE I. IN GENERAL

Secs. 325-1—325-25. Reserved.

ARTICLE II. EXCAVATIONS

Sec. 325-26. Permission required.

It shall be unlawful to make any excavation in or deposit any earth or other material on any public way without permission in writing from the public works director.

(Code 1988, § 27-31; Ord. No. 1929, §§ I, II, 8-5-02)

Sec. 325-27. Protection of public.

All persons making excavations within the city shall mark the excavations in such a manner as to ensure the safety of vehicular and pedestrian traffic, and such warnings shall be clearly visible both day and night.

(Code 1988, § 27-32)

Sec. 325-28. Refilling.

Immediately upon the completion of any improvement for which an excavation has been made, the excavation shall be refilled and any excess dirt or other matter shall be removed.

(Code 1988, § 27-33)

Sec. 325-29. Restoration of public way.

Upon the refilling of an excavation, the excavator shall restore the public way to its prior condition.

(Code 1988, § 27-34)

Secs. 325-30—325-55. Reserved.

[1]Cross reference(s)—Streets and sidewalks, ch. 26; access and median cuts, § 26-136 et seq.; utilities, ch. 28; buildings and building regulations, ch. 30; design standards, ch. 32; development impact fee, ch. 33; drainage and flood control, ch. 34; subdivisions, ch. 37; zoning, ch. 38.

ARTICLE III. CURB CUTS

DIVISION 1. GENERALLY

Sec. 325-56. Specifications generally

All construction of crossings under this article shall be done in a manner and with such materials as are prescribed by the specifications of the public works department existing at the time such construction is accomplished at the expense of the owner of the abutting property.

(Code 1988, § 27-51; Ord. No. 1929, §§ I, II, 8-5-02)

Sec. 325-57. Light traffic commercial areas.

In all light traffic commercial areas, which shall include all office buildings or other commercial buildings not more than two stories in height, the width of curb cuts shall be a minimum of 12 feet and a maximum of 25 feet. No curb cuts shall be closer than five feet from side property lines. All other requirements shall be the same as in residential areas.

(Code 1988, § 27-52)

Sec. 325-58. Heavy traffic commercial areas.

(a) In all heavy traffic commercial areas, which include but are not limited to all drive-in type establishments, no curb cuts shall be closer than five feet from side property lines. The width of curb cuts shall be a minimum of 20 feet and a maximum of 35 feet, provided that the public works department may approve a curb cut over 35 feet in width when justified after a complete study of the following factors:

(1) Traffic volume.

(2) Pedestrian volume.

(3) One-way streets.

(4) Type of business making the request.

(b) All other requirements shall be the same as in residential areas.

(Code 1988, § 27-53; Ord. No. 1929, §§ I, II, 8-5-02)

Sec. 325-59. Residential areas.

In all residential areas, which shall include all dwelling units, single-family, apartments or otherwise, the following shall apply:

(1) The minimum width of curb cuts shall be 12 feet and the maximum width shall be 22 feet.

(2) A minimum of 22 feet of the standing curb must remain between any two curb cuts on the same lot or single parcel of land. If more than one lot or parcel of land is being put to a single land use, this requirement shall apply to that land use.

(3) The minimum setback for the building from the property line in an apartment parking area shall be 30 feet. Curb cuts and ramps for the handicapped shall be provided in new construction.

(4) No double or circle drives shall be installed or maintained unless the property shall have a minimum of 60 feet of frontage on the street affected thereby.

(5) Corner property curb cuts shall be no closer to the intersecting street than ten feet from the property line of the intersecting street, but the driveway shall not encroach on the corner curb return of intersections. No driveway shall be allowed on the one-way turning roadways of channelized intersections. Where traffic volumes are heavy or where the intersection is signalized, the corner clearance shall be at least twice the stated minimum value on the stopping side of the intersection.

(Code 1988, § 27-54)

Sec. 3~~2~~5-60. Minimum parking lot dimensions.

For the purpose of this article, minimum parking lot dimensions shall be as follows:

Parking angle (degrees)	Stall width (feet)	Stall depth (feet)	Width of aisle (feet)
30	9	17.3	11
45	9	18.8	13
60	9	21	18
90	9	19	27

(Code 1988, § 27-55; Ord. No. 1929, §§ I, II, 8-5-02)

Sec. 3~~2~~5-61. Appeals.

If any applicant is aggrieved by the refusal of the city public works department to grant any permit under this article or if any owner or occupant shall be aggrieved by receipt of the notice of proposed revocation of a permit, the applicant, owner, or occupant may, within ten days after denial of the application or receipt of notice, appeal the decision of the city public works department to the city council by filing written notice thereof with the city clerk within the stated time.

(Code 1988, § 27-56; Ord. No. 1929, §§ I, II, 8-5-02)

Sec. 3~~2~~5-62. Abandoned and nonconforming curb cuts.

(a) This article shall not be retroactive as to any curb cuts or crossings in existence and in actual use as of October 7, 1974, except as provided in this section.

(b) If any vehicular or other sidewalk crossing is clearly abandoned as a crossing or no longer used for its intended purpose, any permit granted for the use of the crossing as such shall be subject to revocation by the city public works department only after 30 days' written notice of such proposed revocation has been

given to the owner of the property to which the crossing is appurtenant. The owner's name and address will be ascertained from the county tax rolls. Notice will also be effected by giving a copy of the written notice to the occupant of the premises, if any, and if such occupant is other than the owner. It shall be sufficient notice under this section to make delivery of the notices by certified mail with return receipt requested. If the name and address of the owner cannot be reasonably ascertained from the current county tax rolls and the premises are unoccupied, it shall be sufficient notice under this section to publish the notice in English in a newspaper of general circulation in the city once a week for four consecutive weeks.

(c) All curb cuts on designated thoroughfares as shown on the city thoroughfare plan, which are determined by the city public works department to constitute a traffic hazard and which become nonconforming as of October 7, 1974, shall be subject to revocation as provided in subsection (b) of this section.

(Code 1988, § 27-57; Ord. No. 1929, §§ I, II, 8-5-02)

Sec. 3~~2~~5-63. Conformance requirements.

If the city public works department has revoked any permit for curb cut or use of a sidewalk crossing under section 35-62, such crossing shall be removed by and at the expense of the owner of the property to which the curb cut or crossing is appurtenant. Furthermore, the curb and sidewalk shall be properly restored after the city public works department has given written notice to the persons and in the manner specified in section 35-62, directing such removal and proper restoration of the curb and sidewalk. The time allowed for removal and restoration by the owner or occupant shall be 30 days after notice in the cases provided for in section 35-62(b) and two years after notice in the cases provided for in subsection 35-62(c), provided that, upon resolution duly passed by the city council that a traffic hazard exists at a nonconforming curb cut which causes immediate and imminent danger to life, safety or property, conformance may be required within a lesser period of time set by the city council, but in no event less than 30 days. Each day's delay of the owner in complying with such notice after the expiration of the time specified shall constitute a separate violation of this article. If conformance is not attained within the time allotted, the city may make the necessary removal and restoration at the cost of the owner, and the cost thereof shall constitute a lien on the property affected.

(Code 1988, § 27-58; Ord. No. 1929, §§ I, II, 8-5-02)

Secs. 3~~2~~5-64—3~~2~~5-90. Reserved.

DIVISION 2. PERMIT

Sec. 3~~2~~5-91. Required.

The owner of any land desiring to construct a crossing of any sidewalk or public right-of-way for use by trucks, tractors, trailers, buses, automobiles or any other vehicles so as to enter any private or other alley or way on such premises or so as to give access to any entrance or exit to any such premises shall first obtain a permit from the city public works department.

(Code 1988, § 27-71; Ord. No. 1929, §§ I, II, 8-5-02)

Sec. 325-92. Application.

Application for a permit required by this division shall be made on forms provided by the public works department and shall be accompanied by a plan showing accurately the extent and character of the crossing proposed to be constructed.

(Code 1988, § 27-72; Ord. No. 1929, §§ I, II, 8-5-02)

Sec. 325-93. Consideration, approval.

After examination and consideration of the application for a permit required by this division and the plan and examination of the premises if deemed necessary, the public works department is authorized and directed to approve a permit for the construction and use of the right-of-way or crossing over the sidewalk, if the use of the right-of-way or crossing will not unreasonably interfere with the proper and safe use of the sidewalk or right-of-way to be crossed or the proper and safe use of the street or other public way to which ingress and egress is made from private premises. The public works department shall make its determination based on the standards specified in this article. No construction shall be made until such permit has been granted.

(Code 1988, § 27-73; Ord. No. 1929, §§ I, II, 8-5-02)

Secs. 325-94—325-120. Reserved.

ARTICLE IV. WORK AREA TRAFFIC CONTROL[2]

Sec. 325-121. Purpose.

The purpose of this article is to:

(1) Set forth traffic control requirements to be observed by all those who perform work in a public street;

(2) Provide safe and effective work areas; and

(3) Warn, control, protect, and expedite vehicular and pedestrian traffic.

(Code 1988, § 28-26)

Sec. 325-122. Applicability.

Unless otherwise stated, the requirements specified in this article are applicable to all private contractors, utility companies, and city work crews performing work on or within public rights-of-way within the city limits.

(Code 1988, § 28-27)

[2]Cross reference(s)—Traffic, ch. 27.

Sec. 325-123. Requirements.

All traffic control performed within public right-of-way shall conform to chapter 6, entitled "Standards for Work Zone Traffic Control," as set forth in the Manual on Uniform Traffic Control Devices, published by the federal highway administration.

(Code 1988, § 28-28)

Sec. 325-124. Responsibilities.

(a) *Generally.* Construction work within public rights-of-way is performed by private contractors, utility companies and city work crews, each with distinct and separate responsibilities, as discussed in this section.

(b) *Private contractors.* Private contractors, when working in the public right-of-way, shall be required to submit a traffic control plan to the public works department, in conjunction with the request for a permit from the community development department. This traffic control plan shall conform to the "Standards for Work Zone Traffic Control," as outlined in the Manual on Uniform Traffic Control Devices. Also, the traffic control plan shall include the time and date of the construction work.

(c) *Private contractor under contract with city.* Private contractors, when working under contract with the city for construction work, shall be required to follow the specific traffic control plan outlined in the construction plans. This traffic control plan shall conform to the "Standards for Work Zone Traffic Control," as outlined in the Manual on Uniform Traffic Control Devices. The contract administrator for the city shall be responsible for ensuring that the contractor follows the prescribed traffic control plan. The public works department will provide review of the project plans prior to the letting of the bid and will be available to inspect the traffic control devices during construction, as requested by the contract administrator.

(d) *Utility companies.* Utility companies, when working in the public right-of-way, shall be required to notify the public works department of any construction work that will adversely affect traffic and that will be in place for longer than 24 hours in duration. All traffic control shall conform to the "Standards for Work Zone Traffic Control," as outlined in the Manual on Uniform Traffic Control Devices. As required, the public works department will inspect the work site for conformance with the Manual on Uniform Traffic Control Devices.

(e) *City work crews.* City work crews, when working in the public right-of-way, shall be required to conform to the "Standards for Work Zone Traffic Control," as outlined in the Manual on Uniform Traffic Control Devices. Each city department that performs work in the public right-of-way shall be required to designate an employee responsible for ensuring that proper traffic control procedures are followed within the department. If proper traffic control procedures are not being followed, the city safety officer shall place the department on notice that proper traffic control procedures are not being observed. If the problem is not corrected, appropriate disciplinary measures shall be taken.

(f) *Notification by private contractors, utility companies and city work crews.* Private contractors, utility companies, and city work crews are responsible for notification to and coordination with all agencies that the traffic control will affect, including the following:

(1) Police department.

(2) Fire and emergency services department.

(3) Utility companies, when applicable.

(4) City public services department.

(5) City public works department.

(6) City risk management section.

(7) Reserved.

(8) City public information officer.

(Code 1988, § 28-29; Ord. No. 1929, §§ I, II, 8-5-02)

Sec. 3~~5~~2-125. Authority.

Under this article, the contract administrator shall notify the private contractor or utility company of any deficiencies in traffic control. The private contractor or utility company will have two hours from the time of notification to correct the discrepancies. If the deficiencies are not corrected, the problem shall be turned over to the police department for enforcement, as outlined in section 35-126.

(Code 1988, § 28-30; Ord. No. 1929, §§ I, II, 8-5-02)

Sec. 32~~5~~-126. Enforcement.

(a) Every violation of this article constitutes an offense. Each day a violation of this article exists constitutes a separate offense.

(b) The police department is authorized to issue citations for violations of this article and to file criminal complaints in municipal court, alleging violations of this article.

(c) The municipal court may impose a fine for each offense, not to exceed $300.00 for each day the violation is found to have occurred. Failure to comply with any such orders for compliance or other judgements of the municipal court, including failure to pay fines previously imposed, shall constitute contempt of court and may be separately punished at the discretion of the municipal court.

(Code 1988, § 28-31)

Chapter 36 SIGNS[1]

ARTICLE I. IN GENERAL

Sec. 36-1. Purpose.

The purpose of this chapter 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 chapter to maintain property values and to create a more aesthetically pleasing community, through the preservation of the natural beauty and environment of the city, by preventing the over concentration, improper placement, and density of signs, but keeping in mind the importance of signage to the business community, and the vital element it is to the free enterprise system.

(Ord. No. 2575, § II(exh. A), 4-26-10)

Sec. 36-2. Scope.

This chapter shall apply to all signs, as that term is defined in section 36-3, within the city limits.

(Ord. No. 2575, § II(exh. A), 4-26-10)

Sec. 36-3. 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 (See appendix 2 for examples and illustrations):

Abandoned sign means an on- or off-premises sign that 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 is displayed.

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[1]Editor's note(s)—Ord. No. 2572, § II(exh. A), adopted Apr. 26, 2010, amended ch. 36 in its entirety to read as herein set out. Former ch. 36, §§ 36-1—36-119, and appenices 1 and 2, pertained to similar subject matter and derived from: Ord. No. 1128, adopted May 18, 1990; Res. No. 92-084, adopted Oct. 19, 1992; Ord. No. 1292, adopted Dec. 21, 1992; Ord. No. 1297, adopted Feb. 2, 1993; Ord. No. 1444, adopted Apr. 3, 1995; Ord. No. 1476, adopted Sept. 3, 1995; Ord. No. 1508, adopted Feb. 5, 1996; Ord. No. 1509, adopted Feb. 5, 1996; Ord. No. 1526, adopted Apr. 1, 1996; Ord. No. 1725, adopted Mar. 1, 1999; Ord. No. 1854, adopted Feb. 5, 2001; Ord. No. 2111, adopted June 21, 2004; and Ord. No. 2141, adopted Oct. 4, 2004; Ord. No. 2304, § II, adopting May 15, 2006; and Ord. No. 2440, § I, adopted Mar. 24, 2008.

Cross reference(s)—Advertising, ch. 3; merchandising, advertising and signs in parks, § 20-37; streets and sidewalks, ch. 26; buildings and building regulations, ch. 30; development impact fee, ch. 33; subdivisions, ch. 37; zoning, ch. 38.

Accessory use sign means any sign that is printed on or included in the design of any object which cannot be construed as being a building or freestanding sign (i.e., vending machines, menu signs, ATM machines, etc.).

Advertising means the action of calling something to the attention of the public by verbal or visual presentation.

Athletic field means a wide stretch of open land used for outdoor games such as baseball, football and soccer.

Attached sign means any sign which is fastened to, connected to, or painted on and wholly or partially supported by a building.

Awning means a hood or cover which projects from the wall of a building and is composed of rigid or nonrigid materials.

Awning sign means a sign which is fastened to or painted on an awning.

Banner means a sign composed of lightweight, flexible material on which letters, symbols or pictures are painted or printed.

Bench sign means any sign affixed to or painted on a functional bench.

Billboard means an 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 means an allowance for additional sign area as an incentive to reduce the legal height permitted, or to remove nonconforming signs.

Business/service center means a group of two or more businesses planned, constructed, owned and managed independently or as a total entity which share access, parking or landscaping.

Canopy or *marquee* means a permanent, roof-like shelter extending from part or all of a building or independent of a building.

Canopy sign means a sign attached to or painted on a canopy.

Clear sight triangle means a triangular area of unobstructed vision at street intersections and at entrances/exits, permitting a vehicle driver to see approaching vehicles to the right or left. Refer to article VI, division 3 of the City of Las Cruces Design Standards.

Codes means any other applicable city, state or federal codes.

Collector street means a street which collects traffic from local streets and connects with major and minor arterials.

Construction/renovation sign means 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 means the verbal, visual or pictorial portion of any sign.

Corporate pertains to any organization incorporated pursuant to law.

Decorations means any display which calls attention to a community-organized event or to a state or national holiday.

Development identification sign means 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 means any sign erected for the convenience of the public, such as the directing traffic movement, parking or identifying restrooms, public telephones, walkways and other similar features or facilities, and bearing no advertising message, excluding those erected by the United States Department of Transportation and the state highway and transportation department.

Flag/decorative means any rectangular display constructed of lightweight material having no logo or advertising message printed or painted on it.

Freestanding sign means any sign attached to or supported from the ground, and not attached to a building.

Garage sale sign. See "Private sale or event sign".

Gate entrance sign means any sign installed or constructed over the entrance to the premises in specific zoning districts as described in this chapter.

Government sign means any sign erected by any city, county, state or federal agency or its designee, setting forth information pursuant to law.

Ground sign means any sign which is attached to either the ground or to a footing set flush with the ground.

House or building sign or *nameplate* means a sign limited to identifying the street name, building or property number, and the name of the owner or occupant of the building or property.

Illuminated sign means any sign which is lighted internally, externally or by lights directed towards the sign by any light source.

Information sign means any sign whose purpose is to indicate the business, hours of operation or similar identification information.

Legal notice means any sign required by law or pursuant to a court order.

Local street means a street designed to provide access to abutting property and local streets, and to discourage through traffic.

Logo means an identifying symbol used for advertising purposes.

Maintenance means the total upkeep of a sign, structurally and electrically, in terms of safety, and cosmetically, in terms of visual attractiveness.

Major arterial means a street with access control, channelized intersections, restrictive parking, and which distributes and collects traffic to and from minor arterials.

Marquee or *canopy.* See Canopy.

Marquee sign means a sign attached to, mounted on or painted on a marquee.

Minor arterial means 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 means any sign located on a complex site, limited in time until the complex ceases to be a model complex.

Mural means 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 means any rectangular display constructed of lightweight material used to identify a nation, state or corporation.

Neighborhood sign means a sign erected for the convenience of the public, directing traffic to and/or identifying specific neighborhoods and bearing no logo, tagline or advertising message,

Nonconforming sign means any sign legally erected and permitted in compliance with codes at the time it was erected and permitted, but which does not conform to current codes or this chapter.

Off-premises sign means a 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 means a sign which advertises or directs attention to a business, product, service or activity which is available on the premises where the sign is located.

Pennant means a display made of a lightweight material which tapers to a point, having no logo or advertising message printed on it.

Point-of-sale sign means any sign which is located or attached directly to the product to be sold.

Pole sign means any sign whose primary means of support is one or more poles set into a concrete footing, located at or below ground level.

Political sign means a sign pertaining to any national, state or local election and/or caucus.

Portable sign means a freestanding sign not permanently affixed, anchored or secured to the ground or a building, which may be rolled or moved about.

Private sale or event sign means a temporary sign advertising private sales of personal property at garage, yard or estate sales and the like; private fundraising events, such as a nonprofit carwash, or food/clothing drive, etc.

Product identification sign means any sign used to identify the supplier/contractor of the construction product being used.

Prohibited sign means any sign not expressly permitted within this chapter, or any sign which is specifically prohibited in this chapter, as provided in section 36-10.

Promotional display, commercial means special advertising for grand openings, anniversaries, special or seasonal events, and which are for a limited time, in addition to the legal signage permitted.

Promotional display, residential means special advertising using pennants, flags, streamers, banners, open house signs and other similar signs, the duration of an open house or similar showing.

Public area means any bus bench, bus shelter, landscaped median, trail, park, or arroyo duly recognized by the city.

Real estate broker identification sign means a sign used at a broker's residence for identification purposes as prescribed by state law.

Real estate directional sign means a sign which advertises or directs attention to real property not available on the premises where the sign is located.

Real estate sign means a sign intended to advertise the financing, development, sale, transfer, lease, exchange or rent of real property.

Roof sign means any sign which is attached to the roof of a building or structure.

Setback means the distance required from the property line or from other buildings/structures or businesses.

Shopping center means 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 means 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.

Sign administrator means a city employee so designated to administer and enforce the terms and conditions of this chapter, the codes, and all other provisions of laws pertaining to signs.

Special use sign means any sign intended for use by establishments requiring a special use permit pursuant to chapter 38.

Streamers means a display made of light, flexible material, consisting of long, narrow, wavy strips having no logo or advertising message printed or painted on it.

Street segment means the length of a roadway located between intersections of two collector or higher classified roadways based upon the Las Cruces Metropolitan Planning Organization designation.

Structural requirements means the safety standards that apply to those signs governed by the requirements in the building code and other companion documents.

Temperature/time/date sign means any sign with the purpose of displaying the temperature, time, date and logo/name.

Temporary sign means any sign intended for a limited period of display.

Total front footage means the total length of a property fronting on any side of a public street, or the total length of a building on which a sign is allowed.

Trademark/label/name means identification applied or attached to each permitted sign to designate the manufacturer and installer.

Unlawful sign means any sign ever erected which does not have a valid permit or, after erection, did not comply with all applicable provisions of the permit under which it was constructed and erected, or did not comply with all provisions of codes, or which does or did not meet the necessary requirements to be considered nonconforming.

Unlicensed commercial sign means any sign erected by an individual, group, organization or club for fundraising or other monetary gain.

Unsafe sign means any sign identified by the sign administrator as being improperly constructed and installed, erected or secured, thereby subject to falling or creating a safety hazard, with supported findings.

Variance means an authorization granted to a property owner to depart from the numerical requirements of the zoning regulations (as applied here, this chapter).

Vehicle sign means a sign painted on or attached to either a vehicle or to a trailer designed to be pulled behind a motorized vehicle, which relates to a business, activity, use, service or product.

Wall sign means any sign affixed flush to or painted upon the wall of any building.

Window sign means any sign that is applied or attached to the exterior or interior of a window or a window frame.

(Ord. No. 2575, § II(exh. A), 4-26-10)

Cross reference(s)—Definitions generally, § 1-2.

Sec. 36-4. Calculation of sign area.

(a) The area of an attached sign is measured as the area within the smallest rectangle or combination of rectangles which contains all text, symbols or other graphic elements, plus any background area which does not appear as a continuous portion of the building surface that highlights a sign.

(b) 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 sides are back to back or separated by an angle of 45 degrees or less. If the two sides are not of equal size, the larger side shall be measured.

(Ord. No. 2575, § II(exh. A), 4-26-10)

Sec. 36-5. Variances.

(a) There shall be no flexible development standards issued for any section addressed in this chapter.

(b) Variance requests shall follow procedures and requirements outlined within chapter 38.

(Ord. No. 2575, § II(exh. A), 4-26-10)

Sec. 36-6. Structural requirements.

(a) All signs shall conform to the structural design requirements set forth in the International Building Code and companion documents.

(b) Sign permit applications for freestanding signs exceeding 20 feet in height, measured from ground level, shall be accompanied by an engineer's design drawing showing the appropriate calculations. The drawing shall be stamped by an engineer certified in the state.

(Ord. No. 2575, § II(exh. A), 4-26-10)

Sec. 36-7. Maintenance and removal.

(a) *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 chapter.

(b) *Unsafe signs.* If, in the opinion of the sign administrator, 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(s) responsible for the sign (the owner or lessee) and the land owner. The person so notified shall correct the unsafe condition of the sign within seven days in conformance with this chapter.

(c) *Maintenance.*

(1) All signs shall be kept in good repair, both structurally and in appearance. All braces, bolts, clips, fastenings and the supporting frame shall be securely affixed to the support structure or wall and shall be free from insect infestation, rot or other deterioration.

(2) 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 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. This subsection shall not be construed to alter the prohibition on the replacement of a nonconforming sign, nor shall this subsection be construed to prevent the changing of the message of a sign.

(d) *Repair, alteration or removal.* Any written notice to repair, alter or to remove a sign will be sent via certified mail by the sign administrator to the land owner and to the sign owner lessee, or person(s) responsible for the sign. If such order is not acted on within seven days, the sign administrator may initiate proceedings contained in this chapter to revoke the permit and remove the sign at the expense of the land owner, sign owner, lessee, or person(s) responsible for the sign.

(e) *Unlawful signs.* If any sign is installed, erected, constructed or maintained in violation of any of the terms of this chapter, or the applicable code the sign 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 and order the designated responsible party to bring the sign into compliance with this chapter and any other applicable codes within 14 days from the date of the warning. Only one warning per violation will be issued. The warning shall remain in effect for the duration of the business.

(Ord. No. 2575, § II(exh. A), 4-26-10)

Sec. 36-8. Nonconforming signs.

(a) Subject to the remaining restrictions of this section, nonconforming signs that were otherwise lawful on the effective date of the ordinance from which this chapter derives may be continued.

(b) No person may engage in any activity that causes an increase in the extent of nonconformity of a nonconforming sign. Without limiting the generality of this statement, no nonconforming sign may be enlarged or altered in such a manner as to aggravate the nonconforming condition, nor may illumination be added to any nonconforming sign.

(c) Any change in the use of any building or property on which a nonconforming sign is located will require that all nonconforming signs on that property be brought into compliance with all applicable sections of this chapter within nine months of the change.

(d) A nonconforming billboard may be reconstructed on the same property so as to meet the size, height, configuration, and support requirements of this Code without losing its legal nonconforming status. To the extent possible, setback and separation requirements will be met. A sign permit is required in order to rebuild a nonconforming sign under this provision.

(e) A nonconforming on-premises sign may not be moved or replaced except to bring the sign into conformity with this chapter to the extent possible. For the purpose of this subsection, the term "replaced" means the replacing of any or all parts of a sign that would extend the normal life span of the sign. An example is replacing wood pole supports with metal I-beam supports.

(f) If a nonconforming sign is destroyed, damaged or in need of repair, it may not thereafter be repaired, reconstructed or replaced except in conformity with all the sections of this chapter and the remnants of the former sign structure shall be cleared from the land. For purposes of this subsection, a nonconforming sign is destroyed, damaged or in need of repair if damaged up to 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.

(g) The message of a nonconforming sign may be changed so long as this does not create any new nonconforming issues (for example, by creating an off-premises sign under circumstances where such a sign would not be allowed).

(h) If a nonconforming 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 90 days after such abandonment by the sign owner, owner of the property where the sign is located or other party having control over such sign.

(i) If a nonconforming billboard remains blank for a continuous period of 90 days, that billboard shall be deemed abandoned and shall be altered to comply with this chapter 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:

(1) It advertises a business, service, commodity, accommodation, attraction or other enterprise or activity that is no longer operating or being offered or conducted;

(2) The advertising message it displays becomes illegible in whole or substantial part; or

(3) The advertising copy has been removed.

(j) The city shall reserve the right to remove a nonconforming sign in accordance with state law.

(k) This section shall not apply to any benches placed under the terms of any contract in effect on the date effective date of the ordinance from which this chapter derives.

(Ord. No. 2575, § II(exh. A), 4-26-10)

Sec. 36-9. Permits.

(a) Sign permits shall be required for all signs unless otherwise stated in this chapter.

(b) Signs not requiring permits under this chapter shall be as follows:

(1) Accessory use signs.

(2) Change of copy on legally established signs.

(3) Construction/renovation signs (those not exceeding 16 square feet in sign area).

(4) Decorations for national holidays or community-wide festivals and fiestas.

(5) Directional signs.

(6) Flags/decorations.

(7) Garage sale signs.

(8) Government signs.

(9) House or building signs or nameplates.

(10) Information signs.

(11) Legal notices.

(12) Model complex signs (those not exceeding 16 square feet in sign area).

(13) National, state and corporate flags following accepted flag protocol.

(14) Pennants.

(15) Point-of-sale signs.

(16) Political signs, except billboards.

(17) Private sale or event signs.

(18) Product identification signs.

(19) Promotional displays, residential.

(20) Railroad signs.

(21) Real estate broker identification signs.

(22) Real estate directional signs.

(23) Real estate signs (those not exceeding 16 square feet in sign area).

(24) Streamers.

(25) Vehicle signs.

(Ord. No. 2575, § II(exh. A), 4-26-10)

Sec. 36-10. Prohibited signs.

(a) Any sign not expressly permitted within this chapter is prohibited.

(b) A sign placed or painted on any motor vehicle, recreational vehicle, trailer or other movable device that reasonably indicates the use of such vehicle, trailer or device as a sign is prohibited. This includes the parking of such vehicle, trailer or device in such a manner as to constitute a sign. This does not include vehicles, etc., used in the course of normal business activities.

(c) Any sign constructed to resemble any official marker or sign normally erected by a city, state or federal government agency or a sign using words, phrases, symbols or characters in such a manner as to interfere with, mislead or confuse traffic is prohibited.

(d) A sign advertising activities that are illegal according to federal or state laws, rules or regulations and county or city ordinances or resolutions is prohibited.

(e) Any sign erected on, attached to or painted on retaining walls, fences, rocks or natural features is prohibited. This prohibition shall not include development identification signs placed on walls used for landscaping purposes and athletic field signs as defined in section 36-88.

(f) Any sign illegally placed, constructed or maintained is prohibited.

(Ord. No. 2575, § II(exh. A), 4-26-10)

Sec. 36-11. Placement.

(a) No sign shall be permitted to violate the clear sight triangle as referenced in article VI, division 3 of the City of Las Cruces Design Standards.

(b) No sign shall obstruct any door, stairway, fire escape or opening intended to provide ingress and egress for any building or structure.

(c) 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 obstructs or interferes with the clear view of any traveler on any street.

(d) 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 in this chapter.

(e) 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.

(f) The city, civic groups and nonprofit entities who desire to utilize the city utility poles for placement of banners or other signs or attachments may do so only for a large event, celebration or festival of city-wide interest or other community or county-wide attraction. Such events, celebrations, festival or attraction are those events, celebrations, festivals or attractions which are designed to attract large numbers of city residents and tourists, may occur on an annual or semi-annual basis and which promote the city's history, natural and cultural beauty, art, cuisine and/or athletic events (e.g., the Whole Enchilada Festival, Gus Macker Basketball Tournament, Border Book Festival, the Renaissance Fair, the Fourth of July).

(1) A special sign permit shall be obtained, indicating the dates of display, number of banners to be displayed, location(s) of display, etc., and must be approved by the city manager or designee.

(2) All banners shall be installed and removed either by the city or the entity requesting the display.

a. If installed and removed by the city, permit fees shall be based on the number of banners to be installed/removed at a rate approved by the city council (Resolution No. 00-360). Permit fees shall be paid by the applicant upon permit approval and in advance of sign installation.

b. If installed and removed by the entity requesting the display the city requires a minimum of $1,000,000.00 insurance, with the city being named as an additional insured party and the entity must provide a hold harmless indemnity agreement, not holding the city responsible for any accidents or loss in the installation/removal of the banners.

(3) Banners shall be restricted to placement on city-owned utility/light poles only.

(4) Banners shall only be displayed along major arterials, as defined by the city metropolitan planning organization transportation plan.

(5) The maximum length of display shall be determined by the length of the event being advertised. Banners are permitted to be displayed 1½ times the length of the event being advertised. The one-half amount of days is permitted to be utilized prior to the event. (Example: Event is ten days, display permitted 15 days total, banners can be displayed five days prior to event.)

(6) Any aggrieved person, department, commission, board, or bureau that is affected by a decision of an administrative official in the administration of this section may appeal such decision to the city council. Such appeal must be in writing within 15 days after the decision and must be filed with the city clerk.

(g) Any sign extending over an area intended for pedestrian use shall not be less than seven feet, four inches above the finished grade below it.

(h) No sign shall be placed on any property without written consent of the owner or the owner's authorized agent.

(i) No part of any sign may protrude into the setback except as follows:

(1) If the right-of-way extends 15 feet beyond the back of the curb, a sign may be placed on the property line. A written agreement between the city and the property owner shall be initiated to ensure that the sign will be relocated at the owner's expense if the roadway is ever widened at the sign location.

(2) 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.

(j) 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 subsection.

(k) No temporary or permanent sign shall be placed on public property, with the exception of signs lawfully permitted. Any unlawful sign found in a public right-of-way or on public property shall be seized, and removal is authorized.

(Ord. No. 2575, § II(exh. A), 4-26-10)

Sec. 36-12. Lighting.

(a) Light from any light source intended to illuminate a sign shall be shaded, shielded, or directed in such a way so that the light intensity or brightness shall not adversely affect the safe vision of 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.

(b) Signs which face residentially zoned lots having a linear distance of 75 feet or less from that zone shall not be illuminated.

(c) Signs in residential zones shall not be illuminated with the exception of house or building sign or nameplate.

(Ord. No. 2575, § II(exh. A), 4-26-10)

Sec. 36-13. Enforcement.

(a) *Violations and penalties.* Any person who shall violate any section of this chapter shall be guilty of an offense and shall, upon conviction, be punished by a fine of not less than $50.00 and not more than $300.00 for each violation. Each day in which any violation shall occur shall constitute a separate offense. In addition, the city attorney is authorized to take all actions, both legal and equitable, necessary to ensure compliance with this chapter.

(b) *Enforcement authority.*

(1) The sign code administrator or designee shall have the authority to remove any sign that is in the public right-of-way and in violation of code. The sign owner will be contacted about the situation and will be allowed 30 calendar days to collect the removed sign or signs. After set time, any remaining sign or signs shall be recycled.

(2) The police department, through its codes enforcement division, is authorized to issue citations for violations of this chapter and to file criminal complaints in municipal court alleging violations of this chapter.

(3) The municipal court may impose a fine for each offense, not to exceed $300.00 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 of the court to remove structures it finds in violation of this chapter. Failure to comply with any such orders for removal or other judgments of the municipal court, including failure to pay fines previously imposed, shall constitute contempt of court and may be separately punished at the discretion of the municipal court.

(Ord. No. 2575, § II(exh. A), 4-26-10)

Secs. 36-14—36-40. Reserved.

ARTICLE II. ON-PREMISES SIGNS[2]

Sec. 36-41. General conditions.

The following general conditions apply to on-premises signs:

(1) *Accessory use sign.*

a. The primary purpose of the sign must be corporate/business identification and not advertising per se.

b. The object into which the sign is incorporated must serve a functional purpose and be an item which is normally associated with the type of business or enterprise for which it is being used.

(2) *Attached sign.* No attached sign shall extend beyond the highest point of a roofline, or project beyond the edge of any wall.

(3) *Decorations.* Any display shall be removed no later than five days after the event/holiday.

(4) *Development identification sign (permanent).*

a. The maximum sign area shall not exceed 32 square feet.

b. The maximum height shall not exceed ten feet.

c. The sign may be placed in the public right-of-way, provided prior approval has been granted by city manager or official designee.

d. This sign may be used in addition to any other freestanding sign allowed pursuant to this chapter.

(5) *Directional sign.* Directional signs visible from the public right-of-way (i.e., entrance/exit) shall not exceed six square feet in sign area and four feet in height.

(6) *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 lot.

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.

(7) *Freestanding sign.* All signs classified as freestanding are limited to locations along street segments meeting specific zoning criteria further defined elsewhere in this chapter.

(8) *Gate entrance sign.*

a. The sign may identify the owner, resident or name of a certain parcel of property (i.e., John Doe Ranch, etc.).

[2]Cross reference(s)—Licenses, taxation and miscellaneous business regulations, ch. 16.

b. Total sign height, including poles, shall not exceed 20 feet. The sign face itself shall not exceed three feet in height and 30 feet in width.

(9) *Information sign.* Signs visible from the public right-of-way shall have a maximum size of four square feet in sign area.

(10) *Legal notices.* These signs are exempt from the requirements of this chapter; however, they must comply with provisions for the clear sight triangle.

(11) *Pennant.* These displays may be used in addition to the regular signage allowed per business.

(12) *Point-of-sale sign.*

a. This sign shall limit its advertisement to the product, its price, and its manufacturer.

b. The cumulative sign area for these signs shall not exceed 20 square feet.

c. Each sign shall be no larger than two square feet in sign area.

(13) *Portable sign.*

a. Portable signs, although not incorporating a permanent footing in their design, shall be 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 chapter be subject to all on-premises provisions governing freestanding signs.

(14) *Product identification sign.* The sign shall be placed on the structure and shall not exceed one-third square foot in sign area.

(15) *Real estate broker identification sign.* The sign area shall not exceed two square feet.

(16) *Special use sign.*

a. The maximum number of signs allowed for each location shall be limited to one freestanding sign and one attached sign.

b. Height requirements are established in appendix 1 to this chapter. Each sign shall not exceed 20 square feet in sign area.

c. Examples where the sign requirements of this subsection would apply include the following:

1. Cemeteries located within R-1 zones.

2. Golf courses and country clubs located within an R-3 zone.

d. When special use permits are granted pursuant to chapter 38, the requirements of this subsection shall apply.

Exception. If a special use permit is granted for a location within a zone designation (i.e., C-2, M-1) that allows greater signage, the requirements specific to that zone shall apply.

(17) *Streamers.* These displays may be used in addition to the regular signage allowed per business.

(18) *Wall sign.* No wall sign flush-mounted may be extended more than 12 inches in depth out from the wall to which it is attached.

(19) *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.

(Ord. No. 2575, § II(exh. A), 4-26-10)

Sec. 36-42. Residential zones (REM, RE, EE, R-1aM, R-1bM, R-1cM, R-1a, R-1b, R-1c).

The following sign types are permitted: Development identification sign; directional sign; garage sale sign; gate entrance sign, government sign; house or building sign or nameplate; legal notices; model complex sign; national, state and corporate flags; neighborhood sign; political sign; private sale or event sign; real estate broker identification sign; real estate sign; and a special use sign, pursuant to requirements stated elsewhere in this chapter.

(Ord. No. 2575, § II(exh. A), 4-26-10)

Sec. 36-43. Residential zones (R-2, R-3).

The following sign types are permitted: Development identification sign; directional sign; flags/decorative; garage sale sign; government sign; house or building sign or nameplate; legal notices; model complex sign; national, state and corporate flags; neighborhood sign; political sign; private sale or event sign; real estate broker identification sign; real estate sign; and a special use sign, pursuant to requirements stated elsewhere in this chapter.

(Ord. No. 2575, § II(exh. A), 4-26-10)

Sec. 36-44. Flood control zones (FC).

The following signs are permitted:

(1) One freestanding sign, one attached sign or a combination of both shall be permitted for advertising purposes only. In no event shall the total square footage of both signs exceed 32 square feet in sign area.

(2) Sign types allowed include: Development identification sign; directional sign; flags/decorative; government sign; legal notices; national, state and corporate flags; point-of-sale sign; political sign; private sale or event sign; real estate broker identification sign; real estate sign; and a special use sign, pursuant to requirements stated elsewhere in this chapter.

(Ord. No. 2575, § II(exh. A), 4-26-10)

Sec. 36-45. Residential, office and commercial zones (R-4, O-1, O-2, C-1).

(a) *Attached signage.* One square foot of on-premises signage for each linear foot of exterior wall shall be allowed. The sign shall be placed on the side of the building used to calculate the square footage of the sign. The following are considered attached signs: Awnings signs, canopy or marquee signs, banners, roof signs, window signs and wall signs. These attached signs are subject to the design standards of all applicable codes.

(b) *Freestanding signs.* These signs must comply with the following conditions:

(1) Locations which permit freestanding signs are determined by zoning districts along specific segments of streets. When the percentage of office, commercial or industrial zoning equals or exceeds 60 percent of the total street frontage for that segment, all criteria governing freestanding signs shall apply. When

the percentage is less than 60 percent, the maximum height of freestanding signs shall be 12 feet, unless a more restrictive height limitation is mentioned elsewhere in this chapter, in which case the more restrictive height limitation shall apply.

(2) The maximum height and minimum setbacks for freestanding signs are determined by street classification. See appendix 1 to this chapter pertaining to development standards.

(3) Individual freestanding signs shall be limited to those businesses that own direct, unobstructed (on-site) access to the public street.

(4) 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.

(5) The size of freestanding signs is determined as follows:

Linear Street Frontage (feet)	Size Allowed (square feet)
0—100	50
101—300	75
301—600	100
;gt;600 (see subsection (b)(6) of this section)	100

On lots with more than one street frontage, only one street frontage shall be used to calculate the permitted sign size, height and number of signs.

(6) The number of freestanding signs is limited to one per lot, except where the frontage of the lot exceeds 600 linear feet. For those lots, two freestanding signs are permitted, provided there is a minimum distance of 200 feet between the signs.

(Ord. No. 2575, § II(exh. A), 4-26-10)

Sec. 36-46. Commercial and industrial zones (C-2, C-3, MTech, M-1/M-2, M-3).

(a) *Attached signage.* One and one-half square feet of on-premises signage for each linear foot of exterior wall is permitted. The sign 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 signs, canopy or marquee signs, banners, roof signs, window signs and wall signs. These attached signs are subject to the design standards of all applicable codes.

(b) *Freestanding signage.* These signs must comply with the following conditions:

(1) Locations which permit freestanding signs are determined by zoning districts along specific segments of streets. When the percentage of office, commercial or industrial zoning equals or exceeds 60 percent of the total street frontage for that segment, all criteria governing freestanding signs shall apply. When the percentage is less than 60 percent, the maximum height of freestanding signs shall be 12 feet, unless a more restrictive height limitation is mentioned elsewhere in this chapter, in which case the more restrictive height limitation shall apply.

(2) The maximum height and minimum setbacks for freestanding signs are determined by street classification. See appendix 1 to this chapter pertaining to development standards.

(3) Individual freestanding signs shall be limited to those businesses that own direct, unobstructed (on-site) access to the public street.

(4) 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.

(5) The size of freestanding signs is determined as follows:

Linear Street Frontage (feet)	Size Allowed (square feet)
0—100	100
101—300	150
301—600	200
;gt;600	200

On lots with more than one street frontage, only one street frontage shall be used to calculate the permitted sign size, height and number of signs.

(6) The number of freestanding signs is limited to one per lot, except where the frontage of the lot exceeds 600 linear feet. For those lots, two freestanding signs are permitted, provided there is a minimum distance of 200 feet between the signs.

(Ord. No. 2575, § II(exh. A), 4-26-10)

Sec. 36-47. Business centers (various zones).

(a) *Attached signage*. For business center, 1½ square feet of on-premises signage for each linear foot of exterior wall is permitted; provided that any business shall be allowed a minimum of 100 square feet of signage. The sign 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 signs, canopy or marquee signs, banners, roof signs, window signs and wall signs. These attached signs are subject to the design standards of all applicable codes.

(b) *Freestanding signage*. Freestanding signs must comply with the applicable freestanding sign criteria for the district they are located in.

(Ord. No. 2575, § II(exh. A), 4-26-10)

Sec. 36-48. Sign regulations in overlay zone districts.

Refer to the following zoning code for information regarding signs that are located within the overlay districts throughout Las Cruces including the central business district, the university district overlay zone, and others.

(Ord. No. 2575, § II(exh. A), 4-26-10)

Sec. 36-49. Planned unit development zones PUD.

(a) A newly submitted planned unit development (PUD) will provide a plan for signage that is desired in the new development during the PUD review process.

(b) Any changes to the signage plan of a PUD shall provide a minor PUD amendment.

(c) A previously approved and existing PUD or any newly submitted PUD that does not present a plan for signage shall use existing sign regulations of the sign code. A PUD with residential land uses shall follow sign

regulations for residential zones; a PUD with commercial land uses shall follow sign regulations for commercial zones; and a PUD with industrial land uses shall follow sign regulations for industrial zones. A mixed-use PUD shall follow sign regulations of the appropriate zone that fits the land use of the PUD.

(Ord. No. 2575, § II(exh. A), 4-26-10)

Secs. 36-50—36-80. Reserved.

ARTICLE III. OFF-PREMISES SIGNS

Sec. 36-81. Attached signs.

No attached off-premises signs shall be permitted.

(Ord. No. 2575, § II(exh. A), 4-26-10)

Sec. 36-82. Public area signs.

(a) With the approval of the city manager, bus benches and bus shelters may be placed in the public right-of-way along bus routes or in areas frequented by pedestrians. In addition, signs may be placed on benches and shelters and in landscaped medians, parks, trails, and arroyos that are adopted public areas.

(b) No commercial (other than a business name as specified in subsection (c) below) or political advertising shall be placed upon bus benches, bus shelters, or in other public areas.

(c) Benches, shelters, and medians donated or maintained by individuals or businesses may have signs designed by the city with the inscription "adopted by..." and further regulated by:

(1) The sign on benches shall be no larger than three inches high by 18 inches long.

(2) The sign on shelters shall be no larger than 12 inches high by 48 inches long.

(3) The sign in medians shall be no larger than 12 inches high by 18 inches long.

(4) The sign in parks, trails, and arroyos shall be no larger than 18 inches high by 24 inches wide.

(d) Bus benches are exempt from the location restrictions for freestanding signs only when they are located at designated bus stops.

(e) This section shall not apply to any benches placed under the terms of any contract in effect on the effective date of the ordinance from which this chapter derives.

(Ord. No. 2575, § II(exh. A), 4-26-10)

Sec. 36-83. Billboards.

(a) Billboards shall be located only in areas zoned C-2, C-3, M-1/M-2, or M-3.

(b) Billboards may be located only along the following roadways and only along street segments having a minimum of 75 percent office, commercial or industrial zoning. (A street segment is defined as that length of a roadway located between intersections of two collector or higher classified roadways.)

Interstate 10

Interstate 25

Bataan Memorial East and West (west of Porter Drive)

Main Street

Picacho Avenue

Amador Avenue

Lohman Avenue (west of Interstate 25)

Solano Drive

El Paseo Road

Valley Drive

Motel Blvd (south of Picacho)

Telshor Blvd (north of Lohman)

(c) Total sign area, spacing, height and setbacks shall be subject to the following requirements:

(1) Billboards located along interstate highways shall not exceed 400 square feet of total sign area, shall be spaced a minimum of 1,000 feet away from any other billboard and shall not exceed 40 feet in height measured from ground level.

(2) All other billboards shall not exceed 300 square feet of total sign area, shall be spaced a minimum of 1,000 feet away from any other billboard and shall not exceed 30 feet in height measured from ground level. There shall be a minimum clearance of 15 feet measured from the ground level to the bottom of the billboard face.

(3) A maximum of two faces, parallel back-to-back is permitted, provided both faces are of the same size and attached to the same pole for support. Sign faces must be relatively perpendicular to the designated roadway and each face shall not advertise more than one message.

(4) Billboards shall be supported by a maximum of two upright poles.

(5) Vertical or horizontal stacking of billboards is prohibited.

(6) Billboards shall be set back a minimum of 15 feet from the property line fronting along the designated roadway. Except for billboards fronting along interstate highways, the setback from the designated roadway shall not exceed one third of the property depth. In each case there shall be a minimum of five feet from all other property lines measured from the property line to any portion of the billboard structure.

(7) Billboards shall have a minimum sign area of 72 square feet.

(d) A legally permitted billboard which follows all associated standards for billboards is allowed to advertise a business, product, service, or activity that is located on the same premises.

(Ord. No. 2575, § II(exh. A), 4-26-10)

Sec. 36-84. Garage, private sale or event signs.

(a) Off-premises signs may be used to advertise any garage sale, private sale or event, provided that the signs are not over three square feet in sign area and are used only during the duration of the event.

(b) The person erecting the sign and the property owner at the sign location shall be responsible for sign removal and all other requirements concerning signs.

(Ord. No. 2575, § II(exh. A), 4-26-10)

Sec. 36-85. Government signs.

(a) Traffic control and similar signs are exempt from all requirements of this chapter.

(b) Building identification signs and similar signs do not require permits; however, they must meet the numerical requirements of this chapter.

(Ord. No. 2575, § II(exh. A), 4-26-10)

Sec. 36-86. Political signs.

(a) No individual political sign shall exceed 32 square feet in sign area.

(b) All political signs may be erected no sooner than 90 days before the election and/or caucus to which they pertain and shall be removed within ten days following the same election and/or caucus.

(c) Advertising on a duly permitted billboard shall be exempt from the size and time limits stated in this section.

(d) Political signs are permitted to be placed on fences/walls (e.g., chain link fences, retaining walls, rock walls), but are not permitted to be placed in clear sight triangles or in a manner that would prevent clear sight of vehicles (see section 32-405 of the Municipal Code).

(Ord. No. 2575, § II(exh. A), 4-26-10)

Sec. 36-87. Vehicle signs.

Off-premises vehicle signs are permitted provided the vehicle is:

(1) For sale and the purpose of the sign relates to its sale;

(2) Placed and is for some purpose other than advertising; or

(3) Contributing to the legitimate purposes of the business for which it is used.

(Ord. No. 2575, § II(exh. A), 4-26-10)

Sec. 36-88. Athletic field signs.

(a) Signs shall be permitted to be displayed on the inside of fences surrounding individual athletic fields, with the side facing the playing field.

(b) Each sign shall not exceed 32 square feet in sign area.

(c) The signs shall not be permitted to extend above or beyond the edges of the fence.

(d) Freestanding signs and attached signs are not permitted.

(Ord. No. 2575, § II(exh. A), 4-26-10)

Sec. 36-89. Neighborhood signs.

(a) The sign may be placed on private property, provided prior approval has been granted by the property owner.

(b) The maximum sign area shall not exceed four square feet. The maximum height shall not exceed three feet.

(c) A maximum of one sign is allowed per property.

(d) Signs shall not conflict with any traffic control, nor the clear sight triangle.

(e) Signs may not be placed any further than one-half mile from the neighborhood to which they pertain to.

(f) A maximum of four signs shall be permitted per neighborhood.

(g) Valid sign permits shall be obtained or renewed annually for each sign.

(h) Signs will be maintained by the party responsible for erecting the signs.

(Ord. No. 2575, § II(exh. A), 4-26-10)

Sec. 36-90—36-115. Reserved.

ARTICLE IV. TEMPORARY SIGNS

Sec. 36-116. Construction/renovation signs.

(a) Construction/renovation signage shall not exceed 64 square feet in sign area, and shall not be erected until a building permit has been secured. The sign shall be removed not later than 14 days after the issuance of a certificate of occupancy or the building permit expires.

(b) Signs less than 16 square feet in sign area do not require a sign permit and shall not be assessed a permit fee.

(c) Signs which exceed 16 square feet in sign area require a sign permit and shall be assessed the applicable permit fee.

(Ord. No. 2575, § II(exh. A), 4-26-10)

Cross reference(s)—Buildings and building regulations, ch. 30.

Sec. 36-117. Real estate signs.

(a) *Residentially zoned lots or parcels.* Real estate signs are permitted for residentially zoned lots or parcels as follows:

(1) For less than 1.00 acre: One sign per street frontage not to exceed four square feet in sign area per sign. The sign shall not exceed seven feet in height.

(2) For 1.01 to 5.00 acres: One sign per street frontage not to exceed 32 square feet in sign area per sign. The sign shall not exceed eight feet in height.

(3) For 5.01 to 10.00 acres: Two signs not to exceed 32 square feet in sign area per sign. The sign shall not exceed eight feet in height.

(4) For greater than 10.00 acres: Three signs not to exceed 32 square feet in sign area per sign. The sign shall not exceed eight feet in height.

(b) *All other zoned lots or parcels.* Real estate signs for all other zoned lots or parcels are permitted as follows:

(1) For less than 1.00 acre: One sign per street frontage not to exceed 16 square feet in sign area per sign. The sign shall not exceed eight feet in height.

(2) For 1.01 to 5.00 acres: One sign per street frontage not to exceed 32 square feet in sign area per sign. The sign shall not exceed ten feet in height.

(3) For 5.01 to 10.00 acres: Two signs not to exceed 32 square feet in sign area per sign. The sign shall not exceed 15 feet in height.

(4) For greater than 10.00 acres: Three signs not to exceed 64 square feet in sign area per sign or two signs not to exceed 128 square feet in sign area per sign. The sign shall not exceed 15 feet in height.

(c) *Real estate directional signs.* These signs shall not exceed six square feet in sign area.

(d) *Model complex signs.* Model complex signs shall be located on the project site and shall conform to the following:

(1) One sign per complex not to exceed 32 square feet in sign area.

(2) One sign per model not to exceed four square feet in sign area.

(3) Signs are to be removed when the complex ceases to be a model home complex.

(e) *Removal.* Signs shall be removed 72 hours after closing of sale or lease of property.

(f) *Location.* No real estate sign shall be erected in the public right-of-way or in the clear sight triangle.

(g) *Permits.*

(1) Signs which do not exceed 16 square feet in sign area do not require a sign permit and shall not be assessed a permit fee.

(2) Signs which exceed 16 square feet in sign area require a sign permit and shall be assessed the applicable permit fee.

(Ord. No. 2575, § II(exh. A), 4-26-10)

Sec. 36-118. Commercial promotional displays.

In addition to authorized attached and freestanding signs, occasional events for commercial promotional displays requiring special advertising shall be subject to the following:

(1) Each business shall be limited to one freestanding and three attached signs. Each sign shall not exceed 100 square feet in size.

(2) Displays incorporating balloons, streamers, flags and pennants will be permitted and are not limited in size and number.

(3) Each business shall be allowed one permit for a grand opening display during its first six months of operation. The permit for this display shall be for 20 consecutive days.

(4) Each business shall be allowed four promotional displays during each calendar year. The permit for each of these displays shall be for ten consecutive days.

(5) Each business shall be allowed one bona fide going out of business display. The permit for this display shall be for 60 consecutive days.

(6) 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. All displays shall be removed not later than the permissible time limit stated in this section. A permit will be issued to the applicant and will remain in effect for the duration of that event. No permit fee will be assessed. A new permit is required for each event.

Cross reference(s)—Licenses, taxation and miscellaneous businesses regulations, ch. 16.

(Ord. No. 2575, § II(exh. A), 4-26-10)

Sec. 36-119. Residential promotional displays.

For an open house or other similar showing, the following residential promotional displays and conditions shall apply:

(1) Displays incorporating pennants, flags, streamers, banners, open house signs, welcome signs and other like signs will be allowed.

(2) The sign display may be erected any time on the day prior to the event and must be removed within 24 hours following the event.

(Ord. No. 2575, § II(exh. A), 4-26-10)

APPENDIX 1. DEVELOPMENT STANDARDS

TABLE 1. MAXIMUM SIGN HEIGHT BY STREET CLASSIFICATION (IN FEET)

	Zone					
Street Class	R-3	R-4, O-1	O-2, C-1	C-2, MT, M-1/M-2	C-3, M-3	All Other Zones
Local	0	6	6	18	30	0
Collector	6	12	18	18	30	6
Minor arterial	6	12	18	18	30	6
Principal arterial	12	18	18	30	30	6

NOTE: Freestanding signs which are allowed by right and erected in the zones listed in table 1 shall follow those height requirements enumerated in the table, unless specific height requirements are stated elsewhere in this chapter.

(Ord. No. 2575, § II(exh. A), 4-26-10)

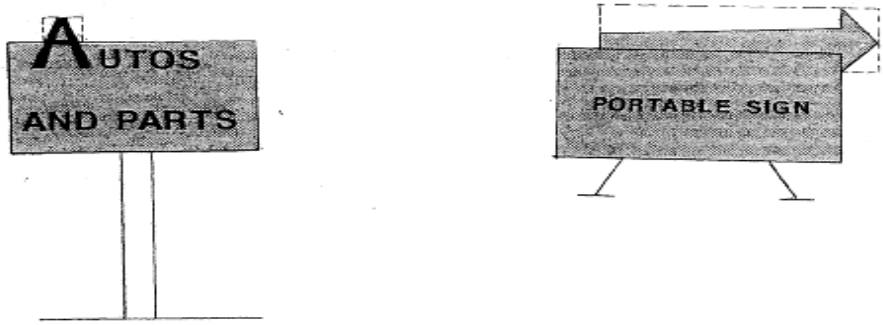
TABLE 2
MINIMUM SETBACK BY STREET CLASSIFICATION

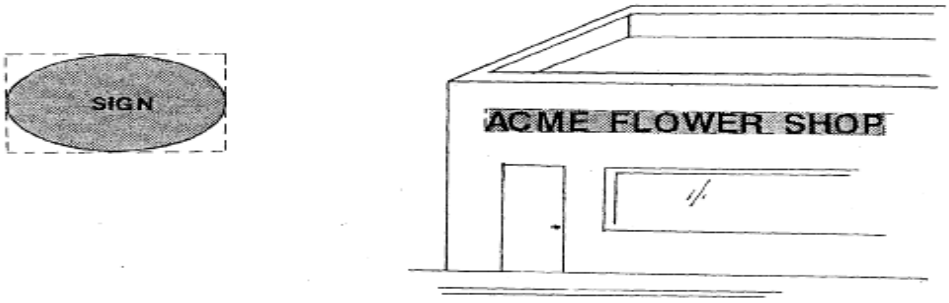
Street Class	Setback	Setback
Local	10 feet from property line	5 feet side yard
Collector	12 feet from property line	5 feet side yard
Minor arterial	15 feet from property line	5 feet side yard
Principal arterial	15 feet from property line	5 feet side yard

(Ord. No. 2575, § II(exh. A), 4-26-10)

~~APPENDIX 2. EXAMPLES AND ILLUSTRATIONS~~

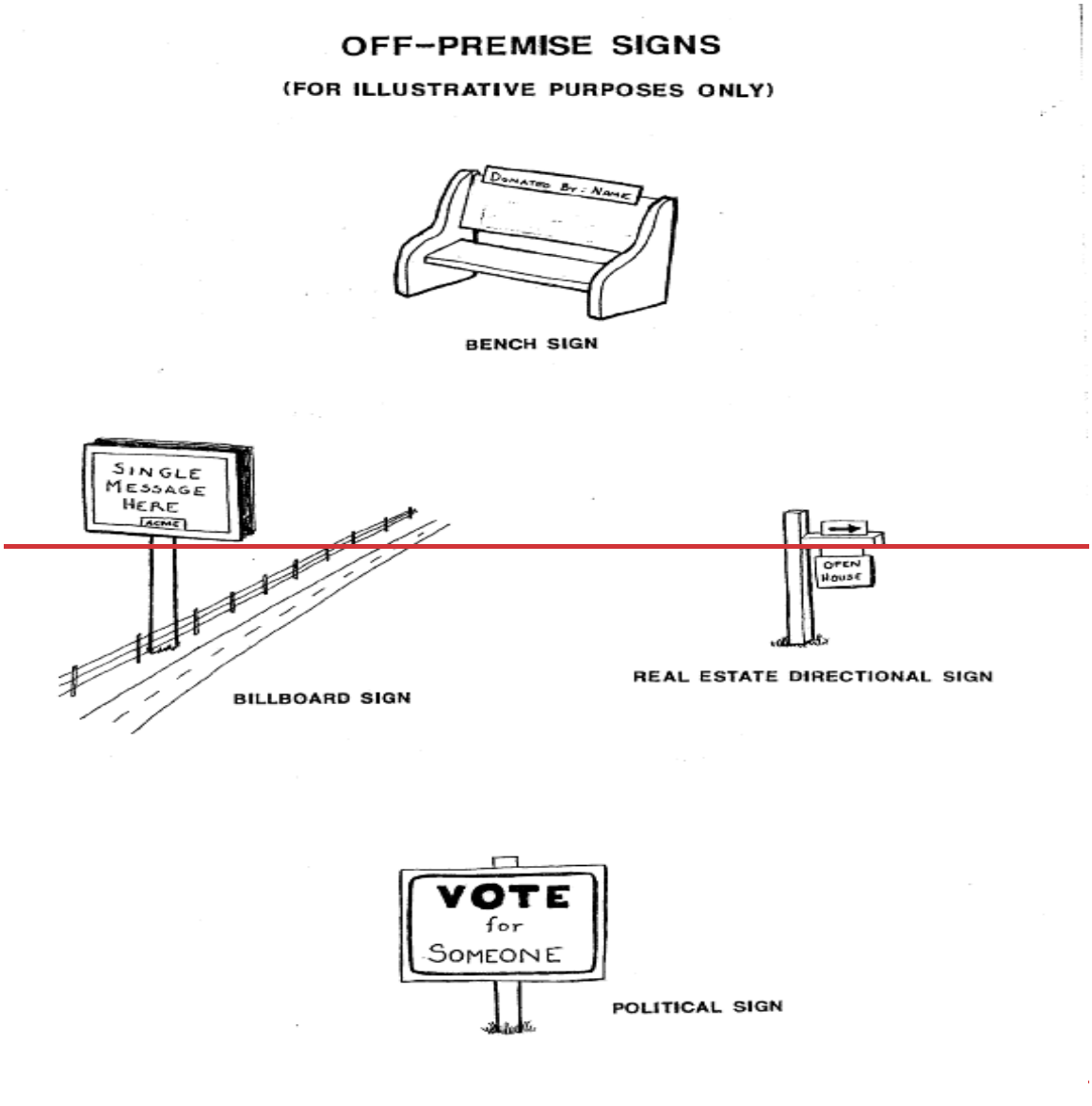
DETERMINING SIGN AREA





– – – 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


OFF–PREMISE SIGNS
(FOR ILLUSTRATIVE PURPOSES ONLY)
DONATED BY: NAME
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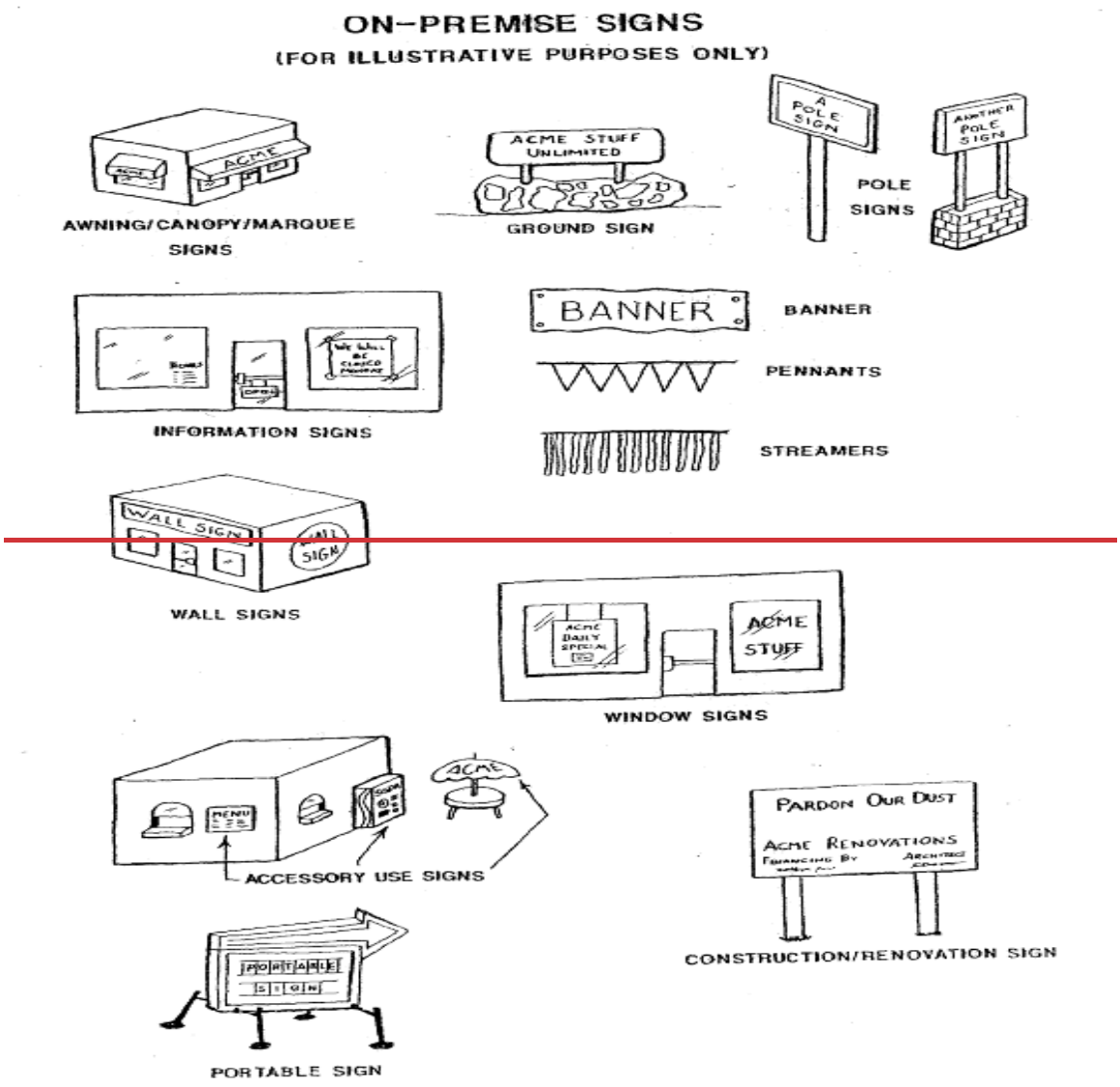
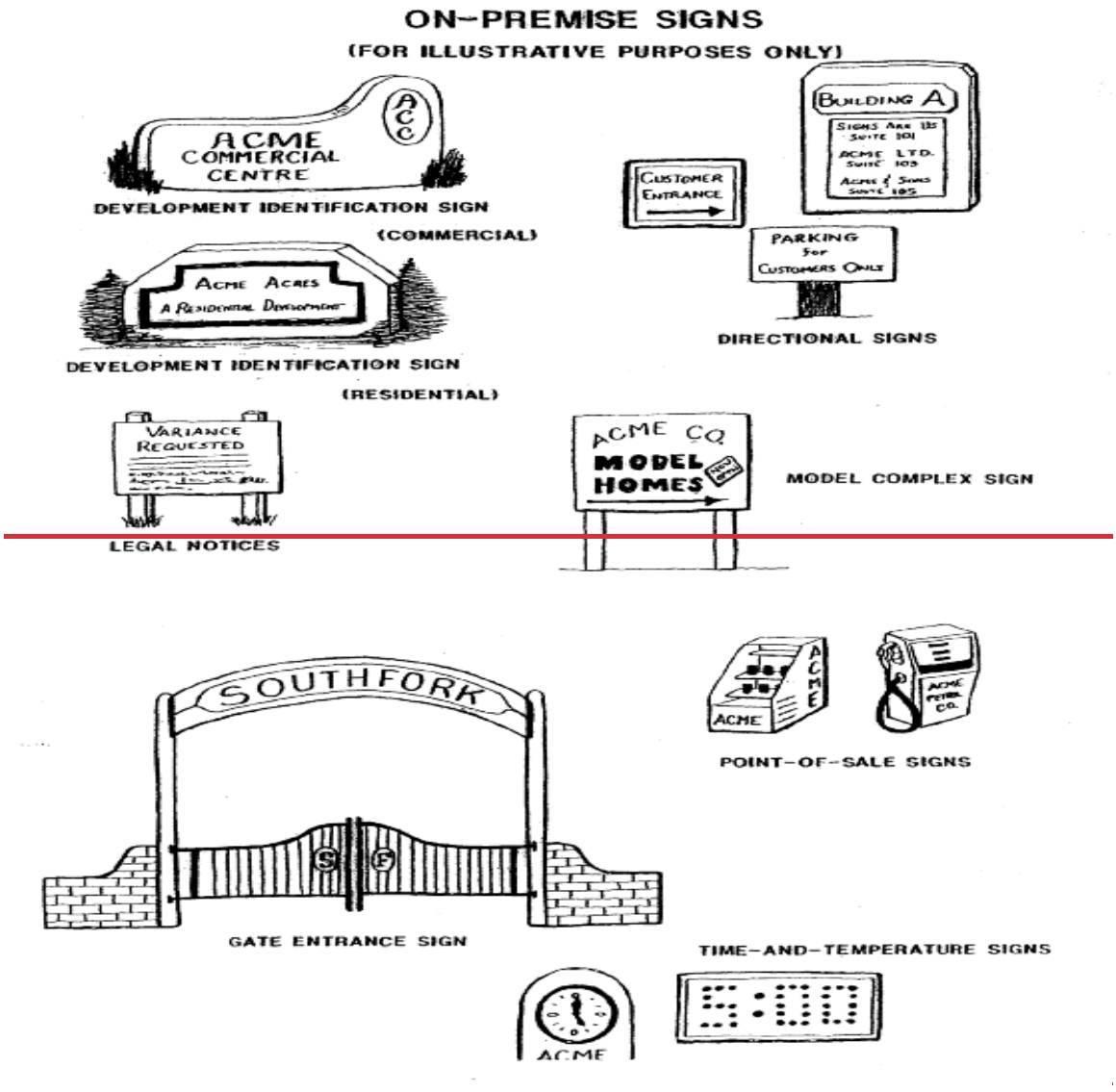
SINGLE MESSAGE HERE
ACME
BILLBOARD SIGN
OPEN HOUSE
REAL ESTATE DIRECTIONAL SIGN
VOTE
for
SOMEONE
POLITICAL SIGN


ON–PREMISE SIGNS
(FOR ILLUSTRATIVE PURPOSES ONLY)
ACME
AWNING/CANOPY/MARQUEE SIGNS
ACME STUFF UNLIMITED
GROUND SIGN
A POLE SIGN
ANOTHER POLE SIGN
POLE SIGNS
INFORMATION SIGNS
BANNER
BANNER
PENNANTS
STREAMERS
WALL SIGN
WALL SIGN
WALL SIGNS
ACME STUFF
WINDOW SIGNS
MENU
ACME
ACCESSORY USE SIGNS
PARDON OUR DUST
ACME RENOVATIONS
CONSTRUCTION/RENOVATION SIGN
PORTABLE SIGN
PORTABLE SIGN
PORTABLE SIGN


ON-PREMISE SIGNS
(FOR ILLUSTRATIVE PURPOSES ONLY)
ACME COMMERCIAL CENTRE
DEVELOPMENT IDENTIFICATION SIGN
(COMMERCIAL)
ACME ACRES
A RESIDENTIAL DEVELOPMENT
DEVELOPMENT IDENTIFICATION SIGN
(RESIDENTIAL)
BUILDING A
CUSTOMER ENTRANCE
PARKING for CUSTOMERS ONLY
DIRECTIONAL SIGNS
VARIANCE REQUESTED
LEGAL NOTICES
ACME CO
MODEL HOMES
MODEL COMPLEX SIGN
SOUTHFORK
GATE ENTRANCE SIGN
ACME
POINT-OF-SALE SIGNS
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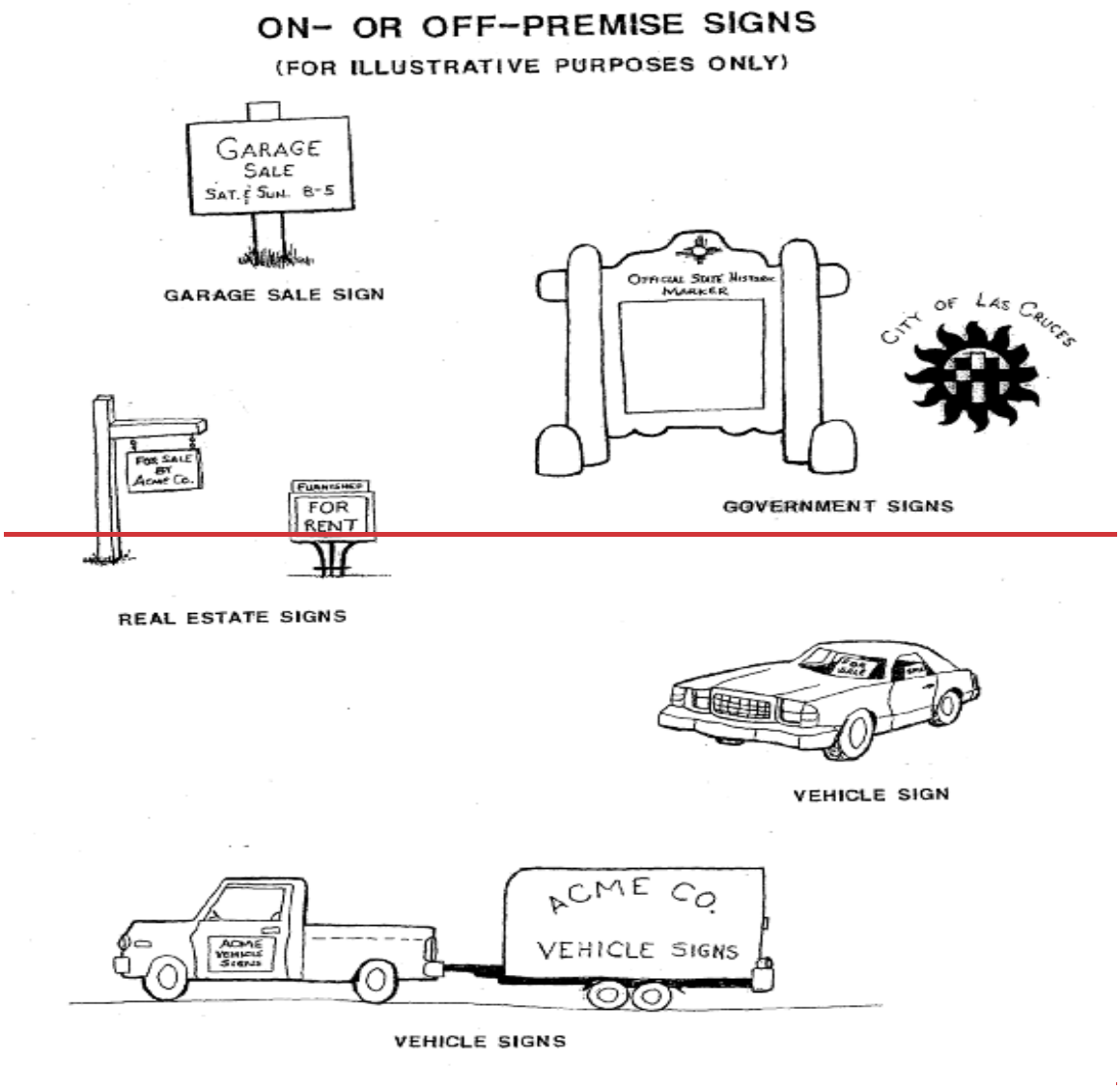
TIME-AND-TEMPERATURE SIGNS



~~(Ord. No. 2575, § II(exh. A), 4-26-10)~~

Chapter 37 SUBDIVISIONS[1]

ARTICLE I. GENERAL PROVISIONS

Sec. 37-1. Introduction.

This chapter applies to anyone wishing to divide a parcel of land into two or more parts or to eliminate or adjust lot lines between two or more existing parcels. The required information and the steps to be taken vary and depend on certain characteristics of the proposal, such as the desired number of lots, the intended use of each, the location and legal description. The following information will help determine the process and the requirements necessary for dividing the property.

Why subdivide? People subdivide land for many reasons, the most common being for resale. For example, you may wish to sell a portion of your land to another person. Other reasons for subdividing land might include such transactions as long-term leasing or the mortgaging of a portion of a lot. In order to accomplish any of these, it is necessary to follow the procedures outlined in this chapter.

What is a subdivision? Just as there are many reasons for subdividing land, there are also many ways to subdivide. Some subdivisions consist of just one to two lots and can utilize the alternate summary process. Others consist of hundreds of lots to be developed in phases of a few lots at a time and must follow the processes as illustrated by this chapter's procedures for master plans, preliminary plats, and final plats. A subdivision proposal may contain multiple lots but also may change the uses of the property as well. When a subdivision is proposed in the central part of the city to utilize existing roads and utilities, it may be possible to use the infill subdivision process. Often subdivisions propose to change something about property that has already been subdivided; this would be considered a replat, as defined in this chapter's section on replats.

Subdivisions come in a variety of shapes, sizes, uses and locations. Many require the construction of streets, sidewalks or other improvements to serve the lots created; while some utilize existing infrastructure. Therefore, this chapter provides four basic processes to suit the wide variety of possibilities involved in subdividing land; the alternate summary process, Replat, infill subdivision process and major subdivision process.

One or two lots. The alternate summary process (article VI) and replat (article VI and VII) are followed when a subdivision of land consists of no more than two lots. While larger subdivisions consisting of three lots or more are required to be approved by the planning and zoning commission at a public hearing, the alternate summary process is intended to streamline the processing of small subdivisions by allowing them to be approved administratively.

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[1]Editor's note(s)—Ord. No. 2686, § I(Exh. A), adopted August 5, 2013, amended chapter 37 in its entirety to read as herein set out. Formerly, chapter 37 pertained to similar subject matter, and derived from Ord. No. 2291, § I, adopted March 27, 2006, and Ord. No. 2519, § II, adopted May 26, 2009.

Cross reference(s)—Any ordinance dedicating or accepting any plat or subdivision saved from repeal, § 1-13(a)(8); housing, ch. 13; streets and sidewalks, ch. 26; utilities, ch. 28; buildings and building regulations, ch. 30; design standards, ch. 32; development impact fee, ch. 33; drainage and flood control, ch. 34; excavations and curb cuts, ch. 35; signs, ch. 36; zoning, ch. 38; mobile home subdivisions, § 38-1841 et seq.

State law reference(s)—Subdivisions, NMSA 1978, § 3-20-1 et seq.

In the central part of the city. The infill subdivision process (article V) is designed to make desirable the development of vacant land in the central part of the city. The boundary of the infill area is generally bordered by Interstate 25, University Avenue, Valley Drive, and North Main Street. All subdivision proposals within this boundary would be considered infill subdivisions. There are two methods of processing subdivisions within the infill area. One is the infill development process, an expedited procedure which allows variances, special use permits, and other land use issues to be addressed. The second method is the infill subdivision method, also an expedited method for subdivision-related cases only and for properties which do not qualify to use the infill development process. See article V, infill subdivision process, for more details regarding these two processes. Subdivision proposals in the infill area consisting of just one or two lots may follow the alternate summary process.

Major subdivisions. A subdivision that does not meet the criteria under the alternate summary process, Replat procedures or infill subdivision process is considered a major subdivision. This name is somewhat deceiving in that a major subdivision may range from just three lots to a multi-phased development consisting of hundreds of lots. The typical major subdivision is required to follow both the preliminary plat (article III) and final plat (article IV) procedures. More complex proposals, such as phased development, development with multiple land uses and large developments (over 40 lots), will be required to follow the master plan (article II) process in addition to the preliminary and final platting processes. The master plan is also required when a property owner with property outside the city wishes to annex his/her property into the city limits.

City subdivision process. No matter which type of subdivision you may be proposing, the basic process is the same. The subdivision plat must be prepared by a surveyor licensed to practice in the state. The subdivision plat and related materials will be submitted to the city community development department. The city's subdivision administrator will review the materials and, if complete, accept the submittal for formal staff review. The proposal is distributed to various city departments and other governmental agencies for review and comment. These comments, if applicable, are returned to the consulting surveyor to be addressed. Once all comments have been addressed, the subdivision administrator will schedule the proposal for approval consideration by the appropriate body. Depending on the type of subdivision, the approval consideration may come from the subdivision administrator, the development review committee, or the planning and zoning commission.

Once the final plat is approved, you can proceed to construct any required improvement necessary to allow the plat to be filed in the county courthouse. It is possible to provide a form of financial security to cover the cost of the required improvements in order to file the plat before completing roads and utilities. The city's subdivision administrator will oversee the proposal from the time it is submitted until the plat is filed and/or all improvements are constructed.

(Ord. No. 2686, § I(Exh. A), 8-5-13)

Sec. 37-2. The title of this document.

This chapter shall be known and shall be cited as the "Subdivision Code" of the City of Las Cruces, New Mexico.

(Ord. No. 2686, § I(Exh. A), 8-5-13)

Sec. 37-3. The purpose of this chapter.

The purpose and intent of this chapter are to promote the health, safety, convenience and general welfare of the citizens of the city through the implementation of a readable and understandable set of subdivision regulations outlining the processing of subdivision applications. More specifically, provisions of this chapter are designed to achieve the following objectives in newly subdivided areas:

- Ensure orderly, efficient and integrated development within the city pursuant to guidelines established by the elements of the city comprehensive plan and all other applicable city policies, rules and regulations.
- Promote proper street location, width and design in order to facilitate vehicle circulation and to minimize adverse growth impacts in accordance with the metropolitan planning organization (MPO) transportation plan, the transportation element of the comprehensive plan and city design standards.
- Provide for the protection and preservation of natural resources and the promotion of natural beauty within the city.
- Provide for adequate air circulation, lighting, public open spaces, utility services, traffic movement, drainage and public facilities.
- Ensure that proposed development is suitable for a given parcel of land, based on its location and environmental characteristics.
- Strive for a customer service approach to subdivision application processing.

(Ord. No. 2686, § I(Exh. A), 8-5-13)

Sec. 37-4. The city authority to require subdivision regulations.

A. This chapter is created and adopted pursuant to the authority set forth in NMSA § 3-19-6, as amended, and shall be applicable to all property within the corporate limits of the city, except for state and federal land being used for public purposes.

B. The city council, the planning and zoning commission, the development review committee (DRC) and the subdivision administrator (SA) are the review and/or approval bodies for this chapter to regulate the subdividing of land within the corporate limits of the city.

(Ord. No. 2686, § I(Exh. A), 8-5-13)

Sec. 37-5. Severability.

If any article, section, paragraph, sentence, phrase or part of this chapter is declared unconstitutional or otherwise invalid, the remaining portions shall not be affected.

(Ord. No. 2686, § I(Exh. A), 8-5-13)

Sec. 37-6. Interpretation and conflict.

A. *Minimum requirements.* The provisions of this chapter shall be considered to be the minimum requirements to meet the purpose expressed in section 37-3 of the Code; nothing herein prohibits the review/approval bodies from imposing greater requirements to ensure the promotion of health, safety and welfare of the citizens of the city and to achieve the goals and objectives of the comprehensive plan.

B. *Local conflict.* Where the provisions of any local ordinance or regulation impose greater restrictions than those of this chapter, the provisions of such document shall prevail.

C. *Federal and state conflict.* Any provisions of U.S. or state law that impose a greater duty, standard or requirement than those contained herein shall supersede the provisions of this chapter.

D. *Conflict within this chapter.* When two or more provisions of this chapter are in conflict, the most restrictive provision shall apply.

E. *Interpretation of meaning.* The subdivision administrator shall interpret the meaning of the provisions of this chapter. Disagreement with an interpretation may be appealed to the development review committee. The decisions of that committee may be appealed to the planning and zoning commission, and the commission decision may be appealed to the city council.

(Ord. No. 2686, § I(Exh. A), 8-5-13)

Sec. 37-7. Repeal.

All subdivision regulations of the city effective prior to the adoption of this chapter are hereby repealed. Such repeals shall not affect nor prevent the prosecution or punishment of any person for the violation of any regulations repealed for an offense committed prior to the repeal.

(Ord. No. 2686, § I(Exh. A), 8-5-13)

Sec. 37-8. Changes and amendments.

This chapter may be changed and amended by the city council. Such changes or amendments shall not become effective until after a public hearing has been held on the amendments by the planning and zoning commission and recommendations from the commission have been forwarded to the city council.

A. Notice Requirements.

1. Agenda. The agenda for Planning and Zoning Commission meetings shall be available no later than fifteen (15) calendar days prior to the meeting.

2. Notice. Notice regarding the time and place for the Planning and Zoning Commission public hearing shall be published at least fifteen (15) calendar days prior to the meeting. in a newspaper of general circulation in the City.

3. Notice of the City Council public hearing regarding proposed changes and agenda availability shall follow the City Clerk time frames and processes.

(Ord. No. 2686, § I(Exh. A), 8-5-13)

Sec. 37-9. Penalties.

A. *Penalty for use of unapproved or unrecorded plat.* Any owner, or agent of the owner, of any land located within the city who transfers or sells such land prior to approval and recording of the necessary plat with the county clerk, as required in this chapter, shall be deemed guilty of a misdemeanor, and upon conviction shall be penalized in the manner prescribed by law. The description of the land by metes and bounds in the instrument of transferring of land shall not exempt parties to the transaction from such penalties.

B. *Penalty for improper recording.* Any person who records with the county clerk any plat in violation of this chapter shall be deemed guilty of a violation of this chapter and of state law, and upon conviction shall be punished by a fine of not less than $100.00. Also, all city-provided utilities and services may be withheld or withdrawn from the property until such time as this chapter is complied with.

(Ord. No. 2686, § I(Exh. A), 8-5-13)

Sec. 37-10. Fees.

A. A fee is required to offset the costs associated with processing and reviewing the subdivision application, excluding subdivisions processed through the infill development process.

B. All fees related to this chapter shall be adopted by resolution of the city council.

(Ord. No. 2686, § I(Exh. A), 8-5-13)

Sec. 37-11. Processing subdivision applications.

A. Following all prerequisite steps identified for the application types that are listed elsewhere in this code, subdivision applications including submittal materials and fees are to be submitted to the community development department. The subdivision administrator will review the submittal and, if accepted, the submittal will be processed for review. When the review process is completed, the subdivision administrator will schedule the submittal for consideration by the appropriate review/approval officials or bodies and follow the submittal through to final action.

B. Notice of decision. Upon making a recommendation to the city council or taking final action on matters for which the planning and zoning commission has been granted final authority, the community development department shall promptly:

1. Prepare a written decision that includes an order and a statement of the factual and legal basis for the order:

   a. Recommending the granting or denying of relief; or

   b. Granting or denying relief.

2. File the written decision with the city clerk.

3. Send by certified mail, to all parties whose rights will be determined by the decision, a document containing original signatures that includes a copy of the written decision of the planning and zoning commission. Also, this document shall state the requirements for filing an appeal.

4. Send by regular mail, or otherwise provide a copy of the document that includes a copy of the written decision of the planning and zoning commission to every person who has filed a written request with the community development department for notice of the decision.

(Ord. No. 2686, § I(Exh. A), 8-5-13)

Sec. 37-12. Review/approval bodies.

The city council, the planning and zoning commission, the development review committee (DRC) and the subdivision administrator (SA) are the review/approval bodies of this chapter. Depending on the type of subdivision application submitted, any of the four review/approval bodies may be the one to grant final approval of the subdivision submittal.

A. *Subdivision administrator.* The subdivision administrator is a representative of the city whose objective it is to simplify the subdivision process for the applicant, while at the same time addressing all concerns related to the proposal on behalf of the city. The SA is the source of information for the general public, the development community and the staff regarding the subdivision process and its requirements. The SA shall facilitate the processing of all subdivision submittals from preapplication meetings to final acceptance of subdivision improvements.

1. *Authority of the subdivision administrator.* The SA shall have the authority to waive or add submittal requirements in cases in which it is determined that the additional information is necessary to accomplish the objectives of this code. Waiver of engineering/utilities-related submittal requirements shall require the concurrence of the public works director or the utilities director, as appropriate. The SA shall justify, in writing, his/her request for additional submittal requirements.

   The SA shall have the authority to determine the applicability of comments returned by the reviewing staff and to override such comments if it is determined that the comments do not apply to the type of submittal under consideration or that it is inconsistent with city policy, rules and/or regulations. The SA may, with concurrence from the development review committee, approve subdivisions processed through the alternate summary procedure.

2. *Responsibilities of subdivision administrator.*

   a. Address questions from the general public/developers/consultants and staff related to all areas of subdividing/developing land.

   b. Ensure that all notification measures are carried out pursuant to applicable provisions either codified (Subdivision Code) or within approved policy.

   c. Accept or reject submittals.

   d. Facilitate communication between reviewers and developers/subdividers/consultants.

   e. Resolve issues/problems arising from a staff review of a subdivision.

   f. Schedule meetings and prepare agendas for the development review committee.

   g. Prepare staff recommendations and reports for cases requiring planning and zoning commission approval.

   h. Monitor the progression of construction activities in subdivision improvements and associated performance guarantees or similar agreements through final inspections and acceptances of subdivisions.

   i. Identify, as staff liaison to the development review committee, the subdivisions that are required to be reviewed by the development review committee.

B. *Development review committee.* The development review committee (DRC) is a formal group of representatives employed by the city or its representatives empowered to act on behalf of their respective departments on subdivision development related applications.

1. Membership of the development review committee shall consist of at least one representative from each of the following:

   a. Public works department;

   b. Community development department;

   c. Utilities department;

   d. Fire department;

   e. Facilities department;

2. The purposes of the development review committee are:

   a. To identify and address major issues that may affect a proposal, and to provide general oversight of the reviews of subdivision- and development-related proposals;

b. To resolve conflicting comments, recommendations, and design differences between reviewing departments and subdividers/developers regarding planning-related issues that have been appealed from the decision of the subdivision administrator.

c. To make recommendations to the planning and zoning commission for approval, conditional approval, denial or postponement of master plans, preliminary plats and final plats.

3. Authority and procedure of the development review committee. The development review committee shall have final authority for approval of infill concept plans, alternate summaries, and replats that do not increase the number of lots in an existing subdivision. The development review committee's decision shall be final unless it is overruled by appeal to the director or directors responsible for the area of disagreement and/or further appealed to the planning and zoning commission or city council.

The development review committee shall meet at the same time each week as needed to review subdivision application submittals, potential submittals or other development-related issues that may require DRC review. The notice of the DRC meeting shall appear in the public meeting schedule. The subdivision administrator shall set the agenda for DRC meetings and abide by all notification requirements pursuant to approved policy. Minutes will be taken during DRC meetings and will become available to interested parties in the form of staff review comments.

C. *Planning and zoning commission.* The planning and zoning commission is a seven-member board appointed by the city council.

1. Authority of the planning and zoning commission:

a. Final authority on master plans, preliminary plats and, as appropriate, final plats and on all issues referred to the Commission by the development review committee.

b. Recommendation to city council on amendments to this chapter.

c. The commission may recommend that any subdivision proposal be reviewed by the city council.

d. All other authority is granted to the commission in accordance with section 38-66 of the city municipal code, and ordinance no. 1267.

2. A notice of the decision of the planning and zoning commission shall be provided in accordance with section 37-11(b).

D. *City council.* The city council is a seven member board of elected officials that is the governing body of the city.

1. Authority of the city council. The city council, as it pertains to this chapter, has the authority to:

a. Resolve appeals of decisions made by the planning and zoning commission and the development review committee.

b. Grant final approval of amendments to this chapter.

c. Grant approval of any development proposal in which the planned unit development process is used or any proposal in which a planning-related waiver greater than 15 percent of the required standard is requested.

2. A notice of the decision of the city council shall be provided in accordance with section 37-11(b).

(Ord. No. 2686, § I(Exh. A), 8-5-13)

Sec. 37-13. Procedures for appealing decisions of the staff, the development review committee and the planning and zoning commission.

A. *Basis for appeals.* Any person, department, committee, commission, board or bureau that is affected by a decision of an administrative official, committee, or board in the administration or enforcement of this chapter or any other adopted resolution, rule, or regulation may appeal the decision. The appeal must be initiated in writing and delivered to the community development department within 15 calendar days after the decision and all other procedures established by this chapter have been exhausted. The appeal shall state all issues to be considered.

B. *How decisions are appealed.* The city council, the planning and zoning commission, the development review committee, the public works director and the utilities director are responsible for hearing appeals at designated stages of the subdivision process.

C. *Appeal of staff decisions.* Staff decisions may be appealed at any time during the subdivision application process. Appeals of staff decisions may fall under one of two categories, engineering/utility issues and planning related issues. The subdivision administrator shall determine whether the appeal should be to an engineering/utility issue or to a planning-related issue, and shall notify the appropriate body to review the appeal.

1. *Appeal of engineering opinions.* Engineering/utility related opinions are related, but not limited to: design specifications for roadways, grading, drainage, utilities, or other issues determined by the subdivision administrator and/or the public works director to be engineering-related.

   Appeals of staff decisions regarding engineering/utility-related issues are resolved by the public works director or the utilities director, respectively. The appeal may be submitted at any time during the subdivision application process. Appeals shall be submitted in writing to the subdivision administrator. The subdivision administrator shall schedule a meeting for a review of the appeal. The meeting shall include the applicant, public works director and/or the utilities director, as appropriate and the staff member whose decision is being appealed. Upon review of the appeal, the public works director or the utilities director shall render a decision within three business days of the meeting.

2. *Appeal of planning related issues.* Planning related issues are issues related to, but not limited to: lot configuration, street network, right-of-way requirements, land use, density, phasing of development, suitability of location, or other issues determined by the subdivision administrator to be planning-related.

   Appeals of staff decisions regarding planning related issues are resolved by a committee of at least three of the following: the community development director, facilities director, public works director, utilities director and fire chief. The appeal may be submitted at any time during the subdivision application process.

   Appeals shall be submitted in writing to the subdivision administrator. The subdivision administrator shall schedule a meeting for review of the appeal. The meeting shall include at least three department directors, the DRC and the staff member whose decision is being appealed. Upon review of the appeal the directors shall render a decision on the appeal at the meeting.

D. *Appeal of engineering/utility decisions of the public works director or the utilities director.*

1. Appeals of the public works director or the utilities director's decision regarding engineering or utility related issues are resolved by arbitration. The appeal shall be submitted to the subdivision administrator within 15 calendar days of the decision of the public works director or the utilities director.

2. Arbitration defined. Arbitration is the final appeal process used to resolve only engineering or utility related issues that have been reviewed and acted on by the development review committee, public works director or the utilities director.

3. Arbitration procedure. When an appeal alleges that there is fault in a decision made by either the public works director or the utilities director with regard to an engineering- or utility-related issue, the appeal shall be resolved by an arbitration committee. The appellant shall submit the appeal in writing to the subdivision administrator within 15 calendar days of the decision of either the public works director or the utilities director. The arbitration committee shall review the engineering or utilities related issue under question and any pertinent information within 30 calendar days of the appeal submittal. The appellant shall be responsible for all costs associated with the arbitration board.

4. Arbitration committee. The arbitration committee shall consist of three engineers licensed to practice in the state who are not associated with the city, but are familiar with its development standards. The city shall choose one engineer, the applicant shall choose the second engineer, and the two chosen engineers shall choose the third.

Action from the arbitration committee shall be in the form of approval or disapproval. Action from the arbitration committee shall be final unless appealed to the state board of registration for professional engineers and surveyors or to a court of competent jurisdiction.

E. *Appeal of planning related decisions of the department directors.*

1. Appeal of a planning related decision of the department directors is resolved by the planning and zoning commission. Appeals shall be submitted in writing to the subdivision administrator within 15 calendar days of the development review committee's decision.

2. Authority of the planning and zoning commission. The planning and zoning commission, by a majority vote of a quorum of the commission, may, after all other procedures established by this chapter have been exhausted, reverse or affirm any order, requirement, decision, or determination of the development review committee, or make any change in an order, requirement, decision, or determination of the planning related decision at a public hearing.

F. *Appeal of decisions of the planning and zoning commission.*

1. Appeal of a decision of the planning and zoning commission is resolved by the city council. Appeals shall be submitted in writing with the appropriate fees to the subdivision administrator within 15 calendar days of the planning and zoning commission's decision.

2. Authority of the city council. The city council, by a majority vote of all its members, may, after all other procedures established by this chapter have been exhausted, reverse or affirm any order, requirement, decision or determination of the planning and zoning commission, or make any change in an order, requirement, decision, or determination of the planning and zoning commission. The decision of the city council may be appealed to district court.

G. *Stay of proceedings.* An appeal shall stay all proceedings in furtherance of the action appealed unless the officer, official, commission, board, or authority from whom the appeal is taken certifies that, by reason of facts, a stay would cause imminent peril of life and property.

H. *Appellant responsibility in appeals.* All appellants under this section are required to submit in writing to the community development department a detailed statement of the grounds of their appeal, no later than 15 calendar days after the decision is appealed. The written appeal shall state specifically the objections of the decision and the reasons for the appeal.

I. *Notice.* Notice on all appeals of decisions of the Planning and Zoning Commission shall:

1. Be sent by regular mail to all property owners (as shown on the records of the county assessor) within the proposed area of development and within no less than five hundred (500) feet of the subject property. This distance may include streets, alleys, channels, canals, railroads, and all other public rights-of-way. Notice shall be mailed at least fifteen (15) calendar days prior to the required public hearing.

2. Require regular, non-certified, first class mail to be sent to all recognized neighborhood groups within five hundred (500) feet of the subject property if staff has determined that such notice was warranted. Notice shall be mailed at least fifteen (15) calendar days prior to the required public hearing.

3. Require notice of the time and place of the public hearing be published at least fifteen (15) calendar days prior to the public hearing in a newspaper of general circulation in the City.

4. In the event that notification signs were issued for the case now under appeal, the property owner and/or original applicant shall ensure that all signs previously erected for notice purposes remain up until a decision on the appeal is rendered. Modification to and/or replacement of said signs shall be authorized and directed by staff to ensure appropriate information regarding the appeal venue is displayed.

5. The SA shall execute an affidavit verifying the list of persons to whom notice was mailed.

J. *[Fees.]* Fees shall be assessed to the appellant person or persons in order to cover the costs of such appeal. Such fees shall be as prescribed in the fee schedule as adopted and amended.

(Ord. No. 2686, § I(Exh. A), 8-5-13)

Sec. 37-14. Definitions.

Block. An area of land within a subdivision, generally bounded by highways, streets (other than alleys), natural boundaries, or the exterior boundaries of the subdivision.

Building setback. The right angle distance from a point on the street right-of-way to the closest point of any building structure.

City. The City of Las Cruces, New Mexico.

City council. The governing body of the city.

Collector. A street designed to carry moderate to large volumes of traffic (generally a minimum ADT of 5,000 vehicles), primarily from local streets to arterials. Collectors may provide some direct access to individual properties, usually large residential developments and mid-size commercial/industrial/office developments. The length of a major collector seldom exceeds one mile.

Contiguous property. Parcels of property that are in contact or touching.

Cul-de-sac. A minor street with only one outlet and culminated by a turn-around. Refer to section 32-36 of the city municipal code.

Development review committee (DRC). A formal group of representatives employed by the city that meets at the same time each week to review subdivisions or subdivision related proposals and to resolve conflicting comments, recommendations or design differences between city reviewing departments, subdivision administrator, and/or developers/subdividers. The development review committee's decision shall be final unless overruled by a committee of department directors, the planning and zoning commission or city council (See appeals section 37-13).

The development review committee shall consist of at least one representative from each of the following:

- Public works department;

- Community development department;
- Facilities department;
- Utilities department;
- Fire department;

DRC members or their designee shall have the authority to make nonpolicy decisions on behalf of their respective departments and the city.

Drainage plan. A plan indicating an on-site drainage proposal, the passage of stormwaters through the development and safe discharge of runoff onto adjacent lands or into storm drainage facilities. Also, a comprehensive analysis of:

- The existing storm drainage conditions of a proposed development; and
- The disposal of the increased runoff that is generated by the proposed development.

Dwelling. A building or unit thereof designed and used exclusively for residential occupancy.

Easement. The right, liberty, advantage or privilege that one individual (or entity) has in lands of another, either express or imputed (utility, grant or necessity).

Engineer. A person engaged in the practice of engineering and qualified to so practice as attested by his/her legal registration as a professional engineer in the state.

Engineering utility related issues. Issues related to but not limited to: design specifications for roadways, grading, drainage, utilities, or other issues determined by the subdivision administrator and/or the public works director or the utilities director to be engineering-utility-related.

Improvements. Includes infrastructures such as streets, curbs, gutters, sidewalks, fire hydrants, storm drainage facilities, bike paths, trails, and water, sewer, and gas systems or parts thereof.

Lot. A portion of a subdivision or other parcel of land intended for the purpose, whether immediate or future, for development. It also is a tract of land described by metes and bounds and as shown on the records in the county assessor's office.

Major arterial. A street having the primary purpose of carrying large volumes of traffic, and that does not usually provide direct access to individual properties. Major arterials are designed to provide cross city travel, and generally carry a minimum ADT of 10,000 vehicles.

Major local. A street whose primary purpose it is to provide direct access to individual properties, primarily in small to mid-size residential developments, and to individual commercial/industrial/office lots. The length of a major local seldom exceeds one-half mile.

May. When a requirement in these regulations uses the word "may" instead of "shall," the requirement will be necessary only if directed by the development review committee, the planning and zoning commission or city council.

Minor arterial. A street having the primary purpose of carrying moderate to large volumes of traffic and that does not usually provide direct access to individual properties. Minor arterials are designed to provide partial "cross-city" travel, and generally carry a minimum ADT of 5,000 vehicles.

Minor local. A street having the primary purpose of providing direct access to individual residential lots. The lengths of minor locals seldom exceed one-half mile.

Outlot. A parcel of ground or tract of land within a platted subdivision, to be used for purposes other than residential. An example of an outlot is a tract of land designated for open space or a retention pond.

Performance bond. A surety bond made out to the city in an amount equal to the estimated full cost if the improvements, said cost being estimated by the city engineer, surety bonds being legally sufficient to ensure the city that the said improvements will be constructed in accordance with these regulations.

Planned unit development (P.U.D.). A development process whereby the intent and purpose is to promote design and development standard flexibility in cases where strict application of the zoning ordinance would inhibit the overall goals and objectives of the city.

Planning related issues. Issues related to but not limited to: lot configuration, street network, right-of-way requirements, land use, density, phasing of development, suitability of location, other issues determined by the subdivision administrator to be planning-related.

Planning and zoning commission. The officially appointed planning and zoning commission of the city. The planning and zoning commission shall have final authority in the review of subdivision proposals requiring commission action. The commission shall also act as an advisory board with regard to amendments to this code.

Plat or *replat.* A map, chart, survey, or plan, certified by a land surveyor, that contains a description of subdivided plat or resubdivided replat land with ties to permanent survey monuments.

Shall. The word "shall" is mandatory and not permissive.

Street. A public way, other than an alley, that has been dedicated, or reserved by plat and which affords he principal means of access to abutting property.

Subdivider. An owner or an owner's agent who undertakes the subdivision of land as set forth in the respective regulations.

Subdivision. Subdivision for the purpose of approval by the municipal planning authority means: for the area of land within the corporate boundaries of the city, the division of land into two or more parts by platting or by metes and bounds description into tracts or lots for any purpose.

Surveyor. A person who is engaged in the practice of surveying and is qualified to so practice as attested by his/her legal registration as a professional surveyor in the state.

Tract. See *outlot.*

Vacation. To void a portion of a previously-filed subdivision plat application or to void the filed plat in its entirety.

(Ord. No. 2686, § I(Exh. A), 8-5-13)

Secs. 37-15—37-40. Reserved.

ARTICLE II. MASTER PLAN

Sec. 37-41. The purpose of master planning.

A. The purpose of the master planning process is to advance the goals and objectives of the city's comprehensive plan and to address a variety of environmental and social issues in an area being proposed for future development. A master plan is considered part of the planning process in which the proposal is viewed as a conceptual tool reflecting the ideas and thoughts for future development. The master plan process is designed to achieve the following objectives:

- To achieve the goals, objectives and policies of the city comprehensive plan and the objectives of other city policies.

- To ensure compliance with the growth management section of the land use element of the city comprehensive plan.
- To ensure compliance with the metropolitan planning organization's transportation plan.
- To guide future land development and transportation patterns.
- To provide for an efficient process in determining fiscal impacts, neighborhood concerns, the coordination of city capital improvements, and the identification and protection of significant natural features.
- To ensure that all adopted city plans, rules and regulations are followed. To ensure that proposed development is suitable and appropriate for a given parcel of land, based on its location and its environmental characteristics.

B. This chapter recognizes change in design criteria and the need for flexibility in land development. The master plan process permits changes that conform with the intent to provide health, safety, convenience and general welfare to the citizens of the city. Approved master plans shall be used as a general guide to land development with successive steps established for specific plans that shall be consistent with the adopted master plan.

(Ord. No. 2686, § I(Exh. A), 8-5-13)

Sec. 37-42. When a master plan is required.

A. A master plan shall be required when any of the following criteria apply:

1. A development is to be divided into various phases.
2. A development application is proposing multiple land uses.
3. A request for annexation is made.
4. An application is for the single development of 40 or more lots.
5. When a commercial, office or industrial development application is proposing to utilize the alternate summary procedure more than once.

B. For smaller residential developments consisting of no more than two phases on ten or fewer acres, with 39 or fewer lots, a master plan may be omitted at the discretion of the DRC.

C. The subdivider is responsible for including on the master plan all contiguous property owned, legally controlled by, or of any development and/or financial interest to said subdivider.

D. A preliminary plat may be submitted simultaneously with the master plan. A final plat may not be submitted at the same time as the master plan or the preliminary plat. Subdivision applications submitted through the planned unit development (P.U.D.) process will not be required to meet the requirements in this article.

(Ord. No. 2686, § I(Exh. A), 8-5-13)

Sec. 37-43. Preapplication meeting.

A. Any proposed master plan causing need for public notification, review and approval by the Planning and Zoning Commission shall first be reviewed at a pre-application meeting scheduled and held by the Community Development staff. A representative for the proposed development action shall attend the pre-application meeting and discuss the proposal in general terms, providing enough specifics to allow attending staff an opportunity to gauge and determine neighborhood and/or community impacts. In that this represents an initial and informal discussion, information provided to the representative regarding

procedural nuances or other regulatory related information shall be considered preliminary feedback based on information received, and shall not represent a complete disclosure of all regulatory measures that may apply upon formal review. In no circumstances should related discussion by staff represent a final disposition on the preliminary proposal at hand.

1. *Neighborhood group and/or noticed area determination.* Staff upon consideration of the information received during the pre-application meeting, will instruct as to whether early notification of the subject proposal by the applicant to a neighborhood group(s) (recognized group(s)) and/or noticed area shall be necessary prior to formal application and submittal of the development proposal to the city. The criteria used by staff to determine notice need may include, but not be limited to the following:

    a. Development that is likely to cause significant traffic impacts due to limited roadway access or a potential decrease in level of service based on the subject roadway's design.

    b. Potential land use conflicts resulting from proposed land use distribution adjacent to existing development of a differing land use classification such as proposed commercial uses adjacent to low density residential uses.

    c. Known neighborhood concerns on tangible and reasonable development issues that could be mitigated through design alternatives. An example of a concern congruent to this criterion is anticipated development consistency with surrounding development styles as they may relate to lot size/dimension transitions, roadway widths out of character with adjacent development, etc. An example of a concern not congruent to the criterion is disapproving development on private vacant property due to the elimination of "open space" or development of private vacant property because one's view may be compromised,

2. *Early notification exception.* Staff determination of early notice need which shall include an open invitation to discuss the proposal at a meeting, shall not pre-empt the Planning and Zoning Commission, City Council or other reviewing bodies with approval (recommending or final action) authority from thereafter requiring an additional meeting(s). Criteria used by the applicable reviewing body shall be at their discretion and may or may not follow the criteria identified in the preceding provision. Significant deviation of plan proposal post neighborhood group and/or noticed area meeting may subject the applicant from thereafter participating in another meeting to inform and discuss revisions. Changes addressing neighborhood concerns shall not necessarily subject the applicant to another meeting; however, an omission in the proposal that is added post meeting and deemed significant by Community Development staff is a candidate for reconsideration by the notified neighborhood prior to consideration by any formal reviewing body.

3. *Early notification recipients.* Notification recipients shall include registered neighborhood groups, and/or associations, identified on the applicable Community Development Department's web page. In the event an identified association or group does not exist or cover an adequate area surrounding the proposal, both the neighborhood group/association and the property owners within 500 feet shall be notified. If no association or group exists within the notification boundary, notification to property owners shall take place using the same distance threshold. Measurement shall be made radially from the outermost property boundary where the subject proposal is located. Any association/group boundary or property boundary that falls either partially or entirely within said radius based on the qualifying standards of this subsection shall receive notification. Contact and mailing information for associations, groups and property owners to be notified shall be provided by the Community Development Department. Mailing preparation, expenses and materials are the responsibility of the developer, applicant and/or representative. Notification shall take place no later than fifteen (15) calendar days prior to the date of submittal. In the event a meeting is called for pursuant to item (4) that follows, may cause delay with the proposal's submittal in order to accommodate the agreed upon meeting schedule and other factors necessary to meet submittal content.

4. *Early notification form and content.* All required notification shall be sent via regular, non-certified, first class mail and the content of the notice shall include at minimum:

   a. A detailed description (to the extent possible) of what is being pursued in terms of development.

   b. Information as to how the developer, applicant, or representative for the development action may be contacted.

   c. A statement as to how the proposal may impact the neighborhood(s) surrounding the subject property where the development is to occur.

   d. An open offer to participate in a meeting with the association(s)/group(s) and/or property owners at a mutually agreed upon date, time and location in order to discuss the proposal more fully.

   e. A need to provide a WRITTEN meeting request (if desired) to the development representative, copying Community Development staff either in a letter or email format within the stated fifteen (15) calendar day threshold. Requests for a meeting within the fifteen (15) calendar day period shall render the meeting need mandatory prior to submittal whether or not the meeting takes place inside or beyond this fifteen (15) calendar day period. Requests that come in after said period do not compel the applicant to entertain a meeting prior to submittal; however, a meeting with those requesting one is advisable prior to formal review of the proposal by a recommending or decision-making body.

   f. Community Development staff contact information for any related correspondence or general inquiry.

5. *Neighborhood group/neighborhood meeting.* It shall be the responsibility of the representative for the proposal to supply any and all materials necessary to convey development parameters as applicable. Additionally, the representative shall be responsible for minute transcription (summary or verbatim) which clearly indicates the date, time and location of the meeting and the general nature of conversation that tool place regarding the proposal. Information shall at minimum identify key points that convey support for or the lack thereof for the proposal as presented.

B. Conceptual plans shall be presented to the first available development review committee meeting for review and comment. The development review committee shall discuss with the developer, or the developer's representative, the proposed conceptual plan and shall indicate any changes that will be required for the formal submittal of the proposal.

(Ord. No. 2686, § I(Exh. A), 8-5-13)

Sec. 37-44. Submittal of a master plan application.

A. The master plan and supplemental material shall be submitted to the community development department no later than 25 calendar days prior to the day of the next regular meeting of the planning and zoning commission for approval consideration. Any master plan requesting three or more planning-related variances (excluding administrative variances) shall be processed via the planned unit development process as outlined in the city zoning code.

B. Upon submittal, the community development department shall issue a receipt. The subdivision administrator shall then have eight business hours to review the submittal for completeness. If all of the required items have been submitted, and the master plan submittal contains all necessary items as per section 37-46 of this chapter, the subdivision administrator shall accept the submittal for review. A proposed master plan shall not be accepted for review by the subdivision administrator if incomplete or substantially inaccurate. All items required on a master plan must be present for acceptance. If a submittal is found to be incomplete, the

applicant shall have eight business hours to correct the deficiencies and still meet the submittal deadline if applicable.

C. The subdivision administrator, the development review committee or the planning and zoning commission shall have the authority to waive or add submittal requirements if it is determined that the additional items and resulting information will be needed in order to accomplish the objectives of this chapter. Examples of possible additional requirements and/or information could include, but are not limited to, a neighborhood group and/or noticed area meeting, traffic impact analysis, environmental analysis, detailed drainage analysis, etc. Any request for additional submittal requirements shall be justified, in writing, by the requesting entity.

D. Master plans will be processed by the subdivision administrator to the applicable city departments and other governmental agencies for review, comments, and recommendations. Each department shall have five business days to complete the review. Written reports, containing comments and recommendations shall be returned to the subdivision administrator.

E. The subdivision administrator shall review all comments for applicability and appropriateness to the master plan requirements and forward any comments to the subdivider or the subdivider's representative for completion. Master plans applications that are commented upon shall be returned, amended, resubmitted and reviewed until the provisions set forth in the regulations are met.

(Ord. No. 2686, § I(Exh. A), 8-5-13)

Sec. 37-45. Review and consideration of a master plan application.

A. Master plans shall be submitted to the development review committee for review, comments and recommendations. The development review committee shall review the master plan to determine whether it is consistent with the intents and purposes set forth in sections 37-3 and 37-41 of this chapter. The development review committee shall provide the planning and zoning commission with a report containing a recommendation that the master plan be either approved, conditionally approved, postponed or disapproved. The report shall include the reason(s) for the recommendation.

B. Public notice.

1. *Agenda*. The agenda for the planning and zoning commission public hearing shall be made available no later than 15 calendar days prior to the public hearing.

2. *Posting*. Notice of the proposed development shall be posted in conspicuous places on the property by the property owner, applicant or representative at least 15 calendar days prior to the planning and zoning commission public hearing. A sign measuring four feet by four feet shall be used and secured with appropriate supporting hardware made available by Community Development staff. When the property has multiple street frontages, one sign per frontage shall be posted. Large properties may require a greater number of signs which shall be determined by Community Development staff. It shall be the responsibility of the property owner, applicant or representative to ensure continuous posting throughout the public hearing processes. Processes for purposes of this provision shall start with the Planning and Zoning Commission and cease when a final determination is made on the proposal regardless of the number of reviewing entities involved. In that multiple reviewing entities may be involved, Community Development staff will inform the property owner, applicant or representative of necessary changes needed on the sign to reflect the appropriate reviewing entities, meeting dates and venues.

3. *Notice*. Notice on all proposed master plans shall be sent by regular, non-certified, first class mail to all property owners (as shown on the records of the county assessor) within the proposed area of development and within 500 feet of the area of the proposed subdivision, including streets, alleys,

channels, canals and other public rights-of-way. The community development department is responsible for the list of property owners and the preparation of mail. Regular, non-certified, first class mail shall also be sent to all recognized neighborhood groups within five hundred (500) feet of the subject property. Notice for purposes herein shall be mailed at least 15 calendar days prior to the public hearing. The subdivision administrator shall execute an affidavit verifying the list of persons to whom notice was mailed. Notice of the time and place of the public hearing shall be published at least 15 calendar days prior to the public hearing in a newspaper of general circulation in the city.

C. The planning and zoning commission shall review the master plan, report, comments and recommendations received from the development review committee, subdivision administrator and presentations from the applicant or the applicant's representative and from any interested citizens. Action from the planning and zoning commission shall be in the form of approval, conditional approval, postponement, or disapproval. Action from the planning and zoning commission shall be recorded in the minutes of the meeting. A copy of the notice of decision that includes any changes or conditions acted on by the planning and zoning commission at the public hearing shall be furnished to all appropriate parties in accordance with section 37-11(b).

D. It is the requirement of the planning and zoning commission that no master plan shall be reviewed unless either the applicant or the applicant's representative is present at the public hearing. If neither party is present at the public hearing, the master plan will be postponed until the next regular planning and zoning commission meeting.

E. Upon approval of the master plan by the planning and zoning commission, the developer may submit to the community development department any zoning applications, preliminary plats or final plats as necessary and applicable, that reflect the objectives of the approved master plan.

F. The approval of the master plan shall be effective for a period of five years, as described on the approval action form. If, at the expiration of the five-year period, no single preliminary plat, building permit, or any other development application, in conformance with the approved master plan, has been submitted and approved, the master plan shall expire. Such action does not necessarily have to encompass the entire master-planned area in order for said master plan to remain active. The developer may submit a request for extension of approval prior to the expiration date, if desired. The request will be reviewed by the planning and zoning commission for consideration. Please note: Approval of a master plan does not prohibit the utilities department from revising any utility requirements based on projected needs or growth around the master-planned area.

G. Any substantial change to the master plan will require resubmittal of the plan in its entirety and may trigger the need for a neighborhood group and/or noticed area meeting to be determined by and at the discretion of the subdivision administrator. Minor modifications or changes shall be reviewed and considered by the subdivision administrator. Substantial changes to the master plan are subject to a regular public hearing with the same requirements as an original application. Substantial changes shall include, but are not limited to:

1. Any change in land use or use intensity;

2. Modifications of vehicular traffic circulation on arterials, collectors and/or major local designated streets;

3. Increase in residential density;

4. Any extension of time limits beyond 20 percent;

5. Any change in the master plan that is determined by the subdivision administrator to be substantial.

H. Appeals. Any person, department, committee, commission, board or bureau that is affected by a decision of an administrative official, committee, or board in the administration or enforcement of this chapter or any other adopted resolution, rule, or regulation may appeal the decision. The appeal must be initiated in writing

and delivered to the subdivision administrator within 15 calendar days after all other procedures established by this chapter have been attempted. Refer to section 37-13, "procedures for appealing decisions of staff," the development review committee and the planning and zoning commission' for details on the appeal process.

(Ord. No. 2686, § I(Exh. A), 8-5-13)

Sec. 37-46. Master plan submittal requirements.

A. An application for approval of a master plan shall include the following information:

1. Name of master plan.
2. Detailed area/vicinity map clearly showing the surrounding area and the proposal's relationship to existing road networks, and existing 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.
3. North arrow, date of preparation, written and graphic scale.
4. A general legal description that shall include:
    a. Approximate survey ties;
    b. Approximate acreage.
5. Name and address of the consultant preparing the master plan.
6. Name and address of the developer.
7. Boundary lines of the master plan, with approximate lengths of lines.
8. Proposed land use, by parcel or phase. Residential parcels shall provide gross density range.
9. Present zoning and proposed zoning (if applicable).
10. Contours—20-foot intervals. In instances whereby 20-foot intervals are not appropriate or applicable, contours may be provided at an appropriate interval that adequately presents the elevation differences of the land as determined by the community development department director.
11. Adjacent land use and zoning district identification.
12. Thoroughfare system: Proposed approximate location, length, width and point of intersection of all major transportation systems, which may include bikeways, trails and any other transportation lines. Identify existing and proposed classification of roads as per city design standards and based on the current city MPO transportation plan.
13. Significant natural features, such as arroyos and approximate 100-year floodplains.
14. Adjacent roads and other transportation routes identified by functional classification.
15. Easements.
16. Tabular information.
    a. Land use of each phase or parcel.
    b. Approximate acreage for each parcel or phase.
    c. Total number of residential dwelling units, minimum and maximum range.
    d. Dwelling units per acre for each parcel or phase.

e. Approximate acreage proposed for open space, private and public facilities, and right-of-way.

f. Approximate additional population to be generated by development, based on census data.

g. Approximate additional traffic estimated to be generated by development, utilizing ITE trip generation information, as amended.

17. Approval block signifying the final approved master plan to be signed by the subdivision administrator upon approval by the planning and zoning commission and compliance with all conditions.

18. Conceptual utilities plan. The conceptual utilities plan shall contain enough information to provide a general outline of the proposed utility-routing plans for the development, including locations and sizes of existing and proposed utilities to be provided to the development. Actual size and location of utilities to be determined at time of development and subject to change based on utility needs of the surrounding area.

19. Conceptual drainage plan. The conceptual drainage plan shall contain enough information to provide a general understanding of how drainage issues will be addressed by the development.

20. Copy of early notification letter to neighborhood group(s) and/or noticed area and copy of minutes (summary or verbatim) from any subsequent neighborhood group(s) and/or noticed area meeting as may have been required.

21. Supplemental material.

a. Application.

i. 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 county clerk's office.

ii. Any pending litigation of any final order entered by any court of law regarding the ownership of the subject property shall be disclosed by the applicant at the time that the application is submitted.

b. Submittal fee.

(Ord. No. 2686, § I(Exh. A), 8-5-13)

Secs. 37-47—37-75. Reserved.

ARTICLE III. PRELIMINARY PLAT

Sec. 37-76. The purpose of preliminary platting.

The purpose of the preliminary platting process is to establish quality site design that promotes the compatibility of development with physical and cultural issues within the city. The preliminary plat process is designed to achieve the following objectives:

- To provide for an efficient process for establishing streets that have the capacity to adequately handle anticipated traffic flow and that are in harmony with the MPO's transportation plan and the transportation element of the comprehensive plan.
- To promote site design that encourages sound, economical, and compatible development and that creates a healthy living environment in the city.

- To allow for design flexibility and imagination.
- To provide for subdivided lots with adequate configuration, area and appropriate design for the purpose for which they are to be used and to address housing, marketing and economic development trends that support the policies within the housing element of the comprehensive plan.
- To minimize traffic and drainage hazards through proper site design.
- To promote efficient design to mitigate impacts to community infrastructure.
- To assure that all adopted city plans, rules and regulations, and the development master plan, if applicable, are followed.

(Ord. No. 2686, § I(Exh. A), 8-5-13)

Sec. 37-77. When a preliminary plat is required.

A preliminary plat conforming to this chapter shall be required for all subdivisions except those processed through the replat, alternate summary or infill subdivision process. A preliminary plat may be submitted simultaneously with a master plan. Subdivisions that are processed through the P.U.D. process do not have to receive preliminary plat approval.

(Ord. No. 2686, § I(Exh. A), 8-5-13)

Sec. 37-78. Preapplication procedure.

A. Any proposed preliminary plat causing need for public notification, review and approval by the Planning and Zoning Commission shall first be reviewed at a pre-application meeting scheduled and held by the Community Development staff. A representative for the proposed development action shall attend the pre-application meeting and discuss the proposal in general terms, providing enough specifics to allow attending staff an opportunity to gauge and determine neighborhood and/or community impacts. In that this represents an initial and informal discussion, information provided to the representative regarding procedural nuances or other regulatory related information shall be considered preliminary feedback based on information received, and shall not represent a complete disclosure of all regulatory measures that may apply upon formal review. In no circumstances should related discussion by staff represent a final disposition on the preliminary proposal at hand.

1. *Neighborhood group and/or noticed area determination.* Staff upon consideration of the information received during the pre-application meeting, will instruct as to whether early notification of the subject proposal by the applicant to a neighborhood group(s) (recognized group(s)) and/or noticed area shall be necessary prior to formal application and submittal of the development proposal to the city. The criteria used by staff to determine notice need may include, but not be limited to the following:

   a. Development that is likely to cause significant traffic impacts due to limited roadway access or a potential decrease in level of service based on the subject roadway's design.

   b. Potential land use conflicts resulting from proposed land use distribution adjacent to existing development of a differing land use classification such as proposed commercial uses adjacent to low density residential uses.

   c. Known neighborhood concerns on tangible and reasonable development issues that could be mitigated through design alternatives. An example of a concern congruent to this criterion is anticipated development consistency with surrounding development styles as they may relate to lot size/dimension transitions, roadway widths out of character with adjacent development, etc.

An example of a concern not congruent to the criterion is disapproving development on private vacant property due to the elimination of "open space" or development of private vacant property because one's view may be compromised.

2. *Early notification exception.* Staff determination of early notice need which shall include an open invitation to discuss the proposal at a meeting, shall not pre-empt the Planning and Zoning Commission, City Council or other reviewing bodies with approval (recommending or final action) authority from thereafter requiring an additional meeting(s). Criteria used by the applicable reviewing body shall be at their discretion and may or may not follow the criteria identified in the preceding provision. Significant deviation of plan proposal post neighborhood group and/or noticed area meeting may subject the applicant from thereafter participating in another meeting to inform and discuss revisions. Changes addressing neighborhood concerns shall not necessarily subject the applicant to another meeting; however, an omission in the proposal that is added post meeting and deemed significant by Community Development staff is a candidate for reconsideration by the notified neighborhood prior to consideration by any formal reviewing body.

3. *Early notification recipients.* Notification recipients shall include registered neighborhood groups, and/or associations, identified on the applicable Community Development Department's web page. In the event an identified association or group does not exist or cover an adequate area surrounding the proposal, both the neighborhood group/association and the property owners within 500 feet shall be notified. If no association or group exists within the notification boundary, notification to property owners shall take place using the same distance threshold. Measurement shall be made radially from the outermost property boundary where the subject proposal is located. Any association/group boundary or property boundary that falls either partially or entirely within said radius based on the qualifying standards of this subsection shall receive notification. Contact and mailing information for associations, groups and property owners to be notified shall be provided by the Community Development Department. Mailing preparation, expenses and materials are the responsibility of the developer, applicant and/or representative. Notification shall take place no later than 15 calendar days prior to the date of submittal. In the event a meeting is called for pursuant to item (4) that follows, may cause delay with the proposal's submittal in order to accommodate the agreed upon meeting schedule and other factors necessary to meet submittal content.

4. *Early notification form and content.* All required notification shall be sent via regular, non-certified, first class mail and the content of the notice shall include at minimum:

   a. A detailed description (to the extent possible) of what is being pursued in terms of development.

   b. Information as to how the developer, applicant, or representative for the development action may be contacted.

   c. A statement as to how the proposal may impact the neighborhood(s) surrounding the subject property where the development is to occur.

   d. An open offer to participate in a meeting with the association(s)/group(s) and/or property owners at a mutually agreed upon date, time and location in order to discuss the proposal more fully.

   e. A need to provide a WRITTEN meeting request (if desired) to the development representative, copying Community Development staff either in a letter or email format within the stated 15 calendar day threshold. Requests for a meeting within the 15 calendar day period shall render the meeting need mandatory prior to submittal whether or not the meeting takes place inside or beyond this 15 calendar day period. Requests that come in after said period do not compel the applicant to entertain a meeting prior to submittal; however, a meeting with those requesting one is advisable prior to formal review of the proposal by a recommending or decision making body.

f. Community Development staff contact information for any related correspondence or general inquiry.

5. *Neighborhood group/neighborhood meeting.* It shall be the responsibility of the representative for the proposal to supply any and all materials necessary to convey development parameters as applicable. Additionally, the representative shall be responsible for minute transcription (summary or verbatim) which clearly indicates the date, time and location of the meeting and the general nature of conversation that tool place regarding the proposal. Information shall at minimum identify key points that convey support for or the lack thereof for the proposal as presented.

B. If necessary, the conceptual preliminary plat(s) shall be referred to the first available development review committee meeting for review and comment. The subdivision administrator and/or the development review committee shall review all conceptual plans and discuss with the subdivider or the subdivider's representative the changes, if any, that will be required for the submittal process.

(Ord. No. 2686, § I(Exh. A), 8-5-13)

Sec. 37-79. Submittal of a preliminary plat application.

A. The preliminary plat application and relevant supplemental material shall be submitted to the community development department for approval consideration no later than 25 calendar days prior to the day of the regular meeting of the planning and zoning commission.

B. Upon submittal, the community development department shall issue a receipt for submittal. The subdivision administrator shall then have eight business hours to review the submittal for completeness. If all required items have been submitted, and the preliminary plat submittal contains all required items as per section 37-81 of this chapter, the subdivision administrator shall accept the submittal for review. A proposed preliminary plat submittal shall not be accepted for review if incomplete or substantially inaccurate. All items required on a preliminary plat must be present for acceptance. In cases in which a submittal is found to be incomplete, the applicant shall have eight business hours to correct the deficiencies and still meet the submittal deadline if applicable.

C. The subdivision administrator, the development review committee or the planning or zoning commission shall have the authority to waive or add submittal requirements in cases in which it is determined that the additional items and resulting information is necessary in order to accomplish the objectives of this chapter. Examples of possible additional requirements and/or information could include, but is not limited to, a neighborhood group and/or noticed area meeting, traffic impact analysis, environmental analysis, detailed drainage analysis, etc. Any request for additional submittal requirements shall be justified, in writing, by the requesting entity.

D. Preliminary plats will be referred to the applicable city departments and other governmental agencies for review, comments and recommendations. Each department shall have five business days to complete the review. Written reports, with their comments and recommendations, shall be forwarded to the subdivision administrator.

E. The subdivision administrator shall review all comments for applicability and appropriateness to the preliminary plat requirements and forward any comments to the subdivider or the subdivider's representative for completion. Preliminary plat applications that receive comments shall be resubmitted and reviewed until the provisions set forth in the regulations are met and all outstanding comments are addressed.

(Ord. No. 2686, § I(Exh. A), 8-5-13)

Sec. 37-80. Review and consideration of a preliminary plat.

A. Following staff review, the development review committee shall evaluate the preliminary plat and staff comments to determine if they are consistent with the intent and purpose set forth in sections 37-3 and 37-76 of this chapter. The preliminary plat shall be scheduled for a public hearing for planning and zoning commission consideration. The development review committee shall provide the planning and zoning commission with a written report containing a recommendation that the preliminary plat be approved, conditionally approved, postponed or disapproved. The development review committee shall state the reason(s) for their recommendation regarding the preliminary plat to the planning and zoning commission.

B. Public notice requirements. The following shall be required for all preliminary plats scheduled for planning and zoning commission review:

1. *Agenda*. The agenda for the planning and zoning commission public hearing shall be made available no later than fifteen (15) calendar days prior to the public hearing.

2. *Posting*. Notice of the proposed development shall be posted in conspicuous places on the property by the property owner, applicant or representative at least 15 calendar days prior to the planning and zoning commission public hearing. A sign measuring four feet by four feet shall be used and secured with appropriate supporting hardware made available by Community Development staff. When the property has multiple street frontages, one sign per frontage shall be posted. Large properties may require a greater number of signs which shall be determined by Community Development staff. It shall be the responsibility of the property owner, applicant or representative to ensure continuous posting throughout the public hearing processes. Processes for purposes of this provision shall start with the Planning and Zoning Commission and cease when a final determination is made on the proposal regardless of the number of reviewing entities involved. In that multiple reviewing entities may be involved, Community Development staff will inform the property owner, applicant or representative of necessary changes needed on the sign to reflect the appropriate reviewing entities, meeting dates and venues.

3. *Notice*. Notice on all proposed preliminary plats shall be sent by regular, non-certified, first class mail to all property owners (as shown on the records of the county assessor) within the proposed area of development and within 500 feet of the area of the proposed subdivision, including streets, alleys, channels, canals, other public rights-of-way and railroad rights-of-way. The community development department is responsible for the list of property owners and preparation of the mail. Regular, non-certified, first class mail shall also be sent to all recognized neighborhood groups within 500 feet of the subject property. Notice, for purposes herein shall be mailed at least 15 calendar days prior to the public hearing. The subdivision administrator shall execute an affidavit verifying the list of persons to whom notice was mailed. Notice of the time and place of the public hearing shall be published at least 15 calendar days prior to the public hearing in a newspaper of general circulation in the city.

C. The planning and zoning commission shall review the preliminary plat application, the report, any comments, and recommendations from the development review committee, the presentation from the subdivider or the subdivider's representative and from any interested citizens at a public hearing. The intent of the planning and zoning commission review is to allow for public input in the development process and to serve as a land-planning process. Review of the proposal shall consist of planning related issues such as site plan compliance to the city's comprehensive plan and all development- or growth management-related policies. Action from the planning and zoning commission shall be recorded in the minutes of the meeting. Action shall be in the form of an approval, conditional approval, postponement, or disapproval. A copy of the notice of decision that includes any changes or conditions from the planning and zoning commission as done at the public hearing shall be furnished to all appropriate parties in accordance with Sec. 37-11(b).

D. It is the requirement of the planning and zoning commission that no preliminary plat shall be reviewed unless either the applicant or the applicant's representative is present at the planning and zoning commission meeting. If the applicant or the applicant's representative is not present at the public hearing, the preliminary plat application hearing will be postponed until the next regular planning and zoning commission meeting.

E. Approval of a preliminary plat shall not constitute approval of the final plat, but shall signify the general acceptability of the proposed subdivision. Preliminary plat approval shall constitute permission to prepare and submit the final plat application and construction drawings of all improvements for the proposed subdivision. Final platting shall not be considered until preliminary plat approval is complete.

F. Preliminary plat approval shall be effective for no more than two years from the date of approval as described on the approval action form. If a final plat application has not been submitted for approval as required by the provisions of this chapter, the preliminary plat shall expire, and a new preliminary plat application must be submitted for approval by the planning and zoning commission. The developer may submit a request for a one year extension of approval, prior to the expiration date, if desired. The request will be reviewed by the development review committee. All plat extensions shall be automatically conditioned to require compliance with all city codes, regulations, and specifications in place at the time of development of the plat in question.

G. Any substantial change to the preliminary plat application will require resubmittal of the plat in its entirety and may trigger the need for a neighborhood group and/or noticed area meeting to be determined by and at the discretion of the subdivision administrator. Minor modifications or changes shall be considered by the subdivision administrator.

H. Substantial changes to the preliminary plat application will be subject to a planning and zoning commission public hearing, with the same requirements as an original application. Substantial changes shall include but are not limited to:

1. Any proposed change in land use or use intensity;

2. Anticipated (or proposed) modifications of vehicular traffic circulation on arterials, collectors and/or major local designated streets;

3. An anticipated increase in residential density;

4. Any extension of time limits beyond 20 percent;

5. Any change in the preliminary plat that is determined by the subdivision administrator to be substantial.

I. Appeals. Any person, department, committee, commission, board or bureau that is affected by a decision of an administrative official, committee, or board in the administration or enforcement of this chapter or of any other adopted resolution, rule, or regulation may appeal the decision. The appeal must be initiated in writing and delivered to the subdivision administrator within 15 calendar days after all other procedures established by this chapter have been exhausted. Refer to section 37-13, "procedures for appealing decisions of the staff, the development review committee and the planning and zoning commission," for details on the appeal process.

(Ord. No. 2686, § I(Exh. A), 8-5-13)

Sec. 37-81. Preliminary plat submittal requirements.

A. Preliminary plat requirements. The preliminary plat shall be at a scale that adequately represents the information. The preliminary plat shall be prepared on 18-inch × 24-inch sheets of paper. Copies provided

shall be legible, with no limit to the number of sheets used. The plat shall show existing conditions and all proposals, including the following:

1. Name of proposed subdivision;

2. Total acreage of subdivision, to nearest one-tenth of an acre;

3. Date of preparation, north arrow, written and graphic scale;

4. Detailed area/vicinity map clearly showing surrounding area and the proposal's relationship to existing road networks, and existing natural and/or man-made features that may impact the development. Detail must be sufficient for the subject property to be located in the field using the map;

5. Name and address of subdivider;

6. Name and address of the person, corporation or organization preparing the preliminary plat;

7. An accurate and complete boundary survey of the land to be subdivided. Plat boundary lines shall be shown, giving the bearings in degrees, minutes and seconds. Distances shall be shown in feet and hundredths. Curved boundaries or lines on the plat shall provide sufficient data to enable the reestablishment of curves on the ground. Include the location and description of all monuments set or found. Data for each curve shall include:

   a. Central angle and arc length;

   b. Radius;

   c. Chord bearing and length;

8. A statement of ownership, signed by the legal owner, and the equitable owner if applicable, on the final approved preliminary plat;

9. Zoning or proposed zoning shall be shown with boundaries given as streets, highways, or property lines. Special use permit information shall be included if applicable.

10. Number to identify each lot, plus the acreage of each lot and tract;

11. Proposed lot lines and public rights-of-way lines; rights-of-way and street widths; rights-of-way for public services or utilities with identification of any limitations thereof;

12. Proof that all lots in any subdivision meet the requirements of the city zoning code and that each lot shall be dimensioned in such a manner that setbacks, as required by the code, shall be met for any structure or building that may be on or will be constructed on the lot. No platted lot within a subdivision shall contain less square footage than that required by the city zoning code.

13. Approximate locations, dimensions, areas, and purposes of tracts proposed to be reserved for the public;

14. Sites and approximate area(s) for any multi-family dwellings or nonresidential uses;

15. Existing conditions of the proposed preliminary plat, including the information indicated next, if applicable. Separate sheets may be used, if necessary, to convey the information.

   a. Present site designation or subdivision name;

   b. Easements on-site: Location, width and purpose of each;

   c. Public rights-of-way on and within 150 feet of the site: name, width, and classification of each;

   d. Utilities on and adjacent to the site: Locations and size of each water well, water reservoir, water line, sanitary and storm drain; locations of all irrigation channels and drains; locations of gas

lines, fire hydrants, electric and telephone poles, and street lights. If water mains and sewers are not on or adjacent to the tract, indicate the directions, distances, and sizes of the nearest lines;

e. Existing topography.

i. For land with average slopes of less than five percent, show contour lines at intervals of not more than two feet;

ii. For land with average slopes exceeding five percent, show contour lines at intervals of not more than five feet;

f. Existing storm drainage facilities on and adjacent to the site;

g. Conditions on adjacent land significantly affecting design of the subdivision: approximate directions and gradients of ground slopes, character and location of development, access points from adjacent points and building types;

16. Approval block signifying the final approved preliminary plat, to be signed by the subdivision administrator upon approval by the planning and zoning commission and resolution of all outstanding staff comments;

17. Master utility plan, which shall contain a general outline of the proposed utility routing plans for the development, to include, but not be limited to, the following information:

a. Existing and proposed utility locations;

b. Sizes of existing and proposed utilities and system loads;

c. Locations of proposed connections to existing utilities;

d. Proposed off-site improvements necessary to connect to existing utilities;

The master utility plan may be submitted with the final plat or construction drawings with the consent of the utilities department director. Written approval for this allowance must be submitted with the preliminary plat submittal.

18. Copy of early notification letter to neighborhood group(s) and/or noticed area and copy of minutes (summary or verbatim) from any subsequent neighborhood group(s) and/or noticed area meeting as may have been required.

B. Supplemental material to be submitted with the preliminary plat:

1. Application.

a. 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 county clerk's office.

b. Any pending litigation of any final order entered by any court of law regarding the ownership of the subject property shall be disclosed by the applicant at the time that the application is submitted.

2. Submittal fee.

3. Variance requests (if applicable).

4. Master drainage study.

a. The purpose of the master drainage study is to identify major drainage ways, ponding areas, locations of culverts, bridges, open channels and drainage basins that are contributory to the proposed study area. In addition, the ability of downstream drainage facilities to pass the

developed runoff from the proposed development must be analyzed in the master drainage study.

b. The master drainage study shall contain a general outline of the proposed drainage routing plans for the development.

c. The report shall include, but not be limited to, the following information and calculations:

i. Calculation for peak flow from all offsite tributary drainage areas.

ii. Calculations for peak flow within the proposed development for all drainage basins larger than 20 acres.

iii. Preliminary analysis of 100-year floodplain and major drainage ways.

iv. Closed sub-basin analysis of 100-year floodplain and major drainage ways.

v. Discussion and analysis of downstream drainage facilities.

vi. Discussion of anticipated drainage problems within the proposed development and possible solutions.

vii. Report shall be typed on 8½-inch × 11-inch paper.

d. Drawings for the master drainage study shall include, but not be limited to, the following:

i. Any and all floodplains and flood ways must be identified. A copy of applicable F.E.M.A. floodplain map is required indicating limits of current study.

ii. Existing topography.

1) For land that slopes less than approximately five percent, show contour lines at intervals of not more than two feet.

2) For land that slopes more than five percent, show contour lines at intervals of not more than five feet.

3) Location and size of existing and proposed open channels, storm drains, retention/detention areas, and other drainage structures.

4) Identification of all drainage basins in the development.

5) Location of all streets in/adjacent to the proposed development.

6) Identification of all drainage basins tributary to the proposed development.

7) Basin maps may be scaled as small as 1 inch = 2,000 feet. Orthophoto maps at scale of 1 inch = 200 feet are preferred. (Use the most appropriate scale available)

e. Inlet and storm drain size calculations are not required with the master drainage study; therefore, the number of sub-basins analyzed in the report shall be held to the smallest practical amount.

(Ord. No. 2686, § I(Exh. A), 8-5-13)

Secs. 37-82—37-110. Reserved.

ARTICLE IV. FINAL PLAT

Sec. 37-111. The purpose of final platting.

Within two years after the approval of a preliminary plat, the subdivider must submit the final plat. The final plat is the subdivision instrument that is prepared for recording in the office of the county clerk. The final plat process ensures that the recordable plat is in complete compliance with plans approved earlier in the preliminary plat process. If the approved preliminary plat contains more than one phase, a final plat must be submitted every two years thereafter until all phases are complete. The submittal of such additional phases shall constitute a continuance of preliminary plat approval status. A final plat shall not be submitted until preliminary plat approval, if applicable, is complete.

(Ord. No. 2686, § I(Exh. A), 8-5-13)

Sec. 37-112. Preapplication procedure for plats following final plat processes consistent with Article V—Infill Subdivision Process, Section 37-176 (a) regarding alternate summary subdivision creating not more than two lots, Section 37-176 (c) regarding creation of not more than two lots of a previously filed subdivision, Section 37-207 (b) regarding an increase of the number of lots within a previously platted subdivision and Section 37-207 (d) regarding final plats reflecting vacation requests, and Article VIII—Vacation Plats.

A. Any proposed final plat identified in Section 37-112 causing need for public notification, review and approval by the Planning and Zoning Commission or City Council shall first be reviewed at a pre-application meeting scheduled and held by the Community Development staff. A representative for the proposed development action shall attend the pre-application meeting and discuss the proposal in general terms, providing enough specifics to allow attending staff an opportunity to gauge and determine neighborhood and/or community impacts. In that this represents an initial and informal discussion, information provided to the representative regarding procedural nuances or other regulatory related information shall be considered preliminary feedback based on information received, and shall not represent a complete disclosure of all regulatory measures that may apply upon formal review. In no circumstances should related discussion by staff represent a final disposition on the preliminary proposal at hand.

1. *Neighborhood group and/or noticed area determination.* Staff upon consideration of the information received during the pre-application meeting, will instruct as to whether early notification of the subject proposal by the applicant to a neighborhood group(s) (recognized group(s)) and/or noticed area shall be necessary prior to formal application and submittal of the development proposal to the city. The criteria used by staff to determine notice need may include, but not be limited to the following:

   a. Development that seeks the elimination of ROW that could potentially disrupt traffic flow within a neighborhood or if approved becomes inconsistent with the Major Thoroughfare Plan.

   b. Potential land use conflicts resulting from proposed land use distribution adjacent to existing development of a differing land use classification such as proposed commercial uses adjacent to low density residential uses.

   c. Known neighborhood concerns on tangible and reasonable development issues that could be mitigated through design alternatives. An example of a concern congruent to this criterion is anticipated development consistency with surrounding development styles as they may relate to lot size/dimension transitions, roadway widths out of character with adjacent development, etc. An example of a concern not congruent to the criterion is disapproving development on private

vacant property due to the elimination of "open space" or development of private vacant property because one's view may be compromised.

2. *Early notification exception.* Staff determination of early notice need which shall include an open invitation to discuss the proposal at a meeting, shall not pre-empt the Planning and Zoning Commission, City Council or other reviewing bodies with approval (recommending or final action) authority from thereafter requiring an additional meeting(s). Criteria used by the applicable reviewing body shall be at their discretion and may or may not follow the criteria identified in the preceding provision. Significant deviation of plan proposal post neighborhood group and/or noticed area meeting may subject the applicant from thereafter participating in another meeting to inform and discuss revisions. Changes addressing neighborhood concerns shall not necessarily subject the applicant to another meeting; however, an omission in the proposal that is added post meeting and deemed significant by Community Development staff is a candidate for reconsideration by the notified neighborhood prior to consideration by any formal reviewing body.

3. *Early notification recipients.* Notification recipients shall include registered neighborhood groups, and/or associations, identified on the applicable Community Development Department's web page. In the event an identified association or group does not exist or cover an adequate area surrounding the proposal, both the neighborhood group/association and the property owners within 500 feet shall be notified. If no association or group exists within the notification boundary, notification to property owners shall take place using the same distance threshold. Measurement shall be made radially from the outermost property boundary where the subject proposal is located. Any association/group boundary or property boundary that falls either partially or entirely within said radius based on the qualifying standards of this subsection shall receive notification. Contact and mailing information for associations, groups and property owners to be notified shall be provided by the Community Development Department. Mailing preparation, expenses and materials are the responsibility of the developer, applicant and/or representative. Notification shall take place no later than 15 calendar days prior to the date of submittal. In the event a meeting is called for pursuant to item (4) that follows, may cause delay with the proposal's submittal in order to accommodate the agreed upon meeting schedule and other factors necessary to meet submittal content.

4. *Early notification form and content.* All required notification shall be sent via regular, non-certified, first class mail and the content of the notice shall include at minimum:

   a. A detailed description (to the extent possible) of what is being pursued in terms of development.

   b. Information as to how the developer, applicant, or representative for the development action may be contacted.

   c. A statement as to how the proposal may impact the neighborhood(s) surrounding the subject property where the development is to occur.

   d. An open offer to participate in a meeting with the association(s)/group(s) and/or property owners at a mutually agreed upon date, time and location in order to discuss the proposal more fully.

   e. A need to provide a WRITTEN meeting request (if desired) to the development representative, copying Community Development staff either in a letter or email format within the stated 15 calendar day threshold. Requests for a meeting within the 15 calendar day period shall render the meeting need mandatory prior to submittal whether or not the meeting takes place inside or beyond this 15 calendar day period. Requests that come in after said period do not compel the applicant to entertain a meeting prior to submittal; however, a meeting with those requesting one is advisable prior to formal review of the proposal by a recommending or decision making body.

f. Community Development staff contact information for any related correspondence or general inquiry.

5. *Neighborhood group/neighborhood meeting.* It shall be the responsibility of the representative for the proposal to supply any and all materials necessary to convey development parameters as applicable. Additionally, the representative shall be responsible for minute transcription (summary or verbatim) which clearly indicates the date, time and location of the meeting and the general nature of conversation that tool place regarding the proposal. Information shall at minimum identify key points that convey support for or the lack thereof for the proposal as presented.

(Ord. No. 2686, § I(Exh. A), 8-5-13)

Sec. 37-113. Submittal of a final plat application.

A. The final plat and supplemental material shall be submitted to the community development department no later than 25 calendar days prior to the day of the regular meeting of the planning and zoning commission for approval consideration if applicable.

B. Upon submittal, the community development department shall issue a receipt for the submittal. The subdivision administrator shall then have eight business hours to review the submittal for completeness. If all of the required items have been submitted and the final plat submittal contains all necessary items as per section 37-114 of this chapter, the subdivision administrator shall accept the submittal for review. A proposed final plat shall not be accepted for review if incomplete or substantially inaccurate. All items required on a final plat must be present for acceptance. If a submittal is found to be incomplete, the applicant shall have eight business hours to correct the deficiencies and still meet the submittal deadline if applicable.

C. The subdivision administrator or the development review committee shall have the authority to waive or add submittal requirements if it is determined that the additional items and resulting information is necessary to accomplish the objectives of this Code. Additional requirements may include a neighborhood group and/or noticed area meeting (see Section 37-112). Any request for additional submittal requirements shall be justified, in writing, by the requesting entity.

D. Final plats will be referred to the applicable city departments and other governmental agencies for review, comments and recommendations. Each department shall have five business days to complete the review. Written reports, with their recommendations, shall be forwarded to the subdivision administrator. The development review committee shall review the final plat to determine whether it is consistent with the intent and purpose set forth in sections 37-1 and 37-111 of this chapter. For final plats requiring planning and zoning commission approval, a written report shall be provided to the planning and zoning commission with a recommendation that the final plat be either approved, conditionally approved, postponed, or disapproved. The development review committee shall state the reasons for their recommendation on the final plat in the report to the planning and zoning commission.

(Ord. No. 2686, § I(Exh. A), 8-5-13)

Sec. 37-114. Approval of final plats.

A. Administrative approval of final plats. Final plats that are consistent with, and that conform to, an approved preliminary plat shall be approved administratively, unless determined by the subdivision administrator via pre-application for plats subject to Section 37-112 or the DRC that the planning and zoning commission review is necessary, or as otherwise provided by this chapter e.g., replats or waivers to planning-related issues. A final plat that deviates from the approved preliminary plat shall be rejected by the subdivision

administrator and either modified to comply with the preliminary plat or suspended in lieu of an amended preliminary plat.

B. Planning and zoning commission approval of final plats. Final plats requiring planning and zoning commission approval shall be advertised in accordance with the following before consideration at a public hearing:

1. *Agenda*. The agenda for the planning and zoning commission public hearing shall be made available no later than 15 calendar days prior to the public hearing.

2. *Posting*. Notice of the proposed development shall be posted in conspicuous places on the property by the property owner, applicant or representative at least 15 calendar days prior to the planning and zoning commission public hearing. A sign measuring four feet by four feet shall be used and secured with appropriate supporting hardware made available by Community Development staff. When the property has multiple street frontages, one sign per frontage shall be posted. Large properties may require a greater number of signs which shall be determined by Community Development staff. It shall be the responsibility of the property owner, applicant or representative to ensure continuous posting throughout the public hearing processes. Processes for purposes of this provision shall start with the Planning and Zoning Commission and cease when a final determination is made on the proposal regardless of the number of reviewing entities involved. In that multiple reviewing entities may be involved (e.g. appeals), Community Development staff will inform the property owner, applicant or representative of necessary changes needed on the sign to reflect the appropriate reviewing entities, meeting dates and venues.

3. *Notice*. Notice on all proposed final plats requiring planning and zoning commission review shall be sent by regular, non-certified, first class mail to all property owners (as shown on the records of the county assessor) within the proposed area of development and within 500 feet of the area of the proposed subdivision, including streets, alleys, channels, canals, other public rights-of-way and railroad rights-of-way. The community development department is responsible for the list of property owners and for the preparation of mail. Regular, non-certified, first class mail shall also be sent to all recognized neighborhood groups within 500 feet of the subject property. Notice for purposes herein, shall be mailed at least 15 calendar days prior to the public hearing. The subdivision administrator shall execute an affidavit verifying the list of persons to whom notice was mailed. Notice of the time and place of the public hearing shall be published at least 15 calendar days prior to the public hearing in a newspaper of general circulation in the city.

C. The planning and zoning commission shall review the final plat, report, comments and recommendations from the development review committee, presentation from the subdivider or subdivider's representative and from any interested citizens at a public hearing as applicable. If the proposed final plat is complete and devoid of any issues, said final plat shall be placed on the consent agenda for planning and zoning commission approval final plats that are in full compliance with this chapter and an approved preliminary plat, if applicable, as determined by the subdivision administrator, shall not be removed from the consent agenda except by a majority vote of the membership of the commission. Action from the planning and zoning commission on final plats not on the consent agenda shall be in the form of an approval, conditional approval, postponement, or disapproval. Action from the planning and zoning commission shall be recorded in the minutes of the meeting. A copy of the notice of decision that includes any changes or conditions from the planning and zoning commission as done at the public hearing shall be furnished to all appropriate parties in accordance with section 37-11(b). All approvals by the planning and zoning commission are conditioned upon final review and approval of outstanding staff comments.

D. It is the requirement of the planning and zoning commission that no final plat shall be reviewed unless either the applicant or the applicant's representative is present at the planning and zoning commission meeting. If the applicant is not present at the public hearing, the final plat will be tabled until the next regular planning and zoning commission meeting.

E. Upon approval of the final plat, the subdivider may submit applications for construction permits and/or a form of security for the filing of the plat application. The final plat shall not be filed until all construction improvements have been completed, approved and accepted by the city, or until a form of security has been established and approved. It shall be the subdivision administrator's responsibility to obtain the necessary signatures of city officials after final plat approval. The subdivision administrator shall be responsible for filing the final plat with the applicant and/or their representative at the county clerk and recorder's office.

F. Final plat approval shall be effective for no more than three years from the date of approval. If the subdivision improvements have not been completed or a form of security established and approved, the final plat shall be resubmitted for final plat approval. The developer may submit a request for extension of approval prior to the expiration date, if desired. The request will be reviewed by the development review committee for consideration. All plat extensions shall be automatically conditioned to require compliance with all city codes, regulations and specifications in place at the time of development of the plat in question.

G. No changes, revisions, erasures, or modifications shall be made on the final plat. No final plat shall be filed and recorded prior to the satisfaction of all requirements and conditions. Any substantial change to a final plat subject to Section 37-112 may trigger the need for a neighborhood group(s) and/or noticed area meeting to be determined by and at the discretion of the subdivision administrator.

H. Appeals Any person, department, committee, commission, board or bureau affected by a decision of an administrative official, committee, or board in the administration or enforcement of this chapter or of any other adopted resolution, rule, or regulation may appeal the decision. The appeal must be initiated in writing and delivered to the subdivision administrator within 15 calendar days after all other procedures established by this chapter have been exhausted. Refer to section 37-13, "procedures for appealing decisions of staff, the development review committee and the planning and zoning commission," for details on the appeal process.

(Ord. No. 2686, § I(Exh. A), 8-5-13)

Sec. 37-115. Final plat submittal requirements.

A. Final plat requirements. The final plat shall be drawn with permanent ink or produced by a photographic process on a linen or polyester (Mylar) film. The final plat shall be prepared on 18-inch × 24-inch sheets at a scale that adequately represents the information. Copies provided shall be legible.

B. If more than one sheet is used, all sheets must be indexed and contain an index map showing the relationship of the sheet to the whole. Each sheet shall show north arrow, name of subdivision, date of survey, written and graphic scale. The following information shall be shown on the plat:

1. Name of subdivision.

2. Total acreage of subdivision to nearest one-tenth of acre.

3. Date of preparation, north arrow, written and graphic scale.

4. Detailed area/vicinity map clearly showing surrounding area and the proposal's relationship to existing road networks and existing natural or man-made features that may impact the development. Detail must be sufficient so that the subject property can be located in the field using the map.

5. Signed statements by the subdivider dedicating public rights-of-way, and granting all required easements for public use. Also include a statement that the subdivision is planned with the free consent of and in accordance with, the desire of the undersigned owner of the land, acknowledged in a manner required for acknowledgment of deeds. For consistency on all plats, the dedication statement shall read as follows:

DEDICATION

THE TRACT HEREON IS TO BE KNOWN AS _____ SUBDIVISION.

ALL RIGHTS OF WAY AND PUBLIC AREAS SHOWN HEREON ARE DEDICATED TO THE CITY OF LAS CRUCES. UTILITY EASEMENTS ARE GRANTED FOR THE USE OF THE UTILITY COMPANIES THAT ARE SIGNATORY TO THIS PLAT AND TO THE CITY OF LAS CRUCES. ALL RULES AND REGULATIONS OF THE CITY OF LAS CRUCES AND SAID UTILITIES WILL APPLY TO THESE EASEMENTS. ALL OTHER EASEMENTS SHOWN HEREON ARE GRANTED FOR THE USE INDICATED. NO ENCROACHMENT THAT WILL INTERFERE WITH THE USE OF EASEMENTS AS SHOWN ON THIS PLAT IS ALLOWED.

THE SUBDIVISION HAS BEEN DEDICATED IN ACCORDANCE WITH THE WISHES OF THE UNDERSIGNED OWNER(S) OF THE LAND SHOWN HEREON.

6. Name and address of subdivider.

7. Name and address of the person, corporation or organization preparing the final plat.

8. Certification block for planning and zoning commission chairman and secretary.

9. Certification block(s) by authorized representatives from respective utility companies (cable, telephone company and electric company, etc.).

10. Certification and seal by a registered licensed surveyor of the state in accordance with the laws of the state, certifying the accuracy of the survey and the plat, and that the surveyor prepared or supervised preparation of the plat.

11. An accurate and complete boundary survey of the land to be subdivided. Plat boundary lines shall be shown giving the bearings in degrees, minutes and seconds. Distances shall be shown in feet and hundredths. Curved boundaries or lines on the plat shall provide sufficient data to enable the reestablishment of curves on the ground. Curve data shall include:

    a. Central angle and arc length;

    b. Radius;

    c. Chord bearing and length;

12. Location and description of all monuments set or found within the plat area. Subdivisions shall be tied into and referenced to the state plane coordinate system if within one-half mile of a traverse station established in conformity with the state plane coordinate system, with reference made on the final plat.

13. Bearings and lengths for all lot lines and rights-of-way lines existing or proposed. Lines to be eliminated shall be designated and identified by dashed lines. Names of streets, rights-of-way widths of all streets, commercial alleys, green ways, bikeways, trails and other transportation links shall be so designated.

14. Number to identify each lot.

15. Acreage of each lot.

16. Letter to identify each block.

17. Location, dimensions and purpose of all easements, existing or proposed, and any limitations thereof.

18. Adjacent land ownership within 100 feet. Note subdivision and/or owner's names and filing information: book, page and date.

19. Outlots or tracts designated by letter, with disposition indicated in the Note section. Location of land intended to be converted or reserved for public use or reserved in the deeds for the use of all property owners in the proposed subdivision shall be so identified. The purpose of each outlot and the responsibility for maintenance of all tracts shall be noted.

20. Locations, dimensions, and purposes of all necessary easements for water rights in relation to irrigation.

21. Ponding icon. For lots utilizing on-lot ponding, an icon shall be placed on the lot in the approximate location of the proposed ponding area. A note referencing the ponding icon shall also be present on the plat and reflect the purpose and the lot owner's responsibility for maintaining the ponding area.

22. A note placed on the plat stating: "Subdivider responsible for utility stub-outs and for providing any and all easements necessary to provide utility service to lots contained herein."

23. Copy of early notification letter to neighborhood group(s) and/or noticed area and copy of minutes (summary or verbatim) from any subsequent neighborhood group(s) and/or noticed area meeting as may have been required.

C. Supplemental material to submit with the final plat.

1. Application.

a. 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 county clerk's office.

b. Any pending litigation of any final order entered by any court of law regarding the ownership of the subject property shall be disclosed by the applicant at the time the application is submitted.

2. Submittal fee.

3. Documentation from the county assessor's office that the current year's property taxes are paid and that no taxes are owed on the property.

4. Appropriate documentation shall be submitted to show proof of water service and approval of sewage disposal. (Applicable if the subdivision will not be utilizing city services.)

5. Address plat. The address plat shall be drawn with permanent black ink or produced by a photographic process on a linen or polyester (Mylar) film. The address plat shall be prepared on 18-inch × 24-inch sheets at a scale that adequately represents the information. Copies provided shall be legible. The following information shall be required:

a. Title of subdivision;

b. Approved lot layout;

c. Lot and block numbers;

d. Street name;

e. Street address for each lot. (Community development department will provide the addresses.)

f. Neighborhood delivery and collection box unit location (NDCBU), if applicable.

6. A traverse closure sheet (computer printout) for the exterior boundaries of the entire tract and for each parcel within the tract, except any parcels that are true rectangles.

7. Filing fee shall be required of the applicant at time of plat filing.

(Ord. No. 2686, § I(Exh. A), 8-5-13)

Secs. 37-116—37-140. Reserved.

~~ARTICLE V. INFILL SUBDIVISION PROCESS~~

~~Sec. 37-141. The purpose of infill subdividing.~~

~~The purpose of the infill subdivision process is to implement the infill policy plan regarding the subdivision of land by providing an efficient process to encourage the development of vacant or underutilized properties within the central part of the City and to utilize existing infrastructure in a more cost-effective manner.~~

~~(Ord. No. 2686, § I(Exh. A), 8-5-13)~~

~~Sec. 37-142. Usage.~~

~~A. The infill subdivision process is designed to make it more desirable to develop vacant or underutilized land in the central part of the City, as well as to streamline the processing of subdivisions through two procedures: the infill development process (IDP) and the infill subdivision method (ISM). Both procedures provide an expedited review and processing schedule.~~

~~B. The infill development process option allows the applicant to submit a single application, in which the Planning and Zoning Commission may consider not only the proposed subdivision, but additional development aspects of the property such as variances, changes of land use, special use permits, etc. Consult section 38-48 of the Municipal Code, for specific procedures and options. The IDP option shall only be available on qualified infill properties within the defined infill area. See figure 1 for delineation of the Infill Area.~~

~~C. To qualify for use of the infill development process, the property must meet the definition of an infill parcel as set forth in Section 38-48 of the Municipal Code. Subdivision proposals not meeting the qualifications of the infill development process, but located within the infill area may follow the provisions of the infill subdivision method.~~

~~D. The infill subdivision method is an expedited procedure for subdivisions located in the infill areas. The ISM allows for an administrative approval of a concept plan in lieu of the full master plan process for proposals that would ordinarily require master plan approval. Once the concept plan has been approved, the developer may skip the preliminary platting process and proceed to the final plat process. The infill subdivision method is for subdivision proposals only. Any necessary variances, zone changes, special use permits, etc., would require separate action. Subdivision proposals in the Infill Area that consist of just one or two lots may potentially follow the alternate summary procedure.~~

~~(Ord. No. 2686, § I(Exh. A), 8-5-13)~~

~~Sec. 37-143. Procedure for the infill development process.~~

~~A. Pre-application procedure for IDP. Any proposed IDP causing need for public notification, review and approval by the Planning and Zoning Commission shall first be reviewed at a pre-application meeting of the Development Review Committee (DRC), scheduled by the Community Development staff. A representative for the proposed development action shall attend the pre-application meeting and discuss the proposal in general terms, providing enough specifics to allow attending staff representing the DRC an opportunity to gauge and determine neighborhood and/or community impacts. In that this represents an initial and~~

informal discussion, information provided to the representative regarding procedural nuance, necessary changes prior to formal submittal, or other regulatory related information shall be considered preliminary feedback based on information received, and shall not represent a complete disclosure of all regulatory measures that may apply upon formal review. In no circumstances should related discussion by staff represent a final disposition on the preliminary proposal at hand.

1. *Neighborhood group and/or noticed area determination.* The DRC, with lead guidance form the Community Development Department representative, shall upon consideration of the information received during the pre-application meeting, instruct as to whether early notification of the subject proposal by the applicant to a neighborhood group(s) (recognized group(s)) and/or noticed area shall be necessary prior to formal application and submittal of the development proposal to the city. The criteria used by staff to determine notice need may include, but not be limited to the following:

   a. Development that is likely to cause significant traffic impacts due to limited roadway access or a potential decrease in level of service based on the subject roadway's design.

   b. Potential land use conflicts resulting from proposed land use distribution adjacent to existing development of a differing land use classification such as proposed commercial uses adjacent to low density residential uses.

   c. Known neighborhood concerns on tangible and reasonable development issues that could be mitigated through design alternatives. An example of a concern congruent to this criterion is anticipated development consistency with surrounding development styles as they may relate to lot size/dimension transitions, roadway widths out of character with adjacent development, etc. An example of a concern not congruent to the criterion is disapproving development on private vacant property due to the elimination of "open space" or development of private vacant property because one's view may be compromised,

2. *Early notification exception.* DRC determination of early notice need which shall include an open invitation to discuss the proposal at a meeting, shall not pre-empt the Planning and Zoning Commission, City Council upon appeal or other reviewing bodies with approval (recommending or final action) authority from thereafter requiring an additional meeting(s). Criteria used by the applicable reviewing body shall be at their discretion and may or may not follow the criteria identified in the preceding provision. Significant deviation of plan proposal post neighborhood group and/or noticed area meeting may subject the applicant from thereafter participating in another meeting to inform and discuss revisions. Changes addressing neighborhood concerns shall not necessarily subject the applicant to another meeting; however, an omission in the proposal that is added post meeting and deemed significant by Community Development staff is a candidate for reconsideration by the notified neighborhood prior to consideration by any formal reviewing body.

3. *Early notification recipients.* Notification recipients shall include registered neighborhood groups, and/or associations, identified on the applicable Community Development Department's web page. In the event an identified association or group does not exist or cover an adequate area surrounding the proposal, both the neighborhood group/association and the property owners within 500 feet shall be notified. If no association or group exists within the notification boundary, notification to property owners shall take place using the same distance threshold. Measurement shall be made radially from the outermost property boundary where the subject proposal is located. Any association/group boundary or property boundary that falls either partially or entirely within said radius based on the qualifying standards of this subsection shall receive notification. Contact and mailing information for associations, groups and property owners to be notified shall be provided by the Community Development Department. Mailing preparation, expenses and materials are the responsibility of the developer, applicant and/or representative. Notification shall take place no later than 15 calendar days prior to the date of submittal. In the event a meeting is called for pursuant to item (4) that follows, may

cause delay with the proposal's submittal in order to accommodate the agreed upon meeting schedule and other factors necessary to meet submittal content.

4. *Early notification form and content.* All required notification shall be sent via regular, non-certified, first class mail and the content of the notice shall include at minimum:

   a. A detailed description (to the extent possible) of what is being pursued in terms of development.

   b. Information as to how the developer, applicant, or representative for the development action may be contacted.

   c. A statement as to how the proposal may impact the neighborhood(s) surrounding the subject property where the development is to occur.

   d. An open offer to participate in a meeting with the association(s)/group(s) and/or property owners at a mutually agreed upon date, time and location in order to discuss the proposal more fully.

   e. A need to provide a WRITTEN meeting request (if desired) to the development representative, copying Community Development staff either in a letter or email format within the stated 15 calendar day threshold. Requests for a meeting within the 15 calendar day period shall render the meeting need mandatory prior to submittal whether or not the meeting takes place inside or beyond this 15 calendar day period. Requests that come in after said period do not compel the applicant to entertain a meeting prior to submittal; however, a meeting with those requesting one is advisable prior to formal review of the proposal by a recommending or decision making body.

   f. Community Development staff contact information for any related correspondence or general inquiry.

5. *Neighborhood group/neighborhood meeting.* It shall be the responsibility of the representative for the proposal to supply any and all materials necessary to convey development parameters as applicable. Additionally, the representative shall be responsible for minute transcription (summary or verbatim) which clearly indicates the date, time and location of the meeting and the general nature of conversation that tool place regarding the proposal. Information shall at minimum identify key points that convey support for or the lack thereof for the proposal as presented

B. For purposes of the pre-application process, a written application or fee is not required, nor does this pre-application procedure require formal approval.

(Ord. No. 2686, § I(Exh. A), 8-5-13)

Sec. 37-144. Submittal of an infill development process application.

A. The application indicating the type of action being requested, along with the necessary support information may be submitted to the community development department at any time. The submittal shall be reviewed by the appropriate staff within eight business hours, and if all required items have been submitted, the application shall be accepted for review. If a submittal is found to be incomplete, the applicant shall correct the deficiencies and resubmit the application. The proposal will then be scheduled for review by the planning and zoning commission at a public hearing on the first Tuesday following the public notice period.

B. The subdivision administrator, the development review committee or the planning and zoning commission shall have the authority to waive or add submittal requirements if it is determined that the additional items and resulting information is necessary in order to accomplish the objectives of this chapter. Additional

requirements may include a neighborhood group and/or noticed area meeting. Any request for additional submittal requirements shall be justified in writing by the requesting entity.

(Ord. No. 2686, § I(Exh. A), 8-5-13)

Sec. 37-145. Approval of infill subdivisions under the infill development process.

A. Following staff review, a written report shall be provided to the planning and zoning commission with a recommendation that the proposal be approved, conditionally approved, postponed, or disapproved. The development review committee shall state reasons for their recommendation on the proposal to the Planning and Zoning Commission.

1. Public notice requirements for the IDP.

a. *Agenda.* The agenda for the planning and zoning commission public hearing shall be made available no later than 15 calendar days prior to the public hearing.

b. *Posting.* Notice of the proposed development shall be posted in conspicuous places on the property site by the property owner, applicant or representative at least 15 calendar days prior to the planning and zoning commission public hearing. A sign measuring four feet by four feet shall be used and secured with appropriate supporting hardware made available by Community Development staff. When the property has multiple street frontages, one sign per frontage shall be posted. Large properties may require a greater number of signs which shall be determined by Community Development staff. It shall be the responsibility of the property owner, applicant or representative to ensure continuous posting throughout the public hearing processes. Processes for purposes of this provision shall start with the Planning and Zoning Commission and cease when a final determination is made on the proposal regardless of the number of reviewing entities involved. In that multiple reviewing entities may be involved, Community Development staff will inform the property owner, applicant or representative of necessary changes needed on the sign to reflect the appropriate reviewing entities, meeting dates and venues.

c. *Notice.* Notice on all proposed subdivisions shall be sent by regular, non-certified, first class mail for subdivision related matters. If zoning related issues are part of the IDP request, notice for those items shall follow Article II, Section 38-10, E. to all property owners (as shown on the records of the county assessor) within the proposed area of development and within 500 feet of the area of the proposed subdivision, including streets, alleys, channels, canals, other public rights-of-way and railroad rights-of-way. The community development department is responsible for the list of property owners and the preparation of the mail. Regular, non-certified, first class mail shall also be sent to all recognized neighborhood groups within 500 feet of the subject property. Notice for purposes herein shall be mailed at least 15 calendar days prior to the public hearing. Notice of the time and place of the public hearing shall be published in a newspaper of general circulation in the city at least 15 calendar days prior to the meeting.

B. The planning and zoning commission shall review the proposal, report, comments and recommendations received from the development review committee, the presentation from the subdivider or the subdivider's representative, and comments from any interested citizens, at a public hearing scheduled as needed, in accordance with section 38-1605 of the municipal code. Action from the planning and zoning commission shall be in the form of an approval, conditional approval, postponement or disapproval. Action from the planning and zoning commission shall be recorded in the minutes of the meeting. A copy of the notice of decision that includes any changes or conditions from the planning and zoning commission as done at the public hearing shall be furnished to all appropriate parties in accordance with section 37-11(b).

(Ord. No. 2686, § I(Exh. A), 8-5-13)

Sec. 37-146. Preapplication procedure for the infill subdivision method.

A. The subdivider that is following the infill subdivision method shall, prior to the filing of an application for approval of a final plat, submit a conceptual plan of the proposed development for formal review. Upon receipt of the submittal, the community development department shall issue a receipt for same. The subdivision administrator shall then have eight business hours to review the submittal for completeness. If all of the required items have been submitted, and the conceptual plan submittal contains all necessary items as per section 37-144 of this chapter, the subdivision administrator shall accept the submittal for review. A proposed conceptual plan shall not be accepted for review if incomplete. All items required on a conceptual plan must be present for acceptance. If a submittal is found to be incomplete, the applicant shall have eight business hours to correct the deficiencies and still meet the submittal deadline, if applicable.

B. Any proposed ISM causing need for public notification, review and approval by the Planning and Zoning Commission shall first have a concept plan reviewed at a meeting of the Development Review Committee (DRC) that is to be scheduled within nine calendar days of acceptance by the Community Development staff (note: a conceptual plan is not required if following the infill development process). The purpose of the review is to determine whether it is consistent with the intents and purposes set forth in sections 37-3 and 37-141 of this chapter and to gauge whether early notification is warranted. A written report shall ultimately be provided to the subdivider indicating any changes that may be needed or potential concerns that may arise during the final plat and construction drawing review process. Upon completion of the review, the DRC will provide a recommendation on the proposal for the Planning and Zoning Commission. Due to this process, a representative for the proposed development action shall attend the DRC meeting and discuss the proposal in general terms, providing enough specifics to allow attending staff representing the DRC an opportunity to gauge and determine neighborhood and/or community impacts and development related issues.

1. *Neighborhood group and/or noticed area determination.* The DRC, with lead guidance form the Community Development Department representative, shall upon consideration of the information received during the pre-application meeting, instruct as to whether early notification of the subject proposal by the applicant to a neighborhood group(s) (recognized group(s)) and/or noticed area shall be necessary prior to formal application and submittal of the development proposal to the city. The criteria used by staff to determine notice need may include, but not be limited to the following:

   a. Development that is likely to cause significant traffic impacts due to limited roadway access or a potential decrease in level of service based on the subject roadway's design.

   b. Potential land use conflicts resulting from proposed land use distribution adjacent to existing development of a differing land use classification such as proposed commercial uses adjacent to low density residential uses.

   c. Known neighborhood concerns on tangible and reasonable development issues that could be mitigated through design alternatives. An example of a concern congruent to this criterion is anticipated development consistency with surrounding development styles as they may relate to lot size/dimension transitions, roadway widths out of character with adjacent development, etc. An example of a concern not congruent to the criterion is disapproving development on private vacant property due to the elimination of "open space" or development of private vacant property because one's view may be compromised,

2. *Early notification exception.* DRC determination of early notice need which shall include an open invitation to discuss the proposal at a meeting, shall not pre-empt the Planning and Zoning Commission, City Council upon appeal or other reviewing bodies with approval (recommending or final action) authority from thereafter requiring an additional meeting(s). Criteria used by the applicable reviewing body shall be at their discretion and may or may not follow the criteria identified in the

preceding provision. Significant deviation of plan proposal post neighborhood group and/or noticed area meeting may subject the applicant from thereafter participating in another meeting to inform and discuss revisions. Changes addressing neighborhood concerns shall not necessarily subject the applicant to another meeting; however, an omission in the proposal that is added post meeting and deemed significant by Community Development staff is a candidate for reconsideration by the notified neighborhood prior to consideration by any formal reviewing body.

3. *Early notification recipients.* Notification recipients shall include registered neighborhood groups, and/or associations, identified on the applicable Community Development Department's web page. In the event an identified association or group does not exist or cover an adequate area surrounding the proposal, both the neighborhood group/association and the property owners within 500 feet shall be notified. If no association or group exists within the notification boundary, notification to property owners shall take place using the same distance threshold. Measurement shall be made radially from the outermost property boundary where the subject proposal is located. Any association/group boundary or property boundary that falls either partially or entirely within said radius based on the qualifying standards of this subsection shall receive notification. Contact and mailing information for associations, groups and property owners to be notified shall be provided by the Community Development Department. Mailing preparation, expenses and materials are the responsibility of the developer, applicant and/or representative. Notification shall take place no later than 15 calendar days prior to the date of submittal. In the event a meeting is called for pursuant to item (4) that follows, may cause delay with the proposal's submittal in order to accommodate the agreed upon meeting schedule and other factors necessary to meet submittal content.

4. *Early notification form and content.* All required notification shall be sent via regular, non-certified, first class mail and the content of the notice shall include at minimum:

   a. A detailed description (to the extent possible) of what is being pursued in terms of development.

   b. Information as to how the developer, applicant, or representative for the development action may be contacted.

   c. A statement as to how the proposal may impact the neighborhood(s) surrounding the subject property where the development is to occur.

   d. An open offer to participate in a meeting with the association(s)/group(s) and/or property owners at a mutually agreed upon date, time and location in order to discuss the proposal more fully.

   e. A need to provide a WRITTEN meeting request (if desired) to the development representative, copying Community Development staff either in a letter or email format within the stated 15 calendar day threshold. Requests for a meeting within the 15 calendar day period shall render the meeting need mandatory prior to submittal whether or not the meeting takes place inside or beyond this 15 calendar day period. Requests that come in after said period do not compel the applicant to entertain a meeting prior to submittal; however, a meeting with those requesting one is advisable prior to formal review of the proposal by a recommending or decision making body.

   f. Community Development staff contact information for any related correspondence or general inquiry.

5. *Neighborhood group/neighborhood meeting.* It shall be the responsibility of the representative for the proposal to supply any and all materials necessary to convey development parameters as applicable. Additionally, the representative shall be responsible for minute transcription (summary or verbatim) which clearly indicates the date, time and location of the meeting and the general nature of

conversation that tool place regarding the proposal. Information shall at minimum identify key points that convey support for or the lack thereof for the proposal as presented.

(Ord. No. 2686, § I(Exh. A), 8-5-13)

Sec. 37-147. Submittal of an infill subdivision method application.

A. Following a concept plan review by the DRC, if required, the final plat and supplemental material shall be submitted to the community development department. Upon submittal, the subdivision administrator shall have eight hours to review the submittal for completeness. If all of the required items have been submitted, and the final plat submittal contains all necessary items per section 37-147, the submittal will be accepted for review. A proposed final plat shall not be accepted for review if incomplete or substantially inaccurate.

B. The subdivision administrator, the development review committee or the planning and zoning commission shall have the authority to waive or add submittal requirements if it is determined that the additional items and resulting information is necessary in order to accomplish the objectives of this chapter. Additional requirements may include a neighborhood group and/or noticed area meeting. Any request for additional submittal requirements shall be justified in writing by the requesting entity.

C. Final plats shall be processed to the development review committee and other governmental agencies, if applicable, for review, comments and recommendations. The development review committee shall review the final plat to determine if it is consistent with the intent and purpose set forth in sections 37-3 and 37-141 of this chapter.

(Ord. No. 2686, § I(Exh. A), 8-5-13)

Sec. 37-148. Approval of infill subdivisions under the infill subdivision method.

A. Following staff review, a written report shall be provided to the Planning and Zoning Commission with a recommendation that the final plat be approved, conditionally approved, postponed, or disapproved. The development review committee shall inform the planning and zoning commission of the reasons for their recommendation on the final plat.

B. Public notice requirements for the infill subdivision method.

1. *Agenda*. The agenda for the planning and zoning commission public hearing shall be made available no later than 15 calendar days prior to the public hearing.

2. *Posting*. Notice of the proposed development shall be posted in conspicuous places on the property site by the property owner, applicant or representative at least 15 calendar days prior to the Planning and Zoning Commission public hearing. A sign measuring four feet by four feet shall be used and secured with appropriate supporting hardware made available by Community Development staff. When the property has multiple street frontages, one sign per frontage shall be posted. Large properties may require a greater number of signs which shall be determined by Community Development staff. It shall be the responsibility of the property owner, applicant or representative to ensure continuous posting throughout the public hearing processes. Processes for purposes of this provision shall start with the Planning and Zoning Commission and cease when a final determination is made on the proposal regardless of the number of reviewing entities involved. In that multiple reviewing entities may be involved, Community Development staff will inform the property owner, applicant or representative of necessary changes needed on the sign to reflect the appropriate reviewing entities, meeting dates and venues.

3. *Notice*. Notice on all proposed subdivisions shall be sent by regular, non-certified, first class mail to all property owners (as shown on the records of the county assessor) within the proposed area of development and within 500 feet of the area of the proposed subdivision, excluding streets, alleys, channels, canals, other public rights-of-way and railroad rights-of-way. Regular, non-certified, first class mail shall also be sent to all recognized neighborhood groups within 500 feet of the subject property. The community development department is responsible for the list of property owners and preparation of regular mail. Notice for purposes herein, shall be mailed at least 15 calendar days prior to the public hearing. The subdivision administrator shall execute an affidavit verifying the list of persons to whom notice was mailed. Notice of the time and place of the public hearing shall be published at least 15 calendar days prior to the public hearing in a newspaper of general circulation in the city.

C. The Planning and Zoning Commission shall review the final plat, report, comments and recommendations from the development review committee, presentation from the applicant or the applicant's representative and from any interested citizens. Action from the Planning and Zoning Commission shall be in the form of an approval, conditional approval, postponement, or disapproval. Action from the Planning and Zoning Commission shall be recorded in the minutes of the meeting. A copy of the notice of decision that includes any changes or conditions from the Planning and Zoning Commission, as approved at the public hearing, shall be furnished to all appropriate parties in accordance with section 37-11(b). All approvals by the Planning and Zoning Commission are conditioned upon final review and approval of outstanding staff comments.

(Ord. No. 2686, § I(Exh. A), 8-5-13)

Sec. 37-149. Additional approval requirements for the infill development process or infill subdivision method.

A. It is a requirement of the Planning and Zoning Commission that no infill development process or infill subdivision method proposal shall be reviewed unless either the subdivider or the subdivider's representative is present at the Planning and Zoning Commission meeting. If the applicant or representative is not present at the public hearing, the proposal shall be tabled until the next available Planning and Zoning Commission meeting.

B. Upon final approval of the infill development process or the infill subdivision method proposal, the subdivider may submit applications for construction permits and/or a form of security for the filing of the plat. The final plat shall not be filed until all construction improvements have been completed by the developer and approved by the city or a form of security has been established and approved. It shall be the subdivision administrator's responsibility to obtain the necessary signatures of city officials after final plat approval. The subdivision administrator shall be responsible for filing the final plat at the county clerk and recorder's office.

C. Final plat approval shall be effective for no more than three years from the date of approval. If the subdivision improvements have not been completed or a form of security established and approved, the final plat shall be resubmitted for final plat approval. Prior to the expiration date, the developer may submit a request for extension, if desired. The request will be reviewed by the development review committee for consideration. All plat extensions shall be automatically conditioned to required compliance with all city codes, regulations and specifications in place at the time of development of the plat in question.

D. No changes, revisions, erasures, or modifications shall be made on the final plat. No final plat shall be filed and recorded prior to the satisfaction of all requirements and conditions.

E. Appeals. Any person, department, committee, commission, board or bureau that is affected by a decision of an administrative official, committee, or board in the administration or enforcement of this chapter or any other adopted resolution, rule, or regulation may appeal the decision. The appeal must be initiated in writing

and delivered to the subdivision administrator within 15 calendar days after all other procedures established by this chapter have been exhausted. For details on the appeal process, refer to section 37-13, "procedures for appealing decisions if staff, the development review committee and the planning and zoning commission."

(Ord. No. 2686, § I(Exh. A), 8-5-13)

Sec. 37-150. Infill subdivision submittal requirements for the infill development process or infill subdivision method.

A. *Conceptual plan requirements.* Preapplication procedure for infill subdivisions utilizing the ISM requires the submittal of a conceptual plan, which shall be prepared in accordance with the master plan requirements stated in section 37-46.

B. *Final plat and supplemental material requirements.* After review of the conceptual plan, if required, the subdivider shall submit the following for final plat approval.

1. Application for final plat.

   a. 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) of the subject property as recorded in the county clerk's office.

   b. Any pending litigation of any final order entered by any court of law regarding the ownership of the subject property shall be disclosed by the applicant at the time that the application is submitted.

2. Submittal fee, unless utilizing the IDP.

3. Filing fee shall be required of the applicant at the time of plat filing.

4. A final plat conforming to section 37-114 of this chapter.

5. Copy of early notification letter to neighborhood group(s) and/or noticed area and copy of minutes (summary or verbatim) from any subsequent neighborhood group(s) and/or noticed area meeting as may have been required.

6. Address plat. The address plat shall be drawn with permanent ink or produced by a photographic process on a linen or polyester (Mylar) film. The address plat shall be prepared on 18-inch x 24-inch sheets at a scale that adequately represents the information (preferred scale: 1 inch = 100 feet). Copies provided shall be legible. The following information shall be required:

   a. Title of subdivision.

   b. Approved lot layout.

   c. Lot and block numbers.

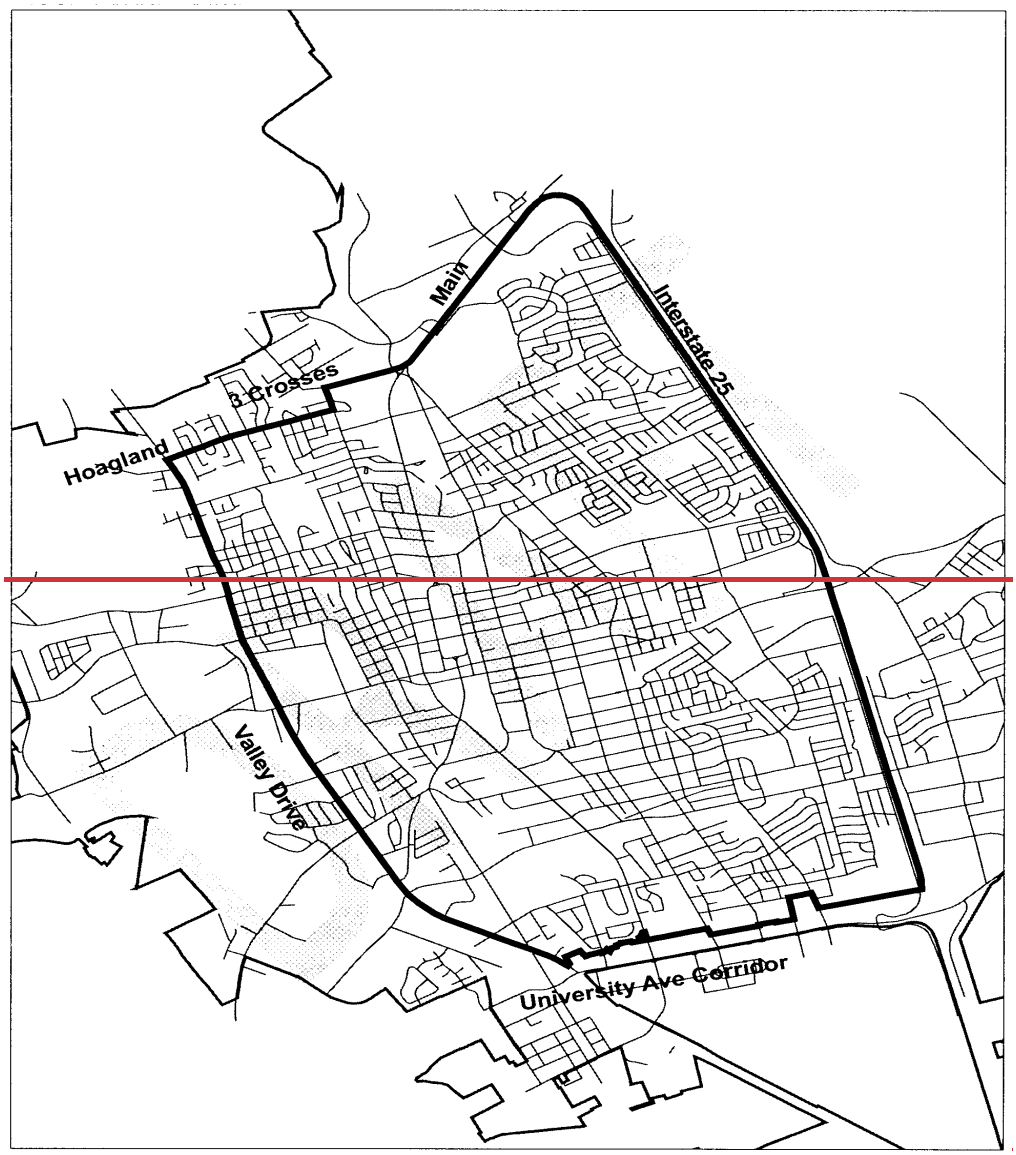
   d. Street name.

   e. Address for each lot. (Community development department will provide the addresses.)

   f. Neighborhood delivery and collection box unit location, if applicable.

(Ord. No. 2686, § I(Exh. A), 8-5-13)

FIGURE 1: Infill Area



~~**Secs. 37-151—37-175. Reserved.**~~

~~*ARTICLE VI. ALTERNATE SUMMARY PROCESS*~~

~~**Sec. 37-176. The purpose of the alternate summary process.**~~

~~A. When a subdivision consists of no more than two parcels of land or is a replat of a previously-filed subdivision application that does not increase the total number of lots, the subdivision administrator may review and approve the subdivision, including subdivisions that propose to dedicate a right-of-way.~~

~~B. The subdivision administrator may also approve replats that decrease the number of lots of contiguous parcels in a previously-filed subdivision, provided that street dedications and utility easements are not being proposed to be vacated by the action.~~

C. The subdivision administrator shall have the authority to determine whether a replat of a previously-approved subdivision or a subdivision of two parcels shall be approved by summary procedure or be brought before the planning and zoning commission. The determination shall be final unless overruled by the development review committee, the city planning and zoning commission or city council action. (See section 37-13, "procedures for appealing decisions of staff, the development review committee and the planning and zoning commission")

D. The alternate summary procedure shall be used only once on any one property unless the property has been master-planned for creating commercial, office or industrial subdivisions and the streets within those subdivisions have been dedicated and accepted by the city, including previously-platted lots (See article II: Master Plan). If the streets within a subdivision have not been dedicated and accepted by the city, the subdivider must follow the master plan procedures of this chapter before utilizing the alternate summary procedure more than once (See article II: Master Plan).

(Ord. No. 2686, § I(Exh. A), 8-5-13)

Sec. 37-177. Pre-application procedure for final plats submitted under Sec. 37-176 (a) (increase of no more than two lots) or Sec. 37-176 (c) (creation of two parcels from a previously approved subdivision).

A. Any proposed final plat under Section 37-176(a) (increase of no more than two lots) or Section 37-176(c) (creation of two parcels from a previously approved subdivision) causing need for public notification, review and approval by the Planning and Zoning Commission shall first be reviewed at a pre-application meeting scheduled and held by the Community Development staff. A representative for the proposed development action shall attend the pre-application meeting and discuss the proposal in general terms, providing enough specifics to allow attending staff an opportunity to gauge and determine neighborhood and/or community impacts. In that this represents an initial and informal discussion, information provided to the representative regarding procedural nuances or other regulatory related information shall be considered preliminary feedback based on information received, and shall not represent a complete disclosure of all regulatory measures that may apply upon formal review. In no circumstances should related discussion by staff represent a final disposition on the preliminary proposal at hand.

1. *Neighborhood group and/or noticed area determination.* Staff upon consideration of the information received during the pre-application meeting, will instruct as to whether early notification of the subject proposal by the applicant to a neighborhood group(s) (recognized group(s)) and/or noticed area shall be necessary prior to formal application and submittal of the development proposal to the city. The criteria used by staff to determine notice need may include, but not be limited to the following:

   a. Development that seeks the elimination of ROW that could potentially disrupt traffic flow within a neighborhood or if approved becomes inconsistent with the Major Thoroughfare Plan.

   b. Potential land use conflicts resulting from proposed land use distribution adjacent to existing development of a differing land use classification such as proposed commercial uses adjacent to low density residential uses.

   c. Known neighborhood concerns on tangible and reasonable development issues that could be mitigated through design alternatives. An example of a concern congruent to this criterion is anticipated development consistency with surrounding development styles as they may relate to lot size/dimension transitions, roadway widths out of character with adjacent development, etc. An example of a concern not congruent to the criterion is disapproving development on private vacant property due to the elimination of "open space" or development of private vacant property because one's view may be compromised,

2. *Early notification exception.* Staff determination of early notice need which shall include an open invitation to discuss the proposal at a meeting, shall not pre-empt the Planning and Zoning Commission, City Council or other reviewing bodies with approval (recommending or final action) authority from thereafter requiring an additional meeting(s). Criteria used by the applicable reviewing body shall be at their discretion and may or may not follow the criteria identified in the preceding provision. Significant deviation of plan proposal post neighborhood group and/or noticed area meeting may subject the applicant from thereafter participating in another meeting to inform and discuss revisions. Changes addressing neighborhood concerns shall not necessarily subject the applicant to another meeting; however, an omission in the proposal that is added post meeting and deemed significant by Community Development staff is a candidate for reconsideration by the notified neighborhood prior to consideration by any formal reviewing body.

3. *Early notification recipients.* Notification recipients shall include registered neighborhood groups, and/or associations, identified on the applicable Community Development Department's web page. In the event an identified association or group does not exist or cover an adequate area surrounding the proposal, both the neighborhood group/association and the property owners within 500 feet shall be notified. If no association or group exists within the notification boundary, notification to property owners shall take place using the same distance threshold. Measurement shall be made radially from the outermost property boundary where the subject proposal is located. Any association/group boundary or property boundary that falls either partially or entirely within said radius based on the qualifying standards of this subsection shall receive notification. Contact and mailing information for associations, groups and property owners to be notified shall be provided by the Community Development Department. Mailing preparation, expenses and materials are the responsibility of the developer, applicant and/or representative. Notification shall take place no later than 15 calendar days prior to the date of submittal. In the event a meeting is called for pursuant to item (4) that follows, may cause delay with the proposal's submittal in order to accommodate the agreed upon meeting schedule and other factors necessary to meet submittal content.

4. *Early notification form and content.* All required notification shall be sent via regular, non-certified, first class mail and the content of the notice shall include at minimum:

   a. A detailed description (to the extent possible) of what is being pursued in terms of development.

   b. Information as to how the developer, applicant, or representative for the development action may be contacted.

   c. A statement as to how the proposal may impact the neighborhood(s) surrounding the subject property where the development is to occur.

   d. An open offer to participate in a meeting with the association(s)/group(s) and/or property owners at a mutually agreed upon date, time and location in order to discuss the proposal more fully.

   e. A need to provide a WRITTEN meeting request (if desired) to the development representative, copying Community Development staff either in a letter or email format within the stated 15 calendar day threshold. Requests for a meeting within the 15 calendar day period shall render the meeting need mandatory prior to submittal whether or not the meeting takes place inside or beyond this 15 calendar day period. Requests that come in after said period do not compel the applicant to entertain a meeting prior to submittal; however, a meeting with those requesting one is advisable prior to formal review of the proposal by a recommending or decision making body.

   f. Community Development staff contact information for any related correspondence or general inquiry.

5. *Neighborhood group/neighborhood meeting.* It shall be the responsibility of the representative for the proposal to supply any and all materials necessary to convey development parameters as applicable. Additionally, the representative shall be responsible for minute transcription (summary or verbatim) which clearly indicates the date, time and location of the meeting and the general nature of conversation that tool place regarding the proposal. Information shall at minimum identify key points that convey support for or the lack thereof for the proposal as presented.

(Ord. No. 2686, § I(Exh. A), 8-5-13)

Sec. 37-178. Preapplication procedure - general.

A. Prior to the filing of an application for approval of a final plat, the subdivider shall submit to the community development department a conceptual plan of the proposed development. A written application or fee is not required, nor does the preapplication procedure require formal approval.

B. The conceptual plan shall be processed to the subdivision administrator. The subdivision administrator shall discuss with the applicant or the applicant's representative the proposed final plat and shall indicate changes, if any, that will be required for the submittal process.

(Ord. No. 2686, § I(Exh. A), 8-5-13)

Sec. 37-179. Submittal procedure for the alternate summary process.

A. The final plat and supplemental material processed through the alternate summary procedure shall be submitted to the community development department any time during normal working hours. Upon receipt of the submittal, the community development department shall issue a receipt for same. The subdivision administrator shall then have eight business hours to review the submittal for completeness. If all the required items have been submitted, and the final plat submittal contains all of the necessary items as per section 37-114, the subdivision administrator shall accept the submittal for review. A proposed final plat shall not be accepted for review if incomplete or substantially inaccurate. All items required on a final plat must be presented for acceptance. If a submittal is found to be incomplete, the applicant shall have eight business hours to correct the deficiencies and still meet the submittal deadline, if applicable.

B. The subdivision administrator, the development review committee or the planning and zoning commission shall have the authority to waive or add submittal requirements in cases where it is determined that the additional items and resulting information is necessary in order to accomplish the objectives of this code. Additional requirements may include a neighborhood group and/or noticed area meeting. Any requests for additional submittal requirements shall be justified in writing by the requesting entity.

C. Final plats will be referred to the applicable city departments and other governmental agencies for review, comments and recommendations. Each department shall have five business days to complete the review. Written reports, with their comments and recommendations, shall be forwarded to the subdivision administrator.

D. Whenever comments received by the city departments are in conflict, or the subdivider is in disagreement with the comments, the subdivision administrator shall be the authority to determine and resolve non-engineering or utility comment(s). The subdivision administrator may defer this authority to the development review committee. The development review committee decisions shall be final unless overruled by appeal to department directors, the planning and zoning commission, arbitration or city council, as applicable.

E. The subdivision administrator shall review all comments for applicability and appropriateness to the final plat requirements and shall forward any comments to the subdivider or the subdivider's representative for

revision and completion. Final plats or replats that receive comments shall be resubmitted and reviewed until the provisions set forth in this chapter are met. At that time, the final plat or replat shall be approved, and notice of decision shall be furnished to the applicant and the applicant's representative in accordance with section 37-11(b).

F. Upon final approval of the final plat or replat, the applicant may submit applications for construction permits and/or a form of security for the filing of the plat. The final plat or replat shall not be filed until all construction improvements have been completed and approved by the city, or a form of security has been established and approved. It shall be the subdivision administrator's responsibility to obtain the necessary signatures of city officials after final plat or replat approval. The subdivision administrator and the applicant or their representative shall be responsible for filing the final plat or replat at the office of the county clerk.

G. Final plat approval shall be effective for no more than three years from the date of approval as described on the approval action form. If the subdivision improvements have not begun or a form of security established and approved, the final plat shall be resubmitted for approval. The subdivider may submit a request for extension of approval prior to the expiration date, if desired. The request will be reviewed by the subdivision administrator for consideration. All plat application extensions shall be automatically conditioned to require compliance with all city codes, regulations and specifications in place at the time of development of the plat in question.

H. An applicant who proposes a subdivision for the purpose of mortgage, which is processed through the alternate summary procedure, is required to submit a plat of survey and a legal description with a note that clearly states that the subdivision is for mortgage purposes only and does not allow for the conveyance of the property in question. Upon submittal, the subdivision administrator shall transmit a letter to the property owner stating that the subdivision created is for mortgage purposes only and does not grant the authority to sell the divided parcel as shown on the plat of survey. If the property owner desires to sell the divided parcel by mortgage, he/she is responsible for meeting all requirements, as stated in this chapter. Once the property owner provides a written response to the subdivision administrator's letter that said property owner understands the conditions of the subdivision by mortgage and is not dividing said parcel for the purpose of sale, the subdivision administrator will approve the plat of survey.

I. Appeals. Any person, department, committee, commission, board or bureau affected by a decision of an administrative official, committee, or board in the administration or enforcement of this chapter, or by any other adopted resolution, rule, or regulation, may appeal the decision. The appeal must be initiated in writing and delivered to the community development department within 15 calendar days after all other procedures established by this chapter have been exhausted. Refer to section 37-13, "procedures for appealing decisions of staff, the development review committee and the planning and zoning commission," for details on the appeal process.

(Ord. No. 2686, § I(Exh. A), 8-5-13)

Sec. 37-180. Alternate summary process submittal requirements.

A. Subdivisions that follow the alternate summary process shall conform to the following requirements:

1. Application.

a. The application shall be 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) of the subject property, as recorded in the county clerk's office.

b. Any pending litigation of any final order entered by any court of law regarding the ownership of the subject property shall be disclosed by the applicant at the time that the application is submitted.

2. Submittal fee.

3. Documentation from the county assessor's office that the current year's property taxes are paid and that no taxes are owed on the property.

4. A final plat conforming to section 37-114 of this code.

5. Releases by affected utility companies for replats submitted for approval by the alternate summary procedure.

6. Address plat. The address plat shall be drawn using permanent black ink or produced by a photographic process on a linen or polyester (Mylar) film. The address plat shall be prepared on 18-inch × 24-inch sheets at a scale that adequately represents the information (preferred scale: 1 inch = 100 feet). Copies provided shall be legible. The following information shall be required:

   a. Title of subdivision;

   b. Approved lot layout;

   c. Lot and block numbers;

   d. Street name;

   e. Address of each lot (Community development department will provide the addresses).

   f. Neighborhood delivery and collection box unit location, if applicable.

7. Filing fee at time of plat filing.

8. Copy of early notification letter to neighborhood group(s) and/or noticed area and copy of minutes (summary or verbatim) from any subsequent neighborhood group(s) and/or noticed area meeting as may have been required.

(Ord. No. 2686, § I(Exh. A), 8-5-13)

Secs. 37-181—37-205. Reserved.

ARTICLE VII. REPLATS

Sec. 37-206. Replat—Defined.

A replat occurs when changes take place on a previously-filed subdivision plat. The process to follow when replatting a subdivision of lots within a subdivision varies and depends on the type(s) of changes being made.

(Ord. No. 2686, § I(Exh. A), 8-5-13)

Sec. 37-207. Process to follow when replatting.

A. A replat of a previously-filed subdivision that does not increase the total number of lots (moving or removing existing lot lines) may follow the procedures established in article VI, alternate summary procedure.

B. Replats that increase the total number of lots of a previously-filed subdivision shall follow procedures appropriate to those given in Final Plats.

C. Replats proposing waivers to this chapter and/or design standards shall follow the appropriate procedures regardless of whether said waiver(s) were approved with the original subdivision plat.

D. Replats and vacation plats may be submitted simultaneously and as one plat, if deemed appropriate by the subdivision administrator (Refer to Vacations). The application shall be processed to the city council for consideration when all requirements of this chapter have been met.

E. Appeals. Any person, department, committee, commission, board or bureau affected by a decision of an administrative official, committee, or board in the administration or enforcement of this chapter, or of any other adopted resolution, rule or regulation, may appeal the decision. The appeal must be initiated in writing and delivered to the city community development department within 15 calendar days after all other procedures established by this chapter have been exhausted. For details on the appeal process, refer to section 37-13, "procedures for appealing decisions of staff, the development review committee and the planning and zoning commission."

(Ord. No. 2686, § I(Exh. A), 8-5-13)

Sec. 37-208. Pre-application procedure for final plats submitted under Section 37-207(b) (increase of lots of a previously filed subdivision or Section 37-207(d) (vacation plats).

A. Any proposed final plat under Section 37-207(b) (increase of lots of a previously filed subdivision or Section 37-207(d) (vacation plats) causing need for public notification, review and approval by the Planning and Zoning Commission or City Council shall first be reviewed at a pre-application meeting scheduled and held by the Community Development staff. A representative for the proposed development action shall attend the pre-application meeting and discuss the proposal in general terms, providing enough specifics to allow attending staff an opportunity to gauge and determine neighborhood and/or community impacts. In that this represents an initial and informal discussion, information provided to the representative regarding procedural nuances or other regulatory related information shall be considered preliminary feedback based on information received, and shall not represent a complete disclosure of all regulatory measures that may apply upon formal review. In no circumstances should related discussion by staff represent a final disposition on the preliminary proposal at hand.

1. *Neighborhood group and/or noticed area determination.* Staff upon consideration of the information received during the pre-application meeting, will instruct as to whether early notification of the subject proposal by the applicant to a neighborhood group(s) (recognized group(s)) and/or noticed area shall be necessary prior to formal application and submittal of the development proposal to the city. The criteria used by staff to determine notice need may include, but not be limited to the following:

   a. Development that seeks the elimination of ROW that could potentially disrupt traffic flow within a neighborhood or if approved becomes inconsistent with the Major Thoroughfare Plan.

   b. Potential land use conflicts resulting from proposed land use distribution adjacent to existing development of a differing land use classification such as proposed commercial uses adjacent to low density residential uses.

   c. Known neighborhood concerns on tangible and reasonable development issues that could be mitigated through design alternatives. An example of a concern congruent to this criterion is anticipated development consistency with surrounding development styles as they may relate to lot size/dimension transitions, roadway widths out of character with adjacent development, etc. An example of a concern not congruent to the criterion is disapproving development on private vacant property due to the elimination of "open space" or development of private vacant property because one's view may be compromised.

2. *Early notification exception.* Staff determination of early notice need which shall include an open invitation to discuss the proposal at a meeting, shall not pre-empt the Planning and Zoning

Commission, City Council or other reviewing bodies with approval (recommending or final action) authority from thereafter requiring an additional meeting(s). Criteria used by the applicable reviewing body shall be at their discretion and may or may not follow the criteria identified in the preceding provision. Significant deviation of plan proposal post neighborhood group and/or noticed area meeting may subject the applicant from thereafter participating in another meeting to inform and discuss revisions. Changes addressing neighborhood concerns shall not necessarily subject the applicant to another meeting; however, an omission in the proposal that is added post meeting and deemed significant by Community Development staff is a candidate for reconsideration by the notified neighborhood prior to consideration by any formal reviewing body.

3. *Early notification recipients.* Notification recipients shall include registered neighborhood groups, and/or associations, identified on the applicable Community Development Department's web page. In the event an identified association or group does not exist or cover an adequate area surrounding the proposal, both the neighborhood group/association and the property owners within 500 feet shall be notified. If no association or group exists within the notification boundary, notification to property owners shall take place using the same distance threshold. Measurement shall be made radially from the outermost property boundary where the subject proposal is located. Any association/group boundary or property boundary that falls either partially or entirely within said radius based on the qualifying standards of this subsection shall receive notification. Contact and mailing information for associations, groups and property owners to be notified shall be provided by the Community Development Department. Mailing preparation, expenses and materials are the responsibility of the developer, applicant and/or representative. Notification shall take place no later than 15 calendar days prior to the date of submittal. In the event a meeting is called for pursuant to item (4) that follows, may cause delay with the proposal's submittal in order to accommodate the agreed upon meeting schedule and other factors necessary to meet submittal content.

4. *Early notification form and content.* All required notification shall be sent via regular, non-certified, first class mail and the content of the notice shall include at minimum:

   a. A detailed description (to the extent possible) of what is being pursued in terms of development.

   b. Information as to how the developer, applicant, or representative for the development action may be contacted.

   c. A statement as to how the proposal may impact the neighborhood(s) surrounding the subject property where the development is to occur.

   d. An open offer to participate in a meeting with the association(s)/group(s) and/or property owners at a mutually agreed upon date, time and location in order to discuss the proposal more fully.

   e. A need to provide a WRITTEN meeting request (if desired) to the development representative, copying Community Development staff either in a letter or email format within the stated 15 calendar day threshold. Requests for a meeting within the 15 calendar day period shall render the meeting need mandatory prior to submittal whether or not the meeting takes place inside or beyond this 15 calendar day period. Requests that come in after said period do not compel the applicant to entertain a meeting prior to submittal; however, a meeting with those requesting one is advisable prior to formal review of the proposal by a recommending or decision making body.

   f. Community Development staff contact information for any related correspondence or general inquiry.

5. *Neighborhood group/neighborhood meeting.* It shall be the responsibility of the representative for the proposal to supply any and all materials necessary to convey development parameters as applicable.

Additionally, the representative shall be responsible for minute transcription (summary or verbatim) which clearly indicates the date, time and location of the meeting and the general nature of conversation that tool place regarding the proposal. Information shall at minimum identify key points that convey support for or the lack thereof for the proposal as presented.

(Ord. No. 2686, § I(Exh. A), 8-5-13)

Secs. 37-209—37-235. Reserved.

ARTICLE VIII. VACATION PLATS

Sec. 37-236. Purpose of vacation platting.

A. The vacation process is to be followed when a request is made to rescind all or part of a recorded subdivision plat of land that has been legally dedicated. A vacation petitioner shall file a vacation plat on any land being vacated that is recorded in the county clerk's office, unless determined by the subdivision administrator that such action is not required. If a vacation plat is not required, a plat of survey that is clear and concise in displaying the proposed vacation shall be submitted, in lieu of said plat.

B. Vacation plats shall be prepared as a final plat in accordance with section 37-114 of this chapter. Said plat shall be prepared by, and have the seal of, a state registered land surveyor.

(Ord. No. 2686, § I(Exh. A), 8-5-13)

Sec. 37-237. Preapplication procedure for vacation plats.

A. Any proposed vacation plat causing need for public notification, review and approval by the City Council shall first be reviewed at a pre-application meeting scheduled and held by the Community Development staff. A representative for the proposed platting action shall attend the pre-application meeting and discuss the proposal in general terms, providing enough specifics to allow attending staff an opportunity to gauge and determine neighborhood and/or community impacts. In that this represents an initial and informal discussion, information provided to the representative regarding procedural nuances or other regulatory related information shall be considered preliminary feedback based on information received, and shall not represent a complete disclosure of all regulatory measures that may apply upon formal review. In no circumstances should related discussion by staff represent a final disposition on the preliminary proposal at hand.

1. *Neighborhood group and/or noticed area determination.* Staff upon consideration of the information received during the pre-application meeting, will instruct as to whether early notification of the subject proposal by the applicant to a neighborhood group(s) (recognized group(s)) and/or noticed area shall be necessary prior to formal application and submittal of the development proposal to the city. The criteria used by staff to determine notice need may include, but not be limited to the following:

   a. Development that seeks the elimination of ROW that could potentially disrupt traffic flow within a neighborhood or if approved becomes inconsistent with the Major Thoroughfare Plan.

   b. Potential land use conflicts resulting from potential sale of vacated property to adjacent property owners.

c. Known neighborhood concerns on tangible and reasonable development issues that could be mitigated through design alternatives. An example of a concern congruent to this criterion is the loss of pedestrian access as a result of vacated right of way.

2. *Early notification exception.* Staff determination of early notice need which shall include an open invitation to discuss the proposal at a meeting, shall not pre-empt the Planning and Zoning Commission, City Council or other reviewing bodies with approval (recommending or final action) authority from thereafter requiring an additional meeting(s). Criteria used by the applicable reviewing body shall be at their discretion and may or may not follow the criteria identified in the preceding provision. Significant deviation of plan proposal post neighborhood group and/or noticed area meeting may subject the applicant from thereafter participating in another meeting to inform and discuss revisions. Changes addressing neighborhood concerns shall not necessarily subject the applicant to another meeting; however, an omission in the proposal that is added post meeting and deemed significant by Community Development staff is a candidate for reconsideration by the notified neighborhood prior to consideration by any formal reviewing body.

3. *Early notification recipients.* Notification recipients shall include registered neighborhood groups, and/or associations, identified on the applicable Community Development Department's web page. In the event an identified association or group does not exist or cover an adequate area surrounding the proposal, both the neighborhood group/association and the property owners within 500 feet shall be notified. If no association or group exists within the notification boundary, notification to property owners shall take place using the same distance threshold. Measurement shall be made radially from the outermost property boundary where the subject proposal is located. Any association/group boundary or property boundary that falls either partially or entirely within said radius based on the qualifying standards of this subsection shall receive notification. Contact and mailing information for associations, groups and property owners to be notified shall be provided by the Community Development Department. Mailing preparation, expenses and materials are the responsibility of the developer, applicant and/or representative. Notification shall take place no later than 15 calendar days prior to the date of submittal. In the event a meeting is called for pursuant to item (4) that follows, may cause delay with the proposal's submittal in order to accommodate the agreed upon meeting schedule and other factors necessary to meet submittal content.

4. *Early notification form and content.* All required notification shall be sent via regular, non-certified, first class mail and the content of the notice shall include at minimum:

a. A detailed description (to the extent possible) of what is being pursued in terms of development.

b. Information as to how the developer, applicant, or representative for the development action may be contacted.

c. A statement as to how the proposal may impact the neighborhood(s) surrounding the subject property where the development is to occur.

d. An open offer to participate in a meeting with the association(s)/group(s) and/or property owners at a mutually agreed upon date, time and location in order to discuss the proposal more fully.

e. A need to provide a WRITTEN meeting request (if desired) to the development representative, copying Community Development staff either in a letter or email format within the stated 15 calendar day threshold. Requests for a meeting within the 15 calendar day period shall render the meeting need mandatory prior to submittal whether or not the meeting takes place inside or beyond this 15 calendar day period. Requests that come in after said period do not compel the applicant to entertain a meeting prior to submittal; however, a meeting with those requesting one is advisable prior to formal review of the proposal by a recommending or decision making body.

f. Community Development staff contact information for any related correspondence or general inquiry.

5. *Neighborhood group/neighborhood meeting.* It shall be the responsibility of the representative for the proposal to supply any and all materials necessary to convey development parameters as applicable. Additionally, the representative shall be responsible for minute transcription (summary or verbatim) which clearly indicates the date, time and location of the meeting and the general nature of conversation that tool place regarding the proposal. Information shall at minimum identify key points that convey support for or the lack thereof for the proposal as presented.

(Ord. No. 2686, § I(Exh. A), 8-5-13)

Sec. 37-238. Submittal process for vacation plats.

A. The vacation plat and supplemental material shall be submitted to the community development department no later than 35 calendar days prior to the day of the regular meeting of the city council for approval consideration.

B. Upon receipt of submittal, the community development department shall issue a receipt for same. The subdivision administrator shall then have eight business hours to review the submittal for completeness. If all of the required items have been submitted, and the vacation plat submittal contains all necessary items, the subdivision administrator shall accept the submittal for review. A proposed vacation plat shall not be accepted for review if incomplete or substantially inaccurate. All items required on a vacation plat must be present for acceptance. If the submittal is found to be incomplete, the applicant shall have eight business hours to correct the deficiencies and still meet the submittal deadline if applicable.

C. The subdivision administrator or the development review committee shall have the authority to waive or add submittal requirements if it is determined that the additional items and resulting information is necessary in order to accomplish the objectives of this code. Additional requirements may include a neighborhood group and/or noticed area meeting. Any request for additional submittal requirements shall be justified in writing by the requesting entity.

(Ord. No. 2686, § I(Exh. A), 8-5-13)

Sec. 37-238.5. Vacation plat approval process.

A. Vacation plats shall be submitted to the development review committee for review, comments and recommendations. The development review committee shall review the vacation plat to determine whether it is consistent with the intents and purposes set forth in this chapter.

B. A written report shall be provided to the city council with a recommendation that the vacation plat be either approved, denied or modified. The development review committee shall state reasons for their recommendation to the city council.

C. Public notice requirements.

1. *Agenda.* The agenda of the city council meetings shall be made available no later than 15 calendar days prior to the meeting.

2. *Notice.* Notice of the time and place of the city council meeting shall be published in a newspaper of general circulation in the city at least 15 calendar days prior to the meeting. Notice on all proposed vacations shall be sent by regular, non-certified, first class mail to all property owners (as shown on the records of the county assessor) within 500 feet of the proposed vacated right-of-way. Regular, non-certified, first class mail shall also be sent to all recognized neighborhood groups within 500 feet of the

proposed vacated right-of-way. The subdivision administrator shall execute an affidavit verifying the list of persons to whom notice was mailed. Notice to neighborhood group(s) and/or noticed area shall be mailed at least 15 calendar days prior to the meeting.

D. The city council shall review the vacation plat or request, comments and recommendations from the development review committee, the presentation from the petitioner or the petitioner's representative and from any interested citizens. Action from the city council shall be in the form of approval, denial, or modification. Action from the city council shall be recorded in the minutes of the meeting. An affirmative vote by four members of the city council is required for approval of a vacation plat or request. A copy of the city council notice of decision that includes any changes or conditions, as done at the public hearing, shall be furnished to all of the parties stated above in accordance with section 37-11(b).

E. It is the requirement of the city council that no vacation plat or request shall be reviewed unless either the petitioner or the petitioner's representative is present at the city council meeting. If the applicant is not present at the public hearing, the vacation plat or request will be tabled until the next regular city council meeting.

F. No changes, revisions, erasures or modifications shall be made on the vacation plat after approval by the city council. No vacation plat shall be filed and recorded prior to the satisfaction of all requirements and conditions of this chapter. It shall be the subdivision administrator's responsibility to obtain the necessary signatures of city officials after vacation plat approval. The subdivision administrator shall be responsible for filing the vacation plat at the county clerk's and records office.

G. Appeals. The decision of the city council may be appealed to district court. The appeal must be filed within 30 calendar days of the decision of the city council. See section 37-13 for details on the appeal process.

(Ord. No. 2686, § I(Exh. A), 8-5-13)

Editor's note(s)—Ord. No. 2686, § I(Exh. A), adopted August 5, 2013, enacted provisions intended for use as section 37-238. Inasmuch as there are already provisions so designated, and at the discretion of the editor, said provisions have been redesignated as section 37-238.5.

Sec. 37-239. Vacation plat submittal requirements.

A. The following information shall be required:

1. Application.

a. 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) of the subject property, as recorded in the county clerk's office.

b. Any pending litigation of any final order entered by any court of law regarding the ownership of the subject property shall be disclosed by the applicant at the time that the application is submitted.

2. Submittal fee.

3. Filing fee at time of plat filing.

4. Vacation plat (conforming to the provisions set forth in section 37-114), with the exception that signature blocks for the mayor and the city clerk be added in lieu of that of the city planning and zoning commission. In addition, all existing utilities and utility easements shall be shown on the plat.

5. A petition signed and notarized by property owners in situations whereby access would be affected.

6. A statement of vacation signed and notarized by the property owners.

7. Copy of early notification letter to neighborhood group(s) and/or noticed area and copy of minutes (summary or verbatim) from any subsequent neighborhood group(s) and/or noticed area meeting as may have been required.

(Ord. No. 2686, § I(Exh. A), 8-5-13)

Secs. 37-240—37-265. Reserved.

ARTICLE IX. ANNEXATIONS

Sec. 37-266. Purpose of annexation.

The purpose of an annexation is to redesignate property outside the city as being within the city limits, thereafter. Annexations can be used to maintain a unified urban area and to promote orderly growth utilizing city services.

(Ord. No. 2686, § I(Exh. A), 8-5-13)

Sec. 37-267. When an annexation plat is required.

An annexation plat conforming to this chapter shall be required for all annexation requests. A master plan identifying the purpose for which the property is intended to be used, and an initial zoning request, are also required.

(Ord. No. 2686, § I(Exh. A), 8-5-13)

Sec. 37-268. Preapplication procedure.

A. Any proposed annexation causing need for public notification, review and approval by the Planning and Zoning Commission and City Council shall first be reviewed at a pre-application meeting scheduled and held by the Community Development staff. The applicant shall submit to the community development department a conceptual plan of the proposed development/annexation. A written application or fee is not required, nor does this preapplication procedure require planning and zoning commission approval. A representative for the proposed development action shall attend the pre-application meeting and discuss the proposal in general terms, providing enough specifics to allow attending staff an opportunity to gauge and determine neighborhood and/or community impacts. In that this represents an initial and informal discussion, information provided to the representative regarding procedural nuances or other regulatory related information shall be considered preliminary feedback based on information received, and shall not represent a complete disclosure of all regulatory measures that may apply upon formal review. In no circumstances should related discussion by staff represent a final disposition on the preliminary proposal at hand.

1. *Neighborhood group and/or noticed area determination.* Staff upon consideration of the information received during the pre-application meeting, will instruct as to whether early notification of the subject proposal by the applicant to a neighborhood group(s) (recognized group(s)) and/or noticed area shall be necessary prior to formal application and submittal of the development proposal to the city. The criteria used by staff to determine notice need may include, but not be limited to the following:

   a. Development that is likely to cause significant traffic impacts due to limited roadway access or a potential decrease in level of service based on the subject roadway's design.

b. Potential land use conflicts resulting from proposed land use distribution adjacent to existing development of a differing land use classification such as proposed commercial uses adjacent to low density residential uses.

c. Known neighborhood concerns on tangible and reasonable development issues that could be mitigated through design alternatives. An example of a concern congruent to this criterion is anticipated development consistency with surrounding development styles as they may relate to lot size/dimension transitions, roadway widths out of character with adjacent development, etc. An example of a concern not congruent to the criterion is disapproving development on private vacant property due to the elimination of "open space" or development of private vacant property because one's view may be compromised,

2. *Early notification exception.* Staff determination of early notice need which shall include an open invitation to discuss the proposal at a meeting, shall not pre-empt the Planning and Zoning Commission, City Council or other reviewing bodies with approval (recommending or final action) authority from thereafter requiring an additional meeting(s). Criteria used by the applicable reviewing body shall be at their discretion and may or may not follow the criteria identified in the preceding provision. Significant deviation of plan proposal post neighborhood group and/or noticed area meeting may subject the applicant from thereafter participating in another meeting to inform and discuss revisions. Changes addressing neighborhood concerns shall not necessarily subject the applicant to another meeting; however, an omission in the proposal that is added post meeting and deemed significant by Community Development staff is a candidate for reconsideration by the notified neighborhood prior to consideration by any formal reviewing body.

3. *Early notification recipients.* Notification recipients shall include registered neighborhood groups, and/or associations, identified on the applicable Community Development Department's web page. In the event an identified association or group does not exist or cover an adequate area surrounding the proposal, both the neighborhood group/association and the property owners within 500 feet shall be notified. If no association or group exists within the notification boundary, notification to property owners shall take place using the same distance threshold. Measurement shall be made radially from the outermost property boundary where the subject proposal is located. Any association/group boundary or property boundary that falls either partially or entirely within said radius based on the qualifying standards of this subsection shall receive notification. Contact and mailing information for associations, groups and property owners to be notified shall be provided by the Community Development Department. Mailing preparation, expenses and materials are the responsibility of the developer, applicant and/or representative. Notification shall take place no later than 15 calendar days prior to the date of submittal. In the event a meeting is called for pursuant to item (4) that follows, may cause delay with the proposal's submittal in order to accommodate the agreed upon meeting schedule and other factors necessary to meet submittal content.

4. *Early notification form and content.* All required notification shall be sent via regular, non-certified, first class mail and the content of the notice shall include at minimum:

a. A detailed description (to the extent possible) of what is being pursued in terms of development.

b. Information as to how the developer, applicant, or representative for the development action may be contacted.

c. A statement as to how the proposal may impact the neighborhood(s) surrounding the subject property where the development is to occur.

d. An open offer to participate in a meeting with the association(s)/group(s) and/or property owners at a mutually agreed upon date, time and location in order to discuss the proposal more fully.

e. A need to provide a WRITTEN meeting request (if desired) to the development representative, copying Community Development staff either in a letter or email format within the stated 15 calendar day threshold. Requests for a meeting within the 15 calendar day period shall render the meeting need mandatory prior to submittal whether or not the meeting takes place inside or beyond this 15 calendar day period. Requests that come in after said period do not compel the applicant to entertain a meeting prior to submittal; however, a meeting with those requesting one is advisable prior to formal review of the proposal by a recommending or decision making body.

f. Community Development staff contact information for any related correspondence or general inquiry.

5. *Neighborhood group/neighborhood meeting.* It shall be the responsibility of the representative for the proposal to supply any and all materials necessary to convey development parameters as applicable. Additionally, the representative shall be responsible for minute transcription (summary or verbatim) which clearly indicates the date, time and location of the meeting and the general nature of conversation that tool place regarding the proposal. Information shall at minimum identify key points that convey support for or the lack thereof for the proposal as presented.

B. The subdivision administrator and the zoning administrator shall review all conceptual annexation requests and discuss with the petitioner(s) and/or the petitioners' representative any changes that will be required for the submittal process.

(Ord. No. 2686, § I(Exh. A), 8-5-13)

Sec. 37-269. Submittal of an annexation request.

A. The annexation petition, initial zoning request, master plan and annexation plat shall be submitted to the community development department no later than 48 calendar days prior to the day of the regular meeting of the planning and zoning commission for approval consideration.

B. Upon receipt of a submittal, the community development department shall issue a receipt for same. The subdivision administrator shall then have eight business hours to review the submittal for completeness. If all of the required items have been submitted, the subdivision administrator shall accept the submittal for review. A proposed annexation shall not be accepted for review if the annexation plat, the master plan and the zoning application are incomplete or substantially inaccurate. If a submittal is found to be incomplete, the applicant shall have eight business hours to correct the deficiencies and still meet the submittal deadline if applicable.

C. The subdivision administrator, the development review committee or the planning and zoning commission shall have the authority to waive or add submittal requirements if it is determined that the additional items and resulting information is necessary in order to accomplish the objectives of this code. Required information may include, but is not limited to, a neighborhood groups and/or noticed area meeting, traffic impact analysis, environmental analysis or other documentation or information necessary to meet the objectives of this chapter. Any request for additional submittal requirements shall be justified in writing by the requesting entity.

D. Annexation requests will be referred to the applicable city departments and other governmental agencies for review, comments and recommendations. Each department shall have five business days in which to complete the review. Written reports with their recommendations shall be forwarded to the subdivision administrator.

E. The subdivision administrator shall review all comments for applicability and appropriateness to the annexation requirements and shall forward any comments to the applicant or the applicant's representative

for completion. Annexation requests that receive comments shall be resubmitted and reviewed until the provisions set forth in this chapter are met.

(Ord. No. 2686, § I(Exh. A), 8-5-13)

Sec. 37-270. Review and consideration of an annexation request.

A. Following initial staff review and review of the initial zoning request, the annexation request shall be forwarded to the development review committee for review, comment and recommendation. The development review committee shall review the annexation master plan in accordance with section 37-45 of this chapter. Following development review committee review, the master plan, and the annexation and initial zoning request, shall be scheduled for a public hearing for planning and zoning commission consideration. A written report shall be provided to the planning and zoning commission from the development review committee recommending that the master plan and the annexation and initial zoning request be either approved, conditionally approved, postponed or disapproved. The development review committee shall state the reasons for their recommendation concerning the annexation and initial zoning request submitted to the planning and zoning commission.

B. Public notice requirements. The items indicated below shall be required for all annexation requests scheduled for planning and zoning commission action.

1. *Agenda*. The agenda for the planning and zoning commission public hearing shall be made available no later than 15 calendar days prior to the public hearing.

2. *Posting*. The community development department shall post a notice of the proposed annexation and initial zoning in a conspicuous place on the property at least 15 calendar days prior to the planning and zoning commission public hearing. A sign measuring four feet by four feet shall be used and secured with appropriate supporting hardware made available by Community Development staff. When the property has multiple street frontages, one sign per frontage shall be posted. Large properties may require a greater number of signs which shall be determined by Community Development staff. It shall be the responsibility of the property owner, applicant or representative to ensure continuous posting throughout the public hearing processes. Processes for purposes of this provision shall start with the Planning and Zoning Commission and cease when a final determination is made on the proposal regardless of the number of reviewing entities involved. In that multiple reviewing entities may be involved, Community Development staff will inform the property owner, applicant or representative of necessary changes needed on the sign to reflect the appropriate reviewing entities, meeting dates and venues.

3. *Notice*. Notice of the Planning and Zoning Commission public hearing shall be sent by certified mail to all property owners when one city block or less is under consideration for the activities listed, (except zone change related cases, see Section 38-10B2b, where notice shall be sent by regular, non-certified, first class mail), as shown by the records of the County Assessor, within at least 100 feet of the subject property of the proposed request, excluding streets, alleys, channels, canals, railroads, and all other public rights-of-way. Thereafter, regular, non-certified, first class mail shall be sent to those properties that fall within a distance greater than 100 feet and no less than 500 feet of the subject property. The secondary distance of (>= 100' - <= 500') may include streets, alleys, channels, canals, railroads, and all other public rights-of-way. Regular, non-certified, first class mail shall also be sent to all recognized neighborhood groups within 500 feet of the subject property. Notice shall be mailed at least 15 calendar days prior to the required public hearing. Notice of the time and place of the public hearing shall be published at least 15 calendar days prior to the public hearing in a newspaper of general circulation in the City.

C. The planning and zoning commission shall review the master plan, the annexation and initial zoning request report, comments, and recommendations received from the development review committee, as well as the presentation from the applicant and/or the applicant's representative, and from any interested citizens at a public hearing. The intent of the planning and zoning commission review is to allow for public input in the development process and to serve as a land-planning process. Review of the proposal shall consist of zoning-related issues including, but not limited to, compliance with the comprehensive plan. Action from the planning and zoning commission shall be recorded in the minutes of the meeting. The annexation request shall be heard as one case, but separate action shall be taken on the master plan, the annexation plat and the initial zoning request. Action on the annexation plat and the initial zoning request will be in the form of a recommendation to the city council that the proposals be approved, conditionally approved, or disapproved.

D. It is the requirement of the planning and zoning commission that no annexation request shall be reviewed unless either the applicant or the applicant's representative is present at the public hearing. If neither is present at the public hearing, the request will be postponed until the next regular planning and zoning commission meeting.

E. Following action by the planning and zoning commission, the annexation request and the initial zoning request shall be forwarded to the city council for final action. The annexation request and the initial zoning request will be scheduled for the next available regular city council meeting once staff has received the minutes of the planning and zoning commission public hearing, and all public notice requirements of this chapter are met. A copy of the notice of decisions that include any changes or conditions the planning and zoning commission and city council made at public hearings shall be provided to all appropriate parties in accordance with section 37-11(b).

F. Appeals. Any person, department, committee, commission, board or bureau that is affected by a decision of an administrative official, committee, or board in the administration or enforcement of this chapter, or of any other adopted resolution, rule, or regulation, may appeal the decision. The appeal must be initiated in writing and delivered to the community development department within 15 calendar days after all other procedures established by this chapter have been exhausted. For details on the appeal process, refer to section 37-13, "procedures for appealing decisions of staff, the development review committee and the planning and zoning commission."

(Ord. No. 2686, § I(Exh. A), 8-5-13)

Sec. 37-271. Annexation request submittal requirements.

A. A request for annexation shall include the following:

1. Application (to include annexation, initial zoning and master plan).

   a. 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) of the subject property as recorded in the county clerk's office.

   b. Any pending litigation of any final order entered by any court of law regarding the ownership of the subject property shall be disclosed by the applicant at the time the application is submitted.

2. Submittal fee.

3. Petition. The petition shall contain the following information:

   a. Date;

   b. Description of property (certified by N.M.P.L.S.);

   c. Acknowledgment by each property owner;

d. Name of each property owner;

e. Address of each property owner;

f. Notarized signature of each property owner;

4. Annexation plat. Conforming to the provisions set forth in section 37-114, the plat must also contain certification blocks for the mayor and the city clerk, as well as for recording information (book and page) for the annexation ordinance. An annexation plat must include all adjacent public rights-of-way.

The plat shall, by note, reference all agreements related to water rights, and future payments, and must include the city council resolution number associated with the agreement.

5. Initial zoning request (see 1981 Las Cruces zoning code, as amended).

6. Master plan, conforming to the provisions set forth in section 37-46.

7. Letter of acknowledgment from the property owner(s) that the conveyance of water rights or payment in lieu of said rights shall be required at the time of development; and, adherence to the city's water rights ordinance, as amended.

8. Filing fee at time of plat and ordinance filing.

9. Copy of early notification letter to neighborhood group(s) and/or noticed area and copy of minutes (summary or verbatim) from any subsequent neighborhood group(s) and/or noticed area meeting as may have been required.

(Ord. No. 2686, § I(Exh. A), 8-5-13)

Secs. 37-272—37-297. Reserved.

ARTICLE X. GUARANTEE OF IMPROVEMENTS

Sec. 37-298. Subdivision improvement requirements.

A. After final plat approval, the subdivider shall submit construction drawings to the community development department for review and approval for construction permits. Review of the construction drawings may transpire at any time after the submittal of the final plat. However, construction permits shall not be issued without appropriate approval of the final plat.

B. Designs for subdivisions within the corporate limits of the city shall conform to the provisions set forth in the city design standards, (chapter 32, LCMC).

C. Waivers to the design standards are discouraged and will be considered only if the subdivision application is processed through the planned unit development (P.U.D.) procedure, or whenever the subdivider has provided sound evidence in writing substantiating the need for a waiver to said standards.

(Ord. No. 2686, § I(Exh. A), 8-5-13)

Sec. 37-299. Application procedure.

A. The construction drawings and supplemental material shall be submitted to the community development department. Upon submittal, the community development department shall review the submittal for

completeness. If all of the required items have been submitted, the community development department shall issue a receipt for same.

B. Construction drawings and supplemental material will be processed by the applicable city departments and other governmental agencies for review, comments and recommendations. Written reports, with their comments and recommendations, shall be forwarded to the community development department within ten business days for the first review and within five business days for each subsequent review.

C. The community development department shall forward any comments to the subdivider or the subdivider's representative for completion. Construction drawings and supplemental material that receive comments shall be resubmitted and reviewed until the provisions set forth in this chapter are met. At that time, the construction drawings shall be approved, the construction approval block signed by the appropriate authorities and a construction permit issued (if the final plat has received approval from the appropriate authority).

D. Conflict. Whenever comments received by the city departments are in conflict, or whenever the subdivider is in disagreement with the comment(s), the subdivision administrator will determine the appropriate procedure to be followed in order to resolve said conflict or disagreement. Conflicts or disagreements may be resolved by following the applicable appeal procedure.

E. Appeals.

1. Appeals of staff decisions regarding nonutility engineering concerns with the construction drawings are resolved by the public works director. The appeal may be submitted at any time during the construction drawing review process. Appeals shall be submitted in writing to the subdivision administrator. The subdivision administrator shall schedule a meeting for review of the appeal. The meeting shall include the applicant, the development review committee, and the staff member whose decision is being appealed. After a review of the appeal, the public works director shall render a decision within three business days of the meeting.

2. Appeals of staff decisions regarding utility concerns with the construction drawings are resolved by the utilities department director. The appeal may be submitted at any time during the construction drawing review process. Appeals shall be submitted in writing to the subdivision administrator. The subdivision administrator shall schedule a meeting for review of the appeal. The meeting shall include the applicant, the utilities director, the DRC and the staff member whose decision is being appealed. Upon review of the appeal, the utilities director shall render a decision within three business days of the meeting.

3. Appeals to the decision of either the public works director or the utilities director regarding the construction drawings are resolved by arbitration. See section 37-13(d), "appeal of public works director or the utilities director."

(Ord. No. 2686, § I(Exh. A), 8-5-13)

Sec. 37-300. Construction drawing submittal requirements.

A. Subdivision requirements.

1. Application;

2. Submittal fee;

3. A final plat conforming to section 37-114 of this chapter;

4. Geotechnical soils investigation report. A complete geotechnical soils investigation and corresponding report may be required if the soil conditions are unknown, unreliable, or otherwise unusual. This requirement must be met when working in soils that are graded "expansive" or "very fine."

   Any geotechnical soils investigation must include, at a minimum, representative sampling and testing for:

   a. Soil classification (USCS);

   b. Sieve analysis;

   c. Structural design factors (R value and/or CBR value);

   d. Other parameters may be required, including but not limited to:

      i. Soil percolation tests (permeability);

      ii. Soil boring logs;

      iii. Water table elevations;

5. Pavement design. A complete pavement design may be required for collectors, arterials, industrial parks/developments, or other areas subject to unusual traffic loadings. This requirement must be met whenever the soil to be worked in has been graded as "expansive" or "very fine." Pavement designs must include, at a minimum:

   a. Depth and type of subgrade preparation;

   b. Depth and type of base course needed;

   c. Depth and type of asphalt pavement needed: Note—Asphalt mix formula to be required from contractors.

6. Final drainage study. The final drainage study shall be a detailed report and analysis of the drainage in the proposed development. It shall include detailed calculations for all potential runoff within the proposed development, and detailed calculations supporting the design of all drainage structures within the development.

   Construction plans for all drainage structures, and grading plans for all street grades where applicable, shall also be considered as part of the final drainage study.

   Drawings and calculations comprising the final drainage study shall include, but not be limited to, the following information:

   a. Existing and proposed contours for proposed development. (Contour interval based on N.G.S. Datum—two-foot contour interval minimum.) Proposed development with relatively flat surfaces (e.g., river valley subdivisions) shall contain spot elevations or one-foot contour intervals.

   b. Location(s) and elevation(s) of city or U.S.G.S benchmark(s). All elevations shall be based on N.G.S. Datum.

   c. Property lines.

   d. Streets, R.O.W. limits, names and grades.

   e. Existing drainage facilities and structures, including existing irrigation ditches, roadside ditches, drainage ways, gutter flow directions, and culverts.

      All pertinent information such as size, slope, elevations and locations of existing drainage ways shall be included in order to facilitate review and approval of drainage plans.

   f. Overall drainage area boundaries and drainage sub-area boundaries.

g. Proposed types of curbs and gutters and gutter flow directions, including crosspans (intersections).

h. Proposed storm drains, open drainage ways and right-of-way requirements, including proposed inlets, manholes, culverts, erosion control and energy dissipation devices, and any other appurtenances necessary for drainage control.

i. Proposed inflow and outfall point(s) for runoff from the study area.

j. Routing and accumulative flows at various critical points for the initial (ten-year) and major (100-year) storm runoff.

k. Minimum finished-floor elevation and ground-site elevations at all critical building locations for protection from major storm runoff.

l. A 1-inch = 100-foot (preferable) scale map of the proposed development that shows the following information:

i. Locations and sizes of all drainage structures;

ii. General flow patterns within the development;

iii. Minimum finished-floor or building-pad elevation of each building site;

iv. 100-year flood level in all streets in which the curb would be overtopped during the 100-year storm;

v. All drainage basins within the development (Note: The number of basins should be limited to the smallest practical number.)

m. All floodplains and floodways within the proposed development. A copy of the current F.E.M.A. Floodplain Map is required showing project limits.

n. All drawings on 24-inch × 36-inch sheets.

o. Plan details. The following details shall be indicated on the drainage plans.

i. Title block (lower right-hand corner preferred);

ii. Scale;

iii. Date and revisions;

iv. Name and address of professional engineer (and firm);

v. Professional engineer's seal;

vi. Drawing number (sheet n/n);

vii. Legend;

viii. Approval block for appropriate reviewing departments and agencies;

p. Construction drawings. Construction drawings shall be prepared by a registered professional engineer licensed in the state. All drawings shall be on 24-inch × 36-inch sheets and shall show the following information:

Plan.

- North arrow;
- Property lines;
- Street names and easements (with locations and width dimensions);

- ~~Existing utility lines, locations and depths (or heights):~~
  - ~~Water;~~
  - ~~Gas;~~
  - ~~Storm drains;~~
  - ~~Irrigation canals;~~
  - ~~Sanitary sewers;~~
  - ~~All existing and proposed public and private utilities.~~

~~*Profile.*~~

- ~~Vertical and horizontal grids with scales identified;~~
- ~~Ground surface grade (dashed line) and proposed grade (solid line);~~
- ~~Existing utility lines where crossed;~~
- ~~Benchmarks (N.G.S. Datum);~~

~~*Proposed construction.*~~

- ~~*Pipes and culverts.*~~
  - ~~Plan showing stationing;~~
  - ~~Profile showing elevations at even stationing (at 50-foot intervals)~~
  - ~~Size and length pipe, pipe composition (if applicable) and distances between manholes;~~
  - ~~Slope of pipe;~~
  - ~~Inlet and outlet details of all manholes and inlets, and connections to existing drainage systems (if applicable);~~
  - ~~Manhole details, including station numbers, and invert and top elevations;~~
  - ~~Typical bedding details for pipe for all bedding situations encountered on project;~~
- ~~*Open channels:*~~
  - ~~Plan showing stationing;~~
  - ~~Profile indicating elevations of invert of channel, top of lining (if any), and adjacent ground grade;~~
  - ~~Profile showing elevations at even stationing (at 50-foot intervals);~~
  - ~~Typical cross sections;~~
  - ~~Construction notes;~~
  - ~~Lining details;~~
  - ~~Rip-rap and bedding details, with graduation requirements for same;~~
  - ~~Details of all inflow and outflow structures and drop structures (includes subgrade and foundation design details);~~
- ~~*Technical specifications.* Technical specifications shall be included on any drainage project permitted for construction within the city. Specifications shall meet the minimum~~

guidelines for construction as outlined in the city standard specifications for roadway construction and design standards as amended. Additional specifications for construction shall be included, to the point at which there exists a clear understanding of the nature and quality of work to be performed on the project. Additional technical specifications for projects that will become city property or that will be involved in the city storm drainage maintenance program, may be required.

q. Street plan and profiles. The plan and profiles shall be prepared on 24-inch x 36-inch sheets by a registered professional engineer, licensed in the state. The scale of all plans and profiles shall be 1:5 vertical, 1:50 horizontal unless a grid break would result. In such cases, the scale may be 1:10 vertical, 1:100 horizontal. A grid shall be required in all cases.

Plan. The following information shall be indicated on the plans:

- Title block (lower right-hand corner preferred);
- Horizontal/vertical scale;
- Date and revisions;
- Name of professional engineer (and firm);
- Professional engineer's seal;
- Drawing number (sheet n/n);
- Legend;
- Construction approval block for appropriate reviewing departments and agencies;
- Street name;
- North arrow;
- Match lines with stationing and "see sheets" called out;
- Limits of construction;
- Centerline stationing;
- Stations at street intersections, curb returns and property lines;
- Sizes and locations of all utilities (existing and proposed) (stub-outs not required);
- Rights-of-way widths;
- Adjacent block and lot numbers;
- Fire hydrant locations;
- Water and gas lines and valve locations;
- Sidewalk and wheelchair ramp locations;
- Curve centerline data;
- Stationing and locations or crown transition;
- Back-of-curb radius (P.C., P.T. and midpoint stations), or sidewalk if no curbing is required, if applicable;
- Curb/gutter locations, if applicable;

- Top-of-curb elevations, or of sidewalk if no curbing is required, and stations at each front lot corner;
- Drainage flow arrows at crosspans and nontypical intersections;
- Driveway locations and stations (if applicable);
- Proposed top-of-pavement spot elevations at and across from all intersections (at flowline extensions);
- A local benchmark based on N.G.S. datum, with description, location and elevation;
- Manhole locations;
- "No parking" sign locations (if applicable)

Profiles. The following information shall be indicated on the profiles:

- Proposed and existing grades 100 feet beyond limits of construction;
- Even stationing (at 50-foot intervals) and elevations on all profiles of top-of-curb, right and left, street centerline required if in a nontypical section;
- Stationing and elevation of the vertical point of intersection on all vertical curves, including, PVT, PVI, PVC, and K value;
- Top-of-curb elevations (or top-of-sidewalk elevations if no curbing is required at each lot corner);
- Sanitary and storm sewer pipe invert elevations;
- Slopes of sewer lines;
- Stationing of manholes;
- Pipeline locations, sizes and depths noted;
- Limits of construction;
- Grid at scale of 1:5 Vertical and 1:50 horizontal; scale can be 1:10 vertical and 1:100 horizontal if size will require a page break;

r. Grading plans. The plans shall be prepared by a registered professional engineer licensed in the state. The following information shall be required:

- Street names;
- Block and lot numbers;
- North arrow;
- Written and graphic scales;
- Existing contours based on project "as-builts," not plans, at 2-foot intervals (100 feet beyond project boundary if adjacent land is undeveloped and the property line of the adjacent land is developed). Proposed development with relatively flat surfaces (e.g., river valley subdivisions) shall provide spot elevations, or one-foot contour intervals;
- Retaining wall locations (and note if walls will be built at time of roadway construction) (See city design standards, chapter 32, LCMC);
- Top-of-curb elevations, or sidewalk if no curbing is required at each lot corner
- Pad elevations or finished floor elevations (for each lot);

• Spot elevations (minimum of six per lot showing high points and low points) or a typical lot detail if the proposed development has a relatively flat surface (e.g., river valley subdivision);

• Pond elevations: Top, bottom and dimension from property lines (if applicable);

• Barrow ditch elevations (if applicable);

• Drainage channel elevations (if applicable);

• Drainage flow arrows (and note if roof area will drain to ponding area);

• Retention/detention, basin, location and elevation;

• A project benchmark based on N.G.S. datum with description, location and elevation.

• Note: All grading, including lot grading, shall be done at time of roadway construction and to be maintained by subdivider.

• General notes for grading and construction, etc.;

• Off-site grading or slope grading limits (if applicable);

• All grading must comply with chapter 70 of the Uniform Building Code or an approved alternative. Alternative design may only be approved by the public works director.

If grading will be performed on the land of an adjacent property owner(s), or construction vehicles may need to access the property, a copy of a letter must be provided to the city, signed by the adjacent property owner(s), stating that they understand the nature of the work and do not oppose the modification to their property and/or that they will allow temporary access to their property by the contractor;

• Show existing utilities.

s. Utility master plan. The Utility master plan shall include all phases of development and be prepared by a registered professional engineer, licensed in the state. The following information shall be required: If utilities are not in the standard location, i.e., street right-of-way, then preapproval is required by the utilities department.

• Utilities for existing development: Size and type of pipe (existing and proposed), including underground electrical, telephone, cable TV, etc.;

• Lot and block numbers;

• Street names;

• North arrow, written and graphic scale: Scale shall be no greater than 1-inch = 60-feet;

• Utility stubouts;

• Street light pad and conduit locations;

• Wire utility boxes;

• Fire hydrant locations;

• Water and gas valve locations;

• A local benchmark based on N.G.S. datum, with description, location and elevation;

• Manhole locations.

t. Detail sheet, to be prepared by a registered professional engineer licensed in the state. The following information shall be required, if applicable:

- Roadway construction notes and general notes;
- Utility construction notes;
- Manhole details;
- Typical utility stubout to lot detail;
- Street intersection detail (if applicable);
- Typical street cross-section(s) (including paving composition);
- Curb and gutter detail;
- Wheelchair ramp detail;
- Retaining wall detail, cut-off wall detail and all fencing details (if applicable);
- Drainage structure details;
- Light base details;
- Typical lot layout;
- Any other construction detail which may be needed for clarification purposes;
- Water and gas valve and line detail.

B. The subdivider of any approved subdivision shall be responsible for completing roads, drainage and utility improvements necessary for filing the final plat. Construction improvements shall include 100 percent coverage of all road, drainage and utility improvements within the subdivision and 50 percent coverage of roads adjacent to the subdivision. The subdivider shall be responsible for any necessary off-site utility extensions required to provide service, unless such extensions are already part of the utility capital improvement program.

(Ord. No. 2686, § I(Exh. A), 8-5-13)

Sec. 37-301. Installation and acceptance of improvements.

The improvements, both public and private, required with the approved subdivision application shall be constructed, installed and approved into the city's maintenance program (if applicable) prior to the filing of an approved final plat or provisions made to secure the completion of improvements. The subdivider may secure the improvements by furnishing a performance bond, an irrevocable letter of credit, a cashier's check, an escrow account, or other acceptable collateral and a guarantee of performance to the city in favor of the city, to secure actual construction of the improvements within a period of 34 months after the approval of the final plat. If the improvements have not been constructed in accordance with the approved plans and specifications within the time frame prescribed by this chapter, the city may withdraw adequate monies from the securities to complete the construction of the subdivision.

(Ord. No. 2686, § I(Exh. A), 8-5-13)

Sec. 37-302. Guarantee of performance.

A. The community development department shall not file the final plat until all required improvements have been inspected and approved by the city, or until provisions are made to secure the completion of improvements. If the improvements are not completed by the completion date, the subdivision shall revert to preliminary plat status unless the final plat has received an approval extension.

B. A form of security, a guarantee of performance and a bid from the contractor may have to be filed with the city. The amount of such security must cover the projected cost of all required improvements agreed to by the subdivision administrator. The amount shall be based on the projected costs that the city would incur at the time improvements are scheduled for completion. Any of the following types of security shall be filed with the subdivision administrator:

1. Performance bond. A surety bond acceptable to the city to cover estimated costs of improvements.

2. Escrow account. An account established with a financial institution in the amount of the projected costs of improvements.

3. Irrevocable stand-by letter of credit. Irrevocable authority to draw a draft for the projected cost of improvements.

4. Cashiers check. An amount of security acceptable to the city to cover estimated costs of improvements.

5. Any other form of security approved by the subdivision administrator and legal staff.

6. An applicant subdividing a large tract of land as deemed appropriate by the development review committee, may with the approval of the subdivision administrator and the legal staff, submit a final plat for approval without providing any form of security if it is noted on the final plat that:

a. The city has not accepted the dedications identified on the plat; and

b. The applicant and future owners shall notify prospective purchasers in writing that the purchaser will be responsible for providing the necessary improvements and/or security.

The city shall not issue any building permits within the subdivision until such time security in form of those listed in 37-302(b)(1—5) has been provided to the city.

All forms of security and agreements shall be reviewed and approved by the subdivision administrator, and approved as to form by the attorney's office.

(Ord. No. 2686, § I(Exh. A), 8-5-13)

Sec. 37-303. Release of collateral.

If the developer wishes to provide a form of security, the following procedure for release of collateral shall apply:

As improvements are completed, the subdivider may apply to the subdivision administrator for a release of part or all of the collateral deposited. Application for partial release shall include the contractor's invoice, showing the items and percentages of completion being billed. The subdivision administrator shall forward the request to the appropriate inspectors to verify that the work being billed has been completed. Upon inspection and approval by the city, the subdivision administrator may release said collateral. If the subdivision administrator determines that any of such improvements are not constructed in compliance with specifications, the city shall be entitled to withhold collateral sufficient to ensure such compliance. If the city determines that the subdivider will not construct any or all of the improvements in accordance with all of the specifications, the city may withdraw and employ from the deposit of collateral such funds as may be necessary to construct the improvements in accordance with the specifications. The subdivision administrator shall withhold 10% of any collateral for specific improvements until such time as the final approved record drawings are submitted to the subdivision administrator and the improvements are accepted by the city.

(Ord. No. 2686, § I(Exh. A), 8-5-13)

Sec. 37-304. Extension of guarantee of performance.

A. The subdivider may request an extension of the guarantee of performance with the city via a written request explaining the extension proposal and the reasons for said request. The subdivision administrator shall review the subdivider's request to determine whether the guarantee of performance and the security will be extended. If approved, the subdivider shall be responsible to furnish a revised guarantee of performance and a form of security that adequately secures the completion of improvements prior to the expiration date of the guarantee of performance contract.

B. Guarantee of performance extensions shall only be granted once, for a one-year period, if there has been substantial progress made in the construction of the improvements. Substantial progress, in this sense, means 50 percent completion, the extent to be determined by the subdivision administrator.

(Ord. No. 2686, § I(Exh. A), 8-5-13)

Sec. 37-305. Acceptance of improvements.

A. The subdivider may request the city to approve and accept the roadway, utility, and drainage improvements. For preliminary acceptance of utility improvements, and prior to connection to the city's utility system, the subdivider shall be required to submit utility blueline drawings for review and approval by city engineers. Such drawings shall be submitted to the utilities department projects administrator.

B. Upon completion of the development, the subdivider may make a written request to the subdivision administrator for final acceptance of all subdivision improvements. Along with the written request, the city shall require the submission of one set of Mylar record drawings (as-builts), a computer-aided drawing file on a 3.5-inch computer diskette or recordable CD, or other format accepted by the city, and a detailed material listing. The city shall inspect said improvements to determine whether the infrastructure is acceptable and whether it conforms to the approved final plat and construction drawings. The computer-aided drawing file on computer diskette or CD may be waived by the development review committee. Granting a waiver shall not serve as a convenience to the applicant, but the waiver shall be the minimum necessary for relief due to some demonstrable hardship, and shall be granted only in cases where reasonable alternative means are not available to resolve the issue(s).

C. The computer-aided drawing file to be submitted shall be labeled with the contractor's name, the engineer's name, the subdivision name, the subdivision location, and the final inspection date. The computer-aided drawing file shall be the file used to generate the final record drawings (hard copy). The computer-aided drawing file shall depict the final Mylar as-builts with the rights-of-way and the subdivision tied to the state plane coordinates. The computer file drawing shall be in AutoCAD Version 11 or later, or in a similar 100 percent compatible and transferable file. Prior to submittal of the digital record drawings, the project engineer shall enter into a digital file agreement with the city. The purpose of the digital file agreement is to protect the project engineer from liability in the event that the drawings become altered in any manner not approved by the city and the project engineer.

D. Said Mylar drawings shall be signed and sealed by a registered engineer of the state. The Mylar drawings made from the design drawings based on the contractors' as-builts and the computer-aided drawing file shall provide the following information for city review:

1. *Grade changes.* Reflect all changes in grading from the approved plan and profile sheets, including but not limited to curb elevations, property line elevations, drop inlets, curb return elevations, tops of manholes, and inverts.

2. *Street alignment changes.* Designate any alignment change within a street right-of-way that deviates from that shown on the approved plan and the profile sheets.

3. *Detail sheet changes.* Reflect any change in street cross sections, retaining walls or other general details that have been altered from the approved construction drawings.

4. *Utility changes.* Designate all utility changes that deviate from the approved plan and profile sheets.

E. Additionally, a detailed material listing shall be required. The materials listing must be a tabular listing that includes, wherever appropriate, mains (sewer mains must include depth), valves, manholes, fire hydrants, number of service lines and number of drainage inlets. These materials must be represented in the listing by the standard measure or by the unit installed, e.g., linear foot, number of each. The listing must be separated by utility function for potable water, wastewater, storm drainage and gas. The listing must include:

1. Developer's name;

2. Subdivision name and location;

3. Date of final inspection;

4. Quantity and unit of materials installed (e.g., 250 linear feet, eight each);

5. Material description, including size or dimensions (e.g., 4-inch PVC main).

F. The subdivision administrator, upon receipt of a written report of recommendation for acceptance and from:

1. The public works director that all improvements have been installed in accordance with the plans, as approved, and are in conformity with the requirements of this chapter; and

2. The utilities director that all utility improvements have been installed in accordance with the plans, as approved, and that they are in conformance with the requirements of this chapter;

May formally accept said public improvements for city maintenance. The subdivision administrator will notify the subdivider within ten business days after his/her request as to whether the improvements will be accepted for city maintenance. The subdivision will be accepted only with the concurrence of the subdivision administrator, public works department director and the utilities department director. Upon acceptance, the subdivider shall guarantee improvements for one year.

(Ord. No. 2686, § I(Exh. A), 8-5-13)

Secs. 37-306—37-331. Reserved.

ARTICLE XI. WAIVER OF REGULATIONS

Sec. 37-332. Waivers.

In the case of a particular proposed subdivision, whenever it can be shown that strict compliance with the requirements of this chapter would result in a substantial hardship to the subdivider because of exceptional topographic, soil or other surface or sub-surface conditions, or that such conditions would result in inhibiting the objectives of this code, the planning and zoning commission may vary, modify, or waive nonengineering-related requirements up to 15 percent of the required standard. Furthermore, any proposal containing three or more planning-related waivers shall be processed via the planned unit development process. The subdivision administrator may waive submittal requirements of this chapter. A waiver of engineering submittal requirements shall require the concurrence of the public works director. The public works director and the utilities director may vary, modify or waive engineering-related requirements as applicable and appropriate. No variance or waiver shall be allowed when such waiver is requested because the goals and objectives of the drainage section of the city's design standards are not being met. For example: A waiver shall not be granted if the developer is designing a

drainage system that transfers problems from one location to another, that does not provide protection against regularly-occurring damage, or that creates major property damage or loss of life from runoff expected in a major storm event. Also, no waiver shall grant any variation or modification contrary to the mandatory requirements of state law.

(Ord. No. 2686, § I(Exh. A), 8-5-13)

Sec. 37-333. Waiver procedure.

A. Whenever the subdivider desires to request a waiver or variance from any nonengineering-related requirements of this chapter, the subdivider shall submit, in writing, the request for waiver at the time of master plan submittal or preliminary plat submittal, or at the time that a replat or an alternate summary processed subdivision is submitted. The request for waiver shall include, in detail, the reasons for supporting such a request.

B. The subdivision administrator shall schedule the requested waiver to be reviewed by the development review committee. The development review committee shall review the waiver request and recommend to the planning and zoning commission to approve, disapprove, or modify the waiver request.

C. The planning and zoning commission shall review the recommendations of the development review committee and approve, disapprove, or modify the waiver request. Any waiver requests greater than 15 percent of the required standard shall be forwarded to the city council with a recommendation by the planning and zoning commission that the waiver be either approved or denied. Any proposal requesting three or more planning-related waivers shall be processed via the planned unit development procedures and shall require city council approval.

D. When a proposal with waiver(s) requiring city council approval is submitted, the planning and zoning commission will review the proposal and provide a recommendation for approval or denial to the city council. The case will be forwarded to the city council for action.

E. The city council shall review the proposal and recommendations from the planning and zoning commission. Action by the city council shall be in the form of approval, denial, or modification. Action by the city council shall be recorded in the minutes of the meeting. An affirmative vote by four members of the city council is required for approval of a proposal. A copy of the city council notice of decision that includes any changes or conditions, as done at the public hearing, shall be furnished to all of the parties stated above in accordance with section 37-11(b).

F. Specifications or supplementary data required by this chapter for a master plan, a preliminary plat or a final plat may be waived whenever such specifications or data are determined by the planning and zoning commission to be unnecessary for the consideration of the plat.

Whenever the subdivider desires to request a waiver or variance from any engineering/utility requirements of this chapter, the subdivider may submit, in writing, to the subdivision administrator, the request for waiver at any time during the subdivision process. It is recommended that engineering-related waivers be submitted as early in the process as possible to avoid unnecessary delays. The request for waiver shall include, in detail, the reasons for supporting such a request.

The subdivision administrator shall submit the requested waiver to either the public works director or the utilities director, as applicable. Upon receipt of the request, the public works director or the utilities director shall meet with the development review committee at the next scheduled meeting to discuss the waiver request(s). The public works director or the utilities director, after consultation with the DRC, shall render a decision on the waiver or variance request within three business days.

(Ord. No. 2686, § I(Exh. A), 8-5-13)

Secs. 37-334—37-359. Reserved.

ARTICLE XII. CONSTRUCTION STANDARDS

Sec. 37-360. General provisions.

A. Construction of all subdivisions (public and private improvements) within the corporate limits of the city shall conform to all applicable sections of the documents listed below. The regulations, policies and provisions governing the construction of required improvements include, but are not limited to, the following documents, as amended:

1. City comprehensive plan;
2. City zoning code (chapter 38, LCMC);
3. City design standards (chapter 32, LCMC);
4. MPO transportation plan;
5. Stormwater management policy plan;
6. Bicycle facilities and systems master plan;
7. City standard specifications for road construction;
8. Building code (chapter 30, LCMC);
9. City standard specifications for water, sewer, and gas utilities;
10. Any and all other rules, regulation, and policies adopted by the city governing construction standards.

(Ord. No. 2686, § I(Exh. A), 8-5-13)

Chapter 38 ZONING[1]

ARTICLE I. PURPOSE, AUTHORITY, AND SCOPE OF THE ZONING CODE

Sec. 38-1. Title.

This chapter shall be entitled "The Las Cruces Zoning Code" and is referred to elsewhere as "this Code."

(Ord. No. 2354, § I, 1-22-07)

Sec. 38-2. Purpose and intent.

The purpose of this Code is to implement the Las Cruces Comprehensive Plan and plan elements, especially the land use element, adopted by the city council. The land use core goal of the comprehensive plan, and the purpose of the land use element, is to "achieve an urban form which supports and enhances our unique environment." The intent of this Code is to encourage the most appropriate use of land and to promote the health, safety, and general welfare of the community for the purpose of improving each citizen's quality of life. The regulations within this Code are deemed necessary to:

A. Ensure that all development is in accordance with this Code and the Las Cruces Comprehensive Plan and its elements, which are designed to

1. Mitigate congestion in the streets and public ways,
2. Secure safety from fire, flood waters, panic and other dangers,
3. Promote health and the general welfare,
4. Provide adequate light and air,
5. Prevent overcrowding of land,
6. Avoid undue concentration of population,

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[1]Editor's note(s)—Ord. No. 2354, adopted Jan. 22, 2007, repealed ch. 38, §§ 38-1—38-5, 38-10—38-17, 38-20, 38-21, 38-30—38-33, 38-40—38-62, 38-70—38-76 and 38-101—38-106, in its entirety and replaced it with a new ch. 38. Former ch. 38 pertained to similar material and derived from Ord. No. 1959, adopted Mar. 3, 2003; Ord. No. 1999, adopted May 19, 2003; Ord. No. 2026, adopted Aug. 4, 2003; Ord. No. 2029, adopted Aug. 18, 2003; Ord. No. 2080, adopted Mar. 1, 2004; Ord. No. 2106, adopted May 17, 2004; Ord. No. 2128, adopted Aug. 16, 2004; Ord. No. 2167, adopted Feb. 28, 2005; Ord. No. 2169, adopted Feb. 22, 2005; Ord. No. 2200, adopted May 23, 2005; Ord. No. 2279, adopted Feb. 27, 2006; Ord. No. 2285, adopted Mar. 27, 2006; Ord. No. 2290, adopted Mar. 27, 2006; Ord. No. 2303, adopted Apr. 24, 2006.

Cross reference(s)—Any ordinance pertaining to zoning map amendments or rezoning saved from repeal, § 1-13(a)(11); Planning and Zoning Commission, § 2-376 et seq.; housing, ch. 13; streets and sidewalks, ch. 26; buildings and building regulations, ch. 30; design standards, ch. 32; development impact fee, ch. 33; drainage and flood control, ch. 34; excavations and curb cuts, ch. 35; signs, ch. 36; subdivisions, ch. 37.

State law reference(s)—Zoning authority, NMSA 1978, § 3-21-1; zoning regulations, NMSA 1978, § 3-21-1 et seq.

7. Facilitate adequate provision for transportation, water, sewerage, schools, parks and other public requirements,

8. Protect the continued use and expansion of city-owned or maintained activities and structures, and

9. Control and abate the unsightly use of buildings or land;

B. Encourage innovations in land development and redevelopment;

C. Give reasonable consideration to the character of each zoning district and its peculiar suitability for particular uses;

D. Encourage mixed-land uses to decrease the length of trips for work and/or shopping and encourage the consolidation of trips and alternative modes of travel;

E. Regulate or restrict the erection, construction, alteration, repair or use of buildings, structures or land;

F. Control and abate the unlawful use of structures, buildings, or land by:

1. Preventing unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use,

2. Restraining, correcting or abating the violation,

3. Preventing the occupancy of such building, structure or land, or

4. Preventing any illegal act, conduct, business or use in or about such premises;

G. Avoid the inappropriate development of land, ensure that development proposals are sensitive to natural areas and features, provide adequate protection from and reduce the effects of natural hazards;

H. Encourage the conservation of energy in the use of structures, buildings, and land;

I. Minimize adverse environmental impacts of development;

J. Improve the design, quality, and character of new development;

K. Encourage development of vacant properties within established areas;

L. Ensure that development proposals are sensitive to the character of existing neighborhoods;

M. Foster a more rational relationship between different land uses for the mutual benefit of all;

N. Conserve the value of buildings and land;

O. Promote health, safety, and general welfare by regulating and restricting the:

1. Height, number of stories and size of buildings and other structures,

2. Percentage of a lot that may be occupied,

3. Size of yards, courtyards and other open space,

4. Density of population,

5. Location and use of buildings, structures and land for trade, industry, residence or other purposes;

P. Reduce noise, glare and odor; and

Q. Mitigate conflicts among neighbors.

(Ord. No. 2354, § I, 1-22-07)

Sec. 38-3. Statutory authority and jurisdiction.

This Code is created and adopted pursuant to the authority set forth in sections 3-19, 3-20 and 3-21 New Mexico State Statutes Annotated (NMSA), 1978 Compilation, as amended, and Section 3-21A NMSA 1987, as amended, and shall be applicable to all property within the corporate limits of the City of Las Cruces, New Mexico, referred to as "the city" elsewhere herein.

State property, Dona Ana County property, the Las Cruces Public School District School Board property, federal property and property owned or controlled by any other governmental entity being utilized for public purposes shall be exempt from these regulations only when specific exemption is provided elsewhere by state or federal statute or court order. Such exemption shall not apply to local, state or federal property that is not being used for public purposes. Governmental and private entities shall comply with the requirements of section 3-19-11 NMSA.

The city shall comply with section 3-19-11 NMSA and the requirements of this Code.

(Ord. No. 2354, § I, 1-22-07)

Sec. 38-4. Interpretation and conflict.

A. *Minimum requirements.* The provisions of this Code shall be considered the minimum requirements or standards to meet the purpose and intent expressed in section 38-2 of this Code.

B. *Local conflict.* Where the provisions of any local ordinance or regulation impose greater restrictions than those of this Code, generally the provisions of such document shall prevail. When two or more provisions of this Code are in conflict, generally the most restrictive provision shall apply (however, see section 38-62, exceptions and modifications.) In either case, the Community Development Director or designee shall have the authority, on a case by case basis, to determine which conflicting provisions of this Code and/or other local requirements shall be imposed.

C. *Federal and state conflict.* Any provisions of U.S. or New Mexico State Law which impose a greater duty, standard, or requirement than those contained herein shall supersede the provisions of this Code.

D. *Interpretation of meaning.* The Community Development Director or designee shall interpret the meaning of the provisions of this Code. Executed interpretations shall be included in the appropriate section of this Code and remain an official part of this Code until overturned. Disagreement with a staff interpretation may be appealed to the Planning and Zoning Commission and the commission's decision may be appealed to the city council. The following are other interpretation/decision appeal issues that are heard by specific bodies as described below:

1. City staff decisions regarding non-specified land uses may be appealed to the Planning and Zoning Commission (see sections 38-30 and 38-40).
2. Design-related interpretation disagreements between the city staff and the University Avenue Corridor Citizen's Design Review Committee may be appealed to the Planning and Zoning Commission (see section 38-44).
3. City staff decisions on matters associated with the Avenida de Mesilla Gateway Overlay Zone District may be appealed to the Planning and Zoning Commission (see section 38-45).
4. West Mesa (Industrial Park) Strategic Planning Committee and city staff decisions regarding the West Mesa Industrial Park may be appealed to the city council (see section 38-46).
5. City staff interpretations regarding infill parcels may be appealed to the Planning and Zoning Commission (see section 38-47).

E. *Severability.* If any article, section, paragraph, sentence, phrase, or part hereof is declared unconstitutional or invalid by a court of competent jurisdiction, all remaining portions shall not be affected.

(Ord. No. 2354, § I, 1-22-07)

Sec. 38-5. Establishment of official zoning district atlas, zoning districts, and boundaries.

A. *Zoning district atlas.* For the purpose of this Code, the city shall be divided into zoning districts and these shall be shown on maps within the official zoning district atlas. If a dispute arises regarding the location of a zoning district boundary, the ordinance creating or changing a zoning district boundary shall be the governing document (see section 38-5C).

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

GENERAL ZONING DISTRICTS

- Single-Family Rural Residential Zoning Districts
  - EE Single-Family Equestrian Estate and Agriculture
  - RE Single-Family Residential Estate
  - REM Single-Family Residential Estate Mobile
- Single-Family Urban Residential Zoning Districts
  - R-1c Single-Family Low Density
  - R-1a Single-Family Medium Density
  - R-1b Single-Family High Density
  - R-1cM Single-Family Low-Density Mobile
  - R-1aM Single-Family Medium-Density Mobile
  - R-1bM Single-Family High-Density Mobile
- Multi-Family Dwelling Zoning Districts
  - R-2 Multi-Dwelling Low Density
  - R-3 Multi-Dwelling Medium Density
  - R-4 Multi-Dwelling High Density (Density to be established by City) and Limited Retail and Office
- Office Zoning Districts
  - O-1 Office, Neighborhood - Limited Retail Service
  - O-2 Office, Professional - Limited Retail Service
- Commercial Zoning Districts
  - C-1 Commercial Low Intensity
  - C-2 Commercial Medium Intensity
  - C-3 Commercial High Intensity
  - M-T Industrial Technology
  - M1/M2 Industrial Standard

M-3 Industrial Heavy

SPECIAL ZONING DISTRICTS

FC Flood Control Zoning District

OS-R Open Space - Recreation Zoning District

OS-NC Open Space - Natural/Conservation Zoning District

H Holding Zone District

CBD Central Business District and Main Street Plaza Overlay Zone

UAC University Avenue Corridor Plan Overlay Zone District

AdM Avenida de Mesilla Gateway Overlay Zone District

WMIP West Mesa Industrial Park Overlay Zone District

LAO Lohman Avenue Overlay District

IDO Infill Development Overlay District

PUD Planned Unit Development

NMO North Mesquite Neighborhood Overlay Zone District

SMO South Mesquite Neighborhood Overlay Zone District

C. *Interpretation and extension of district boundaries.*

1. Where uncertainty exists concerning boundaries of any zoning district shown on maps within the official zoning district atlas, the ordinance creating or changing a zoning district boundary shall be the governing document. The following rules shall apply if there is still uncertainty after reviewing the creating ordinance:

   a. Boundaries shall be construed as the centerline of existing, future or vacated streets, highways, railroads, alleys, drainage or irrigation canals, other public rights-of-way or un-zoned rights-of-way. The boundary extension of any zoning district shall be a projection of the property line and/or zoning district boundary line to the centerline of any applicable right-of-way centerline regardless of the angle of intersection.

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

   c. Where property is not otherwise designated, divided, or subdivided, the boundary line shall be determined by the scaled distance shown on the maps within the official zoning district atlas.

2. When a right-of-way is vacated, either through action by the city council or by a re-plat approved by the Planning and Zoning Commission, zoning district boundaries shall be approved by separate action of the city council. The following rules shall apply for such zoning district boundary extensions for vacated rights-of-way:

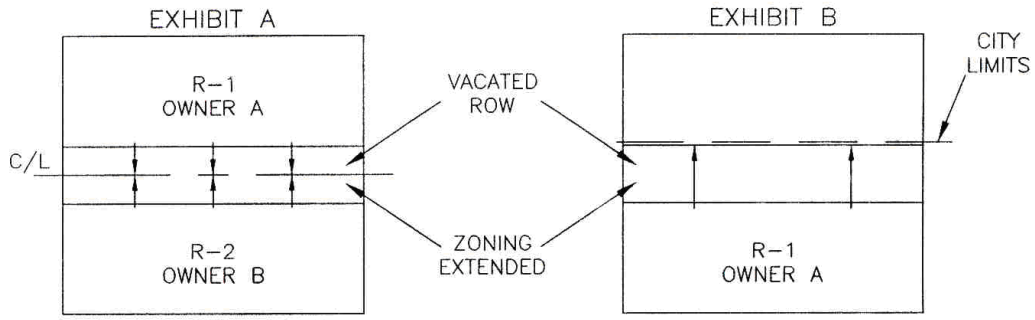
   a. In the event that there are two different properties that receive or purchased the vacated right-of-way, the zoning for the adjoining properties shall be extended to the centerline of what was the right-of-way. See the following exhibit A.

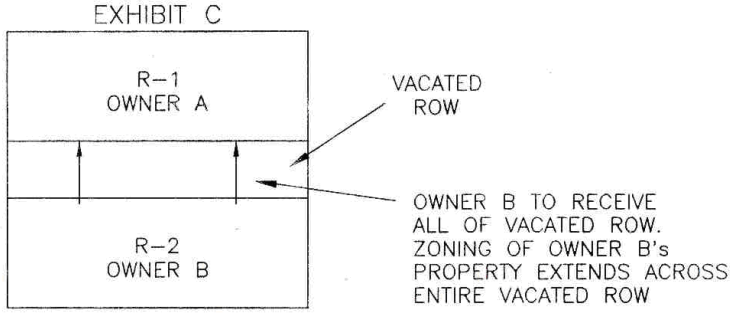
   b. In the event that there is property not within the city adjacent to the vacated right-of-way and the vacated right-of-way is entirely within the city limits, the zoning for the adjoining properties that are within the city limits shall be extended entirely across what was the right-of-way. See the following exhibit B.

c. In the event that there are two different properties, but only one property is to receive all the vacated right-of-way, the zoning for the receiving properties shall be extended entirely across what was the right-of-way. See the following exhibit C.

d. Any other situations concerning zoning district boundary extension and vacated rights-of-way not covered in items 2a through 2c above shall be determined by the city council.

EXAMPLES ONLY





(Ord. No. 2354, § I, 1-22-07)

Secs. 38-6—38-9. Reserved.

ARTICLE II. ADMINISTRATION OF THE ZONING CODE

Sec. 38-10. Planning and Zoning Commission.

A. *Created.* A Planning and Zoning Commission is created by the City Council with the adoption of this Code. The Planning and Zoning Commission shall review the planning, zoning and platting of the City, investigate any related problems and make recommendations to the City Council.

B. *Duties.*

1. *Final Action.* The Planning and Zoning Commission shall take final action on the following:

   a. All Special Use Permits, Master Plans (except as part of an annexation request), Subdivisions (except Alternate Summary Plats and Final Plats as defined in the City's Subdivision Code and subdivisions requesting three or more waivers to planning-related issues), and Final Site Plans of Planned Unit Developments (unless the Final Site Plan is submitted with the Concept Plan),

   b. Within the Infill Areas, all Infill development proposals, and associated variances,

   c. All variances on property whether stand alone or that require a Special Use Permit or where a Planned Unit Development is proposed,

   d. All challenges to administrative decisions or interpretations of the Zoning Code, Sign Code, or Landscape provisions of the City Design Standards,

   e. Appeals of design-related interpretation disagreements between the City staff and the University Avenue Corridor Citizens' Design Review Committee,

   f. Appeals of City staff decisions on matters associated with the Avenida de Mesilla Gateway Overlay Zone District,

   g. Appeals of City staff decisions on matters associated with the Lohman Avenue Overlay District, and

   h. All matters submitted pursuant to NMSA 1978, § 3-19-11.

   Any decision of the Planning and Zoning Commission may be appealed to the City Council in accord with Section 38-13.

2. *Recommendation to City Council.*

   a. The Planning and Zoning Commission, with the assistance of City staff and interested persons, shall recommend the Comprehensive Plan to the City Council. In discharging this duty, the Commission shall consult with and coordinate the planning activities of departments and agencies of the City to assist in the development of the Comprehensive Plan. In its planning activities, the Commission shall take due cognizance of the planning activities of adjacent units of government and other affected public agencies. The Commission shall periodically review the plan and recommend amendments whenever necessary. The Plan may be prepared and adopted in sections, each of which relates to a major subject of the Plan or to a major geographical section of the City. Before adopting the Comprehensive Plan or any section of amendment of the Plan, the Commission shall hold at least one public hearing. The Comprehensive Plan or any section thereof shall be adopted by a majority of all members of the Commission. A copy of the Plan or of any section or amendment thereof adopted by the Commission shall be sent to the City Council for consideration. Until adopted by the City Council, the Plan shall constitute only the recommendation of the Planning and Zoning Commission.

   b. The Planning and Zoning Commission shall recommend to the City Council approval, denial or modification of all requests for Zoning Code amendments, Sign Code amendments, zone changes, annexations (a master plan that is part of an annexation request), initial zonings, the Concept Plan (and Final Site Plans if submitted with the Concept Plan) of Planned Unit Developments, and associated variances. As noted in Subsection 38-10B.l.b, the Planning and Zoning Commission shall take final action on all requests regarding Infill Parcels.

   c. When the Planning and Zoning Commission recommends denial of any matter on which the City Council takes final action, an appeal to City Council is not required.

   d. Community Development Department staff may make a recommendation, if applicable, on any matter to come before the Planning and Zoning Commission.

C. *Pre-Application Procedures.*

1. *Development Proposal—Initial Discussion (Annexations, Zone Changes, Variances, Planned Unit Developments and Special Use Permits).* Any proposed development related action (as listed herein) causing need for public notification, review and approval by a recognized board, committee, commission or council (excludes design or building permit submittals that may require design review committee consideration) shall first be required to have said proposal reviewed at a pre-application meeting scheduled and held by the Community Development staff. A representative for the proposed development action shall attend the pre-application meeting and discuss the proposal in general terms, providing enough specifics to allow attending staff an opportunity to gauge and determine neighborhood and/or community impacts. In that this represents an initial and informal discussion, information provided to the representative regarding procedural nuances or other regulatory related information shall be considered preliminary feedback based on information received, and shall not represent a complete disclosure of all regulatory measures that may apply upon formal review. In no circumstances should related discussion by staff represent a final disposition on the preliminary proposal at hand.

(a) *Neighborhood group and/or noticed area (property owners within the notification distance) notification determination.* Staff upon consideration of the information received during the pre-application meeting, will instruct as to whether early notification of the subject proposal by the applicant to a neighborhood group(s) (recognized group(s)) and/or noticed area shall be necessary prior to formal application and submittal of the development proposal to the city. The criteria used by staff to determine notice need may include, but not be limited to the following:

(i) Development that is likely to cause significant traffic impacts due to limited roadway access or potentially a decrease in level of service based on the subject roadway's design.

(ii) Potential land use conflicts resulting from proposed land use distribution adjacent to existing development of a differing land use classification such as proposed commercial uses adjacent to low density residential.

(iii) Known neighborhood concerns on tangible and reasonable development issues that could be mitigated through design alternatives. An example of a concern congruent to this criterion is development consistency with surrounding development styles as they may relate to setback standards, architectural style, etc. An example of a concern not congruent to the criterion is disapproving development on vacant property due to the elimination of "open space" said vacant property provides or development of vacant property because one's view may be compromised.

(b) *Early Notification exception.* Staff determination of early notice need which shall include an open invitation to discuss the proposal at a meeting, shall not pre-empt the Planning and Zoning Commission, City Council or other reviewing bodies with approval (recommending or final action) authority from thereafter requiring an additional meeting(s). Criteria used by the applicable reviewing body shall be at their discretion and may or may not follow the criteria identified in the preceding provision. Significant deviation of plan proposal post neighborhood group/noticed area meeting may subject the applicant from thereafter participating in another meeting to inform and discuss revisions. Changes addressing concerns raised at said meeting shall not necessarily subject the applicant to another meeting; however, an omission in the proposal that is added post meeting and deemed significant by Community Development staff is a candidate for reconsideration by the notified neighborhood entities prior to consideration by any formal reviewing body.

(c) *Early Notification recipients.* Notification recipients shall include registered neighborhood groups, and/or associations, identified on the applicable Community Development Department's web

page. In the event an identified association or group does not exist or cover an adequate area surrounding the proposal, both the neighborhood group/association and the property owners within 500 feet shall be notified. If no association or group exists within the notification boundary, notification to property owners shall take place using the same distance threshold. Measurement shall be made radially from the outermost property boundary where the subject proposal is located. Any association/group boundary or property boundary that falls either partially or entirely within said radius based on the qualifying standards of this subsection shall receive notification. Contact and mailing information for associations, groups and property owners to be notified shall be provided by the Community Development Department. Mailing preparation, expenses and materials are the responsibility of the developer, applicant and/or representative. Early notification shall take place no later than 15 calendar days prior to the date of submittal. Any party requesting a meeting pursuant to item (d) that follows, may cause delay with the proposal's submittal in order to accommodate the agreed upon meeting schedule and other factors necessary to meet submittal content.

(d) *Early Notification form and content.* All required early notification shall be sent via regular, non-certified, first class mail and the content of the notice shall include at minimum:

(i) A detailed description of what is being pursued in terms of development.

(ii) Information as to how the developer, applicant, or representative for the development action may be contacted.

(iii) A statement as to how the proposal may impact the neighborhood(s) surrounding the subject property where the development is to occur.

(iv) An open offer to participate in a meeting with the association(s)/group(s) and/or property owners at a mutually agreed upon date, time and location in order to discuss the proposal more fully.

(v) A need to provide a WRITTEN meeting request (if desired) to the development representative, copying Community Development staff either in a letter or email format within the stated 15-calendar day threshold. Requests for a meeting within the 15-calendar day period shall render the meeting need mandatory prior to submittal whether or not the meeting takes place inside or beyond this 15-calendar day period. Requests that come in after said period do not compel the applicant to entertain a meeting prior to submittal; however, a meeting with those requesting one is advisable prior to formal review of the proposal by a recommending or decision making body.

(vi) Community Development staff contact information for any related correspondence or general inquiry.

2. *Neighborhood group/noticed area meeting.* It shall be the responsibility of the applicant or representative for the proposal to conduct the meeting and supply any and all materials necessary to convey development parameters as applicable. Additionally, the representative shall be responsible for minute transcription (summary or verbatim) which clearly indicates the date, time and location of the meeting and the general nature of conversation that tool place regarding the proposal. Information shall at minimum identify key points that convey support for or the lack thereof for the proposal as presented.

D. *Application Procedures.* Planning and Zoning Commission. Application for all zoning district changes, annexations, initial zonings, special use permits, planned unit developments, Section 38-10 variances, and Zoning Code and Sign Code text amendments shall be submitted to the Community Development Department. The submittal requirements for the above-listed requests include, but are not limited to, the following:

a. Zoning District Changes, Annexations (Refer to Chapter 37, Article IX: Annexations, of the Subdivision Code), Initial Zoning and Section 38-10 variances:

1) Official Zoning application and Development Statement,

2) Submittal fee,

3) Notarized affidavit,

4) Copy of property's survey and legal description:

An accurate and complete boundary survey shall be made of the land to be developed. Property lines shall be shown giving the bearings in degrees, minutes and seconds. Distances shall be shown in feet and hundredths. Curved boundaries or lines on the survey shall provide sufficient data to enable the re-establishment of curves on the property. The location and description of all monuments set or found shall be included where applicable.

5) Copy of site plan, if applicable:

The site plan shall be at a scale that adequately represents the information as determined by the Community Development Director or designee. The plans shall be prepared on sheets of paper that are at least 8½" × 11" in size. Copies provided shall be legible and of a good quality, with no limit to the number of sheets used. The plans shall indicate the following:

a) Title of site plan.

b) Total acreage of site.

c) Date of preparation, north arrow, written and graphic scale.

d) Identification of site by lot, block, subdivision, if applicable.

e) Name and address of property owner.

f) Name and address of applicant, if applicable.

g) Name and address of consulting firm or representative, if applicable.

h) Location and type of all land uses.

i) All site improvements with all setbacks indicated.

j) Dimensions of all buildings.

k) 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.

l) A landscaping plan, to include the location, size, common name, and biological name of all landscaping materials.

m) Where applicable, pedestrian and bicycle circulation system, and its relation to surrounding circulation.

n) Where applicable, location and arrangement of all open space, common recreational space, and private open space.

o) Architectural renderings or artistic drawings. The drawings shall be prepared on sheets of paper that are at least 8½" × 11" in size. Copies provided shall be legible and of a good quality, with no limit to the number of sheets used. The drawings shall illustrate the following:

(1) All new development illustrating all exterior building materials and colors.

(2) All new development illustrating relationships to neighboring uses, including site lighting.

(3) Sign location, materials, color, size, shape and lighting.

p) A drainage facilities plan, environmental impact statement and/or other items not listed above may be required by the Community Development Director or designee, the Planning and Zoning Commission, or the City Council.

q) Application materials which are illegible and/or otherwise of a low quality will not be accepted.

r) A portion of the submittal requirements may not be required in all cases. Upon receipt of a written request justifying the deletion of required information, the Community Development Director or designee may waive any submittal requirement. The Planning and Zoning Commission may require additional information before acting on a request. The City Council may require additional information before acting on an appeal.

6) Description and justification of requested variances,

7) Request and justification to waive submittal requirements, and

8) An application that meets the following conditions:

a) The application shall be signed by all property owners of record (including all trustees of an estate or all persons that have a specific "power of attorney" for the subject property as recorded in the Dona Ana County Clerk's Office.) Persons who have an equitable interest in the subject property, but no legal title, shall not be deemed the "owners of record" of said property for purposes of this Code.

b) Any pending litigation or any Final Order entered by any Court of Law regarding the ownership of the subject property shall be disclosed by the applicant at the time the application is submitted.

c) The Community Development Director or designee may reject any application if the ownership of the subject property is not clearly established.

9) Copy of notification letter to neighborhood group and/or noticed area and copy of minutes (summary or verbatim) from meeting pursuant to Subsection 38-10 C.1.(d)(v).

b. Special Use Permits and Section 38-10 variances: See Section 38-54. Also refer to Subsection C.a.9. above if applicable.

c. Planned Unit Developments and Section 38-10 variances: See Section 38-49. Also refer to Subsection C.a.9. above if applicable.

d. Infill Development proposals excluding building permit development pursuant to Section 38-48. Also refer to Subsection C.a.9. above as applicable.

e. University District proposals excluding building permit development pursuant to Section 38-44. Also refer to Subsection C.a.9. above as applicable.

f. Avenida de Mesilla Gateway Zone Overlay District excluding building permit development pursuant to Section 38-44. Also refer to Subsection C.a.9. above as applicable.

g. Airport Overlay Zone District excluding building permit development pursuant to Section 38-46. Also refer to Subsection C.a.9. above as applicable.

h. Lohman Avenue Overlay Zone District excluding building permit development pursuant to Section 38-47. Also refer to Subsection C.a.9. above as applicable.

i. North Mesquite Neighborhood Overlay Zone District excluding building permit development pursuant to Section 38-49.1. Also refer to Subsection C.a.9. above as applicable.

j. South Mesquite Neighborhood Overlay Zone District excluding building permit development pursuant to Section 38-49.2. Also refer to Subsection C.a.9. above as applicable.

k. Alameda Depot Neighborhood Overlay Zone District excluding building permit development pursuant to Section 38-49.3. Also refer to Subsection C.a.9. above as applicable.

l. Zoning Code and Sign Code Text Amendments: Submit fee and a draft of the proposed code text amendment to the Community Development Department. The Community Development Director or designee may require that a proposed text amendment to the Comprehensive Plan, affected Plan element or other affected plans be submitted with the code text amendment.

Submittal requirements may be waived by the Community Development Director or designee. The staff may require more information before processing a request. The Planning and Zoning Commission and/or the City Council may require additional information and/or require a neighborhood group and/or noticed area meeting at any point in the consideration of the proposal before the affected body before acting on a request and/or appeal.

E. *Public Hearing and Notice Requirements.*

1. *Public Hearing.* The Planning and Zoning Commission shall conduct a public hearing at a regular or special meeting on the following:

a. Proposed amendment to the Comprehensive Plan, Plan element, other plans required to be reviewed,

b. Proposed amendment to the Zoning Code and Sign Code,

c. Zoning district change, with or without conditions,

d. Special Use Permit,

e. Planned Unit Development,

f. Annexation and Initial zoning,

g. Variances (See Subsection 38-10.G), and

h. Infill Development Proposals.

2. *Agenda.* The agenda for Planning and Zoning Commission meetings shall be available no later than 15 calendar days prior to any meeting.

3. *Posting.* Notice of the public hearing about a request shall be posted in conspicuous places on the property by the property owner, applicant or representative at least 15 calendar days prior to the Planning and Zoning Commission meeting. A sign measuring four feet by four feet shall be used and secured with appropriate supporting hardware made available by Community Development staff. When the property has multiple street frontages, one sign per frontage shall be posted. Large properties may require a greater number of signs which shall be determined by Community Development staff. It shall be the responsibility of the property owner, applicant or representative to ensure continuous posting throughout the public hearing processes. Processes for purposes of this provision shall start with the initial reviewing entity and cease when a final determination is made on the proposal regardless of the number of reviewing entities involved. In that multiple reviewing entities may be involved, Community Development staff will inform the property owner, applicant or

representative of necessary changes needed on the sign to reflect the appropriate reviewing entities, meeting dates and venues.

4. *Notice.*

a. Notice of the Planning and Zoning Commission public hearing shall be mailed to all property owners as further described below when one city block or less is under consideration for the activities listed, (except zone change-related cases that are recommended to City Council and subdivision related cases, see Subsection 38-10.B.2.b. Notice shall be sent by certified, first class mail, to all property owners as shown by the records of the County Assessor, within at least 100 feet of the subject property of the proposed request, excluding streets, alleys, channels, canals, railroads, and all other public rights-of-way. Thereafter, regular, non-certified, first class mail shall be sent to those properties that fall within a distance greater than 100 feet and no less than 500 feet of the subject property. The secondary distance of (> = 100' - < = 500') may include streets, alleys, channels, canals, railroads, and all other public rights-of-way. When an area larger than one city block is under consideration, regular non-certified, first class mail shall be used for all mailed notification and is not subject to right-of-way provisions as outlined above. Regular, non-certified, first class mail shall also be sent to all recognized neighborhood groups within 500 feet of the subject property. Notice shall be mailed at least 15 calendar days prior to the required public hearing. Notice of the time and place of the public hearing shall be published at least 15 calendar days prior to the public hearing in a newspaper of general circulation in the City.

b. Notice of the City Council public hearing regarding zone change-related cases see Subsection 38-10.B.2.b, shall be sent by certified and/or regular, first class, non-certified mail as outlined in paragraph E.4.a.

F. *Special Notification.* The Community Development Department shall provide notification, by certified mail, to the Town of Mesilla of all cases presented to the Planning and Zoning Commission. Notification shall be required for only those cases south and west of Interstate Highway 10, north of Union Avenue and east of Motel Boulevard (N.M. State Highway 292). For notification area, see Figure 1: Town of Mesilla Special Notification Area Map at the end of this Article.

G. *Annexation and Initial Zoning.* A petition for annexation shall include an annexation plat, master plan and initial zoning request. Annexation plat, master plan and initial zoning shall be heard as one case, but separate action shall be taken on the annexation plat, master plan and initial zoning. The City Council shall take final action on the annexation plat, master plan and the initial zoning request after the Planning and Zoning Commission provides a timely recommendation. For detailed information about annexation, refer to Chapter 37, Article IX: Annexations, of the Subdivision Code.

H. *Zoning District Changes Without Conditions (Unconditional Zoning).* A zoning district change or rezoning is a change in classification of property. When approved by the City Council and the 30-calendar day appeal period has expired, the zoning district change shall be recorded and shown on the appropriate zoning district map within the "Official Zoning District Atlas." Approved initial zoning shall be shown on the appropriate zoning district map within the Official Zoning District Atlas. Special Use Permits shall not be considered a zoning district change. No condition that restricts the use of land beyond that otherwise provided by district provisions shall be concurrently imposed with the approval of a zoning district change, except as outlined in Subsection 38-1O.H. However, a variance may be recommended by the Planning and Zoning Commission and granted by the City Council as part of a zoning district change request.

I. *Zoning District Changes With Conditions (Conditional Zoning).*

1. *Authorization.* Zoning district changes may be approved subject to one or more conditions that restrict the use of land beyond that otherwise provided by the district. Variances may be recommended by the Planning and Zoning Commission and granted by the City Council as part of conditional zoning consideration.

2. *Purpose and Intent.* A rezoning subject to a condition is to be used only in circumstances where the proposed change of district is appropriate to allow certain uses which are in accordance with the Comprehensive Plan, and which are not incompatible with the surrounding neighborhood.

3. *Scope.* It shall be unlawful to utilize, sell, or lease property rezoned with conditions without first providing to any prospective buyer or lessee a disclosure statement stipulating the conditions and the time limitation prescribed, if any, and without filing a copy of said disclosure with the office of the Dona Ana County Clerk. A condition attached to a zoning district change shall be consistent with the goals, objectives and policies of the Comprehensive Plan, Plan elements or other plans adopted by the City Council and may:

   a. Limit the use of property affected so that one or more of the uses which would otherwise be permitted in the district being adopted shall not be permitted in the specific district as conditioned, and/or

   b. Require compliance with such design standards or time limitations relating to the construction, placement and size of buildings, landscaping, streets, roadways, pathways, utilities, drainage ways, and other site design features as may be necessary to protect the community from the impact of future development.

4. *Limitation on Using Conditional Zoning.* Any use or structure that requires a Special Use Permit under Section 38-54 shall not be permitted by using conditional zoning.

5. *Initiation of Conditional Zoning.* Conditional Zoning may be initiated by the Community Development Director or designee, the Planning and Zoning Commission, City Council, or by the applicant. Requests shall specify those uses, site design features, time limitations, or other conditions for the conditional zoning.

6. *Planning and Zoning Commission Actions.* The Planning and Zoning Commission shall follow procedures specified in this Section when acting on proposed zoning district changes with conditions. The Planning and Zoning Commission may consider and take action on all aspects of the proposed conditions and limitations. The substance of all proposals, site plans, and other pertinent information with regard to conditional zoning shall be made a permanent part of the action recommending approval of said conditional zoning.

7. *Amendment of Official Zoning District Atlas.* The Official Zoning District Atlas shall be amended as necessary to reflect the existence of zoning changes with conditions. Areas affected by conditions shall be identified by the use of the suffix "C" and shall be clearly distinguished from areas in like zoning district that are not subject to special limiting conditions. The action creating a district subject to conditions and a copy of all conditions shall be available in the Community Development Department as a supplement to the Official Zoning District Atlas.

8. *Conditional Zoning Control.* Conditions attached to a zoning district change shall govern over any less restrictive zoning regulations unless specifically provided otherwise. All other regulations not specifically affected by a condition shall apply in the same manner as if the property were not subject to conditions.

9. *Revocation of Conditional Zoning Designation.* A conditional zoning designation shall be revoked and revert to the previous zoning district designation if the designated property is not used or developed in accordance with the conditions and all other applicable regulations within two years from the date of City Council approval. Upon a formal request from the property owner, the Community Development Director or designee may grant a one-time, one-year extension as deemed appropriate. When the only conditions placed upon a zoning designation are prohibitions (such as No billboards allowed or No medical offices allowed), the conditions shall run with the land and shall not be subject to the two-year development window previously stated. Futhermore, these prohibitive conditions shall only be

removed if a re-zoning action causes the condition to be removed. If compliance with the "non-prohibitive" conditions are not made whole, the property shall revert back to the prior designation unless the Community Development Director or designee certifies in writing that remedial action can bring about compliance with approved conditions in a timely fashion. Reversion shall cause the use of the property to follow appropriate zoning requirements as applicable. When conditions speak to performance criteria (i.e., requirement for opaque screen along north property line or height limitations established, etc.) upon development, conversion of property or expectation thereof, the two-year revocation period shall apply.

J. *Variances.* The Planning and Zoning Commission and the Public Works Director or designee (See Subsection 38-101.1) are authorized to grant variances.

1. A variance shall be defined as a variation in the numerical requirements of this Code, the Sign Code, or the Design Standards (landscaping). Numerical variances to the clear sight triangle requirements shall be considered, reviewed, denied, or approved by the Public Works Director or designee, as per Article III of Chapter 26.

2. A variance proposal to be acted on by the Planning and Zoning Commission may either be part of a request for rezoning, initial zoning, special use permit or planned unit development, or be submitted independent of such proposals and heard based on the individual merits of the request. Use variances, which are non-numerical, as well as numerical variances to the provisions of this Code, may be granted by the Planning and Zoning Commission only in accordance with the Infill Development Process (IDP), Section 38-48. Administrative decisions on or interpretations of the Zoning Code or the Sign Code by staff may be affirmed, reversed, or modified pursuant to this section and appealed to the City Council in accord with Section 38-13, except as provided in Subsection 38-4.D.

3. In the event of a denial decision by the Planning and Zoning Commission and/or City Council, there shall be no reapplication for the exact same variance, which was properly advertised and acted on, for a period of one year after the date of the decision of the Planning and Zoning Commission and/or City Council. A modified variance request processed through the IDP, Section 38-48, may be resubmitted at any time following action by the Planning and Zoning Commission.

4. A variance shall be automatically revoked if a building permit, sign permit or business registration/license for the approved variance has not been obtained within one year. Upon a formal request from the property owner, the Community Development Director or designee may grant a one-time, one-year extension as deemed appropriate.

K. *Criteria For Decisions.* The Planning and Zoning Commission shall review each request in relation to the goals, objectives and policies of the Comprehensive Plan, Plan elements, other applicable plans, and the purpose and intent of this Code, Sections 38-2 and 36-1 of the Sign Code, when appropriate, and determine whether the request is consistent or inconsistent with stated criteria. Members of the Planning and Zoning Commission shall state the factual basis and the findings for their vote.

Furthermore, granting any variance shall not merely serve as a convenience to the applicant, but the variance shall be the minimum necessary for relief in order to accomplish the stated objective(s) of the applicant's request or demonstrable hardship. Hardships are not considered personal or monetary. In addition to criteria already referenced, decisions may consider:

1. A physical hardship relative to the property (i.e., topographic constraints or right-of-way takes resulting reduced development flexibility, etc.) in question.

2. The potential for spurring economic development at a neighborhood or city-wide level if requested allowances are granted.

3. Monetary considerations not as a whole, but relative to options available to meet the applicant's stated objectives when such options cause considerable monetary hardship under strict application of code provisions.

L. *Notice of Decision.* Upon making a recommendation to the City Council or taking final action on matters for which the Planning and Zoning Commission has been granted final authority, the Community Development Department shall promptly:

1. Prepare a written decision that includes an order stating the factual basis and the findings of the Planning and Zoning Commission which support the order:

a. Recommending the granting or denying of relief, or

b. Granting or denying relief;

2. File the written decision with the City Clerk's Office;

3. Send by certified mail a document with appropriate signatures that includes a copy of the written decision of the Planning and Zoning Commission to all parties whose rights are adjudged by the decision and that contains the requirements for filing an appeal;

4. Send by regular mail, or otherwise provide, a copy of the document that includes a copy of the written decision of the Planning and Zoning Commission to every person who has filed a written request with the Community Development Department for notice of the decision.

M. *Appeal to City Council.* Decisions of the Planning and Zoning Commission may be appealed to the City Council in accord with the provisions of Section 38-13.

N. *Resubmittal of Request.* A request denied by the Planning and Zoning Commission and/or the City Council shall not be resubmitted or reconsidered for a period of one year. However, after meeting with Community Development Department staff, a different request on the same property may be submitted no less than six months after such denial decision. Special use permits or planned unit developments processed through the IDP that are denied by the Planning and Zoning Commission may be modified and resubmitted at any time following action by the Planning and Zoning Commission.

(Ord. No. 2354, § I, 1-22-07; Ord. No. 2687, § I(Exh. A), 8-5-13)

Sec. 38-11. Reserved.

Sec. 38-12. Reserved.

Sec. 38-13. City Council.

A. *Final Action.* After recommendation from Community Development Department staff, if applicable, and the Planning and Zoning Commission, the City Council shall take final action on the following:

1. Comprehensive Plan, Plan elements, other plans sent from the Planning and Zoning Commission and all amendments,

2. Zoning district change requests,

3. Initial zoning requests,

4. Concept Plan and Final Site Plans submitted with the Concept Plan of Planned Unit Developments (subdivisions requesting three or more waivers to planning-related issues become planned unit developments),

5. Associated variances with Subsections A.2 through A.4 above,

6. Zoning Code and Sign Code amendments, and

7. Appeals of decisions of the Planning and Zoning Commission.

B. *Changing and Reconsideration of Petitioned Zoning Proposals.* A zoning district change or initial zoning request may be amended by the City Council to be more restrictive. Such amendment and reconsideration shall not require readvertisement or notice to surrounding property owners if considered by the City Council at the original (first) Public Hearing. Subsequent public hearings shall require readvertisement and notice to surrounding property owners unless the hearing is continued or the request is postponed to a specific date.

C. *Grounds for Appeal to City Council.* Any person, or any department, commission, board or bureau of the City that is affected by a decision of an administrative official, commission, committee, or board in the administration or enforcement of this Code, or any other resolution, rule or regulation adopted pursuant to NMSA 1978, §§ 3-21-1 through 3-21-12 and NMSA 1978, § 3-21A, may appeal such decision to the City Council. Such appeal must be initiated in writing within 15 calendar days after the decision and after all other procedures established by this Code have been exhausted. Any person that is a party to an appeal may request a "Battershell" due process proceeding in place of the automatic standard due process.

D. *Stay of Proceedings.* An appeal shall stay all proceedings in furtherance of the action appealed unless the officer, official, commission, committee, or board from whom the appeal is taken certifies that by reason of facts 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, committee, or board from whom the appeal is taken.

E. *Appellant Responsibility in Appeals.* All appellants under this Section are required to submit to the Community Development Department a detailed written statement of the grounds of their appeal, including findings, no later than 15 calendar days after the decision is filed with the City Clerk's Office. The appeal shall state all issues to be considered. Only the issues stated shall be considered during the applicable proceeding.

F. *Appeal Notice.* Notice on all appeals, except Zoning and Sign Code amendments and interpretations, on decisions of the Planning and Zoning Commission shall be sent in complete accordance with Subsection 38-10.E.4.a. With the exception of subdivision related matters, the specified exclusion referencing Subsection 38-10.B.2.b., shall not apply for appeals under this section. Notice of the time and place of the appeal shall be posted in conspicuous places on the property by Community Development Department staff at least 15 calendar days prior to the appeal public hearing.

G. *Authority of the City Council.* When an appeal alleges that there is error in any order, requirement, decision or determination by an administrative official, commission, committee, or board in the enforcement of this ordinance, or any other resolution, rule or regulation adopted pursuant to the above-stated State Statutes, the City Council, 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, commission, committee or board; or make any change in an order, requirement, decision, or determination of an administrative official, commission, board, or committee.

Members of the Planning and Zoning Commission shall not participate in any way in an appeal before the City Council of any decision of their Commission. The minutes of each Commission meeting are the public record that indicates each Commission member's participation. This restriction applies to members of other groups or committees, e.g., University Avenue Corridor Citizens' Design Review Committee, when the group or committee is required to make a recommendation to the Planning and Zoning Commission.

H. *Notice of Decision.* Upon City Council making any final decision, the Community Development Department shall promptly:

1. Prepare a written decision that includes an order stating the factual basis and the findings of the City Council which support the order;

2. File the written decision with the City Clerk's Office;

3. Send by certified mail a document with appropriate signatures that includes a copy of the written decision of the City Council to all parties to the appeal submitted to the City Council, including persons who had filed a formal protest as an aggrieved person, and that contains the requirements for filing an appeal;

4. Send by regular mail, or otherwise provide, a copy of the document that includes a copy of the written decision of the City Council to every person who has filed a written request with the City Clerk for notice of the decision.

I. *Amendment, Repeal and Review of the Zoning Code.*

1. The City Council, after a public hearing and after a recommendation from the Planning and Zoning Commission, may amend, supplement, or repeal any portion or all of this Code.

2. There shall be a continuous evaluation of the provisions of this Code, and amendments shall be submitted to the City Council as deemed necessary.

(Ord. No. 2354, § I, 1-22-07; Ord. No. 2687, § I(Exh. A), 8-5-13)

Sec. 38-14. Appeal to District Court.

Any person dissatisfied with an order or determination of the Planning and Zoning Commission, after review of the order or determination by City Council; may commence an appeal in District Court pursuant to the provisions of NMSA 1978, § 12-8A-1 as amended, and NMSA 1978, § 39-3-1.1, as amended.

Any person aggrieved by a determination of the City Council may appeal to the District Court within 30 calendar days after the final decision of the City Council has been filed with the City Clerk's Office.

(Ord. No. 2354, § I, 1-22-07; Ord. No. 2687, § I(Exh. A), 8-5-13)

Sec. 38-15. Violations of the Zoning Code.

A. *Violations.* It shall be a violation of this Code for any person, firm, or 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 zoning approval. Each day that such violation exists shall constitute a separate offense. Any violation herein described is governed by the provisions of the Las Cruces Municipal Code and its subsequent amendments.

B. *Penalties.* The Las Cruces Municipal Court shall impose the penalties for each day the violation of this Code exists. In addition to fines, the Las Cruces Municipal Court may grant injunctive relief in accordance with the provisions of the Las Cruces Municipal Code and its amendments.

C. *Other Remedies.* Nothing herein shall limit the City from seeking other remedies at law or equity to enforce the Zoning Code. Violations of this Code shall be brought into compliance, abated, removed, and/or pursued in the applicable court of law. In all such cases that the Court rules to allow non-conformance with this Code, there shall be a pro forma action by the Planning and Zoning Commission permitting such non-conformance. Such action shall be consistent with the Court's ruling, and thereafter said nonconformance shall be considered legal non-conforming and be subject to the provisions thereof.

(Ord. No. 2354, § I, 1-22-07; Ord. No. 2687, § I(Exh. A), 8-5-13)

Sec. 38-16. Enforcement Provisions.

A. *Duty to Enforce.* The offlcial(s) designated by the City Manager shall enforce this Code.

B. *Building Permits and Plans.* No building or structure, except those exempted by the City's Building Code, shall be erected, enlarged, or structurally altered until a building permit has been issued and zoning approval of all plans has been granted by the Community Development Director or designee.

C. *Certificate of Occupancy.* Certificate of Occupancy approving a structure or use of land shall be required for all of the following prior to occupancy:

1. Occupancy and use of a building hereafter erected or structurally altered;

2. Change in use of an existing building to a use of a different classification;

3. Occupancy and use of vacant land;

4. Change in the use of land to use of a different zoning district classification;

5. Change in the use of a non-conforming use, including the alteration or expansion of a non-conforming use or structure.

D. *Legal Documents to Insure Compliance.* The Community Development Director or designee may require affidavits, disclosure statements, deed restrictions, 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. 2354, § I, 1-22-07; Ord. No. 2687, § I(Exh. A), 8-5-13)

Sec. 38-17. Fees.

All fees relating to this Code shall be adopted by resolution of the City Council.

(Ord. No. 2354, § I, 1-22-07; Ord. No. 2687, § I(Exh. A), 8-5-13)

Secs. 38-18, 38-19. Reserved.

Figure 1. Town of Mesilla Special Notification Area

ARTICLE III. DEFINITIONS

Sec. 38-20. General.

A. *Scope.* Unless otherwise expressly stated, the following words, terms or phrases shall, for the purpose of this Code, have the meanings defined in this article and elsewhere in this Municipal Code.

B. *Interchangeability.* Words stated in the present tense include the future; words stated in the masculine gender include the feminine and neutral; the singular number includes the plural and the plural the singular.

C. *Words, terms or phrases defined in other codes.* Where words, terms or phrases are not defined in this Code, but are defined in federal or state laws or elsewhere in this Municipal Code laws, such words, terms or phrases shall have the meanings ascribed to them as in those laws.

D. *Words, terms or phrases not defined.* Where words, terms or phrases are not defined through the methods authorized above, the Community Development Director or designee shall have the authority to interpret such words, terms or phrases.

(Ord. No. 2354, § I, 1-22-07)

Sec. 38-21. Specific definitions.

A

Accessory uses and structures. (See Section 38-51)

Accessible route. (See Section 38-58)

Accessory dwelling unit. (See Section 38-53)

Adult amusement establishment means an establishment that:

1. Provides amusement or entertainment that is distinguished or characterized by an emphasis on material depicting or relating to specified sexual activities or specific anatomical areas;
2. Features topless dancers, exotic dancers, strippers, male or female impersonators, topless/bottomless waitering, or similar entertainment;
3. Provides an escort or partner to its patrons, upon payment of a fee; and
4. Supports legal activity only.

Adult bookstore/video store means a commercial establishment which has 20 percent or more of its floor space or one of its principal business purposes, offers for sale or rental or for any form of consideration any one or more of the following:

1. Films, video tapes, video cassettes or reproductions of video cassettes, photographs, slides, motion pictures, books, magazines or other visual representations which are distinguished or characterized by their emphasis on matters depicting or describing "specified sexual activities" or "specified anatomical areas;" or
2. Instruments, devices or paraphernalia which are designated for use in connection with "specified sexual activities."

A commercial establishment may have other principal business purposes that do not include the sale or rental of material depicted or describing "specified sexual activities" or "specified anatomical areas" and still be categorized as an Adult Bookstore/Video Store if the use is a principal use based upon the visible inventory of commercial activity of the establishment. Only legal products or activities are permitted.

Aggrieved means having suffered loss or injury.

Aggrieved party or person means one whose legal right is invaded by an act complained of, or whose pecuniary interest is directly and adversely affected by a decree or judgment. One whose right of property may be established or divested. The word "aggrieved" refers to a substantial grievance, a denial of some personal, pecuniary or property right, or the imposition upon a party of a burden or obligation.

Alley means a public thoroughfare that is not a low density local or higher designated roadway which affords only a secondary means of access to abutting property. (See Section 38-58)

Amusement enterprise, temporary. (See Section 38-50)

Amusement park or enterprise means a profit-oriented, commercially-operated business with various devices for entertainment which is permanently located at one site.

Antennas. (See Section 38-59)

Apartment means one or more rooms with private bath and kitchen facilities comprising an independent self contained dwelling unit grouped together with one or more dwelling units on a single lot, parcel, or tract. A dwelling unit used exclusively for lease or rent as a residence in which an owner may reside. Not an Accessory Dwelling Unit or a Guest Dwelling.

Assisted living facility or retirement facility means a community residence(s) specifically designed for those who are able or who wish to live an independent lifestyle but may need assistance with daily chores, such as, cooking, cleaning, laundry, and/or driving. On-site, skilled nursing care or medical facilities may be permitted. Any living facility or part thereof which requires licensing by the New Mexico State Health Department shall be considered a nursing home.

Attached means the physical union of two otherwise independent structures or objects, or the relation between two parts of a single structure, each having its own function.

B

Babysitting means the care of a child of another person for remuneration in a home in which six or fewer children are cared for at any one time. (See Section 38-52)

Bar. (See Section 12-122 of the Municipal Code)

Bed and breakfast facility means a limited commercial activity, conducted for a fee, within a dwelling unit containing dining and bathroom facilities with sleeping rooms for short-term guest lodging. The owner/operator shall live in the dwelling, in another dwelling on the property, or on property adjacent to the Bed and Breakfast Facility. (See Section 38-53)

Block means property bounded on all sides by one or more of the following: a street, railroad, right-of-way, waterway, un-subdivided areas, or other definite boundaries. (See also City's Subdivision Code)

Block face means one side of a Block, as defined.

Boarding or breeding stable means a facility used for the boarding, breeding, or raising of large animals, e.g., horses.

Boardinghouse means a dwelling unit, other than an apartment, hotel, motel, or tourist facility, including more than two rooms that are intended to be rented but which rooms, individually or collectively, do not constitute separate dwelling units, where for compensation and by pre-arrangement for more than two weeks, food and lodging are provided, including sorority and fraternity houses. The term compensation shall include money, services or other things of value.

Body shop means a shop where vehicle exteriors are structurally repaired, replaced or reconditioned. Waxing, pre-fabrication, stripping, or similar activity shall not be considered bodywork.

Bufferyard means an area between the property line and a potential structure that may have landscaping, drainage facilities, walls and fences, but not parking.

Buildable depth means the depth of the lot remaining to be built upon after the required front and required rear yards are provided.

Buildable width means the width of the lot remaining to be built upon after the required side yards are provided.

Building means any structure as defined in Chapter 30 of the Municipal Code.

Building height means the height of a building measured from the lowest adjacent ground surface level to the highest point of the building or from the elevation of the adjacent ground, whichever is lower.

Building projection. (See Section 38-62)

C

Cafe means a Restaurant of less than 1500 square feet and not providing drive-in, drive-up or exclusively carryout service.

Cannabis industry means a person that:

1. Cultivates cannabis plants;
2. Has unprocessed cannabis products tested by a cannabis testing laboratory;
3. Transports unprocessed cannabis products only to other cannabis establishments;
4. Sells cannabis products wholesale;
5. Manufactures cannabis products;
6. Packages cannabis products;
7. Has cannabis products tested by a cannabis testing laboratory; or
8. Purchases, acquires, sells or transports wholesale cannabis products to other cannabis establishments.

Cannabis microbusiness means a person that is authorized to conduct one or more of the following:

1. Production of cannabis at a single licensed premises; provided that the person shall not possess more than 200 total mature cannabis plants at any one time;
2. Manufacture of cannabis products at a single licensed premises;
3. Sales and transportation of only cannabis products produced or manufactured by that person;
4. Operation of only one retail establishment; and
5. Couriering of cannabis products to qualified patients, primary caregivers, reciprocal participants or directly to consumers.

Cannabis research laboratory means a facility that produces or possesses cannabis products and all parts of the plant genus Cannabis for the purpose of studying cannabis cultivation, characteristics or uses.

Cannabis retailer means a person that sells cannabis products to qualified patients, primary caregivers, reciprocal participants or directly to consumers.

Canopy. (See Section 38-45)

Change in land use. (See Article VII)

Child Care Center or *Preschool* means a service provided for the day or night care of children in compliance with the Las Cruces Municipal Code and State law and regulation as follows:

- Home Occupation (1—12 children). See Sections 38-33B and 38-52C.6.
- Family Child Care Home (5—6 children). See Section 38-33D.
- Group Child Care Home (7—12 children). See Section 38-33D.

- Child Care Center (any number of children). See Section 38-33D.

City means the City of Las Cruces, New Mexico.

City Council means the governing body of the City.

Clear sight triangle means an area of unobstructed vision at street intersections and intersections of multiple parking areas (parking lots) entrances/exits permitting a vehicle driver to see approaching vehicles to the right or left. (See Section 32-405 of the Municipal Code)

Clinic means an establishment where people are not lodged overnight, but are treated by a State-licensed health care provider or a group of providers practicing together.

Club means buildings and facilities owned or operated by a corporation, association, person or persons for a social, intellectual, educational, secular or recreational purpose, but not for religious purposes or profit; includes lodge.

Collocation. (See Section 38-59)

Communication structures. (See Section 38-59)

Commercial purposes. (See Section 38-59)

Community Garden means a private or public facility for cultivation of fruits, flowers, vegetables, or ornamental plants by more than one person or family but excludes the cultivation of cannabis.

Comprehensive plan means the Comprehensive Plan for the City of Las Cruces adopted by the City Council on March 1, 1999, and as may be amended.

Conditional use means a land use that is permitted within a specific zoning district with specific conditions. (See Section 38-53)

Condominium means a residential, professional, commercial, office, or industrial development, in which each unit is owned individually, whether the unit includes the ground beneath, 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.

Convenience store means a general retail store containing less than 1,500 square feet of gross floor area that sells general merchandise, goods and services and may include ready-to-eat food products, groceries, sundries, and fuel.

Cottage industry means any manufacturing, compounding, and/or assembly process, including food preparation, which is subordinate to a primary use of retail sales or service. This use is not to be confused with or treated as a home occupation. (See Cottage Industry land use listings in Section 38-33I)

Cul-de-sac. (See the City's Subdivision Code and Design Standards)

Curb cut. (See Section 38-58)

D

Dedicated easement means a public easement that is dedicated for public use and is recorded as such in the office of the County Clerk. (See the definition of Easement)

Designated, disabled parking stall. (See Section 38-58)

Display means merchandise offered for sale inside or outside a building which can be viewed and/or accessed by the customer for purchase without requiring a clerk's assistance for viewing the merchandise, including tobacco products and spray paint. See the definition of "storage."

District means any zone of the City of Las Cruces within which certain zoning and land use requirements are specified and are uniform, and which are designated on the Official Zoning District Map.

Duplex means two dwelling units.

Dwelling, multiple family: triplex, quadplex means a building or buildings designed for three or more families occupying separate, attached, or detached living units.

Dwelling, one dwelling unit means a building designed for and occupied exclusively for residential occupancy and having customary kitchen facilities necessary for a single housekeeping unit.

Dwelling, two-family or *duplex* means a building or buildings designed for two families occupying separate, attached, or detached living units.

E

Easement means 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 purpose. An easement restricts but does not abridge the right of the fee owner to the use and enjoyment of his land. (See Dedicated Easement) See "easement" in the City's Subdivision Code.

Expansion. (See Article VII)

F

Facial mount. (See Section 38-59)

Family means persons related by blood or marriage, or a group of persons who need not be related by blood or marriage, living together as a single housekeeping unit in a dwelling.

Fence. (See Section 38-60)

Flea market or *open market* means an open-air market in which spaces are rented or leased for the purpose of selling second-hand articles and home crafts.

Floor area means 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.

Floor-to-area ratio means the total gross square footage of a structure or building divided by the total square footage of the lot, parcel, or tract on which the structure or building exists or is to be placed.

Fraternity house or *sorority house* means a dwelling with sleeping rooms or a dormitory used for occupancy by individuals in a recognized organization, and in which kitchen facilities are for the common use of all occupants. (See Boardinghouse)

Frontage means a specified distance measured along a right-of-way property line or access easement.

G

Gas station/filling station means a business where the primary use is to sell motor vehicle fuels at retail prices.

Grandfather clause. (See Article VII)

Ground surface level means that surface of a yard which directly abuts a wall, fence, building, or structure, or the average grade level, whichever is most appropriate.

Guest dwelling. (See Section 38-53)

H

Halfway house means 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 for the disabled means a community residence for persons who are physically disabled, developmentally disabled, psychiatrically disabled, mentally ill or for persons who have drug or alcohol problems; or are persons who have disabilities associated with aging. A community residence serving ten or fewer persons (See NMSA 3-21-1C) is considered a residential use of property for purposes of zoning, and is a permitted use in all districts in which residential uses are permitted generally, including particularly residential zones for single-family dwellings. A community residence serving more than ten persons is permitted in the R-2, R-3, and R-4 zoning districts. A community residence pursuant to this definition does not include skilled nursing care homes. (See Section 38-33A)

Home occupation. (See Section 38-52)

Horticulture means the use of land for the growing or production for income of fruits, vegetables, flowers, nursery stock, including ornamental plants and trees, and cultured sod, but excludes the cultivation of cannabis.

Hotel means a building in which lodging and/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.

H.U.D. means the federal Department of Housing and Urban Development.

I

Infill parcel. (See Section 38-47)

Institution means the use including structures dedicated to public or non-profit service.

J

Junkyard means the use of a property of any size for the storage, handling, dismantling, wrecking, keeping, or sale of any tangible scrap materials.

K

Kennel/cattery, commercial. (See Chapter 7 of the Municipal Code)

Kennel/cattery, private residential. (See Chapter 7 of the Municipal Code)

Kitchen means an area used for food preparation containing a sink and any form of cooking apparatus. Plans which only incorporate provisions for such apparatus (i.e. plumbing or electrical rough-ins), shall be considered on an equal basis as a complete facility for purposes herein defined.

L

Less restrictive district or zone means a zoning district in which the uses, requirements, and development standards are predominantly less intensive or are limited to a lesser extent than other zoning districts. (See Article VII)

Lot means 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 records of the County Assessor. A legal lot is a parcel that has been divided in accordance with present or past zoning and subdivision requirements. See "lot" in the City's Subdivision Code.

Lot, corner means a lot abutting upon two or more streets or rights-of-way at their intersection.

Lot depth means the mean horizontal distance between the front and rear lot lines.

Lot, double frontage means an interior lot fronting on two streets. One frontage shall be designated as the primary front yard.

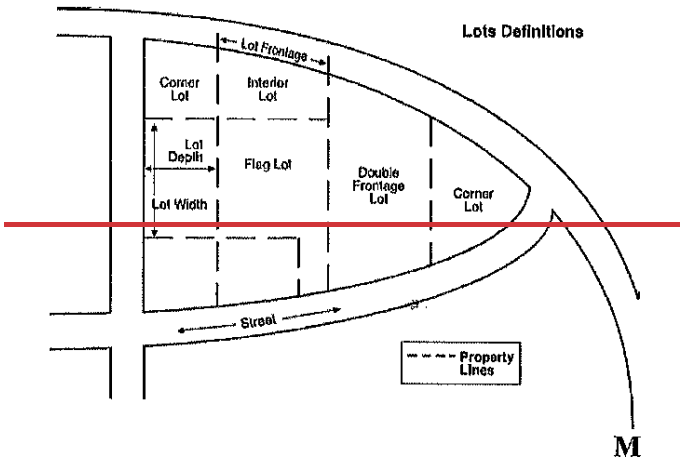
Lot, flag means a lot, parcel or tract of land that includes a private access way (the pole) extending to a public right-of-way to provide access to the rest of the lot (the flag). The private access way has less frontage on a public right-of-way than the normally approved minimum roadway frontage. (See Section 38-62)

Lot, interior means a lot other than a corner lot.

Lot of record means a legal lot, tract, or parcel, the map or deed of which has been recorded in the office of the County Clerk of Dona Ana County prior to the effective date of this Code.

Lot, triple frontage means a lot fronting on three streets. One frontage shall be designated as the primary front yard.

Lot width means the width of a lot at the designated front property line.



M

Main dwelling means the primary dwelling on a property zoned for residential use. (See Section 38-51)

Micro-brewery/micro-pub. (See Cottage Industry definition and Section 38-33l)

Ministorage unit means small storage units, each used for the sole purpose of domestic storage for individuals and strictly prohibiting a business being carried on out of a storage unit.

Manufactured housing. (See Section 38-57)

Mobile home. (See Section 38-57)

Mobile home park. (See Section 38-57)

Mobile home space. (See Section 38-57)

Modular building means a standardized factory-fabricated transportable building module not having a chassis or wheels of its own, designed and constructed in accordance with all applicable local building codes and intended to be placed on a permanent foundation, meeting all local zoning codes and to be used by itself or incorporated with similar units, Manufactured Housing, Mobile Homes, or site built buildings at a building site. A Modular Building can be used for residential or nonresidential uses when located in appropriate zoning districts. (See Section 38-57)

More restrictive district or zone means a zoning district in which the uses, requirements, and development standards are predominantly more intensive or are limited to a greater extent than other zoning districts. (See Article VII. Nonconforming Uses, Structures and Property)

Motel, motorcourt, motor hotel, motor lodge means a 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.

N

Nonconforming. (See Article VII)

Lot, Parcel or Tract of Land

Use

Structure

Site Design Feature

Nuisance. (See Chapter 18 of the Municipal Code)

Nursing home means a community residence that provides on-site, skilled nursing care, intermediate care or full medical facilities. Living facilities that provide any personalized care and require licensing by the New Mexico State Health Department shall be considered as nursing homes.

O

Open space means that area of a lot, tract, or parcel not devoted to any building or structure, driveway, parking lot or stall, or street.

P

Patio home means a detached single-family dwelling unit built on one side property line, Zero-Lot Line, and not considered a Townhouse. (See Section 38-62)

Parking lot. (See Section 38-58)

Planning and Zoning Commission. (See Section 38-10)

Porch means a roofed patio entrance or exit area, open on at least one side.

Prefabricated housing unit means a structure of which the standardized integral parts (walls, roof, windows, etc.) are factory-fabricated so that construction consists mainly of assembling and uniting the standardized integral parts at the building site, designed and constructed in accordance with all applicable local building codes and intended to be placed on a permanent foundation, meeting all local zoning codes and to be used by itself or incorporated with similar units at a building site. Prefabricated units may be used for residential or commercial uses when located in appropriate zoning districts. (See Section 38-57)

Private purposes. (See Section 38-59)

Property line means 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.

P.U.D. Planned Unit Development. (See Section 38-49)

Q

Quadplex means four dwelling units.

Quasi-institutional house. (See Halfway House)

R

Reconversion means the removal of a kitchen from an Accessory Dwelling Unit due to the denial (renewal or initial request), expiration, or termination of a special use permit pursuant to Section 38-54.

Recreational Vehicle. (See Section 38-57)

Recreational Vehicle Park. (See Section 38-57)

Recreational Vehicle Space. (See Section 38-57)

Recreational Vehicle Storage Area. (See Section 38-57)

Related to the family means an individual maintaining direct consanguineous or affinity ties with the property owner/spouse of record.

Religious institution means non-secular activities of a non-profit organization with a membership of more than ten persons. A secular commercial use associated with a religious use that involves the sale of merchandise shall be subject to the requirements of the Zoning Code pertaining to that use, and shall not be considered as a religious use for the purpose of this Code.

Restaurant means an establishment where food is prepared, served and/or consumed. Restaurants shall be classified as follows:

Fast Food. An establishment that sells food, usually in disposable containers, and may include drive-in or drive-up facilities for ordering.

General or *Standard.* An establishment that sells food for consumption on or off the premises.

Take-Out. An establishment that sells food only for consumption off the premises.

(See also Section 12.122)

Riding school or *stable* means any place that has available for hire, boarding and/or riding instruction, e.g., any horse, pony, donkey or mule.

Right-of-way means any land area deeded, reserved, or otherwise acquired by the City, the County, or the State of New Mexico for public use, e.g., roads, streets.

Roof means an overhead structure used for protection or shielding from the sun, rain, or other elements of weather.

Room. (See Section 38-62)

S

Satellite Service Device. (See Section 38-59)

School, commercial means a conservatory, trade or business school operated for a profit that is not approved by the State as a kindergarten, elementary, secondary or post-secondary school, and where the primary function is instruction or teaching.

School, private means a school that may be approved by the State with a curriculum the same as ordinarily given in a public kindergarten, elementary, junior high/middle school, or high school.

Screening means the use of a wall, fence, thick shrubbery, or similar materials to minimize the potentially adverse impact of one land use on another.

Setback means the right angle distance from a point on a property line. See also "Building Setback" in the City's Subdivision Code.

Shopping center/business service center means a group of two or more separate, approved nonresidential uses which are planned, constructed, developed, owned or managed independently or as a total entity which share access, parking, drainage, or landscaping. Approved land uses are only those allowed, those allowed with

conditions or those requiring a special use permit within the zoning district where the shopping center/business service center is located. Other land uses may be approved as part of a planned unit development.

Site-built means a structure that is constructed from materials brought to the site and modified for assembly. Some materials may be assembled off-site, but must be assembled on site to make a complete structure. This does not include a manufactured home, mobile home, or recreational vehicle.

Special use. (See Section 38-54)

Specified anatomical areas means and includes the male genitals in a state of sexual arousal or the vulva or more intimate parts of the female genitals.

Specified sexual activities means and includes any of the following:

1. The fondling or other erotic touching of human genitals, pubic region, anus, buttocks, or female breasts; or
2. Sex acts, normal or perverted, including intercourse, or oral copulation or sodomy; or
3. Masturbation; or
4. Excretory functions as part of or in connection with any of the activities set forth in "1" through "3" above; and
5. Does not include illegal acts.

Storage means materials, equipment and supplies not for sale as well as merchandise that is kept separate from public areas and is not intended to be viewed in the storage areas by customers for purchase. See the definition of "display."

Story means the same as defined in the Las Cruces Building Code. (See Chapter 30)

Street, curb level means a level measured from the street surface or the top of an abutting curb.

Street line means the outer most boundary or property line of a street right-of-way that is the mutual property line of abutting properties.

Street, private means a private roadway that affords the traffic circulation within a development or parcel of land and gives access to uses and structures. (See also the definition of Lot, flag, and Section 38-62)

Street, public means a public thoroughfare that affords the principal means of access to abutting property.

Structure. (See Chapter 30 of the Municipal Code.)

T

Temporary uses. (See Section 38-50)

Time rental riding facilities means a facility in which, for example, saddle horses or ponies, are rented to the general public.

Total height means the distance between the lowest ground surface level of a building or structure and the highest point of the structure.

Tower. (See Section 38-59)

Townhouse means 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 or more attached dwellings separated from one another by common property lines. (See the definition of Patio home, Zero lot line dwelling, and Section 38-62)

Trailer. (See Section 38-57)

Triplex means three dwelling units.

U

Usable open space means open space within a lot, tract, parcel, or development site excluding areas devoted to roadways and parking.

Use means the purpose for which land or structures are arranged, designed, maintained, or occupied.

V

Vacant land. (See Article VII)

Variance. (See Section 38-10)

Vertical structure. (See Section 38-59)

Veterinary facility means any establishment maintained and operated by a licensed veterinarian.

W

Wall. (See Section 38-60)

Wall, common. (See Section 38-60)

Wall, retaining. (See Section 38-60)

Warehouse means a building used primarily for storage of products or wares, in conjunction with retail or wholesale stores, not including uses, such as storerooms or stockrooms. Mini-storage or self-storage of household goods and similar uses shall not be construed as a warehouse use.

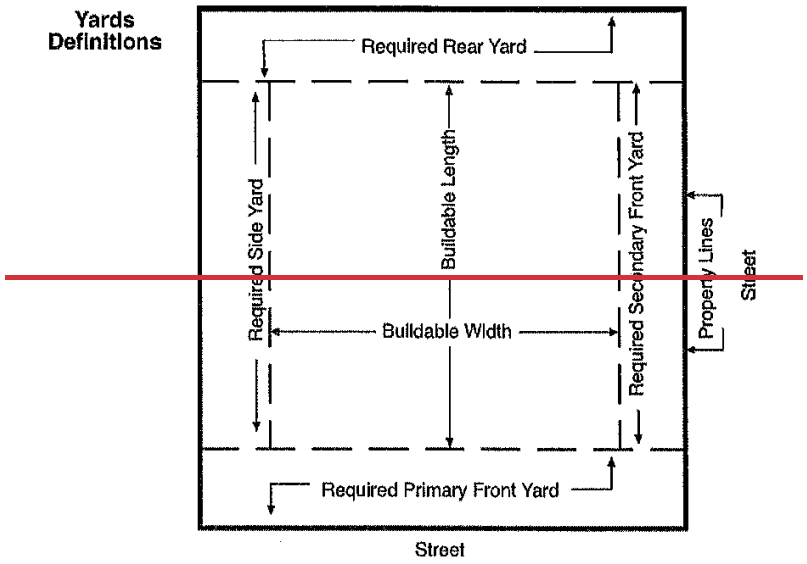
Y

Yard means the space on a lot unobstructed by buildings from the ground to the sky, including sidewalks, driveways, patios, and other ground level surfaces.

Yard, required front means the required yard between the designated front property line and the front setback line.

Yard, required rear means the required yard between the designated rear property line and the rear setback line.

Yard, required side means the required yard between the designated side property line and the side, front and rear setback lines.



~~*Youth hostel* means a temporary lodging facility geared toward youth wherein kitchen, dining, and bathroom facilities are typically communal in arrangement and sleeping quarters private.~~

~~Z~~

~~*Zero lot line dwelling* means the construction of a building, e.g., Patio Home, upon one side property line, leaving a zero setback or distance from the property line to the structure or building. (See Section 38-62)~~

~~(Ord. No. 2354, § I, 1-22-07; Ord. No. 2986, § (I)(Exh. A), 9-7-21)~~

~~Secs. 38-22—38-29. Reserved.~~

~~*ARTICLE IV. GENERAL ZONING DISTRICTS*~~

~~Sec. 38-30. General zoning districts: purpose and uses.~~

~~General zoning districts are the residential, office, commercial, and industrial zoning districts within the city. Each general zoning district is described by a purpose statement, development standards, and a list of land uses. Other nonspecified land uses that are similar to those land uses listed as allowed, as conditional, or as a special use, may be permitted by the Community Development Director or designee. Any decision of the Community Development Director or designee with regard to non-specified land uses may be appealed to the Planning and Zoning Commission.~~

~~The following is a list of the general zoning districts described in this article:~~

~~Single-family rural residential zoning districts~~

~~EE Single-family equestrian estate and agriculture~~

~~RE Single-family residential estate~~

~~REM Single-family residential estate mobile~~

~~Single-family urban residential zoning districts~~

~~R-1c Single-family low density~~

~~R-1a Single-family medium density~~

~~R-1b Single-family high density~~

~~R-1cM Single-family low density mobile~~

~~R-1aM Single-family medium density mobile~~

~~R-1bM Single-family high density mobile~~

~~Multi-dwelling zoning districts~~

~~R-2 Multi-dwelling low density~~

~~R-3 Multi-dwelling medium density~~

~~R-4 Multi-dwelling high density (density to be established by city) and limited retail and office~~

~~Office zoning districts~~

~~O-1 Office, neighborhood - limited retail service~~

~~O-2 Office, professional - limited retail service~~

~~Commercial zoning districts~~

~~C-1 Commercial low intensity~~

~~C-2 Commercial medium intensity~~

~~C-3 Commercial high intensity~~

~~Industrial zoning districts~~

~~M-T Industrial light~~

~~M1/M-2 Industrial standard~~

~~M-3 Industrial heavy~~

~~(Ord. No. 2354, § I, 1-22-07)~~

Sec. 38-31. Residential zoning districts.

A. *Single-Family Rural Residential Zoning Districts.*

1. *Purpose.* The rural residential category is intended to provide for low density single-family housing on large lots specifically designed for farming and/or raising and keeping of animals. It is intended that the rural residential zones meet the demand for lifestyles which desire more open space and include farming and/or the raising and keeping of animals in a rural atmosphere. Limited commercial activity is permitted.

2. Zoning District Descriptions.

EE Equestrian Estate & Agriculture: The EE District is intended as a low density residential district of single-family site-built/manufactured housing on large lots specifically designed for farming and/or the raising and keeping of animals such as horses, mules, cows, pigs, sheep, goats, and fowl in a rural atmosphere. Limited commercial activity is permitted. The maximum density of this district is one dwelling unit per acre.

LAND USES ALLOWED

RESIDENTIAL LAND USES (See Section 38-33A)

Detached, Site Built, Single Family Dwelling Unit

Manufactured Dwelling Unit

RESIDENTIAL-RELATED LAND USES (See Section 38-33B)

Accessory Uses and Structures

Greenhouse (Non-Commercial), Garden Shed or Tool Shed

Recreational Court, Tennis, etc., Private

AGRICULTURE & EQUESTRIAN LAND USES (See Section 38-33C)

Animal Raising

Christmas Tree Farm

Horticulture, all types

Produce Stand

Veterinary Facility

RECREATIONAL LAND USES (See Section 38-33F)

Recreational Court, Tennis, etc., Public

LAND USES ALLOWED WITH CONDITIONS

RESIDENTIAL LAND USES (See Section 38-33A and Section 38-53)

Accessory Dwelling Unit

Bed and Breakfast

Guest Dwelling

Home for Disabled

RESIDENTIAL-RELATED LAND USES (See Section 38-33B and Section 38-53)

~~Home Occupation~~

~~Kennel/Cattery (Private Residential)~~

~~Real Estate Office (Temporary)~~

~~Storage of recreational vehicles and motor vehicle appurtenances~~

~~Swimming Pool, Private~~

~~Temporary Uses~~

~~AGRICULTURE & EQUESTRIAN LAND USES (See Section 38-33C and Section 38-53)~~

~~Facilities for horses and other animals~~

~~INSTITUTIONAL LAND USES (See Section 38-33D and Section 38-53)~~

~~Family Child Care Home~~

~~Community Buildings Uses~~

~~Religious Institution/ Columbarium~~

~~School (K-12) Public, Private, Parochial~~

~~RECREATIONAL LAND USES (See Section 38-33E and Section 38-53)~~

~~Amusement Park Temporary Park~~

~~Swimming Pool, Commercial or Public~~

~~Zoo/Botanical Park~~

~~RETAIL LAND USES (See Section 38-33G and Section 38-53)~~

~~Kennel/Cattery, Commercial~~

~~Private Club or Lodge~~

~~TRANSPORTATION, WHOLESALE TRADE, WAREHOUSING & BULK STORAGE LAND USES (See Section 38-33H and Section 38-53)~~

~~Above Ground Storage Tanks for Flammable and Combustible Liquids and LP Gas~~

~~MANUFACTURING & RELATED LAND USES (See Section 38-33I and Section 38-53)~~

~~Construction Yard or Building(s), Temporary~~

~~UTILITY LAND USES (See Section 38-33J, Section 38-53 and Section 38-59)~~

~~Antenna, Towers, Communication Structures, and Other Vertical Structures~~

~~Face Mount (Attached to Primary Use)~~

~~Public/Private Utility Installation~~

~~LAND USES ALLOWED REQUIRING A SPECIAL USE PERMIT~~

~~RESIDENTIAL LAND USES (See Section 38-33A and Section 38-54)~~

~~Halfway House~~

~~AGRICULTURE & EQUESTRIAN LAND USES (See Section 38-33C and Section 38-54)~~

~~Brewery/Winery~~

~~Cannabis Microbusiness~~

~~Racetrack, Animal~~

~~Rodeo Arena~~

~~INSTITUTIONAL LAND USES (See Section 38-33D and Section 38-54)~~

~~Cemetery/Columbarium~~

~~Group Child Care Home~~

~~RECREATIONAL LAND USES (See Section 38-33E and Section 38-54)~~

~~Amusement Park Permanent~~

~~Country Club~~

~~Golf Course~~

~~Golf Driving Range~~

~~Sports Complex~~

~~TRANSPORTATION, WHOLESALE TRADE, WAREHOUSING & BULK STORAGE LAND USES (See Section 38-33H and Section 38-53)~~

~~Heliport/Helistop~~

~~MANUFACTURING & RELATED LAND USES (See Section 38-33I and Section 38-54)~~

~~Extraction of Raw Materials~~

~~UTILITY LAND USES (See Section 38-33J, Section 38-54, and Section 38-59)~~

~~Antenna, Towers, Communication Structures, and Other Vertical Structures~~

~~RE RESIDENTIAL ESTATE: The RE District is intended as a low density residential district of single-family site-built/manufactured housing on large lots specifically designed to limit commercial activity and to limit the keeping and raising of animals. The maximum density of this district is two dwelling units per acre.~~

~~LAND USES ALLOWED~~

~~RESIDENTIAL LAND USES (See Section 38-33A)~~

~~Detached, Site Built, Single Family Dwelling Unit~~

~~Manufactured Dwelling Unit~~

~~RESIDENTIAL-RELATED LAND USES (See Section 38-33B)~~

~~Accessory Uses and Structures~~

~~Greenhouse (Non-Commercial), Garden Shed or Tool Shed~~

~~Recreational Court, Tennis, etc., Private~~

~~AGRICULTURE & EQUESTRIAN LAND USES (See Section 38-33C)~~

~~Produce Stand~~

~~RECREATIONAL LAND USES (See Section 38-33F)~~

~~Recreational Court, Tennis, etc., Public~~

~~LAND USES ALLOWED WITH CONDITIONS~~

~~RESIDENTIAL LAND USES (See Section 38-33A and Section 38-53)~~

~~Accessory Dwelling Unit~~

~~Bed and Breakfast~~

~~Guest Dwelling~~

~~Home for Disabled~~

~~RESIDENTIAL-RELATED LAND USES (See Section 38-33B and Section 38-53)~~

~~Home Occupation~~

~~Kennel/Cattery (Private Residential)~~

~~Real Estate Office (Temporary)~~

~~Storage of recreational vehicles and motor vehicle appurtenances~~

~~Swimming Pool, Private~~

~~Temporary Uses~~

~~INSTITUTIONAL LAND USES (See Section 38-33D and Section 38-53)~~

~~Family Child Care Home~~

~~Community Buildings Uses~~

~~Religious Institution/ Columbarium~~

~~School (K-12) Public, Private, Parochial~~

~~RECREATIONAL LAND USES (See Section 38-33E and Section 38-53)~~

~~Amusement Park Temporary Park~~

~~Swimming Pool, Commercial or Public~~

~~Zoo/Botanical Park~~

~~RETAIL LAND USES (See Section 38-33G and Section 38-53)~~

~~Kennel/Cattery, Commercial~~

~~Private Club or Lodge~~

~~TRANSPORTATION, WHOLESALE TRADE, WAREHOUSING & BULK STORAGE LAND USES (See Section 38-33H and Section 38-53)~~

~~Above Ground Storage Tanks for Flammable and Combustible Liquids and LP Gas~~

~~MANUFACTURING & RELATED LAND USES (See Section 38-33I and Section 38-53)~~

~~Construction Yard or Building(s), Temporary~~

~~UTILITY LAND USES (See Section 38-33J, Section 38-53 and Section 38-59)~~

~~Antenna, Towers, Communication Structures, and Other Vertical Structures~~

~~Face Mount (Attached to Primary Use)~~

~~Public/Private Utility Installation~~

~~LAND USES ALLOWED REQUIRING A SPECIAL USE PERMIT~~

~~RESIDENTIAL LAND USES (See Section 38-33A and Section 38-54)~~

~~Halfway House~~

~~INSTITUTIONAL LAND USES (See Section 38-33D and Section 38-54)~~

~~Cemetery/Columbarium~~

~~Group Child Care Home~~

~~RECREATIONAL LAND USES (See Section 38-33E and Section 38-54)~~

~~Amusement Park Permanent~~

~~Country Club~~

~~Golf Course~~

~~Golf Driving Range~~

~~MANUFACTURING & RELATED LAND USES (See Section 38-33I and Section 38-54)~~

~~Extraction of Raw Materials~~

~~UTILITY LAND USES (See Section 38-33J, Section 38-54, and Section 38-59)~~

~~Antenna, Towers, Communication Structures, and Other Vertical Structures~~

~~REM RESIDENTIAL ESTATE MOBILE: The REM District is intended as a low density residential district of single-family site-built/manufactured housing or mobile homes on large lots specifically designed for farming and/or the raising and keeping of animals in a rural atmosphere. Limited commercial activity is permitted. The maximum density of this district is two dwelling units per acre.~~

~~LAND USES ALLOWED~~

~~RESIDENTIAL LAND USES (See Section 38-33A)~~

~~Detached, Site Built, Single Family Dwelling Unit~~

~~Manufactured Dwelling Unit~~

~~Mobile Home~~

~~Mobile Home Subdivision~~

~~RESIDENTIAL-RELATED LAND USES (See Section 38-33B)~~

~~Accessory Uses and Structures~~

~~Greenhouse (Non-Commercial), Garden Shed or Tool Shed~~

~~Recreational Court, Tennis, etc., Private~~

~~AGRICULTURE & EQUESTRIAN LAND USES (See Section 38-33C)~~

~~Animal Raising for 4-H or FFA~~

~~Christmas Tree Farm~~

~~Horticulture, all types~~

~~Produce Stand~~

~~Veterinary Facility~~

~~RECREATIONAL LAND USES (See Section 38-33F)~~

~~Recreational Court, Tennis, etc., Public~~

~~LAND USES ALLOWED WITH CONDITIONS~~

~~RESIDENTIAL LAND USES (See Section 38-33A and Section 38-53)~~

~~Accessory Dwelling Unit~~

~~Bed and Breakfast~~

~~Guest Dwelling~~

~~Home for Disabled~~

~~RESIDENTIAL-RELATED LAND USES (See Section 38-33B and Section 38-53)~~

~~Home Occupation~~

~~Kennel/Cattery (Private Residential)~~

~~Real Estate Office (Temporary)~~

~~Storage of recreational vehicles and motor vehicle appurtenances~~

~~Swimming Pool, Private~~

~~Temporary Uses~~

~~AGRICULTURE & EQUESTRIAN LAND USES (See Section 38-33C and Section 38-53)~~

~~Facilities for horses and other animals~~

~~INSTITUTIONAL LAND USES (See Section 38-33D and Section 38-53)~~

~~Family Child Care Home~~

~~Community Buildings Uses~~

~~Religious Institution/ Columbarium~~

~~School (K-12) Public, Private, Parochial~~

~~RECREATIONAL LAND USES (See Section 38-33E and Section 38-53)~~

~~Amusement Park Temporary Park~~

~~Swimming Pool, Commercial or Public~~

~~Zoo/Botanical Park~~

~~RETAIL LAND USES (See Section 38-33G and Section 38-53)~~

~~Kennel/Cattery, Commercial~~

~~Private Club or Lodge~~

~~TRANSPORTATION, WHOLESALE TRADE, WAREHOUSING & BULK STORAGE LAND USES (See Section 38-33H and Section 38-53)~~

~~Above Ground Storage Tanks for Flammable and Combustible Liquids and LP Gas~~

~~MANUFACTURING & RELATED LAND USES (See Section 38-33I and Section 38-53)~~

Construction Yard or Building(s), Temporary

UTILITY LAND USES (See Section 38-33J, Section 38-53 and Section 38-59)

Antenna, Towers, Communication Structures, and Other Vertical Structures

Face Mount (Attached to Primary Use)

Public/Private Utility Installation

LAND USES ALLOWED REQUIRING A SPECIAL USE PERMIT

RESIDENTIAL LAND USES (See Section 38-33A and Section 38-54)

Halfway House

AGRICULTURE & EQUESTRIAN LAND USES (See Section 38-33C and Section 38-54)

Brewery/Winery

Cannabis Microbusiness

Racetrack, Animal

Rodeo Arena

INSTITUTIONAL LAND USES (See Section 38-33D and Section 38-54)

Cemetery/Columbarium

Group Child Care Home

RECREATIONAL LAND USES (See Section 38-33E and Section 38-54)

Amusement Park Permanent

Country Club

Golf Course

Golf Driving Range

Sports Complex

TRANSPORTATION, WHOLESALE TRADE, WAREHOUSING & BULK STORAGE LAND USES (See Section 38-33H and Section 38-53)

Heliport/Helistop

MANUFACTURING & RELATED LAND USES (See Section 38-33I and Section 38-54)

Extraction of Raw Materials

UTILITY LAND USES (See Section 38-33J, Section 38-54, and Section 38-59)

Antenna, Towers, Communication Structures, and Other Vertical Structures

B. *Single-family urban residential zoning districts.*

1. *Purpose:* The single-family urban residential zoning districts are intended to accommodate a variety of urban lifestyles. The residential uses within this category should be oriented away from major transportation corridors. All residential developments within this category should be compatible with or complement the adjacent neighborhoods in terms of architectural design, height, density and landscaping.

2. *Zoning district descriptions:*

R-1c Single-family low-density: The single-family low density district is intended to accommodate single-family site built/manufactured dwelling units and to maintain and protect a low density residential character of development. The maximum density of this district is four dwelling units per acre.

Land uses allowed:

Residential land uses (see section 38-33 A.)

Detached, site-built, single-family dwelling unit

Manufactured dwelling unit

Residential-related land uses (see section 38-33 B.)

Accessory uses and structures

Greenhouse (noncommercial), garden shed or tool shed

Recreational court, tennis, etc., private

Recreational land uses (see section 38-33 F.)

Recreational court, tennis, etc., public

Land uses allowed with conditions:

Residential land uses (see section 38-33 A. and section 38-53)

Accessory dwelling unit

Bed and breakfast

Guest dwelling

Home for disabled

Residential-related land uses (see section 38-33 B. and section 38-53)

Home occupation

Kennel/cattery (private residential)

Real estate office (temporary)

Storage of recreational vehicles and motor vehicle appurtenances

Swimming pool, private

Temporary uses

Institutional land uses (see section 38-33 D. and section 38-53)

Family child care home

Community buildings—Uses

Religious institution/columbarium

School (K—12) public, private, parochial

Recreational land uses (see section 38-33 E. and section 38-53)

Park

Swimming pool, commercial or public

Zoo/botanical park

Retail land uses (see section 38-33 G. and section 38-53)

Private club or lodge

Transportation, wholesale trade, warehousing and bulk storage land uses (see section 38-33 H. and section 38-53)

Above ground storage tanks for flammable and combustible liquids and LP gas

Manufacturing and related land uses (see section 38-33 I. and section 38-53)

Construction yard or building(s), temporary

Utility land uses (see section 38-33 J., section 38-53 and section 38-59)

Antenna, towers, communication structures, and other vertical structures

Face mount (attached to primary use)

Public/private utility installation

Land uses allowed requiring a special use permit:

Residential land uses (see section 38-33 A. and section 38-54)

Halfway house

Institutional land uses (see section 38-33 D. and section 38-54)

Cemetery/columbarium

Group child care home

Recreational land uses (see section 38-33 E. and section 38-54)

Country club

Golf course

Golf driving range

Utility land uses (see section 38-33 J., section 38-54, and section 38-59)

Antenna, towers, communication structures, and other vertical structures

R-1a Single-family medium density: The single-family medium density district is intended to accommodate single-family site-built/manufactured dwelling units, including patio homes and townhouses, and to maintain and protect a medium density residential character of development. This district is also intended to serve as a transition between the single-family high and single-family low density residential development. The maximum density of this district is eight dwelling units per acre.

Land uses allowed:

Residential land uses (see section 38-33 A.)

Detached, site-built, single-family dwelling unit

Manufactured dwelling unit

Townhouse (attached single-family dwelling unit)

Residential-related land uses (see section 38-33 B.)

Accessory uses and structures

~~Greenhouse (noncommercial), garden shed or tool shed~~

~~Recreational court, tennis, etc., private~~

~~Recreational land uses (see section 38-33 F.)~~

~~Recreational court, tennis, etc., public~~

~~*Land uses allowed with conditions:*~~

~~Residential land uses (see section 38-33 A. and section 38-53)~~

~~Accessory dwelling unit~~

~~Bed and breakfast~~

~~Guest dwelling~~

~~Home for disabled~~

~~Patio home~~

~~Residential-related land uses (see section 38-33 B. and section 38-53)~~

~~Home occupation~~

~~Kennel/cattery (private residential)~~

~~Real estate office (temporary)~~

~~Storage of recreational vehicles and motor vehicle appurtenances~~

~~Swimming pool, private~~

~~Temporary uses~~

~~Institutional land uses (see section 38-33 D. and section 38-53)~~

~~Family child care home~~

~~Community buildings—Uses~~

~~Religious institution/columbarium~~

~~School (K—12) public, private, parochial~~

~~Recreational land uses (see section 38-33 E. and section 38-53)~~

~~Park~~

~~Swimming pool, commercial or public~~

~~Zoo/botanical park~~

~~Retail land uses (see section 38-33 G. and section 38-53)~~

~~Private club or lodge~~

~~Transportation, wholesale trade, warehousing and bulk storage land uses (see section 38-33 H. and section 38-53)~~

~~Above ground storage tanks for flammable and combustible liquids and LP gas~~

~~Manufacturing and related land uses (see section 38-33 I. and section 38-53)~~

~~Construction yard or building(s), temporary~~

Utility land uses (see section 38-33 J., section 38-53 and section 38-59)

Antenna, towers, communication structures, and other vertical structures

Face mount (attached to primary use)

Public/private utility installation

Land uses allowed requiring a special use permit:

Residential land uses (see section 38-33 A. and section 38-54)

Halfway house

Institutional land uses (see section 38-33 D. and section 38-54)

Cemetery/columbarium

Group child care home

Recreational land uses (see section 38-33 E. and section 38-54)

Country club

Golf course

Golf driving range

Utility land uses (see section 38-33 J., section 38-54, and section 38-59)

Antenna, towers, communication structures, and other vertical structures

R-1b—Single-family high density: The single-family high density district is intended to accommodate single-family site-built/manufactured dwelling units, including patio homes and townhouses, and to maintain and protect a high density residential character of development. This district is intended to serve as a transition between the multi-dwelling districts and the single-family medium density residential district. The maximum density of this district is 12 dwelling units per acre.

Land uses allowed:

Residential land uses (see section 38-33 A.)

Detached, site-built, single-family dwelling unit

Manufactured dwelling unit

Townhouse (attached single-family dwelling unit)

Residential-related land uses (see section 38-33 B.)

Accessory uses and structures

Greenhouse (noncommercial), garden shed or tool shed

Recreational court, tennis, etc., private

Recreational land uses (see section 38-33 F.)

Recreational court, tennis, etc., public

Land uses allowed with conditions:

Residential land uses (see section 38-33 A. and section 38-53)

Accessory dwelling unit

~~Bed and breakfast~~

~~Guest dwelling~~

~~Home for disabled~~

~~Patio home~~

~~Residential-related land uses (see section 38-33 B. and section 38-53)~~

~~Home occupation~~

~~Kennel/cattery (private residential)~~

~~Real estate office (temporary)~~

~~Storage of recreational vehicles and motor vehicle appurtenances~~

~~Swimming pool, private~~

~~Temporary uses~~

~~Institutional land uses (see section 38-33 D. and section 38-53)~~

~~Family child care home~~

~~Community buildings—Uses~~

~~Religious institution/columbarium~~

~~School (K—12) public, private, parochial~~

~~Recreational land uses (see section 38-33 E. and section 38-53)~~

~~Park~~

~~Swimming pool, commercial or public~~

~~Zoo/botanical park~~

~~Retail land uses (see section 38-33 G. and section 38-53)~~

~~Private club or lodge~~

~~Transportation, wholesale trade, warehousing and bulk storage land uses (see section 38-33 H. and section 38-53)~~

~~Above ground storage tanks for flammable and combustible liquids and LP gas~~

~~Manufacturing and related land uses (see section 38-33 I. and section 38-53)~~

~~Construction yard or building(s), temporary~~

~~Utility land uses (see section 38-33 J., section 38-53 and section 38-59)~~

~~Antenna, towers, communication structures, and other vertical structures~~

~~Face mount (attached to primary use)~~

~~Public/private utility installation~~

~~*Land uses allowed requiring a special use permit:*~~

~~Residential land uses (see section 38-33 A. and section 38-54)~~

~~Halfway house~~

Institutional land uses (see section 38-33 D. and section 38-54)

Cemetery/columbarium

Group child care home

Recreational land uses (see section 38-33.E. and section 38-54)

Country club

Golf course

Golf driving range

Utility land uses (see section 38-33 J., section 38-54, and section 38-59)

Antenna, towers, communication structures, and other vertical structures

R-1cM—Single-family low density mobile: The single-family low density mobile district is intended to accommodate single-family mobile homes and site built/ manufactured homes to maintain and protect a low-density residential character of development. The maximum density of this district is four dwelling units per acre.

Land uses allowed:

Residential land uses (see section 38-33 A.)

Detached, site-built, single-family dwelling unit

Manufactured dwelling unit

Mobile home

Mobile home subdivision

Residential-related land uses (see section 38-33 B.)

Accessory uses and structures

Greenhouse (noncommercial), garden shed or tool shed

Recreational court, tennis, etc., private

Recreational land uses (see section 38-33 F.)

Recreational court, tennis, etc., public

Land uses allowed with conditions:

Residential land uses (see section 38-33 A. and section 38-53)

Accessory dwelling unit

Bed and breakfast

Guest dwelling

Home for disabled

Residential-related land uses (see section 38-33 B. and section 38-53)

Home occupation

Kennel/cattery (private residential)

Real estate office (temporary)

~~Storage of recreational vehicles and motor vehicle appurtenances~~

~~Swimming pool, private~~

~~Temporary uses~~

~~Institutional land uses (see section 38-33 D. and section 38-53)~~

~~Family child care home~~

~~Community buildings—Uses~~

~~Religious institution/columbarium~~

~~School (K—12) public, private, parochial~~

~~Recreational land uses (see section 38-33 E. and section 38-53)~~

~~Park~~

~~Swimming pool, commercial or public~~

~~Zoo/botanical park~~

~~Retail land uses (see section 38-33 G. and section 38-53)~~

~~Private club or lodge~~

~~Transportation, wholesale trade, warehousing and bulk storage land uses (see section 38-33 H. and section 38-53)~~

~~Above ground storage tanks for flammable and combustible liquids and LP gas~~

~~Manufacturing and related land uses (see section 38-33 I. and section 38-53)~~

~~Construction yard or building(s), temporary~~

~~Utility land uses (see section 38-33 J., section 38-53 and section 38-59)~~

~~Antenna, towers, communication structures, and other vertical structures~~

~~Face mount (attached to primary use)~~

~~Public/private utility installation~~

~~*Land uses allowed requiring a special use permit:*~~

~~Residential land uses (see section 38-33 A. and section 38-54)~~

~~Halfway house~~

~~Institutional land uses (see section 38-33 D. and section 38-54)~~

~~Cemetery/columbarium~~

~~Group child care home~~

~~Recreational land uses (see section 38-33 E. and section 38-54)~~

~~Country club~~

~~Golf course~~

~~Golf driving range~~

~~Utility land uses (see section 38-33 J., section 38-54, and section 38-59)~~

Antenna, towers, communication structures, and other vertical structures

R-1aM—Single-family medium density mobile: The single-family medium density mobile district is intended to accommodate single-family mobile homes and site built/manufactured homes, including patio homes and townhouses, to maintain and enhance a medium density residential character of development. This district is also intended to serve as a transition between the single-family high and single-family low density residential development. The maximum density of this district is eight dwelling units per acre.

Land uses allowed:

Residential land uses (see section 38-33 A.)

Detached, site-built, single-family dwelling unit

Manufactured dwelling unit

Mobile home

Mobile home subdivision

Townhouse (attached single family dwelling unit)

Residential-related land uses (see section 38-33 B.)

Accessory uses and structures

Greenhouse (noncommercial), garden shed or tool shed

Recreational court, tennis, etc., private

Recreational land uses (see section 38-33 F.)

Recreational court, tennis, etc., public

Land uses allowed with conditions:

Residential land uses (see section 38-33 A. and section 38-53)

Accessory dwelling unit

Bed and breakfast

Guest dwelling

Home for disabled

Patio home

Residential-related land uses (see section 38-33 B. and section 38-53)

Home occupation

Kennel/cattery (private residential)

Real estate office (temporary)

Storage of recreational vehicles and motor vehicle appurtenances

Swimming pool, private

Temporary uses

Institutional land uses (see section 38-33 D. and section 38-53)

Family child care home

Community buildings—Uses

Religious institution/columbarium

School (K—12) public, private, parochial

Recreational land uses (see section 38-33 E. and section 38-53)

Park

Swimming pool, commercial or public

Zoo/botanical park

Retail land uses (see section 38-33 G. and section 38-53)

Private club or lodge

Transportation, wholesale trade, warehousing and bulk storage land uses (see section 38-33 H. and section 38-53)

Above ground storage tanks for flammable and combustible liquids and LP gas

Manufacturing and related land uses (see section 38-33 I. and section 38-53)

Construction yard or building(s), temporary

Utility land uses (see section 38-33 J., section 38-53 and section 38-59)

Antenna, towers, communication structures, and other vertical structures

Face mount (attached to primary use)

Public/private utility installation

Land uses allowed requiring a special use permit:

Residential land uses (see section 38-33 A. and section 38-54)

Halfway house

Institutional land uses (see section 38-33 D. and section 38-54)

Cemetery/columbarium

Group child care home

Recreational land uses (see section 38-33 E. and section 38-54)

Country club

Golf course

Golf driving range

Utility land uses (see section 38-33 J., section 38-54, and section 38-59)

Antenna, towers, communication structures, and other vertical structures

R-1bM—Single-family high-density mobile: The single-family high-density mobile district is intended to accommodate single-family mobile homes and site built/manufactured homes, including patio homes and townhouses, to maintain and enhance a high density residential character of development. This district is intended to serve as a transition between the multi-dwelling districts and the single-family medium density residential district. The maximum density of this district is 12 dwelling units per acre.

Land uses allowed:

~~Residential land uses (see section 38-33 A.)~~

~~Detached, site-built, single-family dwelling unit~~

~~Manufactured dwelling unit~~

~~Mobile home~~

~~Mobile home subdivision~~

~~Townhouse (attached single-family dwelling unit)~~

~~Residential-related land uses (see section 38-33 B.)~~

~~Accessory uses and structures~~

~~Greenhouse (noncommercial), garden shed or tool shed~~

~~Recreational court, tennis, etc., private~~

~~Recreational land uses (see section 38-33 F.)~~

~~Recreational court, tennis, etc., public~~

~~*Land uses allowed with conditions:*~~

~~Residential land uses (see section 38-33 A. and section 38-53)~~

~~Accessory dwelling unit~~

~~Bed and breakfast~~

~~Guest dwelling~~

~~Home for disabled~~

~~Patio home~~

~~Residential-related land uses (see section 38-33 B. and section 38-53)~~

~~Home occupation~~

~~Kennel/cattery (private residential)~~

~~Real estate office (temporary)~~

~~Storage of recreational vehicles and motor vehicle appurtenances~~

~~Swimming pool, private~~

~~Temporary uses~~

~~Institutional land uses (see section 38-33 D. and section 38-53)~~

~~Family child care home~~

~~Community buildings—Uses~~

~~Religious institution/columbarium~~

~~School (K—12) public, private, parochial~~

~~Recreational land uses (see section 38-33 E. and section 38-53)~~

~~Park~~

~~Swimming pool, commercial or public~~

Zoo/botanical park

Retail land uses (see section 38-33 G. and section 38-53)

Private club or lodge

Transportation, wholesale trade, warehousing and bulk storage land uses (see section 38-33 H. and section 38-53)

Above ground storage tanks for flammable and combustible liquids and LP gas

Manufacturing and related land uses (see section 38-33 I. and section 38-53)

Construction yard or building(s), temporary

Utility land uses (see section 38-33 J., section 38-53 and section 38-59)

Antenna, towers, communication structures, and other vertical structures

Face mount (attached to primary use)

Public/private utility installation

Land uses allowed requiring a special use permit:

Residential land uses (see section 38-33 A. and section 38-54)

Halfway house

Institutional land uses (see section 38-33 D. and section 38-54)

Cemetery/columbarium

Group child care home

Recreational land uses (see section 38-33 E. and section 38-54)

Country club

Golf course

Golf driving range

Utility land uses (see section 38-33 J., section 38-54, and section 38-59)

Antenna, towers, communication structures, and other vertical structures

C. *Multi-dwelling zoning districts.*

1. *Purpose:* The multi-dwelling category is intended to provide for the efficient use of land for higher density residential housing characteristic of duplexes, triplexes, quadplexes and apartments, including condominiums and in specified circumstances single-family site-built/manufactured, patio homes and townhomes. The multi-dwelling category is intended to establish, maintain and enhance higher density residential neighborhoods while allowing some forms of neighborhood commercial uses. Higher density residential uses are intended to be located in and around transportation corridors and office and commercial areas.

2. *Zoning district descriptions:*

R-2—Multi-dwelling low density: The R-2 district is a low density multi-dwelling residential district allowing up to 15 dwelling units per acre. Single-family site-built/manufactured, patio homes, townhomes, apartments (in any configuration/grouping not exceeding the density or eight attached unit limit) and mobile home parks are the only types of housing permitted in this zone. This type of

development should be compatible with high density single-family developments, medium density multi-dwelling districts and low intensity commercial districts.

Land uses allowed:

Residential land uses (see section 38-33 A.)

Apartments (not to exceed eight attached units and may include condominiums)

Detached, site-built, single-family dwelling unit

Home for disabled

Manufactured dwelling unit

Mobile home park

Patio homes

Townhomes

Residential-related land uses (see section 38-33 B.)

Accessory uses and structures

Greenhouse (noncommercial), garden shed or tool shed

Recreational court, tennis, etc., private

Recreational land uses (see section 38-33 F.)

Recreational court, tennis, etc., public

Land uses allowed with conditions:

Residential land uses (see section 38-33 A. and section 38-53)

Assisted living or retirement facility

Bed and breakfast

Mobile home

Nursing home

Residential-related land uses (see section 38-33 B. and section 38-53)

Home occupation

Kennel/cattery (private residential)

Real estate office (temporary)

Storage of recreational vehicles and motor vehicle appurtenances

Swimming pool, private

Temporary uses

Institutional land uses (see section 38-33 D. and section 38-53)

Cemetery/columbarium

Family child care home

Community buildings—Uses

Religious institution/columbarium

School (K—12) public, private, parochial

Recreational land uses (see section 38-33 E. and section 38-53)

Park

Swimming pool, commercial or public

Zoo/botanical park

Retail land uses (see section 38-33 G. and section 38-53)

Private club or lodge

Transportation, wholesale trade, warehousing and bulk storage land uses (see section 38-33 H. and section 38-53)

Above ground storage tanks for flammable and combustible liquids and LP gas

Manufacturing and related land uses (see section 38-33 I. and section 38-53)

Construction yard or building(s), temporary

Utility land uses (see section 38-33 J., section 38-53 and section 38-59)

Antenna, towers, communication structures, and other vertical structures

Face mount (attached to primary use)

Public/private utility installation

Land uses allowed requiring a special use permit:

Residential land uses (see section 38-33 A. and section 38-54)

Halfway house

Institutional land uses (see section 38-33 D. and section 38-54)

Group child care home

Recreational land uses (see section 38-33 E. and section 38-54)

Country club

Golf course

Golf driving range

Utility land uses (see section 38-33 J., section 38-54, and section 38-59)

Antenna, towers, communication structures, and other vertical structures

R-3—Multi-dwelling medium density: The R-3 district is a medium density multi- dwelling district allowing up to 20 dwelling units per acre. Single-family site-built/manufactured, patio homes, townhomes, apartments (in any configuration/grouping not exceeding the density or ten attached unit limit) and mobile home parks are the only types of housing permitted in this zone. This development should be compatible with low density multi-dwelling districts, high density multi-dwelling districts and medium intensity commercial districts. The R-3 zoning districts should be located on roadways classified as major local or above to avoid undue traffic congestion in lower density areas.

Land uses allowed:

~~Residential land uses (see section 38-33 A.)~~

~~Apartments (not to exceed ten attached units and may include condominiums)~~

~~Boarding house~~

~~Detached, site-built, single-family dwelling unit~~

~~Fraternity house/sorority house~~

~~Home for disabled~~

~~Manufactured dwelling unit~~

~~Mobile home park (see section 38-57)~~

~~Patio homes~~

~~Temporary/homeless shelter~~

~~Townhomes~~

~~Youth hostel~~

~~Residential-related land uses (see section 38-33 B.)~~

~~Accessory uses and structures~~

~~Greenhouse (noncommercial), garden shed or tool shed~~

~~Recreational court, tennis, etc., private~~

~~Institutional land uses (see section 38-33 D.)~~

~~Child care or preschool~~

~~Recreational land uses (see section 38-33 F.)~~

~~Recreational court, tennis, etc., public~~

~~*Land uses allowed with conditions:*~~

~~Residential land uses (see section 38-33 A. and section 38-53)~~

~~Assisted living or retirement facility~~

~~Bed and breakfast~~

~~Manufactured dwelling unit~~

~~Mobile home~~

~~Nursing home~~

~~Residential-related land uses (see section 38-33 B. and section 38-53)~~

~~Home occupation~~

~~Kennel/cattery (private residential)~~

~~Real estate office (temporary)~~

~~Storage of recreational vehicles and motor vehicle appurtenances~~

~~Swimming pool, private~~

~~Temporary uses~~

Institutional land uses (see section 38-33 D. and section 38-53)

Cemetery/columbarium

Community buildings—Uses

Library/museum

Religious institution/columbarium

School (K—12) public, private, parochial

Recreational land uses (see section 38-33 E. and section 38-53)

Park

Swimming pool, commercial or public

Zoo/botanical park

Retail land uses (see section 38-33 G. and section 38-53)

Private club or lodge

Transportation, wholesale trade, warehousing and bulk storage land uses (see section 38-33 H. and section 38-53)

Above ground storage tanks for flammable and combustible liquids and LP gas

Manufacturing and related land uses (see section 38-33 I. and section 38-53)

Construction yard or building(s), temporary

Utility land uses (see section 38-33 J., section 38-53 and section 38-59)

Antenna, towers, communication structures, and other vertical structures

Face mount (attached to primary use)

Public/private utility installation

Land uses allowed requiring a special use permit:

Residential land uses (see section 38-33 A. and section 38-54)

Halfway house

Recreational land uses (see section 38-33 E. and section 38-54)

Country club

Golf course

Golf driving range

Utility land uses (see section 38-33 J., section 38-54, and section 38-59)

Antenna, towers, communication structures, and other vertical structures

R-4—Multi-dwelling high density and limited retail and office: The R-4 (density to be established by the city) district is a high-density multi-dwelling district allowing a minimum of ten dwelling units per acre and a maximum as defined by the developer and accepted/approved by the city. For lots, parcels, and tracts zoned R-4 prior to the effective date of the 2001 zoning code as amended (September 4, 2001), 40 dwelling units per acre shall be the maximum density permitted. Apartments in any configuration/grouping shall be permitted as a means to meet the applicable density requirement for

this district. Mobile home parks and apartments are the only allowed housing types in this zone. Limited retail, institutional and service-oriented uses are allowed. This development should be compatible with other multi-dwelling districts and high intensity and regional commercial uses. The R-4 zoning districts should be located on roadways classified as collector or above and should be located where public transportation is available and commercial and employment opportunities are nearby.

Land uses allowed:

Residential land uses (see section 38-33 A.)

Apartments (any configuration/grouping and may include condominiums)

Assisted living or retirement facility

Boarding house

Fraternity house/sorority house

Home for disabled

Mobile home park

Nursing home

Temporary/homeless shelter

Youth hostel

Residential-related land uses (see section 38-33 B.)

Accessory uses and structures

Greenhouse (noncommercial), garden shed or tool shed

Recreational court, tennis, etc., private

Institutional land uses (see section 38-33 D.)

Child care or preschool

Community buildings—Uses

Library/museum

Recreational land uses (see section 38-33 F.)

Health/exercise club/gymnasium/sports instruction

Recreational court, tennis, etc., public

Land uses allowed with conditions:

Residential land uses (see section 38-33 A. and section 38-53)

Bed and breakfast

Manufactured dwelling unit

Mobile home

Residential-related land uses (see section 38-33 B. and section 38-53)

Home occupation

Kennel/cattery (private residential)

~~Real estate office (temporary)~~

~~Storage of recreational vehicles and motor vehicle appurtenances~~

~~Swimming pool, private~~

~~Temporary uses~~

~~Institutional land uses (see section 38-33 D. and section 38-53)~~

~~Cemetery/columbarium~~

~~Religious institution/columbarium~~

~~School (K—12) public, private, parochial~~

~~Recreational land uses (see section 38-33 E. and section 38-53)~~

~~Park~~

~~Swimming pool, commercial or public~~

~~Zoo/botanical park~~

~~Service land uses (see section 38-33 F. and section 38-53)~~

~~Accounting, auditing and bookkeeping~~

~~Architectural, engineering, planning and surveying services~~

~~Bank, bonding and financial institution/facility (no drive thru)~~

~~Barber/beauty/hair salon and related personal care~~

~~Insurance~~

~~Legal services~~

~~Medical/dental office~~

~~Real estate~~

~~Tax preparation~~

~~Retail land uses (see section 38-33 G. and section 38-53)~~

~~Private club or lodge~~

~~Transportation, wholesale trade, warehousing and bulk storage land uses (see section 38-33 H. and section 38-53)~~

~~Above ground storage tanks for flammable and combustible liquids and LP gas~~

~~Parking facilities, commercial (garages and private parking lots)~~

~~Storage/display of merchandise for sale (except manufactured buildings, mobile homes and operable cars, trucks, motorcycles and RVs)~~

~~Storage, warehousing accessory to office, retail service or industry~~

~~Manufacturing and related land uses (see section 38-33 I. and section 38-53)~~

~~Construction yard or building(s), temporary~~

~~Utility land uses (see section 38-33 J., section 38-53 and section 38-59)~~

~~Antenna, towers, communication structures, and other vertical structures~~

~~Face mount (attached to primary use)~~

~~Public/private utility installation~~

~~*Land uses allowed requiring a special use permit:*~~

~~Residential land uses (see section 38-33 A. and section 38-54)~~

~~Halfway house~~

~~Recreational land uses (see section 38-33 E. and section 38-54)~~

~~Country club~~

~~Golf course~~

~~Golf driving range~~

~~Transportation, wholesale trade, warehousing and bulk storage land uses~~

~~Heliport/helistop~~

~~Utility land uses (see section 38-33 J., section 38-54, and section 38-59)~~

~~Antenna, towers, communication structures, and other vertical structures~~

~~D. *Development standards—All residential zoning districts.* Development standards identified in matrix 1 are in addition to the following:~~

Standard	Rural EE Site-built manu-factured dwelling only	Rural RE Site-built manu-factured dwelling only	Rural REM Site-built manu-factured dwelling or mobile home	Urban R-1c Site-built manu-factured dwelling only	Urban R-1a Site-built manu-factured dwelling, patio home(b) or town-house(b)(f)	Urban R-1b Site-built manu-factured dwelling, patio home(b) or town house(b)(f)	Urban R-1cM Site-built manu-factured dwelling or mobile home	Urban R-1aM Site-built manu-factured dwelling, mobile home, patio home(b) or town-house(b)(f)	Urban R-1bM Site-built manu-factured dwelling, mobile home, patio home(b) or town-house(b)(f)	Multi-dwelling R-2 site-built/ manu-factured dwelling, patio home(b), town-house (b)(f), apart-ments (f) and mobile home parks (a)(d)	Multi-dwelling R-3 site-built/ manu-factured dwelling, patio home(b), town-house (b)(f), apart-ments (f) and mobile home parks (a)(d)	Multi-dwelling R-4 Apart-ments(f), mobile home parks(a) and limited retail and office
Maximum # of DU's per lot, parcel or tract	1	1	1	1	1	1	1	1	1	N/A	N/A	N/A
Maximum density (DU's per acre)	1	2	2	4	8	12	4	8	12	15	20	Minimum 10, maximum defined by devel-oper(g)
Lot, parcel or tract area, minimum	1 acre	½ acre	½ acre	10,000 sq. ft.	5,000 sq. ft.	3,500 sq. ft.	10,000 sq. ft.	5,000 sq. ft.	3,500 sq. ft.	5,000 sq. ft.	5,000 sq. ft.	8,500 sq. ft.

Min., parcel dimensions - Depth (feet) - Width (feet)	100 100	100 100	100 100	100 90	70 50	70 40	100 90	70 50	70 40	50 50	50 50	100 70
Min. bldg. setback (h) - Front yard (feet) - Rear yard (feet) - Side yard (feet)	25 15 15	25 15 15	25 15 15	20 25 15	15(e) 20 5 or 0(b)	15(e) 15 5 or 0(b)	20 25 15	15(e) 20 5 or 0(b)	15(e) 15 5 or 0(b)	MF SF 20 20(e) 7 20 7 5	MF SF 20 20(e) 7 20 7 5	20 7 7
Max. height (feet)(c)	35	35	35	35	35	35	35	35	35	35	35	60
Recommended roadway access											Major local	Collector

(a) See mobile home park, section 38-57. Note: Mobile home park minimum size is five acres.

(b) See the exceptions and modifications, section 38-62.

(c) See the antennas, towers, communications structures, and other vertical structures, section 38-59.

(d) Minimum roadway access for a mobile home park is a collector.

(e) No garage or carport shall be within 25 feet of the front property line, section 38-62.

(f) Maximum number of attached townhouses by zoning district: R-1a and R-1aM districts (3), R-1b and R-1bM districts (5), R-2 districts (8), R-3 districts (10).
Maximum number of attached apartments by zoning district (per building): R-2 districts (8), R-3 districts (10), R-4 districts (unlimited).

(g) For all parcels, tracts or lots zoned R-4 prior to the effective date of the 2001 Zoning Code, as amended (September 4, 2001), the maximum density allowed shall be no greater than what was allowed pursuant to the 1981 zoning code, as amended (40 dwelling units per acre - effective date August 3, 1981). This shall remain in effective until such time as the parcel, tract or lot goes through a rezoning action making it subject to current code requirements. Other regulations: The regulations in this section list unique conditions for land uses and development standards in these

zoning districts. Other regulations, e.g. parking, signs, found in other sections of this Code also apply. Sites within special zoning districts, e.g. overlay zones, may be subject to different regulations.

(h) See Staff Interpretation No. 02-002 (Z) in section 38.62.C.2.

		Adjacent Use											
		EE, RE, REM VLD. Res.	R-1c, R-1cM; LD Res.	R-1a, R-1aM, R-1b, R-1bM, R-2, R-3 MD Res.	R-4 (Density to be established) HD Res.	O-1 Neigh. Office	O-2 Pro Office	C-1 Low Inten. Comm.	C-2 Med. Inten. Comm.	C-3 Reg. Comm.	MT Indust. Tech.	M-1/M-2 Indust. Standard	M-3 Indust. Heavy
Proposed Use	VLD Res. EE, RE, REM	R	R	R	R	R	R	R	SB 25'	SB 25'	SB 25'	SB 25'	SB 30'
	LD Res. R-1c, R-1cM	R	R	R	R	R	R	R	SB 25'	SB 25'	SB 25'	SB 25'	SB 30'
	MD Res. R-1a, R-1aM, R-1b, R-1bM, R-2, R-3	R	R	R	R	R	R	R	SB 25'	SB 25'	SB 25'	SB 25'	SB 30'
	HD Res. R-4 (Density to be established by City)	BY 10' B/BY 5' A	BY 10' B/BY 5' A	BY 10' B/BY 5' A	R	R	R	R	R	R	SB 25'	SB 20'	SB 30'
	Neigh. Office O-1	BY 10' B/BY 5' A	BY 10' B/BY 5' A	BY 10' B/BY 5' A	R	R	R	R	R	R	R	R	R
	Pro. Office O-2	BY 15' B/BY 10' A	BY 15' B/BY 10' A	BY 15' B/BY 10' A	R	R	R	R	R	R	R	R	R
	Low Inten. Comm. C-1	BY 15' B/BY 10' A	BY 15' B/BY 10' A	BY 15' B/BY 10' A	R	R	R	R	R	R	R	R	R
	Med. Inten. Comm. C-2	BY 15' B/BY 10' A	BY 15' B/BY 10' A	BY 15' B/BY 10' A	BY 10' B/BY 5' A	R	R	R	R	R	R	R	R
	High Inten. Comm. C-3	BY 15' B/BY 10' A	BY 15' B/BY 10' A	BY 15' B/BY 10' A	BY 10' B/BY 5' A	R	R	R	R	R	R	R	R
	Indust. Standard M-1, M-2	BY 60'C/BY 40' B/BY 20' A	BY 60' C/BY 40' B/BY 20' A	BY 60' C/BY 40' B/BY 20' A	BY 20' B/BY 15' A	R	R	R	R	R	R	R	R

	~~Indust. Heavy M-3~~	~~BY 100' C/BY 75' B/BY 50' A~~	~~BY 100' C/BY 75' B/BY 50' A~~	~~BY 100' C/BY 75' B/BY 50' A~~	~~BY 40' B/BY 30' A~~	~~R~~	~~R~~	~~R~~	~~R~~	~~R~~	~~R~~	~~R~~	~~R~~

~~Key:~~

~~1)~~
~~The first letter denotes a total setback or buffer that is required for that particular zone/land use~~

~~SB = Setback. (A setback is the distance between the property line and where a permanent structure may be constructed. Limited construction may take place, such as sheds and parking.)~~

~~BY = Bufferyard. (Only open space and drainage areas may be placed within the bufferyard.)~~

~~R = Regular setback required for that zoning district (Buffering and/or screening are not required.)~~

~~2)~~
~~The second letter denotes the type of screening required for the particular zone/land use. (Refer to the Design standards for screen standards.)~~

~~A = Opaque screen~~

~~B = Semi-opaque screen~~

~~C = Broken Screen~~

~~3)~~
~~Types of land uses:~~

~~VLD Res. = Very Low Density Residential~~

~~LD Res. = Low Density Residential~~

~~MD Res. = Medium Density Residential~~

~~HD Res. = High Density Residential~~

~~Neigh. Office = Neighborhood Office~~

~~Pro. Office = Professional Office~~

~~Low Inten. Comm. = Low Intensity Commercial~~

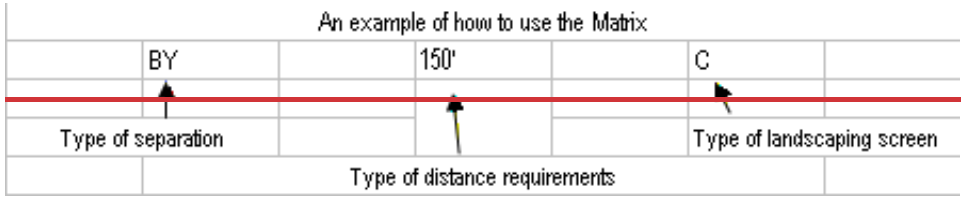
~~Med. Inten. Comm. = Medium Intensity Commercial~~

~~High Inten. Comm. = High Intensity Commercial~~

~~Indust. Tech. = Industrial Technology~~

~~Indust. S. = Industrial Standard~~

~~Indust. H. = Industrial Heavy~~



~~An example of how to use Matrix 1~~

~~(Ord. No. 2354, § I, 1-22-07; Ord. No. 2986, § (I)(Exh. A), 9-7-21)~~

Sec. 38-32. Office, commercial, and industrial zoning districts.

A. *Office Zoning Districts.*

1. *Purpose.* The Office Category serves as a transition between commercial and residential uses. It includes business, personal and professional services that can function without generating large volumes of vehicular traffic. The category is divided into two zoning districts: Neighborhood and Professional. The Neighborhood District (O-1) provides zoning for small-scale type offices. These are typically low-intensity uses and may easily locate near residential areas due to their unobtrusive nature. The Professional District (O-2) provides zoning for those office uses that operate at a higher intensity. Both districts are required to provide buffering (only open space and drainage areas are permitted within these buffer zones) and landscaping when located adjacent to residential uses. Office uses, in these instances, may provide residents an opportunity to work close to home, furthering the City's mixed land use policy.

2. *Zoning District Descriptions.*

O-1 OFFICE, NEIGHBORHOOD—LIMITED RETAIL SERVICE: These office uses are low-intensity, small-scale, and provide service activities (e.g., architect, attorney, and engineering consultant). No goods or merchandise are prepared or sold on the premises with the exception of those activities that serve the primary use. Access to streets that are a major local or higher designation is recommended.

LAND USES ALLOWED

RESIDENTIAL-RELATED LAND USES (See Section 38-33B) (NOTE: Also see Staff Interpretation No. 07-001 (Z) at the end of this Section.)

Accessory Uses and Structures

Greenhouse (Non-Commercial), Garden Shed or Tool Shed

Recreational Court, Tennis, etc., Private

INSTITUTIONAL LAND USES (See Section 38-33D)

Child Care Center or Preschool

SERVICE LAND USES (See Section 38-33F)

Accounting, Auditing & Bookkeeping

Architectural, Engineering, Planning & Surveying Services

Business Offices

Consulting

Credit Reporting & Collection

Desktop Publishing & Graphic Design

Institutional Office: Public, Private, Educational, Religious, & Philanthropic Insurance

Legal Services

Lessons (Art, Dance, Music, etc.)

Mailing & Stenographic Services

Motion Picture Production

Noncommercial Research Organization

~~Photography Studio~~

~~Real Estate~~

~~Tax Preparation~~

~~LAND USES ALLOWED WITH CONDITIONS~~

~~RESIDENTIAL LAND USES (See Section 38-33A and Section 38-53)~~

~~Bed and Breakfast~~

~~Detached, Site-Built, Single Family Dwelling Unit~~

~~Dwelling Use (Non primary)~~

~~Manufactured Dwelling Unit~~

~~RESIDENTIAL-RELATED LAND USES (See Section 38-33B and Section 38-53)~~

~~Home Occupation~~

~~Kennel/Cattery (Private Residential)~~

~~Storage of recreational vehicles and motor vehicle appurtenances~~

~~Swimming Pool, Private~~

~~Temporary Uses~~

~~INSTITUTIONAL LAND USES (See Section 38-33D and Section 38-53)~~

~~Religious Institution/Columbarium~~

~~RECREATIONAL LAND USES (See Section 38-33E and Section 38-53)~~

~~Park~~

~~SERVICE LAND USES (See Section 38-33F and Section 38-53)~~

~~Art Studio~~

~~TRANSPORTATION, WHOLESALE TRADE, WAREHOUSING & BULK STORAGE LAND USES (See Section 38-33H and Section 38-53)~~

~~Above Ground Storage Tanks for Flammable and Combustible Liquids and LP Gas~~

~~Storage/Display of merchandise for sale (except manufactured buildings, mobile homes & operable cars, trucks, motorcycles and RVs)~~

~~Storage, warehousing accessory to Office, Retail Service or Industry~~

~~MANUFACTURING & RELATED LAND USES (See Section 38-33I and Section 38-53)~~

~~Construction Yard or Building(s), Temporary~~

~~UTILITY LAND USES (See Section 38-33J, Section 38-53 and Section 38-59)~~

~~Antenna, Towers, Communication Structures, and Other Vertical Structures~~

~~Face Mount (Attached to Primary Use)~~

~~Public/Private Utility Installation~~

~~LAND USES ALLOWED REQUIRING A SPECIAL USE PERMIT~~

~~UTILITY LAND USES (See Section 38-33J, Section 38-54, and Section 38-59)~~

~~Antenna, Towers, Communication Structures, and Other Vertical Structures~~

~~O-2 OFFICE, PROFESSIONAL—LIMITED RETAIL SERVICE: Larger scale, higher intensity business and professional service activities (e.g., doctor's office, hair salon) are included in this zoning district. No goods or merchandise are prepared or sold on the premises, with the exception of those activities that serve the primary use. Access to streets that are a collector or higher designation is recommended.~~

~~LAND USES ALLOWED~~

~~RESIDENTIAL-RELATED LAND USES (See Section 38-33B)~~

~~Accessory Uses and Structures~~

~~Greenhouse (Non-Commercial), Garden Shed or Tool Shed~~

~~Recreational Court, Tennis, etc., Private~~

~~INSTITUTIONAL LAND USES (See Section 38-33D)~~

~~Child Care Center or Preschool~~

~~Community Buildings Uses~~

~~Convention Center/Exhibition Hall~~

~~Library/Museum~~

~~RECREATIONAL LAND USES (See Section 38-33E)~~

~~Recreational Courts, e.g., Tennis (Public)~~

~~SERVICE LAND USES (See Section 38-33F)~~

~~Accounting, Auditing & Bookkeeping~~

~~Architectural, Engineering, Planning & Surveying Services~~

~~Bank, Bonding & Financial Institution Facility (NO Drive Thru)~~

~~Barber/Beauty/Hair Salon & Related Personal Care~~

~~Business Offices~~

~~Consulting~~

~~Counseling Services~~

~~Credit Reporting & Collection~~

~~Desktop Publishing & Graphic Design~~

~~Funeral Home~~

~~Institutional Office: Public, Private, Educational, Religious, & Philanthropic Insurance~~

~~Laboratory~~

~~Legal Services~~

~~Lessons (Art, Dance, Music, etc.)~~

~~Mailing & Stenographic Services~~

~~Medical/Dental Office~~

~~Motion Picture Production~~

~~Noncommercial Research Organization~~

~~Photography Studio~~

~~Real Estate~~

~~Tax Preparation~~

~~TRANSPORTATION, WHOLESALE TRADE, WAREHOUSING & BULK STORAGE LAND USES (See Section 38-33H and Section 38-53)~~

~~Parking Facilities, Commercial (Garages & Private Parking Lots)~~

~~LAND USES ALLOWED WITH CONDITIONS~~

~~RESIDENTIAL LAND USES (See Section 38-33A and Section 38-53)~~

~~Bed and Breakfast~~

~~Detached, Site-Built, Single Family Dwelling Unit~~

~~Dwelling Use (Non-primary)~~

~~Manufactured Dwelling Unit~~

~~RESIDENTIAL-RELATED LAND USES (See Section 38-33B and Section 38-53)~~

~~Home Occupation~~

~~Kennel/Cattery (Private Residential)~~

~~Storage of recreational vehicles and motor vehicle appurtenances~~

~~Swimming Pool, Private~~

~~Temporary Uses~~

~~INSTITUTIONAL LAND USES (See Section 38-33D and Section 38-53)~~

~~Religious Institution/Columbarium~~

~~School (K-12) Public, Private, Parochial~~

~~School, College or University~~

~~School, Commercial, Trade or Technical~~

~~RECREATIONAL LAND USES (See Section 38-33E and Section 38-53)~~

~~Park~~

~~Swimming Pool, Commercial or Public~~

~~SERVICE LAND USES (See Section 38-33F and Section 38-53)~~

~~Art Studio~~

~~Bank, Bonding & Financial Institution/Facility (Drive thru including ATM and other electronic banking)~~

~~Pharmacy~~

~~TRANSPORTATION, WHOLESALE TRADE, WAREHOUSING & BULK STORAGE LAND USES (See Section 38-33H and Section 38-53)~~

~~Above Ground Storage Tanks for Flammable and Combustible Liquids and LP Gas~~

Storage/Display of merchandise for sale (except manufactured buildings, mobile homes & operable cars, trucks, motorcycles and RVs)

Storage, warehousing accessory to Office, Retail Service or Industry

MANUFACTURING & RELATED LAND USES (See Section 38-33I and Section 38-53)

Construction Yard or Building(s), Temporary

UTILITY LAND USES (See Section 38-33J, Section 38-53 and Section 38-59)

Antenna, Towers, Communication Structures, and Other Vertical Structures

Face Mount (Attached to Primary Use)

Public/Private Utility Installation

LAND USES ALLOWED REQUIRING A SPECIAL USE PERMIT

TRANSPORTATION, WHOLESALE TRADE, WAREHOUSING & BULK STORAGE LAND USES (See Section 38-33H and Section 38-53)

Heliport/Helistop

UTILITY LAND USES (See Section 38-33J, Section 38-54, and Section 38-59)

Antenna, Towers, Communication Structures, and Other Vertical Structures

B. *Commercial Zoning Districts.*

1. *Purpose.* The Commercial Category represents a broad grouping of commercial zoning districts which are based on use, intensity, scale, and compatibility with the natural and urban environment. Commercial developments are intended to be clustered around nodes or centers whenever possible as a means of discouraging strip development.

2. *Zoning District Descriptions.*

C-1 COMMERCIAL LOW INTENSITY: The C-1 district facilitates and encourages development of those uses that generate small-scale retail and service activities within a neighborhood area.

LAND USES ALLOWED

RESIDENTIAL-RELATED LAND USES (See Section 38-33B)

Accessory Uses and Structures

Greenhouse (Non-Commercial), Garden Shed or Tool Shed

Recreational Court, Tennis, etc., Private

INSTITUTIONAL LAND USES (See Section 38-33D)

Child Care Center or Preschool

Community buildings uses

Convention Center/Exhibition Hall

Library/Museum

RECREATIONAL LAND USES (See Section 38-33E)

Recreational Courts, e.g. Tennis (public)

SERVICE LAND USES (See Section 38-33F)

~~Accounting, Auditing & Bookkeeping~~

~~Architectural, Engineering, Planning & Surveying Services~~

~~Art Studio~~

~~Bank, Bonding & Financial Institution/Facility (No Drive Thru)~~

~~Barber/Beauty/Hair Salon & Related Personal Care~~

~~Business Offices~~

~~Consulting~~

~~Counseling Services~~

~~Credit Reporting & Collection~~

~~Desktop Publishing & Graphic Design~~

~~Funeral Home~~

~~Institutional Office: Public, Private, Educational, Religious, & Philanthropic Insurance~~

~~Laboratory~~

~~Legal Services~~

~~Lessons (Art, Dance, Music, etc.)~~

~~Mailing & Stenographic Services~~

~~Medical/Dental Office~~

~~Motion Picture Production~~

~~Noncommercial Research Organization~~

~~Photography Studio~~

~~Real Estate~~

~~Tax Preparation~~

~~RETAIL LAND USES (See Section 38-33G)~~

~~Cleaning & Maid Services~~

~~Clothing Store~~

~~Delicatessen, Produce/Meat Market~~

~~Grocery Store~~

~~Home Furnishings~~

~~Laundry/Dry Cleaning Services~~

~~Specialty Foods (Bakeries, Confectionaries, etc.)~~

~~Specialty Store (Books, Music, Toys, Sports Equip, Stationery, etc.)~~

~~Variety Store~~

~~TRANSPORTATION, WHOLESALE TRADE, WAREHOUSING & BULK STORAGE LAND USES (See Section 38-33H and Section 38-53)~~

~~Parking Facilities, Commercial (Garages & Private Parking Lots)~~

~~LAND USES ALLOWED WITH CONDITIONS~~

~~RESIDENTIAL LAND USES (See Section 38-33A and Section 38-53)~~

~~Bed and Breakfast~~

~~Detached, Site-Built, Single Family Dwelling Unit~~

~~Dwelling Use (Non-primary)~~

~~Manufactured Dwelling Unit~~

~~RESIDENTIAL-RELATED LAND USES (See Section 38-33B and Section 38-53)~~

~~Home Occupation~~

~~Kennel/Cattery (Private Residential)~~

~~Storage of recreational vehicles and motor vehicle appurtenances~~

~~Swimming Pool, Private~~

~~Temporary Uses~~

~~INSTITUTIONAL LAND USES (See Section 38-33D and Section 38-53)~~

~~Religious Institution/Columbarium~~

~~School (K-12), Public, Private, Parochial~~

~~School, College or University~~

~~School, Trade or Technical~~

~~RECREATIONAL LAND USES (See Section 38-33E and Section 38-53)~~

~~Park~~

~~Swimming Pool, Commercial or Public~~

~~SERVICE LAND USES (See Section 38-33F and Section 38-53)~~

~~Bank, Bonding, and Financial Institutions/facility (drive-thru including ATM and other electronic banking) Pharmacy~~

~~RETAIL LAND USES (See Section 38-33G and Section 38-53)~~

~~Café, Cafeteria, Coffee Shop, Restaurant, etc.~~

~~Cannabis Microbusiness~~

~~Cannabis Retailer No On-Site Consumption~~

~~Hardware Store~~

~~Seasonal Sales Non-Temporary (Fireworks, Agriculture Products, Snowcone Stand, etc.)~~

~~Small Item Repair Shop~~

~~Temporary (Non-Seasonal)~~

~~Upholstery Shop~~

~~TRANSPORTATION, WHOLESALE TRADE, WAREHOUSING & BULK STORAGE LAND USES (See Section 38-33H and Section 38-53)~~

Above Ground Storage Tanks for Flammable and Combustible Liquids and LP Gas

Storage/Display of merchandise for sale (except manufactured buildings, mobile homes & operable cars, trucks, motorcycles and RVs)

Storage, warehousing accessory to Office, Retail, Service or Industry

MANUFACTURING & RELATED LAND USES (See Section 38-33I and Section 38-53)

Construction Yard or Building(s), Temporary

Cottage Industry Retail or Service

UTILITY LAND USES (See Section 38-33J, Section 38-53 and Section 38-59)

Antenna, Towers, Communication Structures, and Other Vertical Structures

Face Mount (Attached to Primary Use)

Public/Private Utility Installation

LAND USES ALLOWED REQUIRING A SPECIAL USE PERMIT

UTILITY LAND USES (See Section 38-33J, Section 38-54, and Section 38-59)

Antenna, Towers, Communication Structures, and Other Vertical Structures

TRANSPORTATION, WHOLESALE TRADE, WAREHOUSING & BULK STORAGE LAND USES (See Section 38-33H and Section 38-53)

Heliport/Helistop

C-2 COMMERCIAL MEDIUM INTENSITY: The C-2 district facilitates and encourages development of those uses which provide retail and service activities as a convenience to adjacent neighborhoods and whose use generally serves a population of 5,000 to 30,000.

LAND USES ALLOWED

RESIDENTIAL-RELATED LAND USES (See Section 38-33B)

Accessory Uses and Structures

Greenhouse (Non-Commercial), Garden Shed or Tool Shed

Recreational Court, Tennis, etc., Private

AGRICULTURE & EQUESTRIAN (See Section 38-33C)

Veterinary Facility

INSTITUTIONAL LAND USES (See Section 38-33D)

Child Care Center or Preschool

Community Buildings Uses

Hospital

Library/Museum

RECREATIONAL LAND USES (See Section 38-33E)

Arcade/Game Room

Batting Cages

~~Billiard/Pool Hall~~

~~Bowling Alley~~

~~Country Club~~

~~Golf Course~~

~~Golf Course, Miniature~~

~~Golf Driving Range~~

~~Health/Exercise Club/Gymnasium/Sports Instruction~~

~~Racetrack, Mini, e.g., go-carts~~

~~Recreational Courts, e.g., Tennis (Public)~~

~~Skating Rink~~

~~Zoo/Botanical Park~~

~~SERVICE LAND USES (See Section 38-33F)~~

~~Accounting, Auditing & Bookkeeping~~

~~Architectural, Engineering, Planning & Surveying Services~~

~~Art Studio~~

~~Bank, Bonding & Financial Institution/Facility (No Drive Thru)~~

~~Barber/Beauty/Hair Salon & Related Personal Care~~

~~Business Offices~~

~~Consulting~~

~~Counseling Services~~

~~Funeral Home~~

~~Credit Reporting & Collection~~

~~Desktop Publishing & Graphic Design~~

~~Hotel/Motel~~

~~Institutional Office: Public, Private, Educational, Religious, & Philanthropic Insurance~~

~~Laboratory~~

~~Legal Services~~

~~Lessons (Art, Dance, Music, etc.)~~

~~Mailing & Stenographic Services~~

~~Medical/Dental Office~~

~~Motion Picture Production~~

~~Noncommercial Research Organization~~

~~Pharmacy~~

~~Photography Studio~~

~~Real Estate~~

~~Tax Preparation~~

~~RETAIL LAND USES (See Section 38-33G)~~

~~Auto/Truck Parts Store~~

~~Auto/Truck Self-Service/Automated or Full Service Wash/Wax/Detailing~~

~~Auto/Truck/Motorcycle Dealers~~

~~Auto/Truck/Trailer Rental~~

~~Bar, Pub, Tavern (No Dancing)~~

~~Building Material~~

~~Café, Cafeteria, Coffee Shop, Restaurant, etc.~~

~~Carpet/Window Treatments~~

~~Cleaning & Maid Services~~

~~Clothing Store~~

~~Convenience Store~~

~~Delicatessen, Produce/Meat Market~~

~~Department Store~~

~~Equipment Rental~~

~~Furniture Store~~

~~Garden Supply~~

~~Gas Station~~

~~Grocery Store~~

~~Hardware Store~~

~~Health Care Clinic (Non-Hospital)~~

~~Home Furnishings~~

~~Laundry/Dry Cleaning Services~~

~~Newspaper Distribution~~

~~Pawn Shop~~

~~Private Club or Lodge~~

~~Plant Nursery~~

~~Radio/TV Studio/Station~~

~~Small Item Repair Shop~~

~~Specialty Foods (Bakeries, Confectionaries, etc.)~~

~~Specialty Store (Books, Music, Toys, Sports Equip, Stationery, etc.)~~

~~Telephone & Communication Ctr.~~

~~Theater~~

~~Tire Sales/Repair~~

~~Upholstery Shop~~

~~Variety Store~~

~~Video Tape Rental/Sales~~

~~TRANSPORTATION, WHOLESALE TRADE, WAREHOUSING & BULK STORAGE LAND USES (See Section 38-33H)~~

~~Cab Stand~~

~~Mini-Storage Units~~

~~Parking Facilities, Commercial (Garages & Private Parking Lots)~~

~~MANUFACTURING & RELATED LAND USES (See Section 38-331)~~

~~Crematorium~~

~~LAND USES ALLOWED WITH CONDITIONS~~

~~RESIDENTIAL LAND USES (See Section 38-33A and Section 38-53)~~

~~Apartments (Any configuration/grouping and may include condominiums, Must comply with R-4 development standards, including minimum density of ten dwelling units per acre and maximum density of 40 dwelling units per acre.)~~

~~Assisted Living or Retirement Facility (Any configuration/grouping and may include condominiums, must comply with R-4 development standards, including minimum density of ten dwelling units per acre and maximum density of 40 dwelling units per acre.)~~

~~Nursing Home (Any configuration/grouping and may include condominiums, must comply with R-4 development standards, including minimum density of ten dwelling units per acre and maximum density of 40 dwelling units per acre.)~~

~~Bed and Breakfast~~

~~Detached, Site-Built, Single Family Dwelling Unit~~

~~Dwelling Use (Non primary)~~

~~Manufactured Dwelling Unit~~

~~RESIDENTIAL-RELATED LAND USES (See Section 38-33B and Section 38-53)~~

~~Home Occupation~~

~~Kennel/Cattery (Private Residential)~~

~~Storage of recreational vehicles and motor vehicle appurtenances~~

~~Swimming Pool, Private~~

~~Temporary Uses~~

~~INSTITUTIONAL LAND USES (See Section 38-33D and Section 38-53)~~

~~Religious Institution/Columbarium~~

~~School, (K-12) Public, Private, Parochial~~

~~School, College or University~~

~~School, Commercial, Trade or Technical~~

~~RECREATIONAL LAND USES (See Section 38-33E and Section 38-53)~~

~~Amusement Park (Temporary)~~

~~Park~~

~~Swimming Pool, Commercial or Public~~

~~SERVICE LAND USES (See Section 38-33F and Section 38-53)~~

~~Bank, Bonding & Financial Institution/Facility (Drive thru including ATM & other electronic banking)~~

~~RETAIL LAND USES (See Section 38-33G and Section 38-53)~~

~~Auto/Truck Repair & Service~~

~~Cannabis Microbusiness~~

~~Cannabis Retailer~~

~~Firewood Sales~~

~~Kennel/Cattery, Commercial~~

~~Large Equipment Repair & Service (Non-Vehicular)~~

~~Petroleum/Propane Sales~~

~~Seasonal Sales Non-Temporary (Fireworks, Agriculture Products, Snowcone Stand, etc.)~~

~~Telemarketing/Mail Order/Call Center~~

~~Temporary Use, (Non-Seasonal)~~

~~TRANSPORTATION, WHOLESALE TRADE, WAREHOUSING & BULK STORAGE LAND USES (See Section 38-33H and Section 38-53)~~

~~Above Ground Storage Tanks for Flammable and Combustible Liquids and LP Gas~~

~~Storage/Display of merchandise for sale (except manufactured buildings, mobile homes & operable cars, trucks, motorcycles and RVs)~~

~~Storage outside of buildings of materials, equipment, and supplies not for sale~~

~~Storage, warehousing accessory to Office, Retail, Service or Industry~~

~~MANUFACTURING & RELATED LAND USES (See Section 38-33I and Section 38-53)~~

~~Construction Yard or Building(s), Temporary~~

~~Cottage Industry Retail or Service~~

~~UTILITY LAND USES (See Section 38-33J, Section 38-53 and Section 38-59)~~

~~Antenna, Towers, Communication Structures, and Other Vertical Structures~~

~~Face Mount (Attached to Primary Use)~~

~~Public/Private Utility Installation~~

~~LAND USES ALLOWED REQUIRING A SPECIAL USE PERMIT~~

~~TRANSPORTATION, WHOLESALE TRADE, WAREHOUSING & BULK STORAGE LAND USES (See Section 38-33H and Section 38-54)~~

~~Airport, Privately or Publicly Owned.~~

~~Heliport/Helistop~~

~~UTILITY LAND USES (See Section 38-33J, Section 38-54, and Section 38-59)~~

~~Antenna, Towers, Communication Structures, and Other Vertical Structures~~

~~C-3 COMMERCIAL HIGH INTENSITY: The C-3 district facilitates and encourages development of those uses which provide retail, service, and wholesale activities within the City and a regional market, whose use generally serves a population of over 15,000.~~

~~LAND USES ALLOWED~~

~~RESIDENTIAL-RELATED LAND USES (See Section 38-33B)~~

~~Accessory Uses and Structures~~

~~Greenhouse (Non-Commercial), Garden Shed or Tool Shed~~

~~Recreational Court, Tennis, etc., Private~~

~~AGRICULTURE & EQUESTRIAN (See Section 38-33C)~~

~~Veterinary Facility~~

~~INSTITUTIONAL LAND USES (See Section 38-33D)~~

~~Child Care Center or Preschool~~

~~Community Buildings Uses~~

~~Convention Center/Exhibition Hall~~

~~Hospital~~

~~Library/Museum~~

~~RECREATIONAL LAND USES (See Section 38-33E)~~

~~Arcade/Game Room~~

~~Batting Cages~~

~~Billiard/Pool Hall~~

~~Bowling Alley~~

~~Country Club~~

~~Golf Course~~

~~Golf Course, Miniature~~

~~Golf Driving Range~~

~~Health/Exercise Club/Gymnasium/Sports Instruction~~

~~Racetrack, Mini, e.g., go-carts~~

~~Recreational Courts, e.g., Tennis (Public)~~

~~Skating Rink~~

~~Zoo/Botanical Park~~

~~SERVICE LAND USES (See Section 38-33F)~~

~~Accounting, Auditing & Bookkeeping~~

~~Architectural, Engineering, Planning & Surveying Services~~

~~Art Studio~~

~~Bank, Bonding & Financial Institution/Facility (No Drive Thru)~~

~~Barber/Beauty/Hair Salon & Related Personal Care~~

~~Business Offices~~

~~Consulting~~

~~Counseling Services~~

~~Funeral Home~~

~~Credit Reporting & Collection~~

~~Desktop Publishing & Graphic Design~~

~~Hotel/Motel~~

~~Institutional Office: Public, Private, Educational, Religious, & Philanthropic Insurance~~

~~Laboratory~~

~~Legal Services~~

~~Lessons (Art, Dance, Music, etc.)~~

~~Mailing & Stenographic Services~~

~~Medical/Dental Office~~

~~Motion Picture Production~~

~~Noncommercial Research Organization~~

~~Pharmacy~~

~~Photography Studio~~

~~Real Estate~~

~~Tax Preparation~~

~~RETAIL LAND USES (See Section 38-33G)~~

~~Auto/Truck Parts Store~~

~~Auto/Truck Self-Service/Automated or Full Service Wash/Wax/Detailing~~

~~Auto/Truck/Motorcycle Dealers~~

~~Auto/Truck/Trailer Rental~~

~~Bar/Night Club (Dancing)~~

~~Bar, Pub, Tavern (No Dancing)~~

~~Building Material~~

~~Café, Cafeteria, Coffee Shop, Restaurant, etc.~~

~~Carpet/Window Treatments~~

~~Cleaning & Maid Services~~

~~Clothing Store~~

~~Convenience Store~~

~~Delicatessen, Produce/Meat Market~~

~~Department Store~~

~~Equipment Rental~~

~~Furniture Store~~

~~Garden Supply~~

~~Gas Station~~

~~Grocery Store~~

~~Hardware Store~~

~~Health Care Clinic (Non-Hospital)~~

~~Home Furnishings~~

~~Laundry/Dry Cleaning Services~~

~~Manufactured Housing/Buildings Dealers (Similar large item sales)~~

~~Newspaper Distribution~~

~~Pawn Shop~~

~~Private Club or Lodge~~

~~Plant Nursery~~

~~Radio/TV Studio/Station~~

~~Small Item Repair Shop~~

~~Specialty Foods (Bakeries, Confectionaries, etc.)~~

~~Specialty Store (Books, Music, Toys, Sports Equip, Stationery, etc.)~~

~~Telephone & Communication Ctr.~~

~~Theater~~

~~Theater, Drive in Tire Sales/Repair~~

~~Upholstery Shop~~

~~Variety Store~~

~~Video Tape Rental/Sales~~

~~TRANSPORTATION, WHOLESALE TRADE, WAREHOUSING & BULK STORAGE LAND USES (See Section 38-33H)~~

~~Bus Terminal~~

~~Cab Stand~~

~~Mini-Storage Units~~

~~Parking Facilities, Commercial (Garages & Private Parking Lots)~~

~~MANUFACTURING & RELATED LAND USES (See Section 38-33I)~~

~~Crematorium~~

~~LAND USES ALLOWED WITH CONDITIONS~~

~~RESIDENTIAL LAND USES (See Section 38-33A and Section 38-53)~~

~~Apartments (Any configuration/grouping and may include condominiums. Must comply with R-4 development standards, including minimum density of ten dwelling units per acre and maximum density of 40 dwelling units per acre.)~~

~~Assisted Living or Retirement Facility (Any configuration/grouping and may include condominiums, must comply with R-4 development standards, including minimum density of ten dwelling units per acre and maximum density of 40 dwelling units per acre.)~~

~~Nursing Home (Any configuration/grouping and may include condominiums, must comply with R-4 development standards, including minimum density of ten dwelling units per acre and maximum density of 40 dwelling units per acre.)~~

~~Detached, Site-Built, Single Family Dwelling Unit~~

~~Dwelling Use (Non primary)~~

~~Manufactured Dwelling Unit~~

~~Bed and Breakfast~~

~~Recreational Vehicle Park~~

~~RESIDENTIAL-RELATED LAND USES (See Section 38-33B and Section 38-53)~~

~~Home Occupation~~

~~Kennel/Cattery (Private Residential)~~

~~Storage of recreational vehicles and motor vehicle appurtenances~~

~~Swimming Pool, Private~~

~~Temporary Uses~~

~~INSTITUTIONAL LAND USES (See Section 38-33D and Section 38-53)~~

~~Religious Institution/Columbarium~~

~~School, (K-12) Public, Private, Parochial~~

~~School, College or University~~

~~School, Commercial, Trade or Technical~~

~~RECREATIONAL LAND USES (See Section 38-33E and Section 38-53)~~

~~Amusement Park (Temporary)~~

~~Archery Range Indoor~~

~~Firing Range Indoor~~

~~Park~~

~~Sports Arena/Field/Course, Commercial~~

~~Swimming Pool, Commercial or Public~~

~~SERVICE LAND USES (See Section 38-33F and Section 38-53)~~

~~Bank, Bonding & Financial Institution/Facility (Drive- thru including ATM & other electronic banking)~~

~~RETAIL LAND USES (See Section 38-33G and Section 38-53)~~

~~Auto/Truck Repair & Service~~

~~Cannabis Microbusiness~~

~~Cannabis Retailer~~

~~Firewood Sales~~

~~Flea Market~~

~~Kennel/Cattery, Commercial~~

~~Large Equipment Repair & Service (Non-Vehicular)~~

~~Large Equipment Repair & Service (Vehicular)~~

~~Petroleum/Propane Sales~~

~~Seasonal Sales Non-Temporary (Fireworks, Agriculture Products, Snowcone Stand, etc.)~~

~~Specialty Retailer Primary business is the sale of tourism products that may include the sale of fireworks~~

~~Telemarketing/Mail Order/Call Center~~

~~Temporary Use, (Non-Seasonal)~~

~~TRANSPORTATION, WHOLESALE TRADE, WAREHOUSING & BULK STORAGE LAND USES (See Section 38-33H and Section 38-53)~~

~~Above Ground Storage Tanks for Flammable and Combustible Liquids and LP Gas~~

~~Storage/Display of merchandise for sale (except manufactured buildings, mobile homes & operable cars, trucks, motorcycles and RVs)~~

~~Storage outside of buildings of materials, equipment, and supplies not for sale~~

~~Storage, warehousing accessory to Office, Retail Service or Industry~~

~~MANUFACTURING & RELATED LAND USES (See Section 38-33I and Section 38-53)~~

~~Body Shops & Vehicle Painting Establishments~~

~~Construction Yard or Building(s), Temporary~~

~~Cottage Industry Retail or Service~~

~~UTILITY LAND USES (See Section 38-33J, Section 38-53 and Section 38-59)~~

~~Antenna, Towers, Communication Structures, and Other Vertical Structures~~

~~Face Mount (Attached to Primary Use)~~

Public/Private Utility Installation

LAND USES ALLOWED REQUIRING A SPECIAL USE PERMIT

RESIDENTIAL LAND USES (See Section 38-33A and Section 38-54)

Campground

AGRICULTURE & EQUESTRIAN LAND USES (See Section 38-33C and Section 38-54)

Racetrack, Animal

Rodeo Arena

RECREATIONAL LAND USES (See Section 38-33E and Section 38-54)

Amusement Park Permanent

Archery Range Outdoors

Firing Range Outdoors

Sports Complex

TRANSPORTATION, WHOLESALE TRADE, WAREHOUSING & BULK STORAGE LAND USES (See Section 38-33H and Section 38-54)

Airport, Privately or Publicly Owned

Heliport/Helistop

UTILITY LAND USES (See Section 38-33J, Section 38-54, and Section 38-59)

Antenna, Towers, Communication Structures, and Other Vertical Structures

C. *Industrial Zoning Districts.*

1. *Purpose.* The Industrial category provides the necessary guidance to permit all types of industrial uses within the City of Las Cruces. The Industrial category describes the industrial zoning districts and further defines the development requirements, design standards, uses allowed, and performance and mitigation techniques required in order to permit such industries that are in conformance with the Las Cruces Comprehensive Plan.

   Industrial uses shall have direct access to a collector or higher designated roadway unless located in industrial parks. Internal streets within industrial parks may be constructed to standards lower than a collector as allowed within the City Design Standards. Industrial uses and parks should be developed so as to have minimal negative impact on adjacent uses.

2. *Zoning District Descriptions.*

   M-T INDUSTRIAL TECHNOLOGY: The M-T district is intended to provide for industrial uses that specifically focus on high technology, research, warehousing and large-scale storage facilities and limited manufacturing or processing when ancillary to research and other high technology operations in a generally clean, quiet, and safe environment with minimal negative impacts on the surrounding environment and uses. Commercial and service uses are also introduced as a means of providing support and convenience to the intended land uses associated with this zoning district. (Also see Staff Interpretation 07-002, at the end of Section 38-53 Conditional Uses.)

   LAND USES ALLOWED

   RESIDENTIAL-RELATED LAND USES (See Section 38-33B)

   Accessory Uses and Structures

~~Greenhouse (Non-Commercial), Garden Shed or Tool Shed~~

~~Recreational Court, Tennis, etc., Private~~

~~AGRICULTURE & EQUESTRIAN (See Section 38-33C)~~

~~Veterinary Facility~~

~~INSTITUTIONAL LAND USES (See Section 38-33D)~~

~~Community Buildings Uses~~

~~Convention Center/Exhibition Hall~~

~~Detention Facility~~

~~Library/Museum~~

~~RECREATIONAL LAND USES (See Section 38-D)~~

~~Golf Course~~

~~Golf Driving Range~~

~~Health/Exercise Club/Gymnasium/Sports Instruction~~

~~Recreational Courts, e.g. Tennis, Public or Private~~

~~SERVICE LAND USES (See Section 38-33F)~~

~~Accounting, Auditing & Bookkeeping~~

~~Architectural, Engineering, Planning & Surveying Services~~

~~Bank, Bonding & Financial Institution/Facility (No Drive Thru)~~

~~Barber/Beauty/Hair Salon & Related Personal Care~~

~~Business Offices~~

~~Consulting~~

~~Counseling~~

~~Desktop Publishing & Graphic Design~~

~~Funeral Home~~

~~Hotel/Motel~~

~~Institutional Office: Public, Private, Educational, Religious, & Philanthropic~~

~~Insurance~~

~~Laboratory~~

~~Legal Services~~

~~Mailing & Stenographic Services~~

~~Medical/Dental Office~~

~~Motion Picture Production~~

~~Research Organization, Commercial or Noncommercial~~

~~Pharmacy~~

~~Tax Preparation~~

~~RETAIL LAND USES (See Section 38-33G)~~

~~Café, Cafeteria, Coffee Shop, Restaurant, etc.~~

~~Carpet/Window Treatments~~

~~Cleaning & Maid Services~~

~~Clothing Store~~

~~Convenience Store~~

~~Delicatessen, Produce/Meat Market~~

~~Department Store~~

~~Gas Station~~

~~Health Care Clinic (Non-Hospital)~~

~~Laundry/Dry Cleaning Services~~

~~Radio/TV Studio/Station~~

~~Specialty Foods (Bakeries, Confectionaries, etc.)~~

~~Specialty Store (Books, Music, Toys, Sports Equip, Stationery, etc.)~~

~~Telephone & Communication~~

~~TRANSPORTATION, WHOLESALE TRADE, WAREHOUSING & BULK STORAGE LAND USES (See Section 38-33H)~~

~~Cab Stand~~

~~Ministorage Units~~

~~Parking Facilities, Commercial (Garages & Private Parking Lots)~~

~~MANUFACTURING & RELATED LAND USES (See Section 38-331)~~

~~Jewelry, Silverware, & Plated Ware~~

~~Laboratories (Medical/Dental/R & D)~~

~~Motion Picture Production Theater/Studio~~

~~Musical Instruments~~

~~Printing & Publishing~~

~~Signs & Advertising~~

~~LAND USES ALLOWED WITH CONDITIONS~~

~~RESIDENTIAL LAND USES (See Section 38-33A and Section 38-53)~~

~~Detached, Site-Built, Single Family Dwelling Unit~~

~~Dwelling Use (Non-primary)~~

~~Manufactured Dwelling Unit~~

~~Recreational Vehicle Park~~

~~RESIDENTIAL-RELATED LAND USES (See Section 38-33B and Section 38-53)~~

~~Home Occupation~~

~~Kennel/Cattery (Private Residential)~~

~~Storage of recreational vehicles and motor vehicle appurtenances~~

~~Swimming Pool, Private~~

~~Temporary Uses~~

~~AGRICULTURE & EQUESTRIAN LAND USES (See Section 38-33C and Section 38-53)~~

~~Brewery/Winery~~

~~INSTITUTIONAL LAND USES (See Section 38-33D and Section 38-53)~~

~~Child Care or Preschool~~

~~School, College or University~~

~~School, Commercial, Trade or Technical~~

~~RECREATIONAL LAND USES (See Section 38-33E and Section 38-53)~~

~~Amusement Park (Temporary)~~

~~Park~~

~~Swimming Pool, Commercial or Public~~

~~TRANSPORTATION, WHOLESALE TRADE, WAREHOUSING & BULK STORAGE LAND USES (See Section 38-33H and Section 38-53)~~

~~Above Ground Storage Tanks for Flammable and Combustible Liquids and LP Gas~~

~~Storage/Display of merchandise for sale (except manufactured buildings, mobile homes & operable cars, trucks, motorcycles and RVs)~~

~~Storage outside of buildings of materials, equipment, and supplies not for sale~~

~~Storage, warehousing accessory to Office, Retail Service or Industry~~

~~Wholesale Trade, any product~~

~~MANUFACTURING & RELATED LAND USES (See Section 38-33I and Section 38-53)~~

~~Apparel & Other Textile Products - Clothing~~

~~Brooms, Brushes & Vacuums~~

~~Cannabis Research Laboratory~~

~~Chemical & Allied Products~~

~~Construction Yard or Building(s), Temporary~~

~~Cottage Industry Retail or Service~~

~~Dyeing & Engraving Establishments~~

~~Electrical & Electronic Equip. (Computers)~~

~~Fabricated Metal Products~~

~~Food & Kindred Products~~

~~Furniture & Fixtures~~

~~Glass Cutting & Finishing~~

~~Leather Products~~

~~Lumber & Wood Products (Sawmill/Planing)~~

~~Machinery, except electrical~~

~~Manufactured Buildings~~

~~Metal Work & Machine Shop~~

~~Needles, Pins & Fasteners~~

~~Paper & Allied Products~~

~~Petroleum & Coal Products~~

~~Primary Metal Industries~~

~~Rubber & Plastic Products~~

~~Stone, Glass & Clay Products~~

~~Storage Boxes~~

~~Textile Mill Products (Carpets, Rugs, Hosiery, Threads)~~

~~Tobacco Manufacturing~~

~~Toys & Sporting Goods, Dolls, Games~~

~~Transportation Equipment~~

~~Writing Utensils (pens/pencils/inked ribbons~~

~~UTILITY LAND USES (See Section 38-33J, Section 38-53 and Section 38-59)~~

~~Antenna, Towers, Communication Structures, and Other Vertical Structures~~

~~Face Mount (Attached to Primary Use)~~

~~Public/Private Utility Installation~~

~~Recycling Centers~~

~~Waste Transfer Stations/Sewage Treatment Plants~~

~~LAND USES ALLOWED REQUIRING A SPECIAL USE PERMIT~~

~~RETAIL LAND USES (See Section 38-33G and Section 38-54)~~

~~Adult Book/Video Store & Entertainment Establishment~~

~~TRANSPORTATION, WHOLESALE TRADE, WAREHOUSING & BULK STORAGE LAND USES (See Section 38-33H and Section 38-54)~~

~~Airport, Privately or Publicly Owned~~

~~Heliport/Helistop~~

~~UTILITY LAND USES (See Section 38-33J, Section 38-54, and Section 38-59)~~

~~Antenna, Towers, Communication Structures, and Other Vertical Structures~~

~~M1/M2 INDUSTRIAL STANDARD: The M1/M2 district is intended to provide for industrial uses that consist of full-scale fabrication, manufacturing, packaging and processing of products that can be conducted in a generally clean, quiet, and safe environment with minimal negative impacts on the surrounding environment and uses. (Also see Staff Interpretation 07-002, at the end of Section 38-53 Conditional Uses.)~~

~~LAND USES ALLOWED~~

~~RESIDENTIAL-RELATED LAND USES (See Section 38-33B)~~

~~Accessory Uses and Structures~~

~~Greenhouse (Non-Commercial), Garden Shed or Tool Shed~~

~~Recreational Court, Tennis, etc., Private~~

~~AGRICULTURE & EQUESTRIAN LAND USES (See Section 38-33C)~~

~~Brewery/Winery~~

~~INSTITUTIONAL LAND USES (See Section 38-33D)~~

~~Community Buildings Uses~~

~~Detention Facility~~

~~Library/Museum~~

~~RECREATIONAL LAND USES (See Section 38-33E)~~

~~Racetrack, Mini, e.g., go-carts~~

~~RETAIL LAND USES (See Section 38-33G)~~

~~Auto/Truck Self-Service/Automated or Full Service Wash/Wax/Detailing~~

~~Bar, Pub, Tavern (No Dancing)~~

~~Café, Cafeteria, Coffee Shop, Restaurant, etc.~~

~~Cleaning & Maid Services~~

~~Clothing Store~~

~~Convenience Store~~

~~Delicatessen, Produce/Meat Market~~

~~Gas Station~~

~~Hardware Store~~

~~Health Care Clinic (Non-Hospital)~~

~~Laundry/Dry Cleaning Services~~

~~Plant Nursery~~

~~Radio/TV Studio/Station~~

~~Small Item Repair~~

~~Specialty Foods (Bakeries, Confectionaries, etc.)~~

~~Specialty Store (Books, Music, Toys, Sports Equip, Stationery, etc.)~~

~~Theater, Drive-in~~

~~Tire Sales/Repair~~

~~Upholstery Shop~~

~~SERVICE LAND USES (See Section 38-33F)~~

~~Accounting, Auditing & Bookkeeping~~

~~Architectural, Engineering, Planning & Surveying Services,~~

~~Art Studio~~

~~Bank, Bonding & Financial Institution/Facility (No Drive Thru)~~

~~Barber/Beauty/Hair Salon & Related Personal Care~~

~~Business Offices~~

~~Consulting~~

~~Counseling~~

~~Desktop Publishing & Graphic Design~~

~~Funeral Home~~

~~Hotel/Motel~~

~~Institutional Office: Public, Private, Educational, Religious, & Philanthropic~~

~~Insurance~~

~~Laboratory~~

~~Legal Services~~

~~Mailing & Stenographic Services~~

~~Medical/Dental Office~~

~~Motion Picture Production~~

~~Research Organization, Commercial or Noncommercial~~

~~Pharmacy~~

~~Tax Preparation~~

~~TRANSPORTATION, WHOLESALE TRADE, WAREHOUSING & BULK STORAGE LAND USES (See Section 38-33H)~~

~~Distribution Centers~~

~~Freighthouse/Truck Terminal~~

~~Interstate Warehouse/Bulk Storage Facilities~~

~~Ministorage Units~~

~~Parking Facilities, Commercial (Garages & Private Parking Lots)~~

~~Railroad Terminal/Depot~~

~~Trucking Companies~~

~~Wholesale Trade, any product~~

~~MANUFACTURING & RELATED LAND USES (See Section 38-33l)~~

~~Apparel & Other Textile Products Clothing~~

~~Body Shops & Vehicle Painting Establishments~~

~~Brooms, Brushes & Vacuums~~

~~Chemical & Allied Products~~

~~Construction Yard or Building(s), Temporary~~

~~Cottage Industry Retail or Service~~

~~Crematorium~~

~~Dyeing & Engraving Establishments~~

~~Electrical & Electronic Equip. (Computers)~~

~~Extraction of Raw Materials~~

~~Fabricated Metal Products~~

~~Food & Kindred Products~~

~~Furniture & Fixtures~~

~~Frozen Food Lockers~~

~~Glass Cutting & Finishing~~

~~Jewelry, Silverware, & Plated Ware~~

~~Laboratories (Medical/Dental/R & D)~~

~~Leather Products~~

~~Lumber & Wood Products (Sawmill/Planing)~~

~~Machinery, except electrical~~

~~Manufactured Buildings~~

~~Metal Work & Machine Shop~~

~~Motion Picture Production Theater/Studio~~

~~Musical Instruments~~

~~Needles, Pins & Fasteners~~

~~Paper & Allied Products~~

~~Petroleum & Coal Products~~

~~Primary Metal Industries~~

~~Printing & Publishing~~

~~Retail Trade, Business Service Establishment or Offices, any type~~

~~Rubber & Plastic Products~~

~~Signs & Advertising~~

~~Stone, Glass & Clay Products~~

~~Storage Boxes~~

~~Textile Mill Products (Carpets, Rugs, Hosiery, Threads)~~

~~Tire Manufactures & Recyclers~~

~~Tobacco Manufacturing~~

~~Toys & Sporting Goods, Dolls, Games~~

~~Transportation Equipment~~

~~Upholstery Shop (Vehicle & Furniture)~~

~~Writing Utensils (pens/pencils/inked ribbons)~~

~~UTILITY LAND USES (See Section 38-33J)~~

~~Recycling Centers~~

~~LAND USES ALLOWED WITH CONDITIONS~~

~~RESIDENTIAL LAND USES (See Section 38-33A and Section 38-53)~~

~~Detached, Site-Built, Single Family Dwelling Unit~~

~~Dwelling Use (Non primary)~~

~~Manufactured Dwelling Unit~~

~~RESIDENTIAL-RELATED LAND USES (See Section 38-33B and Section 38-53)~~

~~Home Occupation~~

~~Kennel/Cattery (Private Residential)~~

~~Storage of recreational vehicles and motor vehicle appurtenances~~

~~Swimming Pool, Private~~

~~Temporary Uses~~

~~INSTITUTIONAL LAND USES (See Section 38-33D and Section 38-53)~~

~~Child Care or Preschool~~

~~School, College or University~~

~~School, Commercial, Trade or Technical~~

~~RECREATIONAL LAND USES (See Section 38-33E and Section 38-53)~~

~~Amusement Park (Temporary)~~

~~Archery Range Indoor~~

~~Firing Range Indoor~~

~~Park~~

~~Swimming Pool, Commercial or Public~~

~~RETAIL LAND USES (See Section 38-33G and Section 38-53)~~

~~Auto/Truck Repair & Service~~

~~Cannabis Retailer (Accessory to Cannabis Industry)~~

~~Large Equipment Repair & Service (Non-Vehicular)~~

~~Large Equipment Repair & Service (Vehicular)~~

~~Petroleum/Propane Sales~~

~~TRANSPORTATION, WHOLESALE TRADE, WAREHOUSING & BULK STORAGE LAND USES (See Section 38-33H and Section 38-53)~~

~~Above Ground Storage Tanks for Flammable and Combustible Liquids and LP Gas~~

~~Storage of dismantled or wrecked vehicles & products~~

~~Storage/Display of merchandise for sale (except manufactured buildings, mobile homes & operable cars, trucks, motorcycles and RVs)~~

~~Storage outside of buildings of materials, equipment, and supplies not for sale~~

~~Storage, warehousing accessory to Office, Retail Service or Industry~~

~~MANUFACTURING & RELATED LAND USES (See Section 38-33I and Section 38-53)~~

~~Body Shops & Vehicle Painting Establishments~~

~~Cannabis Industry~~

~~Cannabis Research Laboratory~~

~~Construction Yard or Building(s), Temporary~~

~~Contractor's Yard (Building/Electrical/Mechanical/Roads/Utilities)~~

~~Cottage Industry Retail or Service~~

~~Retail Trade, Business Service Establishment or Offices, any type~~

~~Vehicle Repair (Auto/Truck/Heavy Equipment/Motorcycle/Boat/Recreational Vehicle)~~

~~Wrecker Services~~

~~UTILITY LAND USES (See Section 38-33J, Section 38-53 and Section 38-59)~~

~~Antenna, Towers, Communication Structures, and Other Vertical Structures~~

~~Face Mount (Attached to Primary Use)~~

~~Public/Private Utility Installation~~

~~LAND USES ALLOWED REQUIRING A SPECIAL USE PERMIT~~

~~AGRICULTURE & EQUESTRIAN LAND USES (See section 38-33C and Section 38-54)~~

~~Racetrack, Animal~~

~~Rodeo Arena~~

~~RECREATIONAL LAND USES (See section 38-33e and Section 38-54)~~

~~Amusement Park Permanent~~

~~Archery Range Outdoor~~

~~Firing Range Outdoor~~

~~Racetrack, Auto/Truck~~

~~Sports Complex~~

~~RETAIL LAND USES (See Section 38-33G and Section 38-54)~~

~~Adult Book/Video Store & Entertainment Establishment~~

~~TRANSPORTATION, WHOLESALE TRADE, WAREHOUSING & BULK STORAGE LAND USES (See Section 38-33H and Section 38-54)~~

~~Airport, Privately or Publicly Owned~~

~~Heliport/Helistop~~

~~UTILITY LAND USES (See Section 38-33J, Section 38-54, and Section 38-59)~~

~~Antenna, Towers, Communication Structures, and Other Vertical Structures~~

~~Waste Transfer Stations/Sewage Treatment Plants~~

~~M-3 INDUSTRIAL HEAVY: The M-3 district is intended to provide for industrial uses that consist of high-intensity industrial and manufacturing uses having physical and operational characteristics that may be offensive and/or hazardous to the surrounding community.~~

~~LAND USES ALLOWED~~

~~RESIDENTIAL-RELATED LAND USES (See Section 38-33B)~~

~~Accessory Uses and Structures~~

~~Greenhouse (Non-Commercial), Garden Shed or Tool Shed~~

~~Recreational Court, Tennis, etc., Private~~

~~AGRICULTURE & EQUESTRIAN LAND USES (See Section 38-33C)~~

~~Brewery/Winery~~

~~INSTITUTIONAL LAND USES (See Section 38-33D)~~

~~Community Buildings Uses~~

~~Detention Facility~~

~~RECREATIONAL LAND USES (See Section 38-33E)~~

~~Racetrack, Mini, e.g., go-carts~~

~~RETAIL LAND USES (See Section 38-33G)~~

~~Auto/Truck Self-Service/Automated or Full Service Wash/Detailing~~

~~Gas Station~~

~~Theater, Drive in~~

~~TRANSPORTATION, WHOLESALE TRADE, WAREHOUSING & BULK STORAGE LAND USES (See Section 38-33H)~~

~~Distribution Centers~~

~~Freighthouse/Truck Terminal~~

~~Interstate Warehouse/Bulk Storage Facilities~~

~~Ministorage Units~~

~~Parking Facilities, Commercial (Garages & Private Parking Lots)~~

~~Railroad Terminal/Depot~~

~~Trucking Companies~~

~~Wholesale Trade, any product~~

~~MANUFACTURING & RELATED LAND USES (See Section 38-33l)~~

~~Acid & Battery Manufacture~~

~~Apparel & Other Textile Products - Clothing~~

~~Body Shops & Vehicle Painting Establishments~~

~~Brooms, Brushes & Vacuums~~

~~Chemical & Allied Products~~

~~Construction Yard or Building(s), Temporary~~

~~Cottage Industry Retail or Service~~

~~Crematorium~~

~~Dyeing & Engraving Establishments~~

~~Electrical & Electronic Equip. (Computers)~~

~~Extraction of Raw Materials~~

~~Fabricated Metal Products~~

~~Food & Kindred Products~~

~~Furniture & Fixtures~~

~~Frozen Food Lockers~~

~~Glass Cutting & Finishing~~

~~Jewelry, Silverware, & Plated Ware~~

~~Laboratories (Medical/Dental/R & D)~~

~~Leather Products~~

~~Lumber & Wood Products (Sawmill/Planing)~~

~~Machinery, except electrical~~

~~Manufactured Buildings~~

~~Metal Work & Machine Shop~~

~~Motion Picture Production Theater/Studio~~

~~Musical Instruments~~

~~Needles, Pins & Fasteners~~

~~Paper & Allied Products~~

~~Petroleum & Coal Products~~

~~Primary Metal Industries~~

~~Printing & Publishing~~

~~Retail Trade, Business Service Establishment or Offices, any type~~

~~Rubber & Plastic Products~~

~~Signs & Advertising~~

~~Slaughterhouse~~

~~Stone, Glass & Clay Products~~

~~Storage Boxes~~

~~Textile Mill Products (Carpets, Rugs, Hosiery, Threads)~~

~~Tire Manufactures & Recyclers~~

~~Tobacco Manufacturing~~

~~Toys & Sporting Goods, Dolls, Games~~

~~Transportation Equipment~~

~~Upholstery Shop (Vehicle & Furniture)~~

~~Writing Utensils (pens/pencils/inked ribbons)~~

~~UTILITY LAND USES (See Section 38-33J)~~

~~Recycling Centers~~

~~LAND USES ALLOWED WITH CONDITIONS~~

~~RESIDENTIAL LAND USES (See Section 38-33A and Section 38-53)~~

~~Detached, Site-Built, Single Family Dwelling Unit~~

~~Dwelling Use (Non-primary)~~

~~Manufactured Dwelling Unit~~

~~RESIDENTIAL-RELATED LAND USES (See Section 38-33B and Section 38-53)~~

~~Home Occupation~~

~~Kennel/Cattery (Private Residential)~~

~~Storage of recreational vehicles and motor vehicle appurtenances~~

~~Swimming Pool, Private~~

~~Temporary Uses~~

~~INSTITUTIONAL LAND USES (See Section 38-33D and Section 38-53)~~

~~Child Care or Preschool~~

~~School, Commercial, Trade or Technical~~

~~RECREATIONAL LAND USES (See Section 38-33E and Section 38-53)~~

~~Amusement Park (Temporary)~~

~~Archery Range Indoor~~

~~Firing Range Indoor~~

~~Park~~

~~RETAIL LAND USES (See Section 38-33G and Section 38-53)~~

~~Large Equipment Repair & Service (Non-Vehicular)~~

~~Large Equipment Repair & Service (Vehicular)~~

~~Petroleum/Propane Sales~~

~~TRANSPORTATION, WHOLESALE TRADE, WAREHOUSING & BULK STORAGE LAND USES (See Section 38-33H and Section 38-53)~~

~~Above Ground Storage Tanks for Flammable and Combustible Liquids and LP Gas~~

~~Storage of dismantled or wrecked vehicles & products~~

~~Storage/Display of merchandise for sale (except manufactured buildings, mobile homes & operable cars, trucks, motorcycles and RVs)~~

~~Storage outside of buildings of materials, equipment, and supplies not for sale~~

~~Storage, warehousing accessory to Office, Retail Service or Industry~~

~~MANUFACTURING & RELATED LAND USES (See Section 38-33I and Section 38-53)~~

~~Body Shops & Vehicle Painting Establishments~~

~~Cannabis Industry~~

~~Cannabis Research Laboratory~~

~~Contractor's Yard (Building/Electrical/Mechanical/Roads/Utilities)~~

~~Vehicle Repair (Auto/Truck/Heavy Equipment/Motorcycle/Boat/Recreational Vehicle)~~

~~Wrecker Services~~

~~UTILITY LAND USES (See Section 38-33J, Section 38-53 and Section 38-59)~~

~~Antenna, Towers, Communication Structures, and Other Vertical Structures~~

~~Face Mount (Attached to Primary Use)~~

~~Public/Private Utility Installation~~

~~LAND USES ALLOWED REQUIRING A SPECIAL USE PERMIT~~

~~AGRICULTURE & EQUESTRIAN LAND USES (See section 38-33C and Section 38-54)~~

~~Racetrack, Animal~~

~~Rodeo Arena~~

~~RECREATIONAL LAND USES (See section 38-33e and Section 38-54)~~

~~Amusement Park Permanent~~

~~Archery Range Outdoor~~

~~Firing Range Outdoor~~

~~Racetrack, Auto/Truck~~

~~Sports Complex~~

~~RETAIL LAND USES (See Section 38-33G and Section 38-54)~~

~~Adult Book/Video Store & Entertainment Establishment~~

~~TRANSPORTATION, WHOLESALE TRADE, WAREHOUSING & BULK STORAGE LAND USES (See Section 38-33H and Section 38-54)~~

~~Airport, Privately or Publicly Owned~~

~~Heliport/Helistop~~

~~UTILITY LAND USES (See Section 38-33J, Section 38-54, and Section 38-59)~~

~~Antenna, Towers, Communication Structures, and Other Vertical Structures~~

~~Waste Transfer Stations/Sewage Treatment Plants~~

D. *Development standards—Office, commercial and industrial zoning districts.* Development standards identified in Matrix 1 are in addition to the following:

STANDARD	O-1	O-2	C-1	C-2	C-3*	M-T	M1/M2	M-3
Lot/parcel/tract area - Minimum (sq ft) - Maximum (sq ft)	 5,000 32,670	 5,000 NA	 5,000 32,670	 10,000 43,560	 21,780 NA	 5,000 87,120	 15,000 NA	 25,000 NA
Min. parcel dimensions - Depth/width (feet)	 70/60	 70/60	 70/60	 70/60	 70/60	 70/60	 70/60	 70/60
Min. bldg. setback - Front yard (feet) - Rear yard (feet)[1] - Side yard (feet)[1] - Side, second st.	 20 15 5 15	 15 15 or 0** 5 or 0** 15	 20 15 5 15	 15 15 or 0** 5 or 0** 15	 15 15 or 0** 5 or 0** 15	 15 15 or 0** 5 or 0** 15	 15 15 or 0** 20 or 0** 15	 15 15 or 0** 20 or 0** 15
Maximum building gross floor area square footage	2,500 (2)	NA	2,500 (individual use or center) (2)	NA				
Max. height** (feet)	35	60	35	45	60	60	60	60
Recommended roadway access	NA	Major local	NA	Major local	Minor arterial or any intersection with a major arterial	Access to or located on a collector	Access to or located on a collector	Access to or located on an arterial

* See recreational vehicle park, section 38-57. NOTE: recreational vehicle park minimum size is two acres.

** See the exceptions and modifications, section 38-62.

~~*** See antennas, towers, communication structures, and other vertical structures, section 38-59.~~

~~1. Requirements of the building permit code related to fire resistant construction shall apply in the case of no setback.~~

~~2. A special use permit, section 38-54, is required for square footage in excess of the maximum stated. The special use permit, however, may only be used to grant a single business/use (non-center) additional square footage not to exceed 2,000 square feet for C-1 and 6,000 square feet for C-2.~~

~~Other regulations: The regulations in this section list unique conditions for land uses and development standards in these zoning districts. Other regulations, e.g., parking, signs, found in other sections of this Code also apply. Sites within special zoning districts, e.g., overlay zones, may be subject to different regulations.~~

~~(Ord. No. 2354, § I, 1-22-07; Ord. No. 2891, § I(Exh. A), 6-17-19; Ord. No. 2986, § (I)(Exh. A), 9-7-21; Ord. No. 3014, § (I)(Exh. A), 11-21-22)~~

Sec. 38-33. Land uses in general zoning districts and number of parking stalls required.

LAND USES	GENERAL ZONING DISTRICTS																				AUTO PARKING
A = Allowed Use C = Conditional Use S = Special Use Permit (Sec. 38-54) Uses are prohibited if not A, C or S.	E E	R E	R E M	R 1 c	R 1 a	R 1 b	R 1 c M	R 1 a M	R 1 b M	R 2	R 3	R 4		O 1	O 2	C 1	C 2	C 3	M T	M 1 M 2	M 3	Number of Auto P Stalls (APS) Requi see Section 38-58 parking regulation
Sec. 38-33A RESIDENTIAL LAND USES																					
Accessory Dwelling Unit	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	1 APS/Unit
Apartments (including Condos)										A	A	A					C	C			1.5 APS/Unit

~~Assisted Living or Retirement Facility~~										~~C~~	~~C~~	~~A~~						~~C~~	~~C~~			~~0.5 APS/Unit~~
~~Bed and Breakfast~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~		~~C~~	~~C~~	~~C~~	~~C~~	~~C~~				~~0.5 APS/Bedroom~~
~~Boarding House~~											~~A~~	~~A~~										~~0.5 APS/Bedroom~~

~~Campground~~																	~~S~~		~~S~~		~~1 APS/Site~~
~~Detached, Site-Built, Single Family Dwelling Unit~~	~~A~~	~~A~~	~~A~~	~~A~~	~~A~~	~~A~~	~~A~~	~~A~~	~~A~~	~~A~~	~~A~~	~~C~~		~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~2 APS/Unit~~
~~Duplex (including Condominiums)~~										~~A~~	~~A~~	~~C~~					~~C~~	~~C~~				~~1 APS/Unit~~

~~Fraternity House/Sorority House~~										~~C~~	~~A~~	~~A~~										~~0.5 APS/Bedroom~~
~~Guest Dwelling Unit~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~													~~1 APS/Unit~~
~~Halfway House~~	~~S~~	~~S~~	~~S~~	~~S~~	~~S~~	~~S~~	~~S~~	~~S~~	~~S~~	~~S~~	~~S~~	~~S~~										~~0.5 APS/Bed~~
~~Home for Disabled~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~A~~	~~A~~	~~A~~										~~0.5 APS/Bed~~

~~Manufactured Dwelling Unit~~	~~A~~	~~A~~	~~A~~	~~A~~	~~A~~	~~A~~	~~A~~	~~A~~	~~A~~	~~A~~	~~A~~	~~C~~		~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~2 APS/Unit~~
~~Mobile Home~~			~~A~~				~~A~~	~~A~~	~~A~~	~~C~~	~~C~~	~~C~~										~~2 APS/Unit~~

~~Mobile Home Park~~										~~A~~	~~A~~	~~A~~								~~2 APS/Unit plus 1 APS/Employee~~
~~Mobile Home Subdivision~~			~~A~~				~~A~~	~~A~~	~~A~~											~~2 APS/Unit~~
~~Nursing Home~~										~~C~~	~~C~~	~~A~~					~~C~~	~~C~~		~~1 APS/4 Beds + 1 A Employees + 1 APS Doctors~~
~~Patio Home~~					~~C~~	~~C~~		~~C~~	~~C~~	~~C~~	~~C~~						~~C~~	~~C~~		~~2 APS/Dwelling Un~~
~~Quadplex (including Condominiums)~~										~~A~~	~~A~~	~~C~~					~~C~~	~~C~~		~~1.5 APS/Unit~~

~~Recreational Vehicle Park~~																	~~C~~	~~C~~	~~C~~		~~1 APS/RV space pl~~ ~~APS/2 Employees~~
~~Temporary/Homeless Shelter~~											~~A~~	~~A~~									~~1 APS/4 Beds~~
~~Townhouse (Attached Single Family Dwelling Unit)~~					~~A~~	~~A~~		~~A~~	~~A~~	~~A~~	~~A~~						~~C~~	~~C~~			~~2 APS/Dwelling Un~~

~~Triplex (including Condominiums)~~										~~A~~	~~A~~	~~C~~					~~C~~	~~C~~				~~1 APS/Unit~~

~~Youth Hostel~~											~~A~~	~~A~~									~~1 APS/5 Beds~~
~~Sec. 38-33B RESIDENTIAL-RELATED LAND USES~~																					
~~Accessory Uses and Structures~~	~~A~~	~~A~~	~~A~~	~~A~~	~~A~~	~~A~~	~~A~~	~~A~~	~~A~~	~~A~~	~~A~~	~~A~~		~~A~~	~~A~~	~~A~~	~~A~~	~~A~~	~~A~~	~~A~~	~~Not Applicable~~
~~Greenhouse (Non-Commercial), Garden Shed or Tool Shed~~	~~A~~	~~A~~	~~A~~	~~A~~	~~A~~	~~A~~	~~A~~	~~A~~	~~A~~	~~A~~	~~A~~	~~A~~		~~A~~	~~A~~	~~A~~	~~A~~	~~A~~	~~A~~	~~A~~	~~Not Applicable~~
~~Home Occupation~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~		~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~See Section 38-52~~
~~Kennel/Cattery (Private Residential)~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~		~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~Not Applicable~~
~~Real Estate Office (Temporary)~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~									~~1 APS/600 sq. ft. o floor area (GFA)~~

~~Recreational Court, Tennis, etc., Private~~	~~A~~	~~A~~	~~A~~	~~A~~	~~A~~	~~A~~	~~A~~	~~A~~	~~A~~	~~A~~	~~A~~	~~A~~		~~A~~	~~A~~	~~A~~	~~A~~	~~A~~	~~A~~	~~A~~	~~A~~	~~Not Applicable~~
~~Storage of recreational vehicles and motor vehicle appurtenances~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~		~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~Not Applicable~~
~~Swimming Pool, Private~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~		~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~Not Applicable~~

Temporary Uses	C	C	C	C	C	C	C	C	C	C	C	C		C	C	C	C	C	C	C	C	See Section 38-50
Sec. 38-33C AGRICULTURE & EQUESTRIAN LAND USES																						
Animal Raising	A		A																			Not Applicable
Brewery/Winery	S		S																C	A	A	1 APS/1,200 sq. ft.
Cannabis Microbusiness	S		S																			2 APS/1,200 sq. ft.

Christmas Tree Farm	A		A																		5 APS/Farm
Facilities for Horses: Boarding, Breeding, Training, Riding School, Guest Ranch, Time-rental Riding and Facilities for other animals not including Kennels	C		C																		Commercial Numb stalls required sha determined on a c case basis. All park the disabled and th accessible route sh paved. All other pa and driveways may unpaved or gravel Public Not Applica
Horticulture, all types	A		A																		Not Applicable
Produce Stand	A	A	A																		1 APS/300 sq. ft. o
Racetrack, Animal Rodeo Arena	S		S														S		S	S	1 APS/5 Seats
Veterinary Facility	A		A													A	A	A	A		1 APS/450 sq. ft. o
Sec. 38-33D INSTITUTIONAL LAND USES																					
Cemetery/Columbarium	S	S	S	S	S	S	S	S	S	C	C	C									1 APS/5 seats in as area
Family Child Care Home (FH) (5-6 children)	C	C	C	C	C	C	C	C	C	C	A	A									FH/GH: See section CCC: 1 APS/400 sq GFA
Group Child Care Home (CH) (7-12 children)	S	S	S	S	S	S	S	S	S	S	A	A									
Child Care Center or Preschool (CCC) (13 or more children)											A	A		A	A	A	A	A	C	C	C

~~Community Buildings-Uses~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~A~~			~~A~~	~~A~~	~~A~~	~~A~~	~~A~~	~~A~~	~~A~~	~~1 APS/1,200 sq. ft.~~
~~Convention Center/Exhibition Hall~~															~~A~~			~~A~~	~~A~~	~~A~~		~~1 APS/5 maximum occupancy~~
~~Detention Facility~~																			~~A~~	~~A~~	~~A~~	~~2 APS/Employee o maximum shift~~
~~Hospital~~																	~~A~~	~~A~~				~~1 APS/2.5 Beds + 1 APS/Employee on maximum shift + 1 APS/Doctor~~
~~Library/Museum~~											~~C~~	~~A~~			~~A~~	~~A~~	~~A~~	~~A~~	~~A~~	~~A~~		~~1 APS/600 sq. ft. o~~
~~Religious Institution/Columbarium~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~			~~C~~	~~C~~	~~C~~	~~C~~				~~1 APS/5 seats in pr assembly room~~
~~School (K-8) Public, Private, Parochial~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~			~~C~~	~~C~~	~~C~~	~~C~~				~~2 APS/Classroom~~
~~School (9-12) Public, Private, Parochial~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~			~~C~~	~~C~~	~~C~~	~~C~~				~~1 APS/Employee + seats in primary as hall~~
~~School, College or University~~															~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~		~~1 APS/2 Employee APS/5 Students~~

School, Commercial, Trade or Technical														C	C	C	C	C	C	C	1 APS/2 Employee APS/4 Students
Sec. 38-33E RECREATIONAL LAND USES																					
Amusement Park Permanent	S	S	S														S	S	S	S	Parking area equal of area used by an park
Amusement Park Temporary	C	C	C													C	C	C	C	C	Parking area equal of area used by an park

~~Arcade/Game Room~~																~~A~~	~~A~~				~~1 APS/250 sq. ft. o~~
~~Archery Range: ~~ ~~Indoor ~~ ~~Outdoor~~																	~~C S~~		~~C S~~	~~C S~~	~~1 APS/Lane~~
~~Batting Cages~~																~~A~~	~~A~~				~~1 APS/Cage~~
~~Billiard/Pool Hall~~																~~A~~	~~A~~				~~1 APS/300 sq. ft. o~~
~~Bowling Alley~~																~~A~~	~~A~~				~~2 APS/Lane~~
~~Country Club~~	~~S~~	~~S~~	~~S~~	~~S~~	~~S~~	~~S~~	~~S~~	~~S~~	~~S~~	~~S~~	~~S~~	~~S~~					~~A~~	~~A~~				~~1 APS/200 sq. ft. o~~
~~Firing Range: ~~ ~~Indoor ~~ ~~Outdoor~~																	~~C S~~		~~C S~~	~~C S~~	~~1 APS/Lane~~
~~Golf Course~~	~~S~~	~~S~~	~~S~~	~~S~~	~~S~~	~~S~~	~~S~~	~~S~~	~~S~~	~~S~~	~~S~~	~~S~~					~~A~~	~~A~~	~~A~~	~~A~~		~~30 APS/ 9 Holes~~
~~Golf Course, Miniature~~																~~A~~	~~A~~				~~1 APS/100 sq. ft. o~~
~~Golf Driving Range~~	~~S~~	~~S~~	~~S~~	~~S~~	~~S~~	~~S~~	~~S~~	~~S~~	~~S~~	~~S~~	~~S~~	~~S~~				~~A~~	~~A~~	~~A~~	~~A~~		~~Same as Mini. Golf~~
~~Health/Exercise Club/Gymnasium/Sports Instruction~~											~~A~~					~~A~~	~~A~~	~~A~~	~~A~~		~~1 APS/200 sq. ft. o~~

Park	C	C	C	C	C	C	C	C	C	C	C	C	C		C	C	C	C	C	C	C	C	Based on facilities
Racetrack, Auto/Truck																				S	S	1 APS/5 Seats
Racetrack, Mini, e.g., go-carts																		A	A	C	A	A	1 APS/5 Seats
Recreational Courts, e.g., Tennis (Public)	A	A	A	A	A	A	A	A	A	A	A	A	A			A		A	A	A	A		1.5 APS/Court
Skating Rink																		A	A				1 APS/250 sq. ft. o
Sports Arena/Field/Course, Commercial																			C				1 APS/5 Seats
Sports Complex: Stadium, Baseball, Football, Soccer, Softball, Track, Other Sports	S		S																S		S	S	1 APS/5 Seats
Swimming Pool, Commercial or Public	C	C	C	C	C	C	C	C	C	C	C	C	C			C		C	C	C	C		1 APS/150 sq. ft. o surface area

~~Zoo/Botanical Park~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~					~~A~~	~~A~~				~~20 APS/Acre~~
~~Sec. 38-33F SERVICE LAND USES~~																					
~~Accounting, Auditing & Bookkeeping; Architectural Engineering; Planning & Surveying Services; Insurance: Legal Services; Real Estate: Tax Preparation~~												~~C~~		~~A~~	~~A~~	~~A~~	~~A~~	~~A~~	~~A~~	~~A~~		~~1 APS/450 sq. ft. o~~

~~Art Studio~~													~~C~~	~~C~~	~~A~~	~~A~~	~~A~~		~~A~~		~~1 APS/450 sq. ft. o~~
~~Bank, Bonding & Financial Institution/Facility (No Drive Thru); Barber/Beauty/Hair Salon & Related Personal Care; Medical/Dental Office~~											~~C~~			~~A~~	~~A~~	~~A~~	~~A~~	~~A~~	~~A~~		~~1 APS/450 sq. ft. o APS/Workstation; APS/Doctor~~

~~Bank, Bonding & Financial Institution/Facility (Drive Thru including ATM & other electronic banking drive thru)~~														C	C	C	C	C	C		~~1 APS/450 sq. ft. o See requirements stacking lanes in S 58.~~
~~Business Offices: Consulting; Credit Reporting & Collection; Desktop Publishing & Graphic Design Institutional Office; Public; Private; Educational; Religious; & Philanthropic Mailing & Stenographic Services Motion Picture Production Noncommercial Research Organization~~														A	A	A	A	A	A	A		~~1 APS/450 sq. ft. o~~
~~Photography Studio Lessons (Art. Dance, Music, etc.).~~														A	A	A	A	A		A		~~1 APS/450 sq. ft. o~~
~~Counseling Services, Funeral Home. Laboratory~~															A		A	A	A	A		~~1 APS/450 sq. ft. o Counseling & Labs seats for Funeral H~~
~~Hotel/Motel~~																	A	A	A	A		~~0.75 APS/room plu APS/800 sq. ft. of other uses~~

~~Pharmacy~~														~~C~~	~~C~~	~~A~~	~~A~~	~~A~~	~~A~~		~~1 APS/300 sq. ft. o requirements for s lanes in Section 6.~~
~~**Sec. 38-33G RETAIL LAND USES**~~																				
~~Auto/Truck Parts Store~~																~~A~~	~~A~~				~~1 APS/500 sq. ft. o~~
~~Auto/Truck/Trailer Rental~~																~~A~~	~~A~~				~~1 APS/350 sq. ft. o plus enough APS fo available rental~~
~~Bar, Pub, Tavern (No Dancing)~~																~~A~~	~~A~~		~~A~~		~~1 APS/200 sq. ft. o~~

~~Building Material~~																~~A~~	~~A~~				~~1 APS/350 sq. ft. o~~
~~Business Center (see Shopping Center)~~																					
~~Cannabis Microbusiness~~															~~C~~	~~C~~	~~C~~				~~See Specific land u determine APS rec~~
~~Cannabis Retailer~~															~~C~~	~~C~~	~~C~~		~~C~~		~~1 APS/200 sq. ft. o (on-site consumpt APS/350 sq. ft. of on-site consumpti~~

~~Carpet/Window Treatments~~																~~A~~	~~A~~			~~1 APS/500 sq. ft. o~~
~~Convenience Store~~																~~A~~	~~A~~	~~A~~	~~A~~	~~1 APS/250 sq. ft. o~~
~~Department Store~~																~~A~~	~~A~~			~~1 APS/350 sq. ft. o~~
~~Equipment Rental~~																~~A~~	~~A~~			~~1 APS/400 sq. ft. o~~
~~Furniture Store~~																~~A~~	~~A~~			~~1 APS/600 sq. ft. o~~
~~Garden Supply~~																~~A~~	~~A~~			~~1 APS/400 sq. ft. o~~
~~Health Care Clinic (Non-Hospital)~~																~~A~~	~~A~~	~~A~~	~~A~~	~~1 APS/400 sq. ft. o~~
~~Newspaper Distribution~~																~~A~~	~~A~~			~~1 APS/500 sq. ft. o~~
~~Pawn Shop~~																~~A~~	~~A~~			~~1 APS/400 sq. ft. o~~
~~Plant Nursery~~																~~A~~	~~A~~	~~C~~	~~A~~	~~1 APS/400 sq. ft. o~~
~~Shopping Center/Business-Service Center (See specific land use to determine whether allowed)~~																				~~Less than 15,000 s feet of gross floor (GFA) - 1 parking s 300 square feet of allowed. 15,000 sq~~

																					~~or more of floss fl (GFA) - 1 parking s 350 square feet of allowed.~~
~~Radio/TV Studio/Station~~																~~A~~	~~A~~	~~A~~	~~A~~		~~1 APS/600 sq. ft. o~~
~~Telephone & Communication Ctr~~																~~A~~	~~A~~	~~A~~			~~1 APS/450 sq. ft. o~~
~~Theater~~																~~A~~	~~A~~				~~1 APS/5 Seats~~
~~Tire Sales/Repair~~																~~A~~	~~A~~		~~A~~		~~1 APS/500 sq. ft. o~~
~~Video Tape/DVD Rental/Sales~~																~~A~~	~~A~~				~~1 APS/250 sq. ft. o~~
~~Cleaning & Maid Services~~															~~A~~	~~A~~	~~A~~	~~A~~	~~A~~		~~1 APS/450 sq. ft. o~~
~~Clothing Store~~															~~A~~	~~A~~	~~A~~				~~1 APS/350 sq. ft. o~~
~~Delicatessen, Produce/Meat Market, no eating facilites~~															~~A~~	~~A~~	~~A~~	~~A~~	~~A~~		~~1 APS/350 sq. ft. o~~
~~Delicatessen, Produce/Meat Market, with eating facilites~~															~~A~~	~~A~~	~~A~~	~~A~~	~~A~~		~~1 APS/350 sq. ft. o plus 1 APS/4 seats~~
~~Grocery Store~~															~~A~~	~~A~~	~~A~~				~~1 APS/350 sq. ft. o~~
~~Home Furnishings~~															~~A~~	~~A~~	~~A~~				~~1 APS/400 sq. ft. o~~
~~Laundry/Dry Cleaning Services~~															~~A~~	~~A~~	~~A~~	~~A~~	~~A~~		~~1 APS/400 sq. ft. o~~
~~Specialty Foods (Bakeries, Confectioneries, etc.)~~															~~A~~	~~A~~	~~A~~	~~A~~	~~A~~		~~1 APS/400 sq. ft. o~~
~~Specialty Store (Books, Music, Toys, Sports Equip., Stationery, etc.)~~															~~A~~	~~A~~	~~A~~	~~A~~	~~A~~		~~1 APS/350 sq. ft. o~~

~~Variety Store~~															~~A~~	~~A~~	~~A~~				~~1 APS/350 sq. ft. o~~
~~Auto/Truck/Motorcycle Dealers~~																~~A~~	~~A~~				~~1 APS/500 sq. ft. o~~
~~Bar/Night Club (Dancing)~~																	~~A~~				~~1 APS/125 sq. ft. o~~
~~Manufactured Housing/Buildings Dealers~~																	~~A~~				~~1 APS/450 sq. ft. o~~
~~Adult Book/Video Store & Entertainment Establishment~~																			~~S~~	~~S~~	~~1 APS/350 sq. ft. o~~
~~Auto/Truck Repair & Service~~																~~C~~	~~C~~				~~1 APS/500 sq. ft. G~~
~~Auto/Truck Self-Service/Automated or Full Service Wash/Wax/Detailing~~																~~A~~	~~A~~		~~A~~	~~A~~	~~See stacking lane requirements in Se 58, 2 APS/Service l~~
~~Cafe, Cafeteria, Coffee Shop, Restaurant, etc.~~															~~C~~	~~A~~	~~A~~	~~A~~	~~A~~		~~1 APS/5 seats; Out seating only 1 APS ft. of GFA~~

~~Firewood Sales~~																~~C~~	~~C~~				~~Parking area equal of area used for sales/display/stora~~
~~Flea Market~~																	~~C~~				~~Parking area equal of area used for fl market.~~

~~Gas Station~~ ~~1. With Convenience Store~~ ~~2. With Repair Facilities~~ ~~3. With Cafe/Restaurant~~ ~~4. Gas Sales only~~																	~~A~~	~~A~~	~~A~~	~~A~~	~~A~~	~~See Parking Note #~~ ~~APS/300 sq. ft. of~~ ~~APS/400 sq. ft. of~~ ~~APS/450 sq. ft. of~~ ~~1 APS/5 seats; 4) 1~~ ~~sq. ft. of GFA~~

~~Hardware Store~~															~~C~~	~~A~~	~~A~~		~~A~~		~~1 APS/400 sq. ft. o~~
~~Kennel/Cattery, Commercial~~	~~C~~	~~C~~	~~C~~													~~C~~	~~C~~	~~C~~	~~C~~		~~1 APS/550 sq. ft. o~~
~~Large Equipment Repair & Service (Non-Vehicular)~~																~~C~~	~~C~~		~~C~~	~~C~~	~~1 APS/500 sq. ft. o~~
~~Large Equipment Repair & Service (Vehicular)~~																	~~C~~		~~C~~	~~C~~	~~1 APS/500 sq. ft. o~~

~~Petroleum/Propane Sales~~																~~C~~	~~C~~		~~C~~	~~C~~	~~1 APS/400 sq. ft. o~~
~~Private Club or Lodge~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~					~~A~~	~~A~~				~~1 APS/200 sq. ft. o~~
~~Seasonal Sales Non Temporary (Fireworks. Agriculture Products, Snowcone Stand etc.)~~															~~C~~	~~C~~	~~C~~				~~1 APS/200 sq. ft. o~~

~~Small Item Repair Shop~~															~~C~~	~~A~~	~~A~~		~~A~~		~~1 APS/550 sq. ft. o~~
~~Specialty Retailer Primary business is the sale of tourism products that may include the sale of fireworks~~																		~~C~~			~~1 APS/400 sq. ft. o~~

~~Temporary Use, (Non-Seasonal)~~															~~C~~	~~C~~	~~C~~				~~1 APS/200 sq. ft. o~~
~~Theater, Drive in~~																	~~A~~		~~A~~	~~A~~	~~See requirements stacking lanes in S 58 plus 10% over v capacity~~
~~Upholstery Shop~~															~~C~~	~~A~~	~~A~~		~~A~~		~~1 APS/500 sq. ft. o~~

Sec. 38-33H TRANSPORTATION, WHOLESALE TRADE, WAREHOUSING & BULK STORAGE LAND USES																					
Above Ground Storage Tanks for Flammable and Combustible Liquids and Liquid Petroleum (LP) Gas	C	C	C	C	C	C	C	C	C	C	C	C		C	C	C	C	C	C	C	C	1 APS/Installation
Airport, Privately or Publicly Owned																	S	S		S	S	S: See Section 38-5
Bus Terminal																		A	A	A		1 APS/300 sq. ft. o
Cab Stand																	A	A	A	A		1 APS/350 sq. ft. o plus enough APS f vehicle used in the
Distribution Centers																				A	A	1 APS/1,000 sq. ft.
Freighthouse/Truck Terminal																				A	A	1 APS/1,000 sq. ft.

~~Heliport/Helistop~~	~~S~~		~~S~~								~~S~~			~~S~~		~~S~~	~~S~~	~~S~~	~~S~~	~~S~~	~~No APS accessory primary use e.g., 2 APS when the pr use.~~
~~Interstate Warehouse/Bulk Storage Facilities~~																			~~A~~	~~A~~	~~1 APS/1,000 sq. ft.~~
~~Mini-storage Units~~																~~A~~	~~A~~	~~A~~	~~A~~	~~A~~	~~No APS if units hav vehicular access if APS/4,000 square~~
~~Parking Facilities, Commercial (Garages & Private Parking Lots)~~											~~C~~			~~A~~		~~A~~	~~A~~	~~A~~	~~A~~	~~A~~	~~Not Applicable Sec 38-58~~
~~Railroad Terminal/Depot~~																			~~A~~	~~A~~	~~1 APS/300 sq. ft. o~~
~~Storage of dismantled or wrecked vehicles & products~~																			~~C~~	~~C~~	~~1 APS/10,000 sq. f storage area + 1 A sq. ft. of office are~~
~~Storage/Display of merchandise for sale (except manufactured buildings, mobile homes & operable cars, trucks, motorcycles and RVs)~~											~~C~~		~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~R-4; O-1, O-2 & C as specific use req C-2, C-3, MT, M1/ of specific use req~~

~~Storage outside of buildings of materials, equipment and supplies not for sale~~																~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~Not Applicable~~
~~Storage, warehousing accessory to Office, Retail Trade. Retail Service or Industry~~											~~C~~		~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~See Storage/Displa requirement If no Not Applicable~~
~~Trucking Companies~~																			~~A~~	~~A~~	~~1 APS/500 sq. ft. o office area plus 1 APS/10,000 sq. ft. storage area~~

~~Wholesale Trade, any product~~																		~~C~~	~~A~~	~~A~~	~~1 APS/500 sq. ft. o area plus 1 APS re the first 20,000 sq storage area + 1 APS/10,000 sq. ft. 20,000 sq. ft.~~
~~**Sec. 38-33I MANUFACTURING & RELATED LAND USES, including associated assembly, processing, packaging, and compounding**~~																					
~~Jewelry, Silverware, & Plated Ware; Laboratories (Medical/Dental/R & D); Motion Picture Production; Theater/Studio; Musical Instruments; Printing & Publishing; Signs & Advertising~~																		~~A~~	~~A~~	~~A~~	~~1 APS/1,000 sq. ft. except Labs & Mot Picture Theater/St APS/500 sq. ft. of~~
~~Apparel & Other Textile Products-Clothing, Brooms, Brushes & Vacuums, Chemical & Products, Dyeing & Engraving Establishments, Electrical & Electronic Equip. (Computers), Fabricated Metal Products, Food & Kindred Products, Furniture & Fixtures, Glass Cutting & Finishing, Leather Products, Lumber & Wood Products (Sawmill/Planting), Machinery, except electrical, Manufactured Buildings, Metal Work & Machine Shop, Needles, Pins & Fasteners~~																		~~C~~	~~A~~	~~A~~	~~1 APS/1,000 sq. ft.~~
~~Paper & Products, Primary Metal Industries, Rubber & Plastic Products, Stone, Glass & Clay Products, Storage Boxes, Textile Mill Products (Carpets, Rugs, Hosiery, Threads), Tobacco Manufacturing, Toys & Sporting Goods, Dolls, Games, Transportation Equipment, Writing Utensils (pens/pencils/inked ribbons)~~																		~~C~~	~~A~~	~~A~~	~~1 APS/1,000 sq. ft.~~

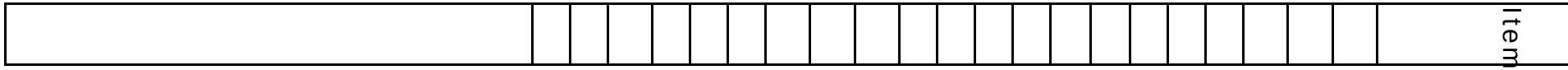
~~Frozen Food Lockers Tire Manufactures & Recyclers Upholstery Shop (Vehicle & Furniture)~~																			~~A~~	~~A~~	~~1 APS/1,000 sq. ft. for Tire M&R; 1 AP ft. of GFA for othe~~
~~Acid & Battery Manufacturing, Slaughterhouse~~																				~~A~~	~~1 APS/1,000 sq. ft.~~
~~Body Shops & Vehicle Painting Establishments~~																	~~C~~		~~C~~	~~C~~	~~1 APS/1,000 sq. ft.~~
~~Cannabis Industry~~																			~~C~~	~~C~~	~~1 APS/1,000 sq. ft.~~

~~Cannabis Research Laboratory~~																		~~C~~	~~C~~	~~C~~	~~1 APS/1,000 sq. ft.~~
~~Construction Yard or Building(s), Temporary~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~		~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~A~~	~~A~~	~~Not Applicable~~
~~Contractor's Yard (Building/Electrical/Mechanical/Roads/Utilities) Vehicle Repair~~																			~~C~~	~~C~~	~~1 APS/1,000 sq. ft.~~

~~(Auto/Truck/Heavy Equipment/Motorcycle/Boat/Recreational/Vehicle) Wrecker Services~~																				
~~Cottage Industry~~															~~C~~	~~C~~	~~C~~	~~C~~	~~A~~	~~A~~	~~See specific use~~
~~Cottage Industry Retail or Service (Manufacture or processing of goods such as beer, food products, for sale on the premises)~~															~~C~~	~~C~~	~~C~~	~~C~~	~~A~~	~~A~~	~~See specific use~~

~~Crematorium~~																~~A~~	~~A~~		~~A~~	~~A~~	~~1 APS/800 sq. ft. o~~

~~Extraction of Raw Materials~~	~~S~~	~~S~~	~~S~~																~~A~~	~~A~~	~~2 APS/3 Employee maximum shift~~
~~Petroleum & Coal Products~~																			~~A~~	~~A~~	~~1 APS/1,000 sq. ft.~~
~~Retail Trade, Business Service Establishment or Offices, any type~~																			~~C~~	~~C~~	~~See specific use~~



~~(Ord. No. 2354, § I, 1-22-07; Ord. No. 2775, § I(Exh. A), 2-16-16; Ord. No. 2891, § I(Exh. A), 6-17-19; Ord. No. 2986, § (I)(Exh. A), 9-7-21)~~

Secs. 38-34—38-39. Reserved.

ARTICLE V. SPECIAL ZONING DISTRICTS

Sec. 38-40. Special zoning districts—Purpose and uses.

Special zoning districts are zones that have a set of unique provisions or unusual characteristics and have a special purpose other than a general residential, office, commercial or industrial zoning district. Nonspecified land uses which are similar to those land uses listed as allowed, as conditional, or as a special use, may be permitted by the Community Development Director or designee. any decision of the Community Development Director or designee with regard to nonspecified land uses may be appealed to the Planning and Zoning Commission.

The following is a list of the special zoning districts described in this article:

FC Flood control zoning district

OS-R Open space—Recreation zoning district

OS-NC Open space—Natural/conservation zoning district

H Holding zone district

CBD Central business district and Main Street Plaza overlay zone

UD University District Overlay

AdM Avenida de Mesilla Gateway overlay zone district

WMIP West Mesa Industrial Park overlay zone district

LAO Lohman Avenue overlay district

IDO Infill development overlay district

PUD Planned unit development

NMO North Mesquite Neighborhood overlay zone district

SMO South Mesquite Neighborhood overlay zone district

(Ord. No. 2354, § I, 1-22-07)

Sec. 38-41. FC—Flood control zoning district.

A. *Purpose:* The FC flood control zoning district is designed to protect persons and property from periodic flooding by designation of principal floodwater channels and areas contiguous which may become invaded by storm runoff. The FC zone may be used for some agricultural purposes, the commercial raising of some animals, and for recreational activities.

B. *Zoning district:*

FC flood control

Engineering study required. Prior to application for any request for a zone change from an existing FC district, an engineering study is required. Such study shall show the location of all flood drainage channels within 500 feet of proposed land uses or structures, anticipated flows at key points, including

the anticipated discharge velocity and depth flow, for the ten-year storm (ten percent chance in any given year) and the 100-year storm (one percent chance in any given year.) Such study shall be performed by an engineer, licensed and registered in the state, and shall clearly demonstrate that the proposed use will in no way impair or impede the flow of water, which would result in property damage or endangering human lives.

C. *Flood control district uses:*

"C" - Conditional uses: These uses are permitted; however, unique conditions for each conditional land use are listed after the land use table or in section 38-53, conditional uses. There also may be requirements in the Municipal Code with which specific land uses must comply.

"S" - Special uses: The uses require a special use permit to be approved by the Planning and Zoning Commission. these uses could have potential harmful effects on the neighborhood in which they are located. The special use permit process will ensure that mitigation techniques to lessen or eliminate the negative impacts will be required. see section 38-54.

FLOOD CONTROL ZONING DISTRICT USES

Uses/District	FC
Commercial and non-commercial raising of animals, crops and trees (no structures allowed.)	C$_1$
Golf course or driving range (no structures allowed.)	S
Park, public and private (no structures allowed.)	C

Conditions: Conditions for land uses listed above as "C", without a number, are described in section 38-53, conditional uses. Conditions with a number, "C#", are described below:

The raising of animals shall be consistent with the Municipal Code and shall be kept 300 feet from adjacent residential property. Raising of crops and trees shall be kept at least 100 feet from adjacent residential property. There shall be no significant nuisance to neighboring property at the property line due to odor, dust, fertilizers, herbicides, and no prolonged use of noisy equipment.

(Ord. No. 2354, § I, 1-22-07)

Sec. 38-41.1. Open space zoning districts.

A. *Purpose:* The open space zoning districts are intended to:

Allow both public and private lands to serve as areas providing both active and passive recreational opportunities in either a developed (modified) or natural setting.

Protect, preserve and/or restore natural resources and open spaces such as areas of undisturbed native vegetation, arroyos and major land features when development within these areas would be detrimental to the health, safety and general welfare of city residents.

Establish buffer areas that are aimed at mitigating issues involving potentially incompatible land uses.

For purposes of these zoning districts, applicable public and private lands whether developed or in their natural state will be considered as open space. Application of the OS zone designations to private land requires the express written consent of the property owner(s). Designation of the OS zone on private land or portions thereof in no way exempts property that may be under development from complying with LCMC chapter 32, design standards, section 32-279 (public sites and open spaces). Developments that incorporate open space into the overall project design and/or provide applicable facilities or improvements to these open spaces may be subject to special development considerations

and flexibility which may include density bonuses, variances and other similar development incentives. Consideration and review of open space designs shall be on a case by case basis and must be deemed beneficial to the city's overall open space network. The city may either approve or reject any proposal. Acceptance of an open space proposal does not guarantee acceptance of these areas for city maintenance.

B. *Zoning district:*

Open space

OS-R Open space—Recreation

OS-NC Open space—Natural/conservation

C. *Development standards:* Specific requirements for these zoning districts vary depending on the intended use of the proposed open space and any anticipated impact to surrounding properties. Other development requirements above and beyond what is included in this section may apply and as such, reference to applicable chapters within the Las Cruces Municipal Code is recommended.

Open space uses:

"A" - Allowed uses: These uses are allowed if they comply with the development standards deemed applicable by the city, other requirements of this article and all other articles of this zoning code if applicable. There also may be requirements in the Municipal Code with which specific land uses must comply.

"C" - Conditional uses: These uses are permitted; however, unique conditions for each conditional land use are listed after the land use table or in section 38-53, conditional uses enumerated. There also may be requirements in the Municipal Code with which specific land uses must comply.

"S" - Special uses: These uses are generally not permitted by right in a zoning district, but through review and approval to determine surrounding area impacts, may be allowed. Requirements for special uses are listed after the land use table or in section 38-54, special use permits. There also may be requirements in the Municipal Code with which specific land uses must comply.

Open Space Uses by District

Uses/District	OS-R
Accessory uses and structures	C[1]
Archery range (indoor/outdoor)	A/S[1]
Batting cages	C[5]
Community buildings - uses (see section 38-53)	C
Country club (see also sections 38-53 and 38-54)	S[2]
Golf course (see section 38-54)	S
Golf course, miniature	C[5]
Golf driving range (see section 38-54)	S
Greenhouse (noncommercial), garden shed or tool shed	C[1]
Park (see section 38-53 and chapter 20)	C
Public/private utility installation, e.g., substations, water wells, transformers, regulators, lift stations, telecommunication site	C[4]
Raising of animals, crops, and trees	C[3]
Recreational courts (noncommercial)	A
Swimming pool (see section 38-53)	C
Temporary uses	C[2]

Uses/District	OS-NC
Nature park (see section 38-53 and chapter 20)	C
Recreational trail/path	C [6]

Condition notes:

1. Structures shall be directly related to the use, maintenance or enjoyment of the subject open space. Examples include equipment buildings, gazebos, monuments, restrooms, play equipment, amphitheatre, etc.
2. Christmas tree stands, fireworks stands, flea markets, and yard, garage or rummage sales on public property are prohibited. see section 38-50 and 38-53 for specific temporary use restrictions.
3. The raising of animals shall be consistent with chapter 7 of the Municipal Code and shall be kept 300 feet from adjacent residential property. Raising of crops and trees shall be kept at least 100 feet from adjacent residential property. There shall be no significant nuisance to neighboring property at the property line due to odor, dust, fertilizer, herbicides, and no prolonged use of noisy equipment.
4. See section 38-53. A solid wall or fence shall surround the installation. Landscaping shall be provided to screen and/or buffer the installation as necessary to allow the use to blend with the surrounding properties and minimize noise and visual pollution. When wells are proposed or already situated on property, consideration and adherence to established well head protection policy shall be followed to the extent possible. Telecommunication structures shall be designed to blend into the surrounding landscape or if attached to a structure, the structure itself. Facial mounts are required as applicable and tower structures shall be designed with concealment in mind. Options include but are not limited to flag poles, outdoor lighting standards, towers that mimic trees, etc.
5. Allowed if an integral part of a recreational open space design. Landscaping shall be provided to screen and/or buffer the use as necessary to allow the use to blend with the surrounding properties and minimize noise and visual pollution as applicable.
6. These facilities are intended to facilitate access through and enjoyment of applicable areas. Accessory uses such as water fountains, benches, and shade structures may be incorporated into the overall design, but must directly benefit or serve the dominant use.

Special use notes:

1. See section 38-54 and section 19-164 of the Municipal Code.
2. Country club must be designed in concert with a golf course or similar type of large open land area.

(Ord. No. 2354, § I, 1-22-07)

Sec. 38-42. H—Holding zone district.

A. *Purpose:* The holding zoning district is intended for property that is not predominantly developed and the property owners do not have plans or are not ready to develop their property. Subdividing the property into lots of one acre or larger is allowed. One detached single-family dwelling may be constructed on any lot of record, i.e., any lot recorded at the county courthouse before the time of annexation. A one time remodeling of an existing structure is also allowed.

B. *Zoning district:* H holding.

C. *Development standards:* Development standards for the EE zoning district shall apply.

D. *Holding zone district uses:*

"A" - Allowed uses: These uses are allowed if they comply with the development standards, other requirements of this article and all other articles of this zoning code. There also may be requirements in the Municipal Code with which specific land uses must comply.

"C" - Conditional uses: These uses are permitted; however, unique conditions for each conditional land use are listed after the land use table or in section 38-53, conditional uses enumerated. There also may be requirements in the Municipal Code with which specific land uses must comply.

Holding Zone District Uses

Uses/District	H
Above ground storage tanks for flammable and combustible liquids and liquid petroleum (LP) gas	C
Accessory buildings and uses	A
Detached, site-built, single-family home or manufactured home	A
Home for the disabled	A
Remodeling of a structure	C-1
Residential-related land uses	(see section 38-33.B.)

Conditions: Conditions for land uses listed above as "C," without a number, are described in section 38-53, conditional uses. Conditions with a number, "C#," are described below.

1. A one-time remodeling of an existing structure is defined as the altering of the interior and/or the exterior, including additions.

(Ord. No. 2354, § I, 1-22-07)

Sec. 38-43. Downtown Development Code.

A. *Purpose.* The purpose of this section and the zoning districts defined herein is to accommodate government facilities, retail, office, residential, and other similar uses in the downtown area of the city with appropriate height, yard, and intensity standards to allow for a higher density and intensity of development. Further, the properties described within the Main Street (MS) zoning district are identified as a special area within the Downtown to encourage revitalization through incentives and clearly defined development standards. See Table 1. Downtown Regulating Plan for the district boundaries, See Sec. N. MS Architectural Standards for development standards that apply to the MS district only.

1. The Downtown Development Code is designed to foster infill redevelopment in a mixed-use pattern as part of a vibrant, diverse, downtown.

2. This Section is intended to promote traditional urban form and a lively mix of uses, allowing for shopfronts, sidewalk cafes, and other commercial uses at the street level, with wide sidewalks and shade trees, overlooked by upper story residences and offices. It also provides a setting for major activities that benefit the community such as markets, festivals, and entertainment.

3. A range of open spaces should be distributed within adjacent neighborhoods and throughout downtown.

4. Buildings and landscaping should contribute to the physical definition of thoroughfares as civic places.

5. The transect designations in Sec. B. Zoning Districts shall describe the general character of downtown.

B. *Zoning Districts.* Zoning districts are limited to the following transect designations:

1. Downtown (DT): This district consists of higher intensity mixed-use buildings that accommodate retail, offices, institutional, and residences. The thoroughfares have wide sidewalks with street trees and buildings are set close to the sidewalks.

2. Main Street (MS): This district is similar in use and character to DT, but the massing and proportions are in harmony with an urban core.

3. General Urban (GU): This district includes a mix of uses, but is primarily in the form of medium-intensity mixed use structures. It may have a wide range of building types: residences, live-work units, commercial buildings, theaters, and mixed-use buildings. The thoroughfares have wide sidewalks and buildings are set close to the sidewalks.

C. *Downtown Regulating Plan.*

1. The regulating plan is the zoning map and principal tool for implementing the Downtown Master Plan, as amended. It identifies the transect district for the building site (See Table 1. Downtown Regulating Plan) which regulates standards for each lot.

2. New development in Downtown shall provide sidewalk improvements, civic spaces as needed, and contribute to a shared parking and access strategy to create a complementary pattern for growth and development. The rules below will enhance a compact, economically sustainable, mixed-use downtown that complements the adjacent neighborhoods and provides flexible opportunities for residential, employment, government, institutional, and commercial uses.

3. Where present, alleys shall provide access to the rear of all lots. Alley dedication and construction within the rear setback is required as part of a redevelopment project if they do not exist. Alleys shall be constructed pursuant to Table 16. Access and Sec. T. Streetscape.

D. *Instructions.*

1. Find the transect zone for your parcel in Table 1. Downtown Regulation Plan.

2. Site and building plans submitted under this Section shall include the following, in compliance with the standards described in this Section:

   a. Site Plan/Building Placement

   b. Building Specifications including floor plans (See § H through § K.)

   c. MS Architectural Standards, if applicable (See § L.)

   d. Fencing (See § M.)

   e. Signs (See § N.)

   f. Use (See § O.)

   g. Parking (See § P.)

   h. Landscaping (See § Q.)

   i. Streetscape, if applicable (See § R.)

3. Site and building plans submitted under this Section require review by respective City departments for appropriate compliance with other applicable City codes and ordinances and final approval by the Community Development Department.

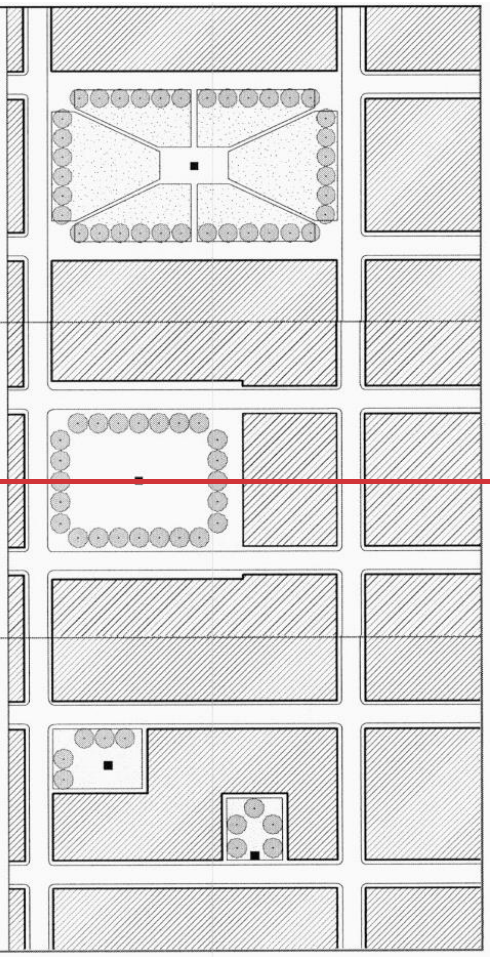
TABLE 1. DOWNTOWN REGULATING PLAN

~~E. *Definitions.* This Sub-section provides definitions for terms in this Section that are technical in nature or that otherwise may not reflect a common usage of the term. Additional definitions are in Article III of Chapter 38, Zoning Code and Sec. 36-3 of Chapter 36, Signs.~~

~~Alley: a vehicular way located to the rear of lots providing access to service areas, parking and accessory structures.~~

~~Civic Space: an outdoor informal or formal area permanently dedicated for public use. See Table 2. Civic Space.~~

~~TABLE 2. CIVIC SPACE~~

a. Square: Size: The minimum size shall be 1/4 acre and the maximum shall be 3 acres. Edge Condition: A square is spatially defined by building frontages. Landscape: A square's landscape shall consist of paths, lawns and trees, formally arranged.	
b. Plaza: Size: The minimum size shall be 1/4 acre and the maximum shall be 2 acres. Edge Condition: A plaza shall be spatially defined by building frontages. Landscape: Its landscape may consist primarily of pavement. Trees and grass are optional, but perimeter shade is required.	
c. Playground: Size: There shall be no minimum or maximum size. Edge Condition: Playgrounds shall be interspersed within urban areas and may be placed within a block. Landscape: A playground may be fenced and include an open shelter. Playgrounds may be included within plazas and squares.	

~~Director: City of Las Cruces Community Development Department Director.~~

~~Elevation: an exterior wall of a building not along a frontage line. See: facade. See Table 3. Terminology Illustrated.~~

~~Encroach: to break the plane of a vertical or horizontal regulatory limit with a structural element extending into a setback, into the public frontage, or above a height limit.~~

~~Encroachment: any structural element that breaks the plane of a vertical or horizontal regulatory limit extending into the public frontage setback, or above a height limit.~~

~~Facade: the exterior wall or elevation of a building that is set along a frontage line. See Table 3. Terminology Illustrated.~~

~~Frontage: the area between a building facade and the vehicular lanes, inclusive of its built and planted components. Frontage is divided into private and public frontages. See Table 3. Terminology Illustrated.~~

~~Primary Frontage: on corner lots, the private frontage designated to bear the address and principal entrance to the building, and the measure of minimum lot width. Prescriptions for the parking locations pertain only to the principal frontage. Prescriptions for the front setback pertain to both frontages of a corner lot. See frontage.~~

~~Secondary Frontage: on corner lots, the private frontage not on the primary thoroughfare.~~

~~Private Frontage: the privately owned setback between the frontage line and principal building facade.~~

~~Common Entry: a private frontage configuration for office and residential use, wherein the facade is aligned close to the frontage line with the primary building entrance at sidewalk grade. The common entry may be buffered by a planter at the sidewalk.~~

~~Forecourt: a private frontage yard wherein a portion of the facade is close to the frontage and the central portion is set back.~~

~~Gallery: a private frontage configuration for retail use wherein the facade is aligned close to the frontage line with an attached cantilevered shed or lightweight colonnade overlapping the sidewalk.~~

~~No Yard: a private frontage yard type with zero setback at the frontage line.~~

~~Porch: a private frontage configuration wherein the facade has a covered patio or elevated area at the primary entrance.~~

~~Shopfront: a private frontage configuration for retail use, with substantial glazing, wherein the facade is aligned close to the frontage line with the building entrance at sidewalk grade.~~

~~Stoop: a private frontage configuration wherein the facade is aligned close to the frontage line with the first story elevated from the sidewalk for privacy, with an exterior stair and landing at the entrance.~~

~~Terrace: a private frontage yard type with a shallow setback and front elevated patio, usually with a low wall at the frontage line. This type buffers residential uses from urban sidewalks. Terraces are also suitable for outdoor cafes.~~

~~Walled Yard: a private frontage yard type with a wall at the frontage line.~~

~~Frontage buildout: the percentage of the lot width that is occupied by the building facade at the front setback.~~

~~Frontage Line: a lot line bordering a public frontage. Facades facing frontage lines define the public realm and are therefore more regulated than the elevations facing other lot lines.~~

~~Landscaped Area: the area of a lot or parcel exclusive of building footprints, driveway and walkway pavements, and other impervious hardscape areas, and exclusive of ponds, pools and other water features.~~

~~Liner building: a building specifically designed to mask a parking lot or a parking structure from a public frontage.~~

~~Live-Work: a mixed-use unit consisting of a commercial and residential use. The commercial use may be anywhere in the unit.~~

~~Lot Coverage: the percentage of a lot that is covered by buildings and other roofed structures.~~

~~Mixed-Use: multiple uses within the same building or in multiple buildings.~~

~~Pedestrian Passage: a pedestrian access between or through buildings. The passage may connect midblock parking to the street.~~

~~Principal Entrance: the main point of access for pedestrians into a building.~~

~~Signs: Signs shall be defined pursuant to Chapter 36, Signs. Additional definitions are as follows:~~

~~Changeable Copy: A sign which allows characters, letters, or illustrations to be changed without altering the sign.~~

~~Display Case: A display case located on the facade of a building which displays menus, handbills or posters advertising a scheduled event, performance or film, and merchandise associated with the event, performance or film.~~

~~Projecting Sign: A small sign, which is suspended from an overhang, canopy, marquee, or awning, or is suspended from a mounting attached directly to the building wall, and hangs perpendicular to the building wall. An 8-foot clearance is required between a projecting sign and finished grade.~~

~~Story: a habitable level within a building, excluding an attic or raised basement.~~

~~Streetscreen: a freestanding wall built along the frontage line with the facade. It may mask a parking lot from the public frontage, provide privacy to a side yard, and/or strengthen the spatial definition of the public realm. (Syn: streetwall).~~

~~Transect: categorization system that organizes all elements of the built environment.~~

~~Use, Civic (See § O.): community uses open to the public including: meeting halls; libraries; schools; police and fire stations; post offices (retail operations only, no primary distribution facilities); places of worship; museums; cultural, visual and performing art centers; transit centers; and government functions open to the public.~~

~~Use, Commerce (See § O.): commerce uses shall be considered to encompass all of the following:~~

~~1. Executive, Administrative, and Professional Offices~~

~~2. Medical and Dental Offices, and Clinics~~

~~3. Day Care Centers~~

~~4. On-premise Alcohol Sales~~

~~5. Sidewalk Cafes~~

~~6. Outdoor Food and Beverage Service~~

~~7. All of the Civic Use Categories~~

~~8. All of the Retail Use Categories~~

~~9. Parking Facilities and Structures~~

~~Use, Cottage Industry (See § O.): cottage industry uses shall refer to an industry whose labor force consists of individuals working at home with their own equipment.~~

~~Use, Lodging (See § O.): lodging uses are defined as premises available for daily and weekly renting of bedrooms and shall be considered to encompass all of the following:~~

~~1. Bed and Breakfast~~

~~2. Inn~~

~~3. Motel~~

~~4. Hotel~~

~~Use, Residential (See § O.): residential uses shall be considered to encompass all of the following:~~

~~1. Dwelling Units~~

~~2. Adult Foster Care Family Home~~

~~3. Family Day Care Homes~~

~~4. Foster Family Homes~~

~~5. Homes for the Disabled~~

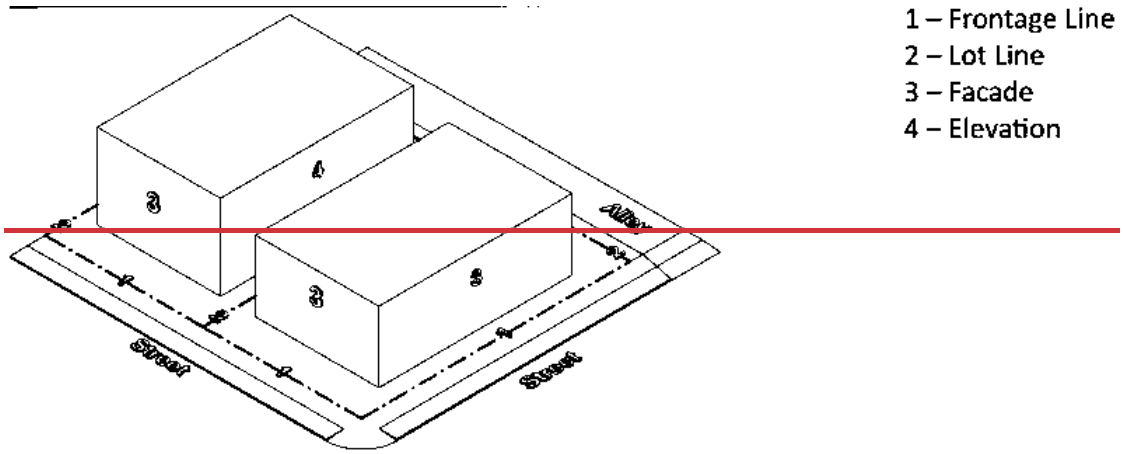
~~Use, Retail (See § O.): retail uses shall be considered to encompass all of the following:~~

1. Retail service: establishments providing services, as opposed to products, to the general public, including restaurants, finance, real estate and insurance, travel agencies, health and educational services, galleries, and temporary storage, provided that the temporary storage is ancillary to the primary retail service.

2. Retail specialty: Include, but are not limited to the sale of gifts, antiques, flowers, books, jewelry, wearing apparel or craft shops making articles exclusively for sale at retail on the premises.

3. Retail trade: Establishments engaged in selling new goods or merchandise to the general public for personal or household consumption and rendering services incidental to the sale of such goods.

TABLE 3. TERMINOLOGY ILLUSTRATED



F. *Existing Building and Property Alteration, Remodel, or Renovation.*

1. For the purpose of this section, alteration, remodel, or renovation shall be defined as: Any change or rearrangement in the supporting members of an existing building, such as bearing walls, columns, beams, girders, as well as any change in rooflines, or any enlargement to or diminution of a building or structure, whether horizontally or vertically.

2. Minor modifications. For the purpose of this section, a minor modification shall be one that does not result in an alteration, remodel, or renovation as described in Section F.1. The minor modification of an existing building or property is permitted by-right if such changes result in greater conformance with the purposes and specifications of this Section. The minor modification must comply with the design standards and codes unless, through the determination of the Director or designee, said compliance would substantially create an undue burden to the property owner or create a condition whereby the expansion and compliance measure, partially applied, would be substantially out of character with the existing development.

3. Existing buildings and properties that do not conform to the provision of this Section may continue in use as they are. However, they shall be brought into compliance with current codes and standards when:

   i. The property remains vacant for a period of one continuous year or greater; or

   ii. Alteration, remodel, or renovation causes one-time or cumulative amendments to 30 percent or greater of the gross square footage of building area; or

iii. A change in use occurs on the property which results in the alteration of the use orientation (e.g. service to retail), or density (e.g. eight dwelling units to 15 dwelling units) or change in occupancy type from the building code perspective.

4. Once permission to proceed has been granted by the Director or designee, the applicant may apply for the permit. Work shall not commence until permit approval is granted.

5. The restoration or rehabilitation of an existing building shall not require the provision of parking in addition to that existing, nor on-site stormwater retention/detention in addition to that existing, unless otherwise required by County or State code.

6. Normal maintenance activities as verified by the city's building official or designee are exempt from this provision.

7. Should an applicant not agree with the interpretation by the Director or designee, the interpretation may be appealed to the Planning and Zoning Commission.

G. *Building Placement.*

1. Lot coverage by building shall not exceed that recorded in Table 4 - Table 6.

2. Facades shall be built parallel to the principal frontage line, and along a minimum percentage of the frontage width at the setback, as specified as frontage buildout on Table 4 - Table 6.

3. Setbacks for principal buildings and accessory buildings shall be as shown in Table 4 - Table 6. Setbacks may be adjusted by up to 10 percent by administrative waiver to accommodate specific site conditions. The Director or designee shall make the following written findings:

a. The waiver is consistent with the provisions of Sec. B. Zoning Districts.

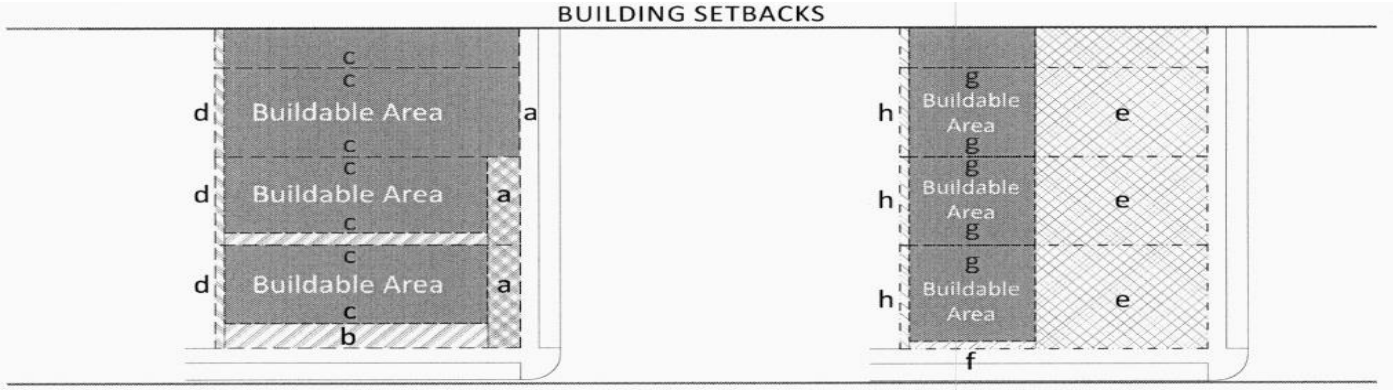
b. The waiver is consistent with the Downtown Master Plan.

c. The building placement will not materially endanger the public health or safety.

d. The location and character of the building placement, if developed according to the plans and information approved, will be in harmony with proximate land uses, and consistent with the purposes of the district.

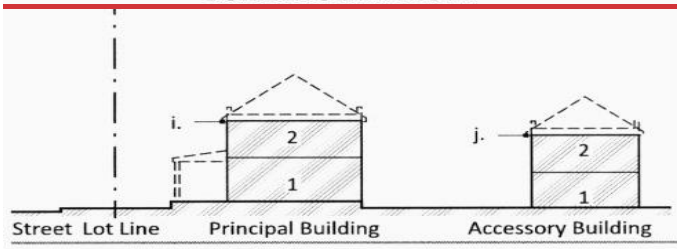
e. The building placement will not adversely affect Downtown by altering its character.

TABLE 4. BUILDING FORM STANDARDS - GU

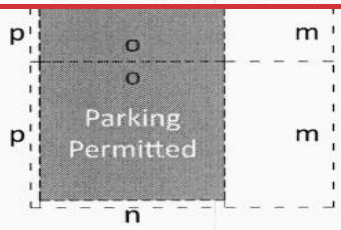


PRINCIPAL BUILDINGS			ACCESSORY BUILDING		
a	Primary Frontage	15 ft. max.	e	From Rear Lot Line	40 ft. max.
b	Secondary Frontage	10 ft. max.	f	Secondary Frontage	5 ft. min.
c	Side Lot Line	0 ft. or 5 ft. min.	g	Side Lot Line	0 ft. min.
d	Rear Lot Line	3 ft. min.	h	Rear Lot Line	3 ft. min.

BUILDING ENVELOPE



PARKING AND STORAGE SETBACKS

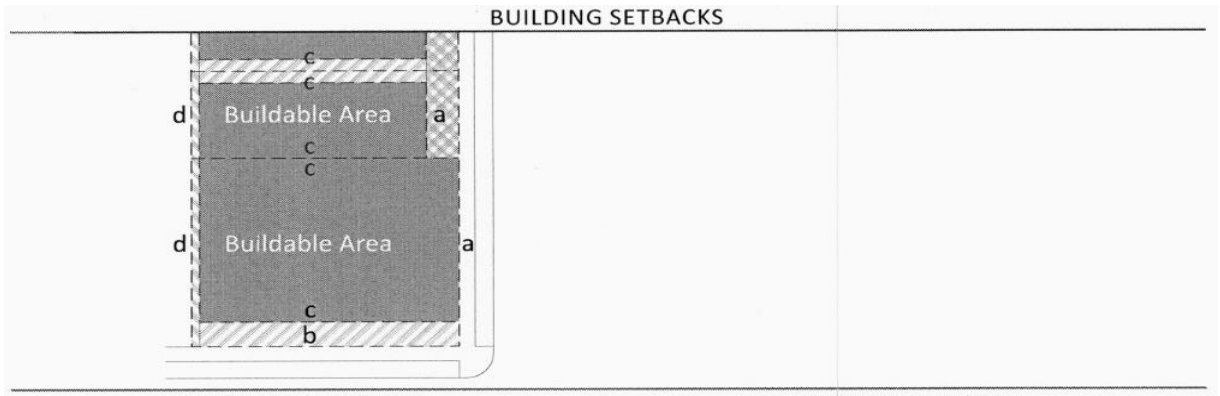


i	Building Height	2.5 stories max.	m	Primary Frontage	20 ft. + Principal Building Setback
j	Outbuilding Height	2 stories max.	n	Secondary Frontage	5 ft. min.
k	Parking Height	n/a	o	Side Lot Line	0 ft. min.
l	Lot Coverage	70% max.	p	Rear Lot Line	3 ft. min.

BUILDING FRONTAGE

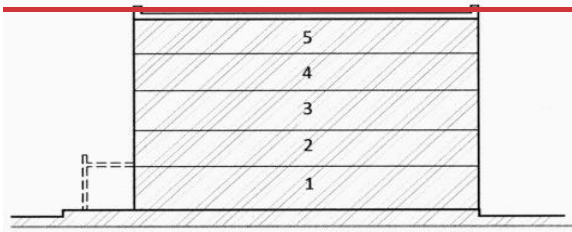
Permitted Frontages, see Table 7 and Table 8	Yard Walled Yard Terrace No Yard	Yard Porch Stoop Shopfront
Frontage Buildout	60% min.	

~~TABLE 5. BUILDING FORM STANDARDS - DT~~

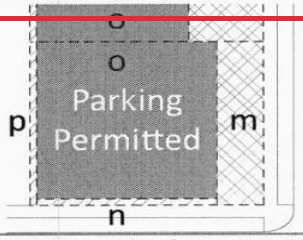


PRINCIPAL BUILDINGS			ACCESSORY BUILDING		
a	Primary Frontage	12 ft. max.	e	From Rear Lot Line	n/a
b	Secondary Frontage	8 ft. max.	f	Secondary Frontage	n/a
c	Side Lot Line	0 ft. or 5 ft. min.	g	Side Lot Line	n/a
d	Rear Lot Line	3 ft. min.	h	Rear Lot Line	n/a

BUILDING ENVELOPE



PARKING AND STORAGE SETBACKS

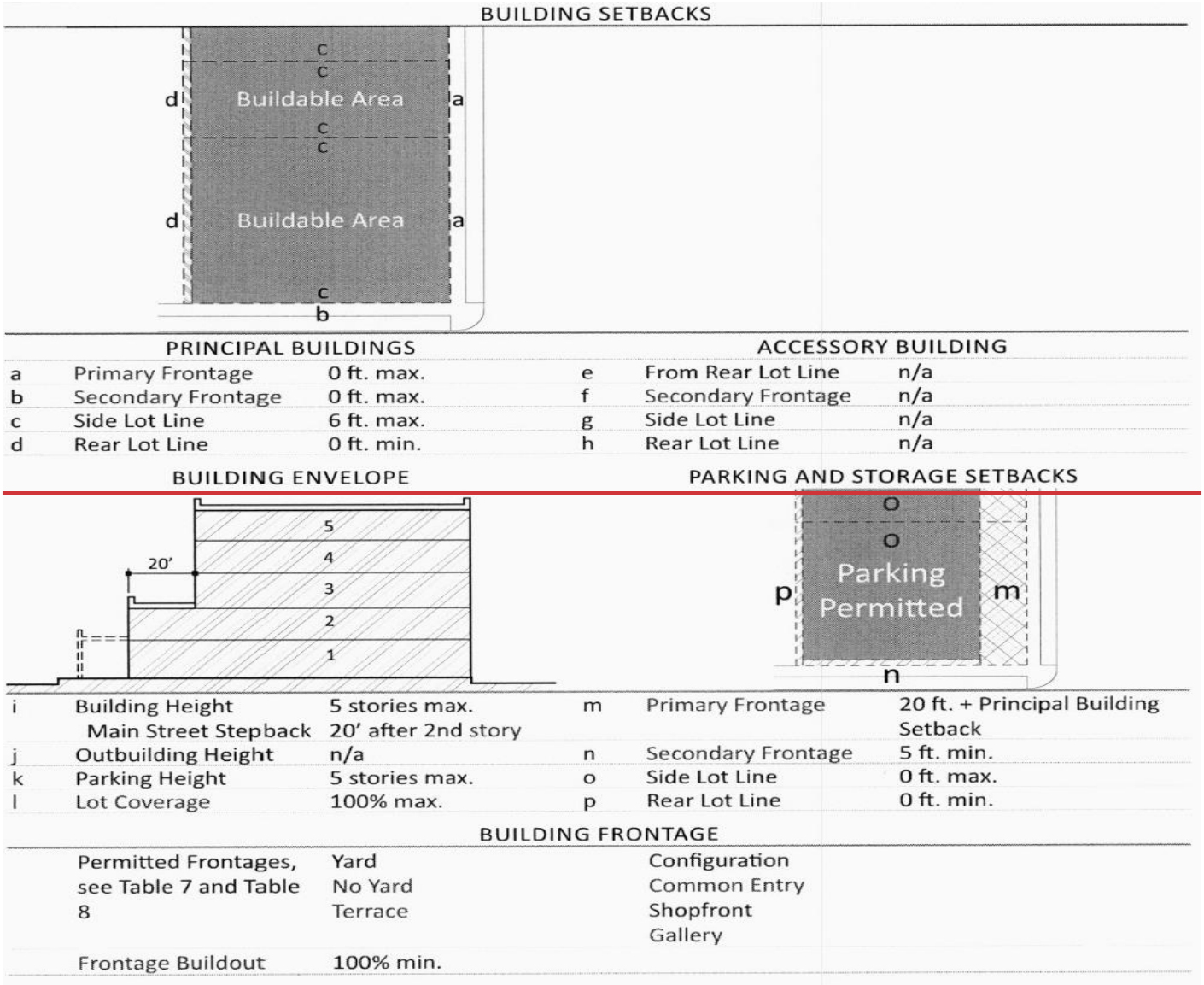


i	Building Height	5 stories max.	m	Primary Frontage	20 ft. + Principal Building Setback
j	Outbuilding Height	n/a	n	Secondary Frontage	5 ft. min.
k	Parking Height	5 stories max.	o	Side Lot Line	0 ft. min.
l	Lot Coverage	100% max.	p	Rear Lot Line	3 ft. min.

BUILDING FRONTAGE

Permitted Frontages, see Table 7 and Table 8	Yard No Yard Terrace Forecourt	Configuration Stoop Common Entry Shopfront Gallery
Frontage Buildout	70% min.	

~~TABLE 6. BUILDING FORM STANDARDS - MS~~



~~H. *Building Specifications: Height.*~~

~~1. Building height is regulated by Table 4—Table 6, measured as follows:~~

~~a. Building height is measured in above ground stories.~~

~~b. Stories are measured from finished floor to finished ceiling.~~

~~c. Stories above the ground floor are limited to 14 feet after which height they are counted as two stories.~~

~~d. For residential uses, a ground floor story of 16 feet or less is counted as one story. Ground floors exceeding 16 feet in height are counted as two stories.~~

~~e. For non-residential and mixed-uses a ground floor story shall be no less than 10 feet in height. A ground floor story of 25 feet or less is counted as one story. Ground floors exceeding 25 feet in height are counted as two stories. Mezzanines extending beyond 33% of the floor area shall be counted as an additional floor.~~

f. Height limits do not apply to unfinished attics, masts, belfries, clock towers, chimney flues, water tanks, or elevator bulkheads.

g. Building stepbacks shall be required in MS pursuant to Table 6.i.

I. *Building Specifications: Frontage Requirements.*

1. Lot lines abutting a right-of-way are designated as a primary frontage or secondary frontage as follows:

a. For lots abutting a right-of-way along a single lot line, the lot line abutting the right-of-way is designated the primary frontage.

b. For lots abutting a right-of-way along multiple lot lines, the lot line relating to the address of the principal building is designated the primary frontage. All remaining lot lines are designed secondary frontages.

c. Main Street is considered the primary frontage for all lots abutting the right-of-way.

2. Regulations pertaining to primary frontages and secondary frontages, collectively frontage requirements, apply to the area of the lot within the front setback and secondary front setback including the following:

a. Building facades;

b. Structures that project from the facade such as porches, terraces, stoops, awnings, canopies, and galleries;

c. Landscape elements and ground surfaces between the building facade and the lot line.

3. Where building facades do not occupy the entire frontage length, a streetscreen is required as follows:

a. Streetscreens must be between 4 and 8 feet in height.

b. Openings in the streetscreen for vehicular access may be no wider than 26 feet.

c. Streetscreens shall provide no less than 70 percent opacity.

4. Frontages are regulated by frontage type according to Table 7, Table 8, and as follows:

a. Landscaping, fencing, and general surface treatment are regulated according to frontage yard type pursuant to Table 7.

b. Encroachments and configurations are regulated according to frontage configuration type pursuant to Table 8.

c. Frontage types are a combination of frontage yard type and frontage configuration type.

d. Where frontage yard types permit multiple frontage configuration types, one or more frontage configuration type may be selected for each facade.

5. Frontage types must be designated at all building frontages and must comply with the standards for that type.

6. A shopfront frontage is required for all ground floor retail uses.

7. Building entries must be provided along frontages as follows:

a. The principal entrance must be located at the primary frontage.

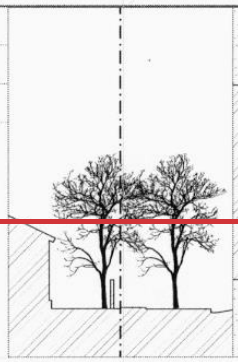
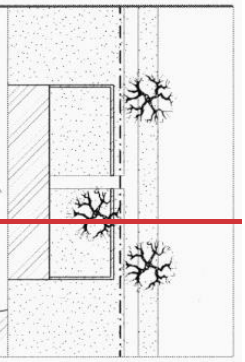
b. All habitable spaces within a building must be accessible from frontages.

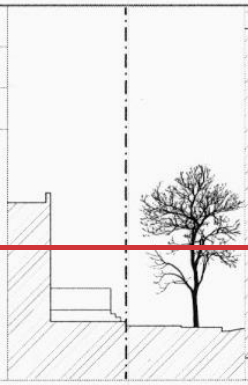
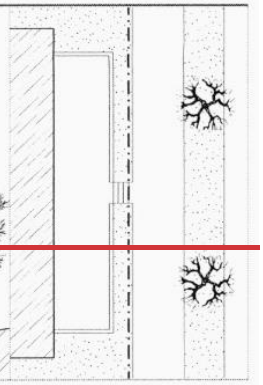
c. Building entries must be provided at primary frontages at a minimum of one entry for every 50 feet of frontage.

d. Building entries must be provided at secondary frontages at a minimum of one entry for every 150 feet of frontage.

8. Loading docks and service areas up to a combined width of 30 feet may be incorporated into secondary frontages no more than 50 feet from the rear lot line.

TABLE 7. FRONTAGE TYPES - YARD

FRONTAGE TYPE REQUIREMENTS	SECTION PRIVATE | PUBLIC	PLAN PRIVATE | PUBLIC
YARD A - WALLED		
District: GU		
Setback Depth: 0 ft. min., 1.5 ft. max.		
Combinations: Porch, Stoop		
Landscape and Fencing Requirements: (a) The front setback must be landscaped. (b) Walls are required within 18 in. of frontage lines. (c) 1 understory tree, or 10 shrubs are required for every 500 sf of landscaped area, or fraction thereof.		
Additional Requirements: (a) Retaining walls are permitted for landscape level changes. (b) Paving is limited to permitted walkways and driveways. (c) 1 walkway per frontage providing access to the primary entrance is permitted up to 48 in. in width. (d) This yard type must be combined with either a porch or stoop frontage.		

FRONTAGE TYPE REQUIREMENTS	SECTION PRIVATE | PUBLIC	PLAN PRIVATE | PUBLIC
YARD B - TERRACE		
District: GU, DT, MS		
Setback Depth: 12 ft. max.		
Combinations: Common Entry, Shopfront, Gallery		
Landscape and Fencing Requirements: (a) The front setback must be landscaped and may be paved in DT and MS. (b) Fencing is permitted at or behind the building setback line. (c) In GU, fencing is permitted at frontage lines.		
Additional Requirements: (a) The frontage setback must be raised between 12 in. and 36 in. (b) Terraces may be no less than 8 feet in depth. (c) Retaining walls are permitted for level changes. (d) If in MS the terrace must be embedded with the building to maintain the zero setback requirement, but shall remain open facing the street. (e) This yard type must be combined with a shopfront or common entry frontage or a combination of both.		

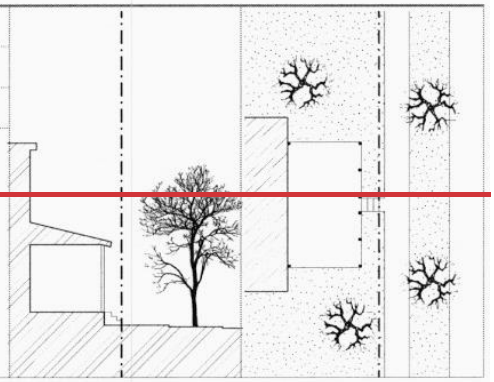
FRONTAGE TYPE REQUIREMENTS		SECTION PRIVATE	SECTION PUBLIC	PLAN PRIVATE	PLAN PUBLIC
YARD C - NO-YARD					
District	GU, DT, MS				
Setback Depth	8 ft. max.				
Combinations	Common Entry, Shopfront, Gallery				
Landscape and Fencing Requirements	(a) The frontage setback must be paved and integrated with the public sidewalk. (b) Raised planters and portable and non-permanent planters are permitted.				
Additional Requirements	(c) The frontage setback must match sidewalk grade. (d) The frontage setback may be used for outdoor seating and mechandise sales and display. The frontage setback may not be used for storage.				

FRONTAGE TYPE REQUIREMENTS		SECTION PRIVATE	SECTION PUBLIC	PLAN PRIVATE	PLAN PUBLIC
YARD D - FORECOURT					
District	DT				
Setback Depth	8 ft. max., excluding forecourt				
Combinations	Shopfront, Common Entry, Gallery				
Landscape and Fencing Requirements	(a) The frontage setback must be paved and integrated with the public sidewalk. (b) Raised planters and portable and non-permanent planters are permitted. (c) Forecourts may be paved or landscaped.				
Additional Requirements	(a) A forecourt shall be located at the primary entrance, and shall be no greater than 600 sf. in area. (b) The forecourt must be bound by facades on a minimum of 2 sides. (c) Facades at the forecourt may exceed maximum frontage setback. (d) The frontage setback must be configured according to Yard E - No-Yard.				

~~TABLE 8. FRONTAGE TYPES - CONFIGURATION~~

FRONTAGE CONFIGURATION REQUIREMENTS	SECTION		PLAN	
	PRIVATE	PUBLIC	PRIVATE	PUBLIC

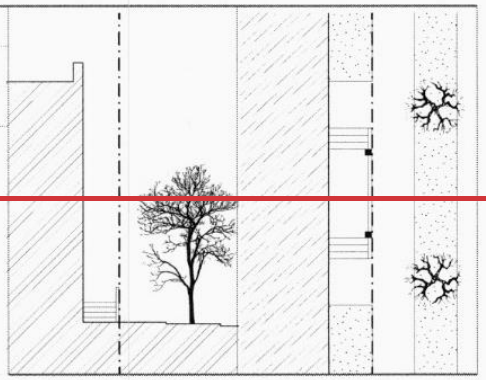
CONFIGURATION A - PORCH



District	GU
Entry Grade	36 in. max.
Combinations	n/a
Setback and Encroachment	(a) Porches and related structures may encroach into frontage setbacks up to 100% of their depth in GU.
Additional Requirements	(a) A porch may only occur at the primary entrance. (b) Porches may be no less than 6 feet in depth.

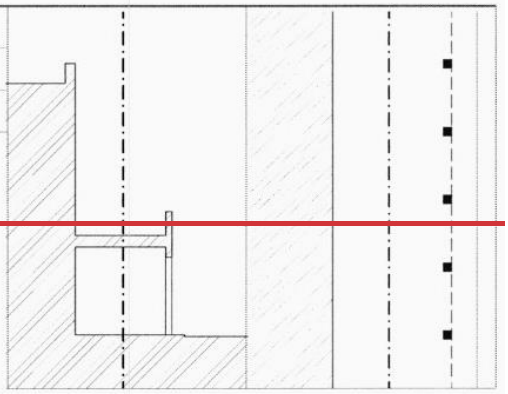
FRONTAGE CONFIGURATION REQUIREMENTS	SECTION		PLAN	
	PRIVATE	PUBLIC	PRIVATE	PUBLIC

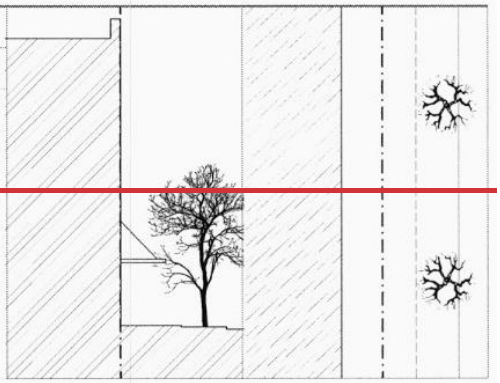
CONFIGURATION B - STOOP



District	GU, DT
Entry Grade	36 in. max.
Combinations	Common Entry
Setback and Encroachment	(a) Stoops and related structures may encroach into frontage setbacks up to 100%. (b) Stoops may be recessed into building facades.
Additional Requirements	(a) A stoop is required at the primary entrance. (b) Stoops may be masonry, stone, stucco, or concrete. (c) Wood is prohibited for stoop railings. (d) Stoop landings may be covered.

FRONTAGE CONFIGURATION REQUIREMENTS	SECTION PRIVATE | PUBLIC	PLAN PRIVATE | PUBLIC
CONFIGURATION C - COMMON ENTRY		
District: DT, MS Entry Grade: 20 in max. Combinations: Shopfront, Stoop		
Setback and Encroachment: (a) Canopies and awnings may encroach into frontage setbacks up to 100% of their depth. (b) Canopies and awnings may encroach into the public pedestrian way up to 10 feet.		
Additional Requirements: (a) A stoop combination is permitted in DT. (b) Canopies are permitted at the primary entrance. (c) Awnings are permitted along facades.		

FRONTAGE CONFIGURATION REQUIREMENTS	SECTION PRIVATE | PUBLIC	PLAN PRIVATE | PUBLIC
CONFIGURATION D- GALLERY		
District: DT, MS Entry Grade: sidewalk grade Combinations: Shopfront, Common Entry		
Setback and Encroachment: (a) Galleries may encroach into frontage setbacks up to 100% of their depth. (b) Galleries may encroach into the public pedestrian way up to 10 feet. (c) Awnings are not permitted in combination with galleries.		
Additional Requirements: (d) Galleries may be no less than 8 feet in depth. (e) Galleries must have a minimum clearance of 10 feet. (f) Galleries must be supported by columns. (g) Galleries must covered by roofing, green roofing, upper terraces, trellises, solar collectors, or fabric.		

FRONTAGE CONFIGURATION REQUIREMENTS	SECTION PRIVATE | PUBLIC — PLAN PRIVATE | PUBLIC
CONFIGURATION E - SHOPFRONT	
District: DT, MS	
Entry Grade: sidewalk grade	
Combinations: Common Entry, Shopfront	
Setback and Encroachment: (a) Display windows may encroach into frontage setbacks up to 5 feet in depth. (b) Awnings may encroach into frontage setbacks up to 100% of their depth. (c) Awnings may encroach into the public pedestrian way up to 10 feet.	
Additional Requirements: (a) Entries may be recessed from the facade up to 5 feet in depth. (b) Tenant spaces must provide shopfronts along no less than 70% of tenant space frontage. (c) Tenant spaces with frontage on both primary and secondary frontages must provide shopfronts along no less than 30% of the secondary frontage.	

~~J. *Building Specifications: Encroachments.*~~

~~1. Encroachments into frontages are permitted as follows:~~

~~a. Encroachments in frontage setback are prohibited except where specifically permitted in this Section, Table 7, and Table 8.~~

~~b. Roof overhangs, cornices, window and door surrounds and other facade decorations may encroach into the front setback up to 2 feet but not beyond the lot line, and may not obscure views from windows to the street or from the street into windows.~~

~~c. Shading devices may encroach into frontage setbacks as follows:~~

~~d. In GU, shading devices attached to facades may encroach up to 6 feet, but not beyond the lot line.~~

~~e. In DT and MS, shading devices may encroach into the front setback up to the lot line, and into the right-of-way up to 10 feet or within 2 feet of the curb.~~

~~f. Balconies may encroach into the frontage setback a maximum of 3 feet, but not beyond the lot line.~~

~~g. Bay and bow windows may encroach into the frontage setbacks up to 3 feet, but not beyond the lot line.~~

~~2. Encroachments into pedestrian passages are permitted as follows:~~

~~a. A minimum of 14 feet in height must be maintained along the entire length of pedestrian passage.~~

~~b. Buildings and structures may encroach over pedestrian passages.~~

~~c. An unobstructed pedestrian path must be maintained a minimum of 5 feet in width and 8 feet in height. The pedestrian path is required to be continuous however it is not required to follow a straight line.~~

d. Signage, bay and bow windows, balconies, lighting fixtures, and display windows may encroach into pedestrian passages.

e. Outdoor seating, outdoor dining, and other non-permanent fixtures may encroach into pedestrian passages.

K. *Building Specifications: Glazing.*

1. Facade glazing at building frontages must meet the minimum area requirements, calculated by glass area for each facade separately, as specified in Table 9. Minimum Facade Glazing.

TABLE 9. MINIMUM FACADE GLAZING

MEASUREMENT	GU	DT
Ground Floor	15%	30%
Second Floor	10%	20%
Upper Floors	n/a	20%

2. Mirrored and reflective glass is prohibited.

3. Shopfront frontages must meet the following glazing requirements:

a. Shopfronts must provide clear glazed areas for visibility into tenant spaces for no less than 60 percent of the shopfront area.

i. Facade area is calculated as the height from finished floor to finished ceiling times the width of the tenant space.

b. Shopfront glazing requirements are calculated separately for each tenant space.

4. Signs and posters shall cover no more than 30 percent of the total glazing area.

L. *MS Architectural Standards.* This sub-section supersedes the zoning district standards for any subject addressed in the MS zoning district.

1. *Building Width:*

a. New buildings facing Main Street shall not exceed the average building width on their block except as follows:

i. Buildings may be a maximum of 150 feet wide if the facade is designed to simulate the average width of buildings on the block.

2. *Facade Standards:*

a. Glazing at the second story shall not exceed 30% of the second story building facade wall area.

b. Mechanical equipment shall be screened from the street view.

3. *Sidewalk Coverings:*

a. When awnings, canopies or galleries are used, they shall be designed and installed in compliance with building codes.

b. Sidewalk coverings shall not obscure architectural details of designated historic building facades.

4. *Signs:*

a. Signs shall not obscure other building elements such as windows, cornices or architectural details.

b. Individual business signs in a single storefront shall relate to each other in design, size and placement on the building and lettering style.

c. Externally illuminated signs shall contain light within the sign frame and shall not spill light over to other portions of the building.

M. *Fencing.*

1. Hedges in frontage fences shall be evergreen.

2. Wood frontage fences shall be painted or stained.

3. Lot line fences shall be between 60 and 72 inches in height.

4. Frontage fences shall not exceed 48 inches in height nor violate the clear sight triangle.

5. Frontage fences may occur at the lot line, or up to 18 inches behind the lot line to permit landscaping.

6. When erected on a lot line, all of the fence and any of its supporting structures shall be contained within the lot.

7. The supporting members and posts shall be on the inside, and the smooth or flat faces on the outside. If two faces are used, each face shall be of the same type and finish. Board on board fences is considered equal treatment.

8. Chain link, barbed wire, razor wire, and electrically charged fences are not permitted.

N. *Signs.* The general intent of regulating signs that are visible from the public frontage is to ensure proper dimensioning and placement with respect to existing or planned architectural features, to maintain or improve public safety, to maintain or improve the aesthetic character of the context in which they are located (See Table 10). Signage provides legible information for pedestrians as well as drivers.

Except with respect to the additional provisions in this section, Chapter 36, Signs shall be applicable and govern pursuant to the administration, processes and provisions for all signage within the City Limits of the City of Las Cruces. However, only the signage types permitted in this subsection and Table 10. General Sign Restrictions hereof shall be permitted in the Downtown. Unless specifically defined in Sec. E. Definitions, all definitions used in this Section shall be as defined in Sec. 36-3 of Chapter 36, Signs.

1. *Prohibited Signs.*

a. Moving, flashing, or animated signs including but not limited to searchlights, streamers and spinners;

b. Inflatable signs, such as but not limited to balloons, gas inflated signs or similar inflated signs;

c. Portable signs, except for sidewalk signs as allowed in Table 10;

d. Flags, other than those specifically allowed in Chapter 36, Signs;

e. Outdoor image projections (signs projected from an external light source onto a building or structure) or any other similar devices.

2. *Permitted Signs and Sign Restrictions.*

a. Permitted sign types are limited by Transect district and the following restrictions according to Table 10. General Sign Restrictions:

i. The number of signs per sign type;

ii. The area of signs;

iii. Height of sign copy.

b. Additional sign restrictions apply per sign type according to Table 11. Specific Sign Regulations.

c. A permit is required for the installation or modification of all signs as specified in Table 11 as Permit.

i. Signs projecting into rights-of-way require a revocable permit.

ii. Signs not requiring a permit must meet all of the requirements of this section.

iii. Signs requiring building inspector approval must be designed by a structural engineer.

d. Signs may be installed and maintained for the period of time specified according to Table 10 as Period.

i. All signs must be removed within 14 days of the termination of the permitted period. Signs permitted for a permanent period are not regulated by this subsection.

ii. Where the period of a sign is limited to during business hours, the sign must be removed during all hours the establishment is not in operation.

iii. Any moveable signs must be removed from outdoor spaces during high winds or other weather conditions that might pose a hazard to public safety.

e. All signs must provide the following clearance except where specified otherwise:

i. 8 feet at pedestrian ways;

ii. 13.5 feet at vehicular ways.

f. Illuminated signs are permitted as follows:

i. Signs may be illuminated by a light source external to the sign;

ii. Internally illuminated signs are permitted at shopfront frontages.

g. Changeable copy is permitted for display cases, suspended, kiosk, ground, and sidewalk signs, and at community and regional parks. Change of copy does not require a permit.

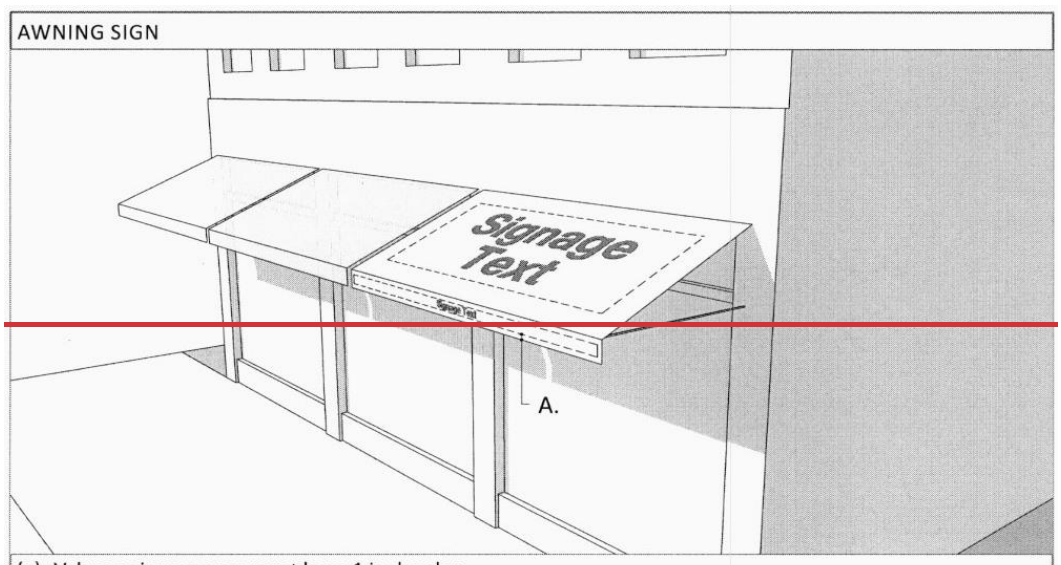
TABLE 10. GENERAL SIGN RESTRICTIONS

SIGN TYPE	MS	DT	PERMIT	PERIOD	NUMBER	MAX. SIZE	MAX. COPY HEIGHT
Awning	•	•	S	O	1 sloping plane, plus 1 valence per awning	75% of sloping plane; 75% area of awning valence	16 in. on sloping plane; 8 in. on valence
Banner		•	n/a	O	1 per frontage	48 sf.	n/a
Canopy		•	S	P	1 per canopy	2 sf per linear foot of shopfront	36 in. max.

Corner		•	S	P	1 per building	24 in. wide	n/a
Display Case		•	S	P	1 per business	6 sf.	n/a
Ground			S	P	1 per frontage	36 sf.	n/a
Kiosk		•	S	P	n/a	24 sf.	18 in.
Marquee		•	S	P	1 per entry	n/a	n/a
Projecting	•	•	S	P	1 per tenant	6 sf.	8 in.
Sidewalk	•	•	n/a	B	1 per tenant	8 sf.	n/a
Suspended	•	•	S	P	1 per entry	6 sf.	n/a
Wall Sign		•	S	O	1 per frontage	3 sf. per 1 linear ft. up to 90% of the width of tenant space	18 in.
Wall Mural Sign		•	S	P	1 per frontage	3 sf. per 1 linear ft. up to 90% of the width of tenant space	n/a
Window	•	•	S	O	1 per window	25% of glazed area	12 in.
Window: Neon		•	n/a	O	n/a	25% of glazed area	n/a
Permit	n/a	not required		Period	n/a	not required	
	S	standard			P	permanent	
					O	period of occupation	
					B	during business hours	

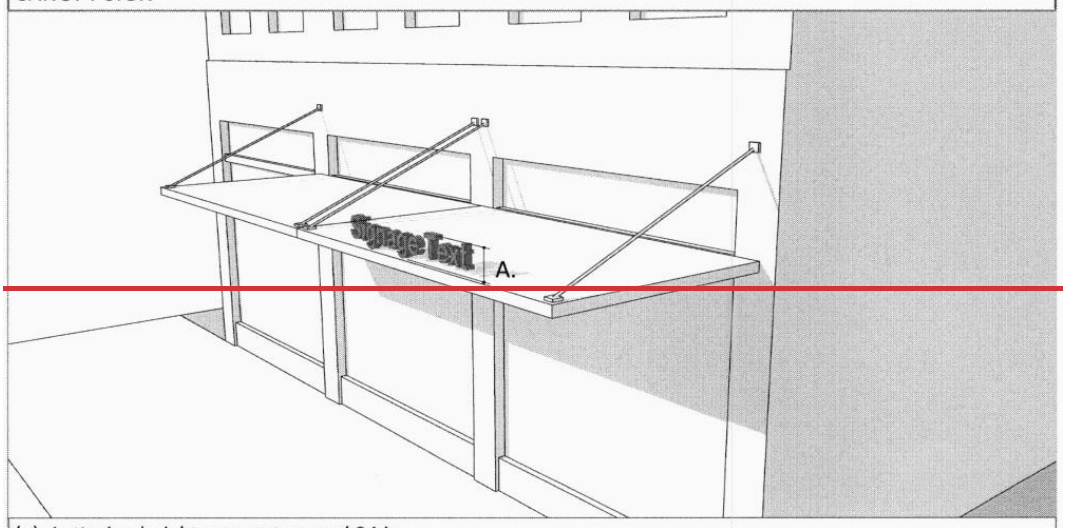
TABLE 11. SPECIFIC SIGN REGULATIONS

AWNING SIGN



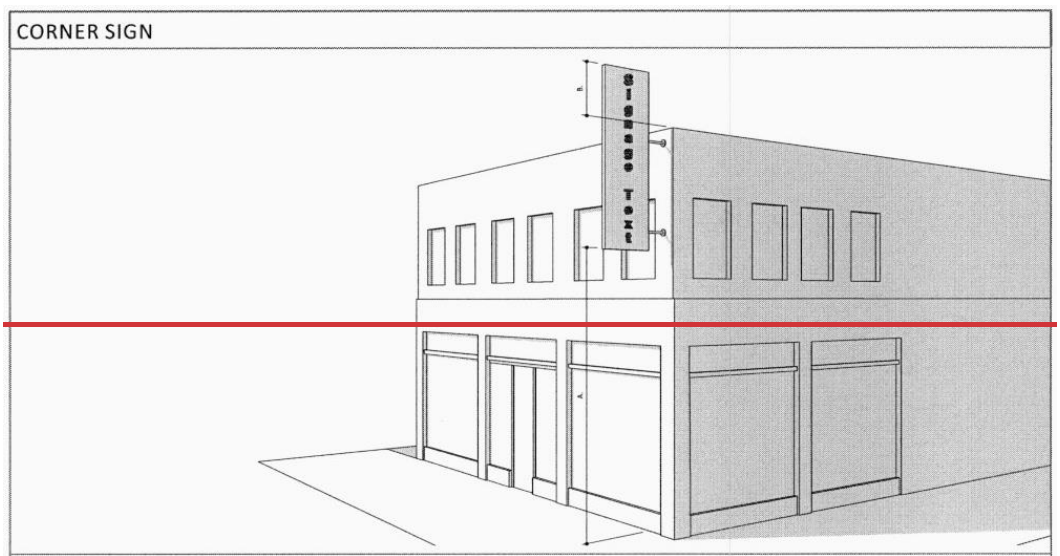
(a) Valence signage area must have 1 in. border.
(b) Valence signage area and panel signage area may not exceed 75% of total valence or panel area. They shall be calculated individually.

CANOPY SIGN



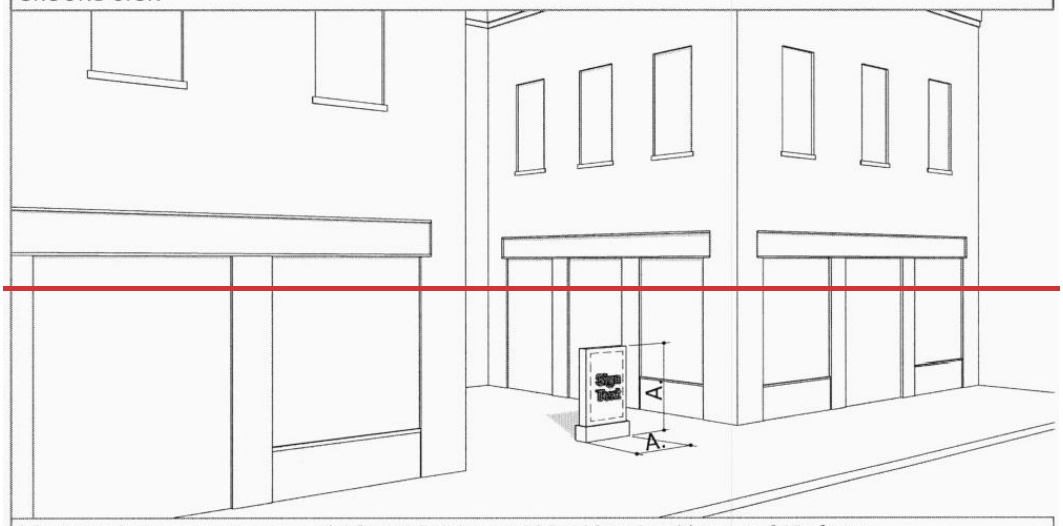
(a) Lettering height may not exceed 24 in.
(b) Canopy signs may be externally illuminated or neon. Fixtures must be shielded to prevent glare. Conduit, raceways, and wiring may not be exposed to view from the sidewalk.

CORNER SIGN



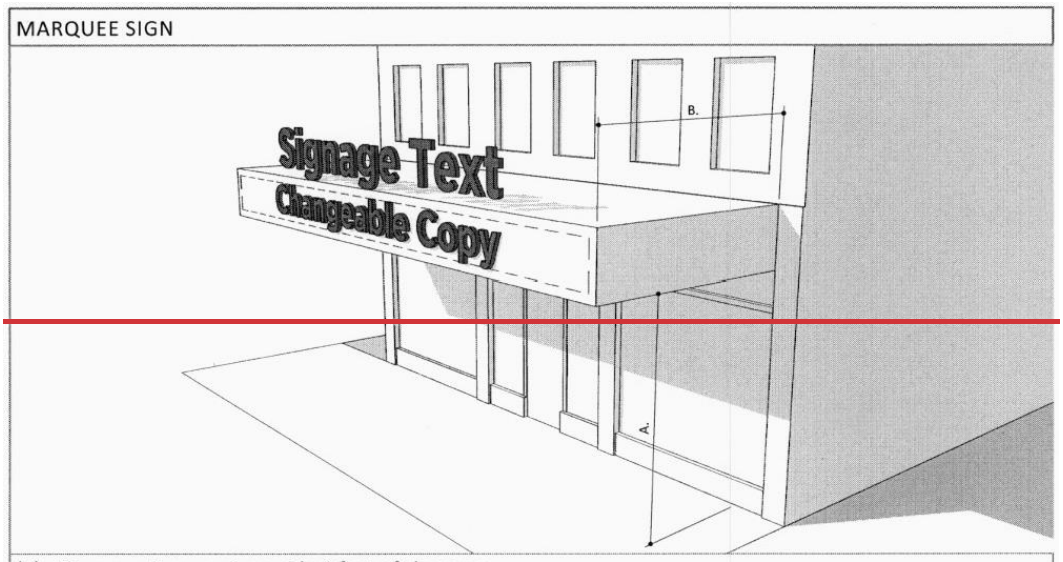
(a) Corner signs must provide 10 feet of clearance.
(b) Corner signs may extend up to 6 feet above parapets.
(c) Corner signs may be located only at the corner of a building with both primary and secondary frontages.

GROUND SIGN



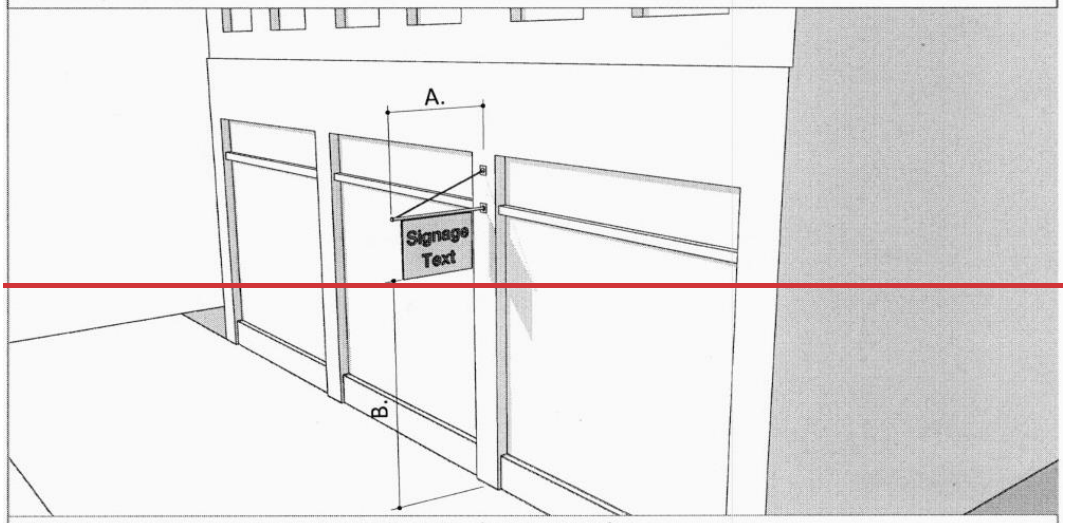
(a) Ground signs must not exceed 6 feet in height or width with a signable area of 12 sf max.
(b) One ground sign per frontage is permitted and may be double-sided.
(c) Ground signs must be constructed of durable materials.

MARQUEE SIGN



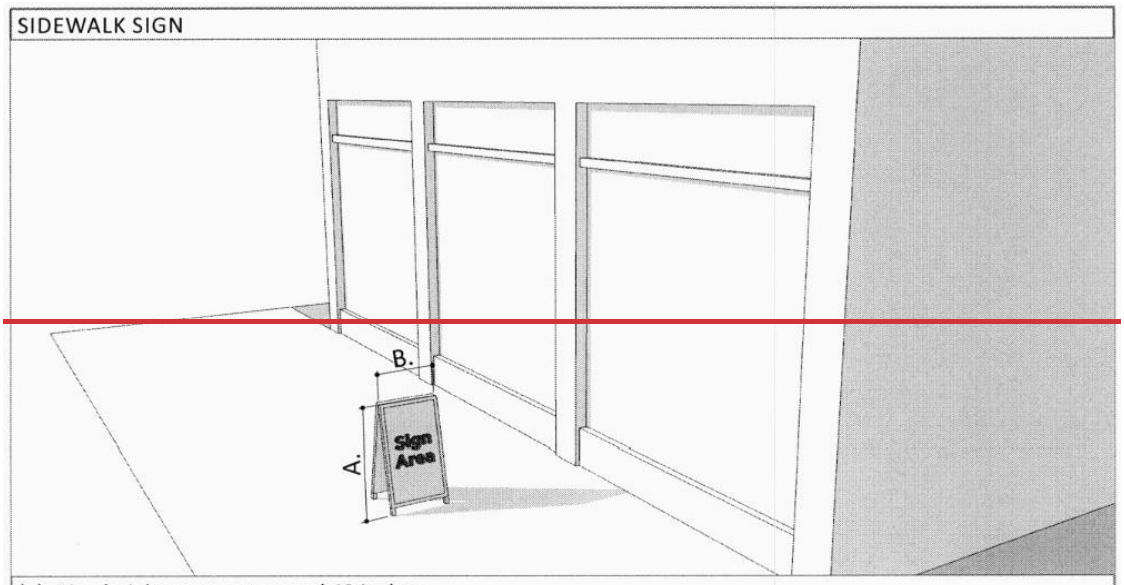
(a) Marquee signs must provide 8 feet of clearance.
(b) Marquee signs may project to within 2 feet of the curb.
(c) Marquee signs may be combined with a canopy sign or a projecting sign.

PROJECTING SIGN



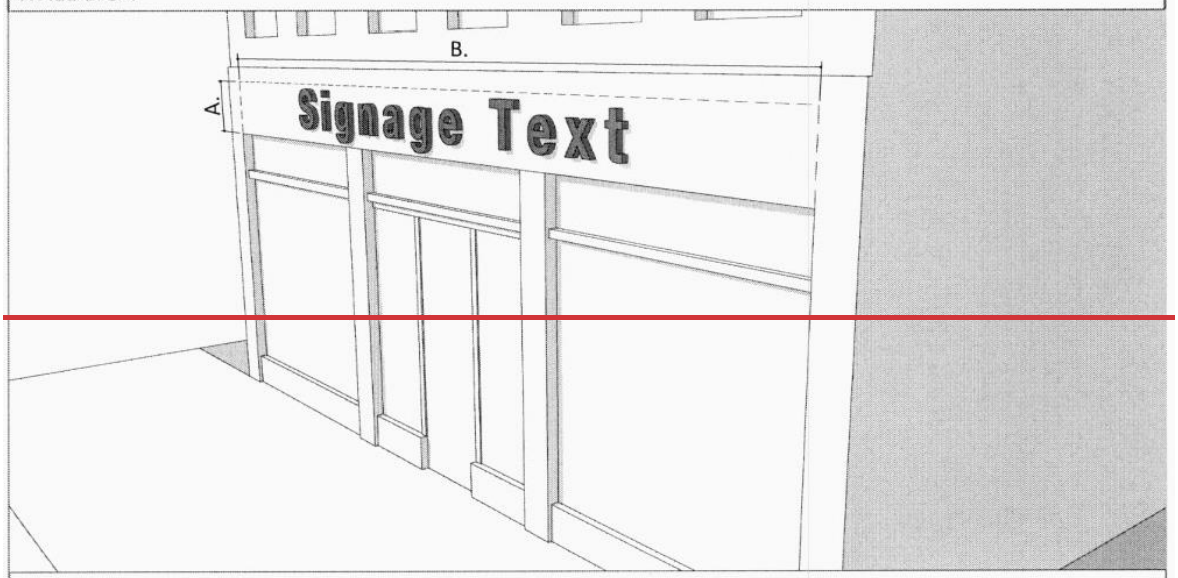
(a) Projecting signs may encroach into the right-of-way up to 3 feet.
(b) Projecting signs must provide 8 feet of clearance.
(c) Projecting signs may be double-sided.

SIDEWALK SIGN

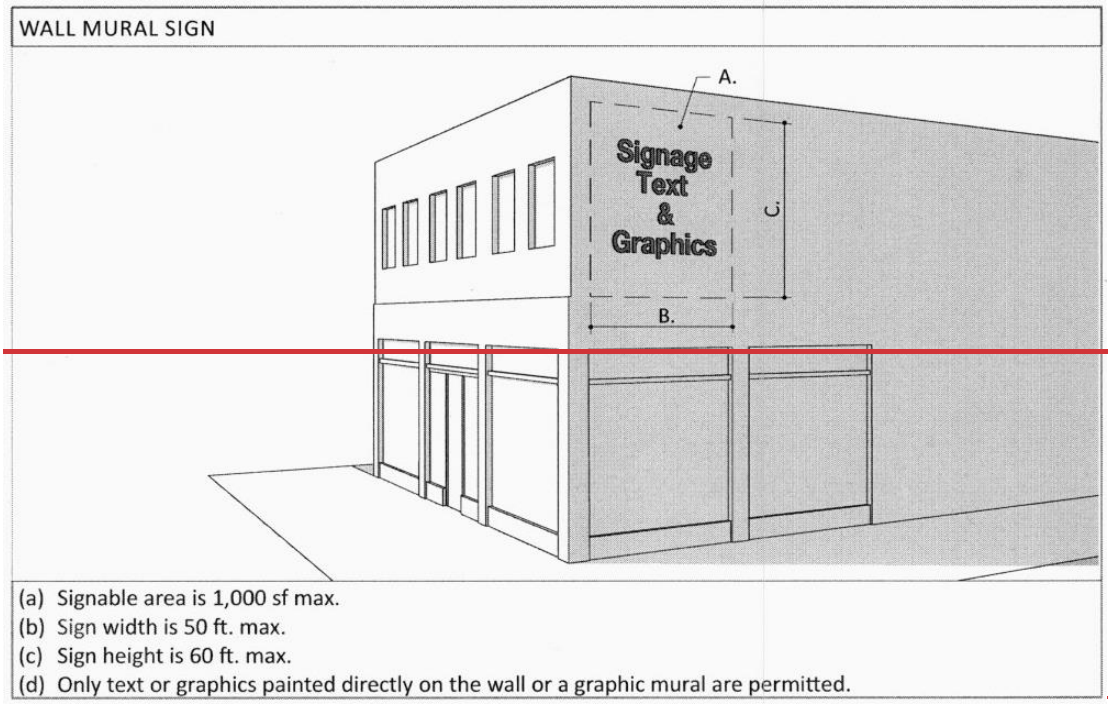


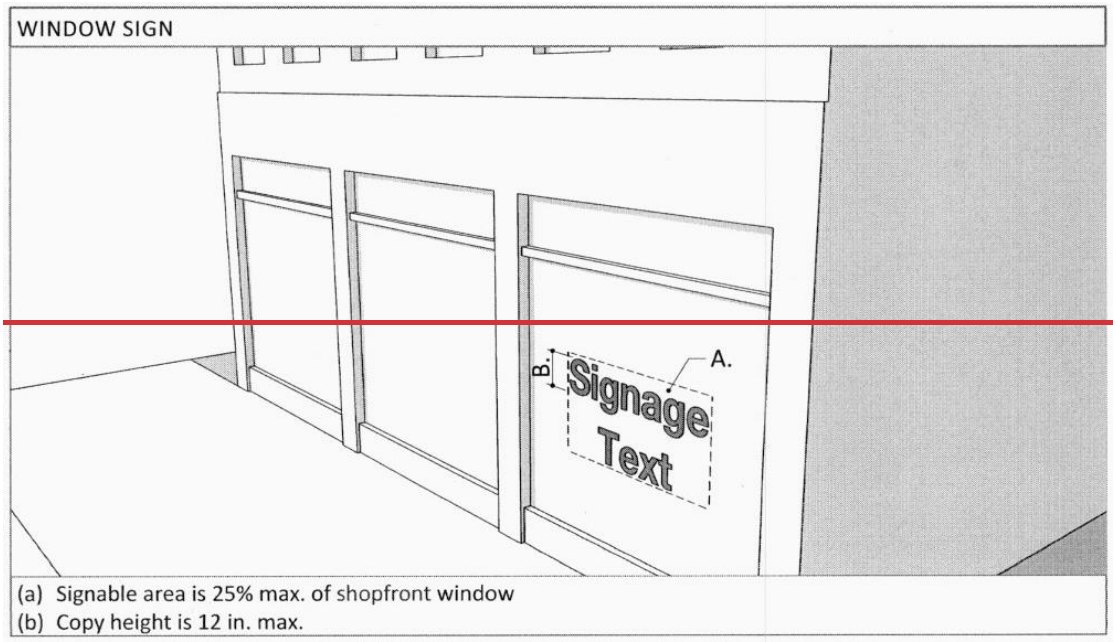
(a) Sign height may not exceed 42 inches
(b) Sign width may not exceed 26 inches.

WALL SIGN



(a) Sign height may not exceed 36 in.
(b) Sign width may be 90% of storefront width.
(c) Wall signs may be externally illuminated or neon. Fixtures must be shielded to prevent glare.





~~O. *Uses.*~~

~~1. Lot and building use is allowed according to Table 12. Allowed Uses by use category and subcategory.~~

~~2. Multiple uses within a single lot or building are permitted in all districts.~~

~~3. Accessory uses are permitted as follows:~~

~~a. Accessory dwellings in GU are limited to housing related to the principal dwelling, rental housing and home office uses, not exceeding 600 square feet per story.~~

b. Home occupations are permitted subject to obtaining a use permit in accordance with the provisions of Sec. 38-52.

4. Manufacturing uses, other than cottage industries, are not permitted Downtown.

5. Conditional Uses are permitted pursuant to Sec. 38-53.

TABLE 12. ALLOWED USES

USE CATEGORY	GU	DT	MS	CONDITIONS
RESIDENTIAL				
Single or Two-family Dwelling	A	NP	NP	
Family Child Care Home (1-5 occupants)	C	C	C	See Section 38-52D; Section 38-53; and Section 38-54
Accessory Dwelling Unit	A	A	A	
Multi-family Dwelling	A	A	A	
Group Home (up to 16 occupants)	C	C	C	See Section 38-52D; Section 38-53; and Section 38-54
LODGING				
Lodging in Accessory Dwelling Unit	A	A	A	
Bed and Breakfast (up to 6 rooms)	A	NP	NP	
Inn (up to 12 rooms)	A	A	A	
Hotel	NP	A	A	
OFFICE				
Accessory Office	A	A	A	
Live-work Unit	A	A	A	
Office	C	A	A	Building area available for office use is limited to the first story.
Outpatient Clinic	NP	A	A	
Laboratory	NP	C	C	Medical, dental, or similar uses. Permitted only when entirely contained within an office building and used strictly for the purpose of serving the occupants of the office complex. There shall be no advertising signs or other visible displays indicating the use from the exterior of the building.
RETAIL				
Open Market Space	A	A	A	

Retail	C	A	A	Building area available for retail use is limited to the first story.
Push Cart	A	A	A	
Kiosk	NP	A	A	
Gasoline Sales	C	C	NP	Permitted only when vehicle repair activities are not associate with the use.
Restaurant or Other Dining Establishment	C	A	A	Seating shall not exceed 40.
Outdoor Cooking	A	A	A	
Outdoor Dining	A	A	A	
Tavern or Bar	C	A	A	Seating shall not exceed 40.
Nightclub	NP	A	A	
INSTITUTIONAL				
Live Theater or Movie Theater	NP	A	A	
Broadcasting Studios	NP	A	NP	
Gallery	C	A	A	Building area available for gallery use is limited to the first story.
Museum	C	A	A	Building area available for museum use is limited to the first story.
Libraries	A	A	A	
Legislative and Court Chambers	NP	A	A	
Conference Center	NP	A	A	
Terminal Waiting Areas	NP	A	A	
Funeral Homes	NP	A	NP	
Participatory Assembly	A	A	A	
Nursing Home with Medical Care	C	C	C	Must be located on a collector or higher designated roadway.
Classroom for Participatory Assembly Uses	A	A	A	
Child Classrooms & Daycare	A	A	A	
Accessory Daycare (fewer than 6 children)	A	A	A	
School, K-12	A	A	A	
School, college or university	A	A	A	

School, commercial, trade or technical	C	A	A	Located on a minor arterial or higher designated roadway.
AGRICULTURAL				
Animal (Pet) Care Facility	NP	A	A	
Animal (Pet) Day Care Facility	NP	A	A	
Chickens	C	NP	NP	Roosters are not permitted.
Garden Supply or Greenhouse	A	NP	NP	

(A) Approved by Right (C) Conditional (NP) Not Permitted

P. *Parking.*

1. Off-street Parking Location and Access.

   a. Off-street parking shall be provided in accordance with achieving the downtown master plan goals and policies and supporting the development proposal.

   b. Additional off-street parking is not required in the downtown transects. Unless otherwise specified, off-street parking design shall comply with Sec. 38-58 of Chapter 38, Zoning as well as any state and federal regulations.

   c. When provided, parking may not be located within 30 feet of the primary frontage line and 20 feet of secondary frontage lines.

   d. Parking areas shall have well-delineated pedestrian access routes to the most direct entrance of the building they serve.

   e. Parking may be fulfilled in the following locations:

      i. Parking spaces provided within the lot

      ii. Parking spaces provided along a parking lane (on-street) corresponding to lot frontages.

      iii. Parking spaces leased from a private or public parking facility within 500 feet of the lot.

      iv. Parking spaces managed by an established parking district.

2. Parking lots and structures visible from frontages require one of the following screening methods or a combination of methods:

   a. Liner buildings, optional at parking lots and required at parking structures. The ground floor frontages of parking structures shall be screened with liner buildings with the exception of ingress and egress points.

   b. A masonry wall no less than 4 feet in height.

   c. An evergreen hedge, or other landscape element to screen the view of parking, no less than 4 feet in height.

3. Driveways providing access to off-street parking are limited to 24 feet (2-way) in width in DT or MS and 10 feet (1-way) in width in GU.

4. Vehicular access to off-street parking is restricted as follows:

   a. Lots with rear alley access must provide vehicular access from a rear alley.

b. One curb-cut is permitted for each secondary frontage. Curb cuts shall comply with Chapter 32, Design Standards.

c. Where secondary frontages are not available, one curb-cut is permitted at the primary frontage for lots with a minimum width of 80 feet.

5. Pedestrian access to off-street parking must be provided from frontages, according to the following:

a. A minimum of one ADA-compliant walkway must be provided between each lot frontage and off-street parking areas.

b. Pedestrian access walkways must be a minimum of 6 feet in width in DT.

6. Shared Vehicular Parking Options.

a. The number of spaces provided may be reduced according to Table 13, completed as follows:

i. For each use, enter the minimum required spaces as specified in Table 13, into the first column.

ii. For each time of day, multiply the required spaces per use by the occupancy rate, and enter the sum of the resulting column in the bottom row.

iii. The resulting reduced minimum required parking spaces is the highest value entered in the bottom row.

TABLE 13. SHARED PARKING

USES	REQ#	M—F 8AM—6PM	M—F 6PM—12AM	M—F 12AM—8AM	SAT & SUN 8AM—6PM	SAT & SUN 6PM—12AM	SAT & SUN 12AM—8AM
Residential		60%	100%	100%	80%	100%	100%
Office		70%	100%	100%	70%	100%	100%
Lodging		100%	20%	5%	5%	5%	5%
Retail		90%	80%	5%	100%	70%	5%
Restaurant		70%	100%	100%	70%	100%	100%
Theater		40%	80%	10%	80%	100%	10%
Entertainment		40%	100%	10%	80%	100%	50%
Conference		100%	100%	5%	100%	100%	5%
Civic		100%	20%	5%	10%	10%	5%
Civic Religious		20%	20%	5%	100%	50%	5%
Total Required							

Q. *Landscaping.*

1. The spacing and placement of plants shall be adequate and appropriate for the typical size, shape and habit of the plant species at maturity.

2. Landscape quantities shall be determined by Article IV, Development Standards for Landscaping of Chapter 32, Design Standards.

3. Proposed trees and understory trees shall be centered horizontally and minimally:

a. Three (3) feet from walkways, curbing and other impervious pavements;

b. Five (5) feet from street lights, underground utilities, utility meters and service lines, fences, walls and other ground level obstructions;

c. Six (6) feet from porch eaves, and awnings and similar overhead obstructions associated with the ground level of buildings;

d. Eight (8) feet from balconies, verandas, building eaves and cornices, and similar overhead obstructions associated with the upper stories of buildings.

4. Ground vegetation with spines, thorns or needles that may present hazards to pedestrians, bicyclists or vehicles are prohibited within two (2) feet of the sidewalk or street.

5. Bare and exposed ground shall be covered with live plant materials and/or mulch, including gravel mulch.

6. Artificial plants or artificial turf are prohibited.

7. Specific to DT and MS.

a. Landscape islands in interior parking lots shall only occur at the end of drive aisles. Islands should be the minimum size for healthy growth for the specific species of tree.

b. Porous paving materials and other green infrastructure methods may be used in order to increase storm water infiltration on site.

8. Any tree species and cultivar applicable for planting in the Downtown Las Cruces microclimate may be considered for planting within Downtown public squares, plazas, and private parcels, with the exception of those identified in Table 14. Prohibited Plants.

TABLE 14. PROHIBITED PLANTS

BOTANICAL NAME	COMMON NAME
Pennisetum setaceum	Crimson fountaingrass
Tamarix spp.	Saltcedar
x Chitalpa	Chitalpa
Elaeagnus angustifolia	Russian olive
Brassica tournefortii	Sahara mustard
Peganum harmala	African rue
Arundo donax	Giant cane
Saccharum ravennae	Ravennagrass
Ulmus pumila	Siberian elm
Ailanthus altissima	Tree of heaven

R. *Streetscape.* The primary use of thoroughfares is to provide access to private lots and public civic spaces. In accordance with the intent of this Section, streetscape improvements shall be designed to support several modes of transportation: public transportation, motor vehicles, and non-motorized vehicles such as bicycles and pedestrians.

1. Alley easements include one (1) bi-directional vehicular lane, within a total width alley of not less than 20 feet. The entire right-of-way should be paved and remain with clear access.

2. At the time of, and within, new or infill development trees shall be planted at an average spacing of no less than 40 feet on center within the front setback of the parcel being developed unless the front setback is less than 8 feet pursuant to Table 15. Public Frontage Type.

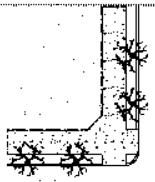
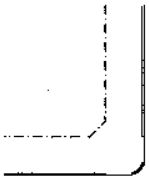
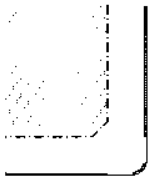
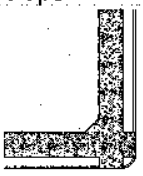
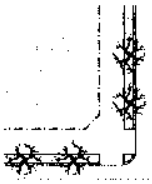
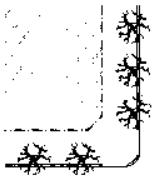
3. Streetscape improvements may be made pursuant to Table 15.

   a. At commercial frontages the spacing of trees may be irregular to avoid visually obscuring shopfronts.

   b. At gallery frontages, public planting is not required and public lighting may be provided within the gallery.

   c. Tree spacing may be adjusted up to 20 percent by administrative waiver to accommodate specific site conditions.

TABLE 15. PUBLIC FRONTAGE TYPE

PUBLIC FRONTAGE TYPE	A	B
i. Assembly: The principal variables are the type and dimension of curbs, walkways, planters and landscape.		
Total Width	10-20 feet	16-20 feet
ii. Curbing: The detailing of the edge of the vehicular way, incorporating drainage.		
Type	Raised Curb	Raised Curb
Cuts	Ramp at 1:12 slope	Ramp at 1:12 slope
iii. Walkway: The portion of the thoroughfare dedicated exclusively to pedestrian activity		
Type	Sidewalk	Sidewalk
Width	10 - 15 feet	12 - 16 feet
iv. Planter: The portion of the thoroughfare accommodating street trees and other landscape.		
Arrangement	Opportunistic	Opportunistic
Planter Type	Continuous	Tree Well
Planter Width	5 feet	4 feet x 9 feet

5. *Sidewalk displays on public property.*

1. *Sidewalk display* means the outdoor display of merchandise for sale to the public during regular business hours by any person, persons or organization when such merchandise is displayed on a portion of, or entirely on a public sidewalk or public place not designed for vehicular traffic.

   a. All agents, employees or representatives conducting a sidewalk display on Main Street between the roundabout and Bowman in downtown Las Cruces, shall comply with the following provisions:

      (i) All sidewalk displays shall only be conducted during regular business hours;

      (ii) All displays shall be installed and removed by the business or property owner daily;

      (iii) No booths, tables or display merchandise shall obstruct ADA access, vehicular traffic, business entrances, or designated fire access points;

      (iv) Sidewalk displays shall be limited to 100 square feet in total size;

      (v) Sidewalk displays shall only be conducted immediately in front of the permanent business located immediately adjacent to Main Street;

      (vi) No person shall leave merchandise, booths, tables or cases on the site of the display after the conclusion of regular business hours.

      (vii) No person shall display merchandise of a type that is not originally sold by the permanent business located immediately adjacent to Main Street

      (viii) Sidewalk displays shall not include vending machines, food or beverage, outdoor lighting, or provide entertainment.

      (ix) All debris and trash created by the sidewalk displays shall be immediately cleaned from the public property.

      (x) No sidewalk displays shall be allowed after the entity with which it is associated is not open to the public.

      (xi) No permanent structure may be affixed to the sidewalk or any building. The business or property owner shall be responsible for any damage caused to the sidewalk or public property by the display;

      (xii) The business or property owner assumes all risks with setting up a sidewalk display and shall not hold the city responsible for any accidents or loss in the installation, removal, or operation of the displays.

(Ord. No. 2783, § I(Exh. A), 6-6-16; Ord. No. 2815, § I(Exh. A), 6-19-17)

Editor's note(s)—Ord. No. 2783, § I(Exh. A), adopted June 6, 2016, repealed and reenacted section 38-43 in its entirety to read as herein set out. Formerly, section 38-43 pertained to the CBD—Central business district and Main Street Plaza overlay zone, and derived from Ord. No. 2354, § I, adopted January 22, 2007; Ord. No. 2502, § I, adopted January 26, 2009; Ord. No. 2701, § I(Exh. A), adopted December 16, 2013, and Ord. No. 2702, § I(Exh. A), adopted December 16, 2013.

Sec. 38-44. UD—University District Overlay.

A. *Intent and purpose.* The University District Overlay intends to allow greater flexibility to developers and land owners while encouraging the development of a vibrant, mixed-use University District. The purpose of this document is to implement transportation, land use and urban design policies as established in the University District plan. Specifically, the purpose of this overlay is to stipulate provisions which will:

1. Promote a pedestrian-oriented urban form in the University District. The focus on form promotes buildings that conform to tested urban design principles, and that adapt to changing conditions over time.

2. Establish an area with a rich mix of uses: Commercial, cultural resources, residential and transportation choices.

3. Maximize connectivity and access in a multimodal circulation network in which residents, workers, and visitors may conveniently walk, drive, bike, or ride public transportation to destinations within and outside of the district.

4. Support existing University District businesses.

5. Promote sustainable development that minimizes negative impacts on natural resources. A walkable, mixed-use, higher density University District supports sustainable development by providing an alternative to low-density development in peripheral areas. University District's buildings, transportation systems and public spaces should be designed to minimize negative impacts on air and water quality and promote innovation in environmental design.

6. Create a seamless destination where the City of Las Cruces and New Mexico State University meet.

B. *Applicability.*

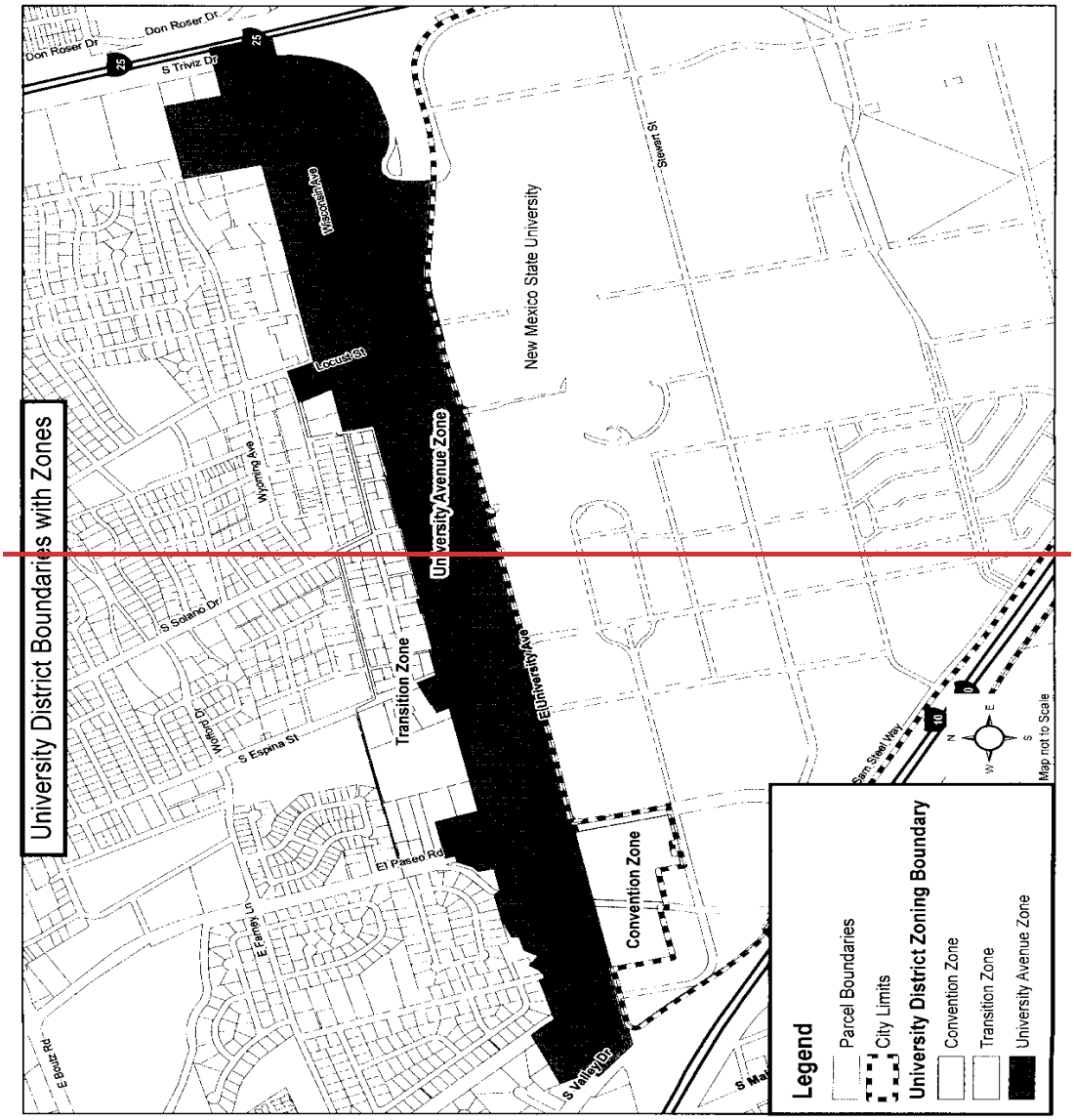
1. *Introduction.* This overlay applies to all properties that have been rezoned within the University District overlay zone. It shall be used to regulate the design of new streets, new buildings, and new public spaces.

2. *Terms.* The provisions of this overlay are activated by "shall" when required; "should" when recommended; and "may" when optional. Technical terms used throughout this Code may be defined in Subsection F. Definitions. Those terms not defined in article 6 shall be accorded their commonly accepted meanings. In the event of conflicts between these definitions and the provisions herein stated, the Community Development Director shall have the authority pursuant to Subsection 38-4 B. to determine which will be imposed.

C. *Diagrams and illustrations.* Diagrams and illustrations are an integral part of this overlay and are used to help explain standards and guidelines. The diagrams and illustrations are for illustrative purposes only. When in conflict, written text shall take precedence over diagrams and illustrations.

D. *Delineation of overlay district.*

1. The University District Overlay applies to all properties within the boundaries noted on the associated map. Please refer to Figure 1.



~~Figure 1: University District Overlay~~

~~2. Within the boundary of this overlay, three distinct zones shall be established: University Avenue Zone (UD-UAZ), Transition Zone (UD-TZ), and Convention Zone (UD-CZ). The locations of these zones are on the associated map.~~

~~E. *The vision for the zones.*~~

~~1. *University Avenue Zone (UD-UAZ):* The UD-UAZ is assigned to land appropriate for an urban neighborhood center with a mix of building types and uses. These lands are generally occupied by attached residential houses, apartment buildings, and commercial or mixed-use buildings. Civic and religious use buildings may also be present. Lands may also be used for playgrounds, squares, and plazas. Two- to five-story buildings are encouraged. Block sizes are limited to create a walkable and well-connected network of streets. Streets are designed to encourage pedestrian activity by generally~~

including on-street parking, curbs and gutters, parkways with street trees, and wide sidewalks. University Avenue shall be the primary frontage for properties on University Avenue.

2. *Transition Zone (UD-TZ):* The UD-TZ is assigned to land appropriate for neighborhoods with a mix of building types and uses. These lands are generally occupied by detached and attached residential houses, small apartment buildings, and small commercial or mixed-use buildings. Civic and religious use buildings may also be present. Lands may also be used for playgrounds, passive and active neighborhood parks and squares. The buildings may be one- to three-stories high with shallow front setbacks and small or no side and rear yards. Block sizes are limited to create a walkable and well connected network of streets. Streets are designed to encourage pedestrian activity by generally including on-street parking, curbs and gutters, parkways with street trees, and wide sidewalks.

3. *Convention Zone (UD-CZ):* The UD-CZ is assigned to land suitable for development that, by its intrinsic size, function, or configuration, may not conform to the descriptions and standards for one of the other zones. The development types include convention and exhibition hall, hotel, and ancillary uses such as restaurant and specialty retail.

F. *Definitions.* Definitions are in addition to those noted in chapter 38, section 38-20 of the 2001 Las Cruces Zoning Code, as amended unless otherwise noted here:

Brew-pub: A brew-pub is a microbrewery which serves food or is combined with a pub. A microbrewery, or craft brewery, is a brewery which produces a limited amount of beer. The maximum amount of beer a brewery may produce and still be classed as a microbrewery in New Mexico is less than or equal to 200,000 barrels a year, according to the New Mexico Alcohol and Gaming Division.

Callecita or *lane:* Combines the space for a car with the space for the pedestrian. See also, the Las Cruces Downtown Revitalization Final Schematic Design and Concept Report, adopted August 2005.

Dwelling, above ground floor: Dwelling unit(s) located above ground floor office or commercial uses.

Front facade: A term that is equivalent to "primary front" in the Las Cruces Municipal Code. It is the elevation with the main entrance to a building that faces a public street. In the UAZ, the primary or front facade faces University Avenue.

Green roof: As defined by the U.S. Environmental Protection Agency, green roofs, also known as rooftop gardens, are planted over existing roof structures, and consist of a waterproof, root-safe membrane that is covered by a drainage system, lightweight growing medium, and plants. Green roofs reduce rooftop and building temperatures, filter pollution, lessen pressure on sewer systems, and reduce the heat island effect.

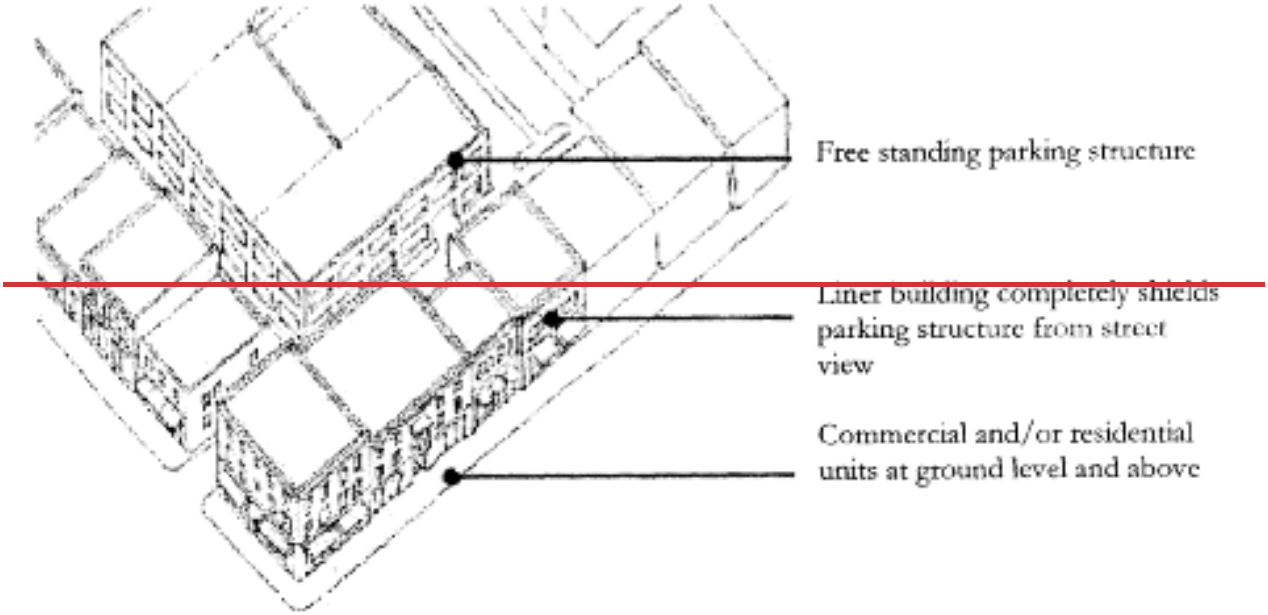
Guest dwelling: A dwelling to be used for temporary occupancy only and is not to be rented or leased. A guest dwelling shall be no more than 50 percent of the main dwelling's heated/cooled square footage and shall not contain a kitchen. (See also chapter 38-53 of the 2001 Las Cruces Zoning Code, as amended.)

Live/work unit: A building that may be used flexibly for living and working in the same building. A variety of uses in the buildings is encouraged. Dwelling units may be located above the ground floor, attached to the rear of a shop front, or detached and located in the rear or side yard. Work is of a commercial nature subject to business registration requirements and not a home occupation.

Mixed-use: For the purposes of this overlay, the term refers to the practice of allowing more than one type of land use category (For example, residential, office or commercial, etc.) in a single building or set of buildings located on a single parcel.

Outdoor plaza or space: A generally open area that may be used for active or passive purposes by one or more businesses and the public visiting the location. An example may include an outdoor seating area for a cafe or restaurant serving as an extension of one or more business, a landscaped plaza serving as open space for patrons and visitors alike, etc.

Parking garage with and without liner building: A combination of structures for parking and a mix of uses (commercial, residential, office) where parking is designed to be concealed from view and levels of parking are at-grade, above grade, or partially below grade (but not fully underground). A liner building is a specialized building that may be built as part of the parking structure or separate; it is parallel to the street and designed to conceal a parking structure from the street with active ground floor uses such as retail shops or residential stoops. A parking garage may be designed without a liner building provided that it is designed in such a way so as to incorporate active ground floor uses, architectural features and articulated elements to mitigate blank walls and screen parking.



Pedestrian scale lighting: Lighting that shall be a maximum of 16 feet in height and shall contribute to the overall character of the surrounding community, site architecture or other site features.

Performing arts center: A multi-use performance space that is intended for use by various types of the performing arts, including dance, music and theatre.

Secondary residence: A dwelling unit that is subordinate in size and location to the main dwelling on a single property, and may be rented or leased as an independent dwelling unit. A secondary residence is different from a guest dwelling or accessory structure in that it is a distinct dwelling unit containing a kitchen. Examples include an apartment or cottage.

Single use: For the purposes of this overlay, the term refers to either one or multiple component parts of a single land use category such as residential, office or commercial. Multiple office related businesses on a single parcel or tract shall be considered a single use. For the purpose of this overlay there shall be a limit to a concentration of single land uses in favor of a mix of uses.

G. *Permitted uses.*

1. *General provisions.*

a) Mixed-use development is permitted throughout the University District. Mixed-use is defined as the practice of allowing more than one type of use, including residential, in a building or set of buildings.

b) The University District Overlay is not within the Infill Overlay District; however, specific provisions of the Infill Overlay that pertain to the University District Overlay shall include streamline review, subdivision processing and waiver of permit and application fees as applicable. Use of these provisions shall be allowed regardless of a parcel's status (vacant, underutilized, etc.)

c) There shall be no development or alteration of the lands, uses, or structures within this overlay except as provided for by this section of the 2001 Las Cruces Zoning Code, as amended from the date of its enactment and other sections of the 2001 Las Cruces Zoning Code, as amended and other codes where applicable. For example, under no circumstances shall development violate the city's traffic standards for maintaining clear sight triangle (chapter 32, article VI, section 32-405).

d) Commercial (retail and service) and office drive-thru windows/drive-up windows are discouraged in the University District. Drive-through uses do not support a pedestrian-oriented environment and are inconsistent with the goals for the University District. Although drive-through facilities are discouraged, the following standards shall apply to facilities approval by the UD-CDRC.

i. *Windows and stacking lanes.* Drive-through windows and stacking lanes shall not be located within the front yard setback or along facades that face a street. Drive-through windows shall be located to the rear of buildings.

ii. *Circulation.* The design and location of the facility shall not impede vehicular traffic flow and shall not impede pedestrian movement and safety. Shared driveways and/or driveways located off of non-arterial streets should be used, where possible.

iii. *Screening.* Architectural elements, landscaping, and/or other screening elements shall be used to minimize the visual impacts of the drive-through facility.

e) Developments having frontage on University Avenue greater than 400 linear feet shall be mixed-use.

f) Land uses that do not appear on this list shall be reviewed by the Community Development Director or designee and a determination will be made as to whether said use is consistent and/or congruous with others listed or whether or not it requires a special use permit by its intended omission.

2. *University Avenue Zone (UD-UAZ), Transition Zone (UD-TZ) and Convention Zone (UD-CZ).* Please refer to Table 1 for uses that are allowed (A), conditional (C) and not permitted (NP). Please refer to section 38-33 in the 2001 Las Cruces Zoning Code, as amended, for the number of auto parking stalls required per land use.

Table 1: Permitted Uses

A = Approved by Right, **C** = Conditions apply to more than one zone unless otherwise noted, **NP** = Not Permitted

	UD-UAZ	UD-TZ	UD-CZ	CONDITIONS	BICYCLE PARKING
AGRICULTURE & EQUESTRIAN USES					
Veterinary Facility	A	C	NP	Close 10 PM	1 BPS/20 employees on maximum shift
INDUSTRIAL LAND USES					

~~Light Manufacturing *(Cabinetry and Woodworking; Cottage Industry Retail or Service, Jewelry, Silverware & Plated Ware; Musical Instrument Fabrication/Manufacture; Printing and Publishing; Signs & Advertising) Fabrication/Manufacture*~~	~~C~~	~~C~~	~~NP~~	~~NEW: Light manufacturing uses permitted shall be an accessory use to a retail business in the UD. A maximum of 49 percent (same as CBD) of the square footage of the buildings may be used for light manufacturing uses. The use shall meet all requirements for the district including the intent and purpose.~~ ~~CONDITIONS:~~ ~~1. No activity producing noise, glare or heat observable or measurable outside the building is allowed.~~ ~~2. No emission of objectionable dust, fumes, odors, vapors, gases, smoke or other forms of air pollution shall be permitted.~~ ~~3. No vibration shall be permitted which is discernible beyond the property lines to the human sense of feeling for three minutes or more duration in any one hour of a day.~~ ~~4. No outside storage.~~	~~1 BPS/20 employees on maximum shift~~
~~Communication/Vertical Structures~~	~~C~~	~~C~~	~~C~~	~~See Section 38-59 and Section 38-54~~	
~~Face Mount (attached to primary use)~~	~~C~~	~~C~~	~~C~~	~~See Section 38-59 and Section 38-54~~	~~na~~
~~Laboratories (Medical/Dental/R & D)~~	~~NP~~	~~NP~~	~~NP~~		
~~Manufacturing, General~~	~~NP~~	~~NP~~	~~NP~~		
~~Ministorage Units~~	~~NP~~	~~NP~~	~~NP~~		
~~Parking Lots (Private or Public)~~	~~NP~~	~~NP~~	~~NP~~		

Parking Garage with Liner Building, Commercial or Public	A	C	A	CONDITIONS: Not to exceed maximum height (45 feet).	
Storage/Display of Merchandise for Sale (exc. Manufactured buildings, mobile homes & operable cars, trucks, motorcycles & RVs)	NP	NP	NP		
Storage outside of buildings of materials, equipment and supplies not for sale	NP	NP	NP		
Storage, warehousing accessory to Office, Retail, Service or Industry	NP	NP	NP		
Recycling Centers	NP	NP	NP		
Water Purification, Commercial	NP	NP	NP		
Wholesale Trade, any product	NP	NP	NP		
INSTITUTIONAL RELATED USES					
Child Care or Preschool (13 or more children)	C	C	NP	See Section 38-52D; Section 38-53; and Section 38-54	1 BPS/7000 GFA
Community Buildings - Uses (includes Community Recreation Facility, etc.)	A	C	C	See Section 38-53 and individual listings in this table (Museum, etc.)	1 BPS/5000 GFA
Convention Center/Exhibition Hall	NP	NP	A		1 BPS/75 Maximum occupancy
Family Child Care Home (5-6 children)	C	C	NP	See Section 38-52D; Section 38-53; and Section 38-54	1 BPS/7000 GFA
Group Child Care Home (7-12 children)	C	C	NP	See Section 38-52D; Section 38-53; and Section 38-54	1 BPS/7000 GFA
Institutional Office (i.e., Convention & Visitors Bureau, etc)	A	A	C	Accessory to Convention Center/Exhibition Hall	1 BPS/8000 GFA
Religious Institution w/Columbarium	C	C	NP	See Section 38-53	1 BPS/40 seats in primary assembly
Library/Museum	A	C	A	Building and site design requires pedestrian	1 BPS/1000 GFA

				orientation and compliance with Building and Site Standards in UD Overlay [b) Placement of Primary Building; d) Frontage Elements, Primary Building]	
Performing Arts Center	A	C	A	Close 10 PM	1 BPS/50 Maximum occupancy
School (K-8) Public, Private, Parochial	C	C	NP	See Section 38-53	6 BPS/classroom
School (9-12) Public, Private, Parochial	C	C	NP	See Section 38-53	4 BPS/classroom
School, College or University	C	C	C	See Section 38-53	1 BPS/20 Employees + 1 BPS/4 Students
School, Commercial, Trade or Technical	C	C	C	See Section 38-53	1 BPS/20 Employees + 1 BPS/4 Students
OFFICE & COMMERCIAL LAND USES					
Adult Amusement Establishment	NP	NP	NP		
Adult Bookstore/Video Store	NP	NP	NP		
Art or Photography Studio	A	A	NP		1 BPS/8000 GFA
Auto/Truck/Trailer Rental	NP	NP	C	Auto rental only when accessory use to Hotel, Convention Center, Exhibition Hall. Not to exceed 10 parked cars.	1 BPS/6000 GFA
Cab Stand	NP	NP	NP		
Eating & Drinking Establishments *(Bar, Pub, Tavern (Dancing & No Dancing); Cafe, Cafeteria, Coffee Shop, Convenience Store; Deli with eating facilities; Restaurant, etc.; Brew Pub)*	A	A	C	New use category that contains both uses in current zoning code and a new one for Brew-Pub.) CONDITIONS: Ancillary to primary Hotel use, Convention Center, & Exhibition Hall.	1 BPS/1000 GFA
Equipment (Large) Repair & Service (Non-Vehicular)	NP	NP	NP		

Equipment Rental	C	C	NP	Outside storage prohibited.	1 BPS/20 employees
Gas Station with Convenience Store	C	NP	NP	Prohibit mid-block locations and at intersections on University Avenue between Turrentine Drive and Locust Street. Repair facilities prohibited.	1 BPS/2000 GFA
General Commercial & Retail *(Bicycle Sales, Service & Repair; Building Material (no outdoor sales or storage); Carpet/Window Treatments; Clothing Store; Department Store; Furniture Store; Garden Supply; Grocery Store; Hardware Store w/out outdoor sales or storage; Specialty Store such as books, music, toys, etc.; Pawn Shop; Plant Nursery; Small Item Repair Shop; Telephone & Communication Center; Upholstery Shop, no outdoor storage; Variety Store; Video Tape/DVD/Rental/Sales; and other typical small-scale Commercial establishments)*	A	A	C	Ancillary to primary Hotel or Convention Center use.	1 BPS/2000 GFA
General Office & Service *(Accounting, Auditing & Bookkeeping; Architectural, Engineering, Planning & Surveying; Bank, Bonding & Financial Institution (No Drive-Thru); Barber/Beauty/Hair Salon & Related Personal Care; Cleaning & Maid Services; Consulting Services;*	A	C	C	TZ: Close 10 PM. CZ: Ancillary to primary Hotel or Convention Center use.	1 BPS/8000 GFA. Medical Office add 1 BPS/2 Doctors

~~*Counseling Services; Credit Reporting & Collection; Desktop Publishing & Graphic Design; Funeral Home; Health Care Clinic (non-hospital); Insurance; Laboratory; Legal Services; Lessons (Art, Dance, Music, etc.); Mailing & Records Management Services; Medical/Dental Office; Motion Picture Production; Pharmacy; Radio/TV Studio/Station; Real Estate; Research Organization, Noncommercial; Tax Preparation; Telemarketing/Mail Order/Call Center; and other similar Business Offices.)*~~					
~~Health Care Clinic (Non-Hospital)~~	~~A~~	~~C~~	~~NP~~	~~Close 10 PM, location on Collector or higher.~~	~~1 BPS/10000 GFA~~
~~Hospital~~	~~NP~~	~~NP~~	~~NP~~		
~~Hotel/Motel~~	~~A~~	~~NP~~	~~A~~		~~1 BPS/20 employees on maximum shift. For additional onsite uses (offices, meeting rooms, ...) see req'ts in Section 38-33F.~~
~~Kennel/Cattery, Commercial~~	~~NP~~	~~NP~~	~~NP~~		
~~Newspaper Distribution~~	~~NP~~	~~NP~~	~~NP~~		
~~Petroleum/Propane Sales~~	~~C~~	~~C~~	~~NP~~	~~Ancillary to retail use.~~	~~na~~
~~Private Club or Lodge~~	~~A~~	~~C~~	~~NP~~	~~Close 10 PM~~	~~1 BPS/2000 GFA~~
~~Temporary (Non-seasonal)~~	~~C~~	~~C~~	~~C~~	~~See section 38-50~~	~~1 BPS/2000 GFA~~

Theater, Movie (Commercial)	A	C	NP	Building and site design requires pedestrian orientation and compliance with Building and Site Standards in UDOverlay [b) Placement of Primary Building; d) Frontage Elements of the Primary Building].	1 BPS/60 seats
Mobile Home, Auto, Motorcycle & Manufactured Home Sales, Service & Repair *(Auto Body Shop; Auto/Truck Parts Store; Auto/Truck Repair & Service; Auto/Truck Wash/Wax/Detailing; Self-Service/Automated or Full Service; Auto/Truck/Motorcycle Dealers; Truck/Trailer Rental (separated Auto Rental conditioned in CZ as an accessory to hotel use); Automobile, Truck and Camper Sales, Service and Repair); Tire Sales/Repair*	NP	NP	NP		
RECREATIONAL USES					
Arcade/Game Room	A	C	NP	Hours of operation: Close 10 PM	1 BPS/1000 sq.ft. GFA
Billiard/Pool hall	A	C	C	TZ: Hours of operation: Close 10 PM; CZ: Ancillary to primary hotel use and subject to NMSU lease agreement.	1 BPS/4000 sq.ft. GFA
Golf Course, Miniature	A	C	NP	Hours of operation: Close 10PM	1 BPS/6 tees + 1/1500 sq.ft. GFA
Health/Exercise Club/Gymnasium/Sports Instruction	A	A	C	Ancillary to primary hotel use.	1 BPS/1500 sq.ft. GFA
Park	A	A	NP		per Director

Recreational Court, Tennis, etc., Public/Private	A	A	NP*		1 BPS/5 courts
Swimming Pool, Commercial or Public/Private	C	C	C	UAZ + TZ: if the pool is part of a MU development & meets the conditions of the code for placement, utilities, walls & fences, stormwater retention. CZ: When ancillary to primary hotel use. See Section 38-51, 38-53, 38-33E.	1 BPS/1250 sq.ft. of pool surface
Botanical Park	C	C	NP	Building and site design requires pedestrian orientation and compliance with Building and Site Standards in UD Overlay [b) Placement of Primary Building and d) Frontage Elements of Primary Building]	2 BPS/acre
Apartments (including Condominiums)	C	C	NP	Achieve minimum density: 10 DU/ac in TZ and 15 DU/ac in UAZ	1 BPS/4 DU
Assisted Living or Retirement Facility	C	C	NP	Building and site design requires pedestrian orientation and compliance with Building and Site Standards in UD Overlay (B: Placement of Primary Building; F: Frontage Elements (Primary Building)	1 BPS/20 Employees on maximum shift
Bed and Breakfast	C	C	NP	UAZ: Maximum 15 rooms; TZ: maximum 8 rooms. Consistent with design guidelines in this overlay.	1 BPS/4 rooms our code does not req bike racks
Boarding House	A	A	A		1 BPS/4 rooms
Detached Site Built Single Family DU	C	C	NP	Achieve minimum density: 15 DU/ac in UAZ, 10 DU/ac in TZ	na
Duplex (including Condominiums)	C	C	NP	Achieve minimum density: 15 DU/ac in UAZ, 10 DU/ac in TZ	1 BPS/Unit our code no BPS
Dwelling, Live-Work	C	C	NP	Dwelling unit is attached to the rear of a shop front or	2 BPS/Unit

				~~detached and located in the rear or side yard or located above the ground floor and that work is of a commercial nature subject to business registration requirements and not a home occupation.~~	
~~Dwelling, Located Above Ground Floor~~	~~C~~	~~C~~	~~NP~~	~~Achieve minimum density: 15 DU/ac UAZ and 10 DU/ac TZ.~~	~~1 BPS/Unit~~
~~Fraternity/Sorority House~~	~~A~~	~~A~~	~~NP~~		~~1 BPS/2 Bdrms~~
~~Guest Dwelling~~	~~C~~	~~C~~	~~NP~~	~~See Section 38.53~~	~~1 BPS/Unit~~
~~Halfway House~~	~~A~~	~~A~~	~~NP~~		~~1 BPS/4 Bdrms~~
~~Home for Disabled~~	~~A~~	~~C~~	~~NP~~	~~See Section 38-21. Ten or fewer persons served allowed in TZ. More than 10 persons served, allowed in UAZ only.~~	~~1 BPS/20 Employees on maximum shift~~
~~Manufactured Dwelling Unit~~	~~C~~	~~C~~	~~NP~~	~~Achieve minimum density: 15 DU/ac in UAZ, 10 DU/ac in TZ~~	~~na~~
~~Nursing Home~~	~~C~~	~~C~~	~~NP~~	~~Building and site design requires pedestrian orientation and compliance with Building and Site Standards in UD Overlay [b) Placement of Primary Building and d) Frontage Elements of Primary Building].~~	~~1 BPS/80 Beds~~
~~Patio Home~~	~~C~~	~~C~~	~~NP~~	~~Sec. 38-62 Setback Exceptions, Achieve minimum density: 15 DU/ac in UAZ, 10 DO/ac in TZ~~	~~1 BPS/Unit our code no BPS~~
~~Quadplex (including Condominiums)~~	~~C~~	~~C~~	~~NP~~	~~Achieve minimum density: 15 DU/ac in UAZ, 10 DU/ac in TZ~~	~~1 BPS/4 DU~~
~~Secondary Residences~~	~~C~~	~~C~~	~~NP~~	~~Achieve minimum density: 15 DU/ac in UAZ, 10 DU/ac in TZ.~~	~~1 BPS/Unit~~
~~Townhouse (Attached Single Family DU)~~	~~C~~	~~C~~	~~NP~~	~~Achieve minimum density: 15 DU/ac in UAZ, 10 DU/ac in TZ~~	~~1 BPS/Unit~~

Triplex (including Condos)	C	C	NP	Achieve minimum density: 15 DU/ac in UAZ, 10 DU/ac in TZ	1 BPS/Unit
Youth Hostel	A	A	NP		1 BPS/10 Beds
RESIDENTIAL RELATED USES					
Accessory Dwelling Unit	A	A	NP		na
Accessory Uses & Structures	C	C	NP	Section 38-51	na
Greenhouse (Non-commercial), Garden Shed, Tool Shed	C	C	NP	Section 38-51 (Accessory Uses and Structures)	na
Home Occupation	C	C	NP	Section 38-52 (Home Occupation Business Registration)	na
Kennel/Cattery (Private Residential)	C	C	NP	In accordance with Chapter 7 of the 2001 Las Cruces Zoning Code, as amended.	na
Storage of recreational vehicles and motor vehicle appurtenances	C	C	NP	See Section 38-58D.6 and Section 38-57C	na

H. *Property alteration, remodel or renovation.*

1. *Purpose.* Property alterations, remodels or renovation standards are established for this district to maintain consistent quality standards for all development and may be for the purpose of adaptive re-use of the structure. For the purposes of this section, exterior remodel, renovation, or alteration shall be defined as: Any change or rearrangement in the supporting members of an existing building, such as bearing walls, columns, beams, girders, as well as any change in rooflines, or any enlargement to or diminution of a building or structure, whether horizontally or vertically. Normal maintenance activities as verified by the city's building official or designee are exempt from this provision.

2. *Minor modifications.* Changes to a property may be made without requiring compliance with the University District Overlay Urban Design Standards (architecture, landscaping, signage, and utilities). The expansion and/or modification must comply with the urban design standards of the University District Overlay unless through the determination of the Community Development Director or designee, said compliance would substantially create an undue burden to the property owner or create a condition whereby the expansion and compliance measure, partially applied, would be substantially out of character with the existing development. In no case shall a minor modification/expansion equal or exceed a cumulative total of 15 percent of the gross floor area, nor shall an expansion or modification equal or exceed a cumulative total of $25,000.00 in valuation. A proposal equal to or exceeding these values or one that impacts parking and landscaping shall not be considered as a minor addition and/or modification. It shall, therefore, be subject to normal review and consideration afforded development in the overlay and may be subject to nonconforming provisions that follow. The applicant must provide estimates for the cost of labor as a means of ensuring compliance with the valuation criteria.

a) Once permission to proceed has been granted by the Community Development Director or designee, the applicant may apply for the permit. Work shall not commence until permit approval is granted.

b) Should an applicant or aggrieved party not agree with the interpretation by the planning director or designee, the interpretation may be appealed to the University District Citizens Design Review Committee for their recommendation to the Planning and Zoning Commission. All other nonconforming use requirements are subject to article XII (Nonconforming Use Provisions) of the 2001 Las Cruces Zoning Code, as amended, and the city's design standards.

I. *Nonconforming uses.* Nonconforming uses within the University District Overlay shall be subject to the following provisions.

1. *Permitted uses—Nonconforming.*

a) When nonconforming site/urban design features regarding access from the right-of-way or lighting are involved, these features shall be brought into compliance with current standards when:

i. The property remains vacant for a period of one continuous year or greater; or

ii. Any one-time or cumulative increase of 15 percent or greater to the gross square footage of building area occurs; or

iii. Any interior/exterior remodel, renovation, or alteration occurs to the building in the amount of $25,000.00 or greater; or

iv. A change in use occurs on the property which results in the alteration of the use intensity (for example, low volume retail to high volume retail), use orientation (for example, service to retail), or density (for example, eight dwelling units to 15 dwelling units) or change in occupancy type from the building code perspective.

b) When nonconforming site/urban design features regarding signage, landscaping, walls or parking are involved, these features shall be brought into compliance with current standards when:

i. The property remains vacant for a period of one continuous year or greater; or

ii. Any one-time or cumulative increase of 50 percent or greater to the gross square footage of building area occurs; or

iii. Any interior/exterior remodel, renovation, or alteration occurs to the building in the amount of $75,000.00 or greater; or

iv. A change in use occurs on the property which results in the alteration of the use intensity (for example, low volume retail to high volume retail), use orientation (for example, service to retail), or density (for example, eight dwelling units to 15 dwelling units) or change in occupancy type from the building code perspective.

c) When nonconforming site/urban design features regarding architecture/building elements associated with window fenestrations/glazing requirements are involved, these features shall be brought into compliance with current standards when:

i. The property remains vacant for a period of one continuous year or greater; or

ii. Any one-time or cumulative increase greater than 75 percent or greater to the gross square footage of building area occurs; or

iii. Any interior/exterior remodel, renovation, or alteration occurs to the building in the amount of $200,000.00 or greater; or

iv. A change in use occurs on the property which results in the alteration of the use intensity (for example, low volume retail to high volume retail), use orientation (for example, service

to retail), or density (for example, eight dwelling units to 15 dwelling units) or change in occupancy type from the building code perspective.

2. *Prohibited uses—Nonconforming.*

a) Uses that existed within the overlay prior to plan/ordinance adoption (2010) that are deemed a prohibited use may be allowed to continue to exist and expand or enlarge (either one-time or cumulative increase) provided that:

i. The property has not remained vacant for a period of one continuous year or greater; or

ii. A change in use has not occurred on the property which results in the alteration of the use intensity (for example, low volume retail to high volume retail), or use orientation (for example, service to retail).

b) If the above two criteria are confirmed not to have existed, the use may:

i. Increase or expand in area (lot or building) not more than 50 percent in gross square footage of lot or building area; and

ii. Any noncompliant site/urban design standards existing shall be brought into compliance with overlay standards to the extent possible. Determination of the extent of compliance shall rest with the Community Development Director or designee.

J. *Development and urban design standards.*

1. *Building and site development standards for the UD-UAZ: University District, University Avenue Zone.*

a) *UAZ: Block, lot and density standards.*

1	Maximum Block Size (For new subdivisions and/or resubdivided parcels or tracts)	All new subdivisions shall require the construction of new streets that create blocks with a maximum perimeter of 2,000 linear feet. When a full block cannot be constructed, street stubs-outs to adjacent properties shall be provided to allow for the future connection and completion of the block by subsequent development.
2	Density	Up to 36 units per acre by right and up to 54 units per acre provided that outdoor space is appropriately designed into the project as defined herein and deemed acceptable by the city. Accessory units and guest dwellings are excluded from this calculation.
3	Lot Width	No minimum except as needed to meet other requirements in this section.
4	Lot Depth	No minimum except as needed to meet other requirements in this section.
5	Impervious Surfaces	No more than 90 percent of the site shall consist of impervious surfaces.

b) *UAZ: Setbacks—Primary building.*

1	Front Setback—Arterials	A minimum five foot setback is required. Within the setback, awnings, porches, window shades, bay windows among other architectural features shall be incorporated into facade design. Buildings that require a setback greater than five feet shall use that setback frontage for active or passive open space as defined herein.
2	Front Setback—Non-Arterials	A minimum five foot setback is required. No specific architectural features are necessary in the facade design.
3	Secondary Front Setback	Five foot minimum
4	Side Setback	Ten foot minimum
5	Rear Setback	Ten foot minimum

c) *UAZ: Building design (primary building).*

1	Number of Floors	3 floors maximum if single use plus an optional basement by right. BONUS: Up to four floors maximum with either open space as defined herein or mixed land use considerations incorporated into the development. Up to five floors maximum with open space and mixed land use considerations incorporated into the development.
2	Architectural Definition	Buildings over two stories shall have a well-defined base, middle and top such that architectural details articulate the different uses at lower building levels.
3	Ground Floor Elevation	The elevation of the ground floor may be elevated a maximum of five feet above the average grade of the site along the front facade of the building. If it can be demonstrated that elevation above five feet is necessary due to floodplain or similar site issues, consideration of said elevation may be considered. If the ground floor is designed to accommodate nonresidential uses, the elevation of the ground floor should be placed near the elevation of the sidewalk to minimize the need for stairs and ADA ramps.
4	Ground Floor Height	If the ground floor is designed to accommodate nonresidential space, the height of the ceiling (as measured from floor plate to floor plate) shall be at least 12 feet for buildings less than three floors and at least 16 feet for buildings with three or more floors.
5	Maximum Height	Seventy-five foot maximum as measured from the average grade of the site along the front facade of the building. For buildings greater than 30 feet or two stories, the upper stories shall be stepped back from the line of the front

		facade to provide areas for outdoor terraces, rooftop patios, etc.
6	Maximum GFA per single use	A single use shall not exceed 15,000 square feet of GFA per building.

d) *UAZ: Frontage elements (primary building).*

1	Entrance and Frontage	The primary entrance shall be located on the facade along the primary front setback. The entrance shall be located within a stoop, storefront, terrace/lightwell, gallery, or forecourt frontage.
2	Rear Access	The appearance of rear entrances should orient customers and provide a safe and convenient access to the building without sacrificing the primary entrance purpose.
3	Windows, All Floors	At least 50 percent of the surface area of ground floor primary front and secondary front setback facades with storefronts shall be occupied by windows with glazing of no less than 60 percent transparency. At least 20 percent of the surface area of all other facades shall be occupied by windows. Numerous smaller openings rather than a few large ones shall be provided along these facades in the accomplishment of this provision. Reflective, translucent or opaque glass is prohibited.

e) *UAZ: Placement of surface parking and accessory buildings.*

1	Front Setback	No closer than the rear facade of the primary building(s), 40 feet, or at least 50 percent of the lot depth, whichever is less.
2	Secondary Front Setback	Eight foot minimum—Parking lot Ten foot minimum—Accessory building
3	Side Setback	A setback is not required. No encroachment into ROW permitted. Stormwater required to be contained on subject parcel.
4	Rear Setback	A setback is not required. No encroachment into ROW permitted. Stormwater required to be contained on subject parcel.

f) *UAZ: Placement of parking structures.*

1	Front Setback	A setback is not required if liner building is designed into and a component part of the parking structure (Please refer to

		definitions—Parking garage with liner building). If the design involves a separate parking structure from a liner building, the structure may be placed no closer than the depth of the liner building across the entire lot. Building code separation shall be required when applicable.
2	Secondary Front Setback	Five foot minimum
3	Side Setback	Ten foot minimum.
4	Rear Setback	Ten foot minimum.

g) *UAZ: Building design (accessory buildings).*

1	Number of Floros	One to two floors, not to exceed number of floors of the primary building.
2	Maximum Height	24 foot maximum as measured from the average grade of the site along the rear facade of the building.

h) *UAZ: Outdoor lighting.*

1	Yard or Outdoor Lighting	Ensure that any outdoor lighting follows chapter 39 - Outdoor Lighting of the Las Cruces Municipal Code.
		For nonresidential uses, it is recommended that the UAZ should have a lighting curfew of 12:00 a.m. or close of business, whichever is later. Appropriate security lighting is hereby authorized.
2	Public Spaces	Pedestrian scale lighting shall be installed throughout the University District. Please refer to definitions in this overlay.

i) *UAZ: Garbage, recycle, mechanical equipment, loading areas and compost storage.*

1	Allowed Locations	Garbage, recycle, and compost receptacles shall be stored within a garage, an outbuilding, or a rear or side yard that is enclosed by a wall or fence that meets section 38-61 of the 2001 Zoning Code. Mechanical equipment and loading areas shall be located away from the street edge and screened from any right-of-way vantage point as applicable.

2. *Building and site development standards for the UD-TZ: University District Transition Zone.*

a) *TZ: Block, lot and density standards.*

1	Maximum Block Size (For new subdivisions and/or	All new subdivisions shall require the construction of new streets that create blocks with a maximum perimeter of 2,000 linear feet. When a full block cannot be constructed,

	resubdivided parcels or tracts)	street stubs-outs to adjacent properties shall be provided to allow for the future connection and completion of the block by subsequent development.
2	Density	Ten minimum to 24 maximum units per acre by right. Accessory units and guest dwellings are excluded from this calculation.
3	Maximum Lot Width	One hundred foot maximum (as measured along the front property line)
4	Lot Depth	No minimum except as needed to meet other requirements in this section.
5	Impervious Surfaces	No more than 80 percent of the site shall consist of impervious surfaces.

b) *TZ: Setbacks—Primary building.*

1	Front Setback—Arterials	A minimum five foot setback is required. Within the setback, awnings, porches, window shades, bay windows among other architectural features shall be incorporated into facade design. Buildings that require a setback greater than five feet shall use that setback frontage for active or passive open space as defined herein.
2	Front Setback—Non-Arterials	A minimum five foot setback is required. No specific architectural features are necessary in the facade design.
3	Secondary Front Setback	Five foot minimum
4	Side Setback	Ten foot minimum
5	Rear Setback	Ten foot minimum

c) *TZ: Building design (primary building).*

1	Number of Floors	Three floors maximum if single use plus an optional basement by right. BONUS: Up to four floors maximum with either open space as defined herein or mixed land use considerations incorporated into the development.
2	Architectural Definition	Buildings over two stories shall have a well-defined base, middle and top such that architectural details articulate the different uses at lower building levels.
3	Ground Floor Elevation	The elevation of the ground floor may be elevated a maximum of five feet above the average grade of the site along the front facade of the building. If it can be demonstrated that elevation above five feet is necessary due to floodplain or similar site issues, consideration of said elevation may be considered. If the ground floor is designed

		to accommodate nonresidential uses, the elevation of the ground floor should be placed near the elevation of the sidewalk to minimize the need for stairs and ADA ramps.
4	Ground Floor Height	If the ground floor is designed to accommodate nonresidential space, the height of the ceiling (as measured from floor plate to floor plate) shall be at least 12 feet for buildings less than three floors and at least 16 feet for buildings with three or more floors.
5	Maximum Height	Thirty-five foot maximum as measured from the average grade of the site along the front facade of the building. For buildings greater than 30 feet or two stories, the upper stories shall be stepped back from the line of the front facade to provide areas for outdoor terraces, rooftop patios, etc.
6	Maximum GFA per single use	A single use shall not exceed 10,000 square feet of GFA.

d) *TZ: Frontage elements (primary building).*

1	Entrance and Frontage	The primary entrance shall be located on the facade along the primary front setback. The entrance shall be located within a stoop, storefront, terrace/lightwell, gallery, or forecourt frontage. (Buildings on corner lots: Primary frontage is the facade that faces the street that corresponds to the property address.)
2	Windows, All Floors	At least 50 percent of the surface area of ground floor front and external side facades with storefronts shall be occupied by windows. At least 20 percent of the surface area of all other facades shall be occupied by windows. Numerous smaller openings rather than a few large ones shall be provided along these facades in the accomplishment of this provision. Reflective, translucent or opaque glass is prohibited.

e) *TZ: Placement of surface parking and accessory buildings.*

1	Front Setback	No closer than the rear facade of the primary building(s), 40 feet, or at least 50 percent of the lot depth, whichever is less.
2	Secondary Front Setback	Eight foot minimum—Parking lot Ten foot minimum—Accessory building

3	Side Setback	A setback is not required. No encroachment into ROW permitted. Stormwater required to be contained on subject parcel. One hour fire-rated wall required pursuant to the building code.
4	Rear Setback	A setback is not required. No encroachment into ROW permitted. Stormwater required to be contained on subject parcel. One hour fire-rated wall required pursuant to the building code.

f) *TZ: Placement of parking structures.*

1	Front Setback	A setback is not required if liner building is designed into and a component part of the parking structure (please refer to definitions - Parking garage with liner building). If the design involves a separate parking structure from a liner building, the structure may be placed no closer than the depth of the liner building across the entire lot. Building code separation shall be required when applicable.
2	Secondary Front Setback	Five foot minimum
3	Side Setback	Ten foot minimum.
4	Rear Setback	Ten foot minimum.
5	Exceptions	Setbacks for podium and underground parking levels may have the same setbacks as the building. Section 38-32.D.9. (buffer requirements) applies to structures proposed in the Transition Zone (TZ) adjacent to single-family residential uses located outside the UD Overlay. For purposes of buffer requirements, the use on parcels shall be the primary determining factor in buffer requirements.

g) *TZ: Building design (accessory buildings).*

1	Number of Floors	One to two floors, not to exceed number of floors of the primary building.
2	Maximum Height	Twenty-four foot maximum as measured from the average grade of the site along the rear facade of the building.

h) *TZ: Outdoor lighting.*

1	Yard or Outdoor Lighting	Ensure that any outdoor lighting follows chapter 39 - Outdoor Lighting of the Las Cruces Municipal Code.
		For nonresidential uses, it is recommended that the TZ should have a lighting curfew of 10:00 p.m. or close of

		business, whichever is later. Appropriate security lighting is hereby authorized.
2	Public Spaces	Pedestrian scale lighting shall be installed throughout the University District.

i) *TZ: Garbage, recycle, mechanical equipment, loading areas and compost storage.*

1	Allowed Locations	Garbage, recycle, and compost receptacles shall be stored within a garage, an outbuilding, or a rear or side yard that is enclosed by a wall or fence that meets section 38-61 of the 2001 Zoning Code as amended. Mechanical equipment and loading areas shall be located away from the street edge and screened from any right-of-way vantage point as applicable.

3. *Building and site design standards for the UD-CZ: University District Convention Zone.*

a) *Civic standards.*

i. *Introduction.* Civic buildings are buildings operated by not-for-profit organizations (including governmental organizations) that are dedicated to arts, culture, education, recreation, government, transit, and or for use approved by the legislative body. The above uses with a religious foundation are not considered civic buildings.

b) *Standards.* The following standards apply to civic buildings:

i. Civic buildings should be architecturally distinctive, designed appropriately for their function, and designed with an outdoor gathering spaces.

ii. Civic buildings may be located within civic spaces.

iii. Civic buildings shall not be subject to the standards of this article (Building Standards). The particulars of their design shall be determined by the University District Citizens Design Review Committee (UD-CDRC) and as required by the director.

c) *Historic building standards.*

i. *Introduction.* Historic buildings are structures that are listed on the National and/or New Mexico Registers of Historic Places.

ii. *Standards.* The following standards apply to historic buildings:

1) Uses for historic buildings and properties shall comply with Table 1, Permitted Land Uses.

2) Alterations and additions to historic buildings shall comply with the Secretary of the Interior's Standards for Rehabilitation.

4. *Landscaping—All zones.* All landscape planting should serve to enhance the architectural value of the building, ground the building in the site, create a pleasant and attractive environment for pedestrians, and mitigate environmental conditions such as excess heat, strong winds and air pollution.

a) *Purpose.* Landscaping standards are established for this district to create a more comfortable environment for pedestrians and transit users; to achieve the intended character of a walkable district that meets the desires of the community; and provide stormwater management by

reducing runoff and improving water quality by filtering runoff before it enters the collection system. Where city uses of easement area or right-of-way requires displacement of landscaping or damage to drainage ponds, the city shall replace or repair those pond and landscaping elements to the extent possible as determined by the city.

b) *Applicability*. The provisions of this section shall supersede other landscaping requirements within the Municipal Code, where conflict in regulation exists, as it applies to the landscaping of the University District only.

c) *Landscaping standards* apply to all development in the University District with the exception of properties that are occupied by single-family residences. Landscape consists of native or drought-tolerant species of both overstory (shade and coniferous trees) and understory plantings of ornamental trees, shrubs, cacti and perennial grasses, groundcovers, and flowers, the standards for which apply to the entire site and parking lot area, excluding building area.

Landscaping for new development within the University District shall comply with principles of water conservation that address:

1. Planning and design;
2. Soil improvements;
3. Efficient irrigation;
4. Zoning of plants;
5. Mulches;
6. Turf alternatives; and
7. Appropriate maintenance. (Please refer to: Curtis Smitb's article, Principles of Xeriscape.)

d) *Area to be Landscaped*. The required area to be landscaped is equal to a minimum of 20 percent of the total parking area. For the purposes of this article, the parking area shall be defined as the surface area of the entire tract of land excluding the building pad.

i. Parking bays in excess of ten spaces in length should be divided by intermittent landscape islands. Landscape islands shall be no less than six feet by six feet for each tree and accompanying groundcovers.

ii. One tree shall be planted in the parking lot area for every five parking spaces. Each tree shall be planted in an area that is no less than six feet by six feet.

iii. A landscape buffer no less than eight feet wide should be provided between all parking areas and the sidewlak or street, the purpose of which is to screen parked vehicles from view from the street. The buffer strip should contain a mix of shade trees, low shrubs or perennial flowers, boulders and may include a decorative fence that ensures visibility. (Please refer to fencing in section J. Development and urban design standards.) If a solid wall or dense hedge is used it should be no less than 18 inches and no more than four feet (48 inches) in height to allow views into and out of parking areas. If a berm is used, the slope should not exceed 20 percent (5:1).

iv. In parking lots larger than one acre or 200 feet or more wide, walkways are required that link perimeter sidewalks to primary building entrances.

v. Green roofs (please refer to section F. Definitions) may be used to meet minimum landscape requirements at a 1:1 ratio excluding the above listed requirements for landscaping parking lots.

e) *Installation.* The irrigation system and landscaping shall be installed before the completion of building construction and prior to the issuance of a certificate of occupancy unless a temporary certificate of occupancy or other written agreement has been arranged with the city. Such agreements extending the time of installation will be for a maximum period of nine months. (Ord. No. 978, § 4.6, 6-20-88)

f) The total required landscape area shall be evenly distributed throughout the site. Businesses offering outdoor seating within their front setbacks may reduce the required landscaping, subject to review by the city and the citizen's design review committee (to be discussed later in this Code).

g) Plants at the time of installation shall be sized and quantities shall be defined according to the following: Two - 2¼-inch caliper tree, five - 15-gallon shrubs, and a choice of either five - one-gallon shrubs or 50 square feet of groundcover, for every 500 square feet of lot area excluding building area and parking lot area.

h) Trees shall include shade producing trees which achieve a mature size of at least 25 feet high and 25 feet spread and ornamental trees which have particular features such as spring blooms, fall foliage color or bark characteristics. Evergreen trees such as pines, junipers, and cypress are also allowed. Shrubs shall include a mix of deciduous and evergreen plants including plants native to the Chihuahuan Desert and others adapted to our climate. Groundcovers shall serve to prevent soil erosion, provide color, and create an oasis feeling.

5. *Fencing, walls and retaining walls—General all zones.*

a) Existing noncompliant fences and walls within the district may remain in place so long as they conform to existing city ordinances regarding permitting, height and placement. Increases in structure height or length shall require full compliance with fencing/wall requirements.

b) New fences/walls shall be of a generally "open" design to maintain visibility from the street. As an example, an open fence including gates has for each one-foot wide segment 60 percent of the surface area in open spaces which afford a direct view through the fence. Picket, post and rail, tubular steel and wrought iron are examples of acceptable open fencing. A base not greater than three feet in height may be used in combination with the "open" design. Chain link fencing is prohibited. All fences/walls in front yards must be "open" by design. A "closed" fence/wall is defined as a structure, including gates, which conceals from view from adjoining properties, streets, or alleys, activities conducted behind it. "Closed" fences/walls may only be constructed in side and rear yards. They are not allowed in front yards.

c) Fences, walls and hedges within the primary front yard (where primary front yard setback is determined) shall be limited to a height of four feet. The design of manmade structures shall conform to the provisions found in section (2) above.

d) Fences, walls and hedges that are within five feet of the secondary front property line (side where secondary front yard setback is determined) shall be limited to a height of four feet. If the fence, wall or hedge is setback at least eight feet from the property line, the maximum height shall be limited to height of eight feet. The design of man-made structures shall conform to the provisions found in section (2) above.

e) Fences, walls and hedges that are within the rear and side yards shall be limited to a height of eight feet.

f) Retaining walls used within the various districts shall be designed in a manner limiting their height to what is absolutely necessary for the retaining purpose intended.

6. *Signage—All zones.*

a) *Purpose.* The University District Overlay Sign Code shall be established for aesthetics, height, overall size, type, and lighting considerations for signage consistent with district urban design standards.

b) *Attached signage.* Only window, wall, awning signs and multi-use development directory signs are allowed. Awnings and the attached signs are subject to the design standards of all applicable codes.

Wall signs: Flush-mount:

1. *Commercial/nonresidential development.*

    a) No wall sign shall project beyond the ends of the wall or beyond the top of the building to which it is affixed.

    b) Walls signs shall be affixed flat against the building wall. Any necessary frame mounting shall not extend more than six inches from the wall.

    c) Wall signs shall be placed on the ground floor of the structure in which the use takes place.

    d) No more than three wall signs shall be allowed per building facade in buildings with more than one business or use.

    e) No more than one wall sign shall be allowed per business or use per building facade. When there are more than three business occupants per building refer to the multi-use development directory sign standards of this sevtion.

    f) One square foot of signage for each linear foot of exterior wall space, not to exceed 50 square feet per wall. The sign(s) shall be placed on the side of the building used to calculate the square footage of the sign. For buildings that are set back 100 or more feet from the sidewalk, signage may exceed the 50-foot maximum as determined by the Community Development Director or designee.

2. *Multitamily residential development.*

    a) Up to two wall signs, not to exceed 32 square feet each, with the name, logo, and associated graphics on a building containing eight or more residential units.

    b) Only one sign is allowed per wall. These attached signs are subject to the design standards of all applicable codes.

Wall signs: Projecting:

1. Projecting signs shall be considered double-faced signs with each sign face of equal size.
2. Projecting signs shall not exceed 12 square feet in sign face area (six square feet per sign face).
3. Only one projecting sign shall be allowed per business per street frontage.
4. Only ground floor commercial businesses shall be permitted to utilize projecting signs.
5. Projecting signs must maintain at least eight feet of clearance as measured from the bottom of the sign to grade and may project no more than four feet from the building or closer than two feet to the edge of the sidewalk, whichever is less.
6. Projecting signs shall be installed at right angles to a building front.

Window signs:

1. There shall be no more than one permanent window sign per window.
2. Neon signs displayed indoors constitute permanent window signs. Only one neon sign shall be permitted per business facade.
3. The total coverage of all permanent, neon and temporary window signs shall not exceed 25 percent of the total glass area of the window.

Awnings and canopies:

1. Awnings and canopies shall be supported solely by the building to which they are attached and no columns or posts shall be permitted as supports.
2. No portion of an awning or canopy shall be less than eight feet above grade. However, if the awning and canopy extends beyond four feet between the building and curb, it must be 12 feet above grade.
3. The roofs of all awnings and canopies shall be used for no other purpose than to form and constitute a roof. The roofs of all awnings and canopies shall not drain directly or into the public right-of-way. The roofs of all awnings and canopies shall be constructed in accordance with the building code.
4. Awnings and canopies shall be designed to withstand a wind speed of not less than 90 miles per hour.
5. Awnings and canopies shall not interfere with street trees or traffic signs.
6. No advertising shall be placed on the awning or canopy except the name or logo of the owner, business or industry conducted within the premises, address of the building, or the building name.
7. Lettering or logos shall be painted or otherwise permanently affixed in letters not exceeding 20 inches in height on the front and side portions thereof.
8. Translucent awnings and canopies are not permitted.
9. Any awning or canopy that encroaches into the public right-of-way shall obtain an approved encroachment agreement from the city's land management department prior to placement and use of the awning or canopy and comply with chapter 32 of the International Building Code.

Multi-use development directory sign. Exterior directory signs, with the name and location of all businesses within a multi-use development, shall be wall-mounted as specified above. One square foot of signage is allowed for each linear foot of exterior wall space, not to exceed 50 square feet per wall. The sign(s) shall be placed on the side of the building used to calculate the square footage of the sign.

c) *Freestanding ground signage—All development.*

i. Ground signs shall be the only freestanding signage permitted within the district.
ii. One ground sign is allowed per lot. The ground sign shall identify the primary tenant, the name of the business center or the name of the residential units.
iii. Individual ground signs shall be limited to properties which own direct, unobstructed (on-site) access to a public street.
iv. Ground signs shall not exceed 24 square feet in area, and shall not exceed three feet in height. Signs shall be placed at least five feet from the outside edge of the right-of-way, and at least five feet from adjacent property lines and not within the clear sight triangle as defined by the City of Las Cruces Design Standards. Please refer to section 32-405.

d) *Design standards.*

i. The silhouette, shape, and materials of signs in the University District Overlay shall be simple and compatible with the building or facade to which they relate.

ii. Freestanding signs shall not be placed so they obscure important architectural features such as entrances, display windows, or decorative cornices when viewed from the right-of-way.

iii. Attached signs shall not disrupt the architectural composition of the building facade. No part of any attached sign shall overlap or cover architectural features of the building such as cornices, eaves, window and door frames, columns, vigas and other decorative elements.

iv. Signs within a business center shall be compatible with the architectural character of the center.

v. The number of different lettering styles or fonts on a sign shall be kept to a minimum, and shall relate to the architectural character of the property. Lettering and copy shall not be crowded onto a sign and shall leave ample space around the copy to preserve legibility.

vi. The visual appearance of signs shall reinforce the architectural character of the site.

vii. Illumination:

a) Signs that are illuminated shall have concealed lighting fixtures with the exception of LED and neon.

b) No reflectors, arms, fixtures or wires shall be visible from the street.

c) Internally illuminated signs shall not be permitted.

d) No sign shall be illuminated to create a nuisance, traffic hazard or excessive glare to adjacent property and shall comply with the City of Las Cruces Street Lighting Ordinance to prevent illumination of the night sky so as to lessen light pollution. Please refer to section 32-409 (Street lighting) and chapter 39, Outdoor Lighting.

e) Freestanding signs shall be landscaped at their base in a manner that is compatible with the character of the site. Landscaping shall form an attractive cluster at the base of the sign.

f) The top of any sign shall not exceed 20 feet above grade.

e) *Temporary promotional banners and pole banners.*

i. *Building-mounted banner displays:* In addition to permitted permanent signage, businesses and organizations in the University District Overlay are allowed temporary, promotional displays in the form of a banner for promotional purposes that are subject to the following conditions:

a) Each business and organization, with the exception of those within the convention zone, shall be permitted one banner three times during each calendar year for a maximum of ten consecutive days each or for a maximum of 30 consecutive days. Due to the nature of the convention zone and the number of special events, banners are expected to change more frequently than three times during each calendar year.

b) Only one banner per business or organization may be displayed at a time.

c) Banners shall be made of a durable material that may include 12 to 16-ounce weight materials, such as, nylon or vinyl reinforced canvas. Banners must have hemmed and reinforced edges. Grommets should be located on the banner's edge to allow it to be securely fastened to its supporting structure. If grommets are not used, some other mechanism such as rope shall be placed within the hem to allow for its attachment.

d) Banners may not exceed 25 square feet in area.

e) Banners shall be securely attached to a permanent building.

f) The applicant shall provide to the sign administrator the name and address of the business/organization where the banner is to be placed, the first day the banner is to be displayed, the date it is to be removed, the size of the proposed banner, and its design.

g) Banners may be erected only when a sign permit has been issued. All banners shall be removed not later than the permissible time limit stated above. Failure to do so may forfeit the ability to use these provisions in the future. A permit will be issued to the applicant and will remain in effect for the duration of that event.

ii. *Pole banners:* Banners may be placed on city-owned utility and light poles promoting city-sponsored events and/or messages with approval by the city manager or his/her designee. (For the purposes of pole banners, a city-sponsored event shall be defined as an event for which the City of Las Cruces donates money and/or services/personnel.) Examples of these types of messages include: "Las Cruces Sparkles on the 4th of July" and "Happy Holidays". Other governmental entities, such as New Mexico State University, may also place banners on city-owned utility and light poles that display a community-wide message and are approved by the city manager or his/her designee. Examples of these types of messages include: "Go Aggies!" and "Welcome Back to School!" Approval with New Mexico State Highway Department will also be required when appropriate. To place banners on city-owned utility and light poles, arrangements shall be made through the traffic engineering section of the public works department. Fees may be imposed to offset expenses.

f) *Prohibited signs:* The following signs are prohibited in the University District Overlay:

i. Portable and pole signs, whether temporary or permanent.

ii. Permanent banners.

iii. Pennants, streamers, and other fluttering devices, whether temporary or permanent.

iv. Real estate, construction, contractor and "coming soon" signs over 12 square feet in area or over five feet tall.

v. Political signs over 12 square feet in area or over five feet tall.

vi. Billboards and all other off-premises signs.

vii. All other signs as prohibited in section H of the Las Cruces Sign Code.

g) *Applicability:* Where there are areas concerning signage not addressed by the University District Sign Code, chapter 36 of the Municipal Code, Signs, shall apply.

K. *Transportation (streets and public spaces).*

1. Right-of-way improvements (traveled way, roadside and intersections) throughout the district shall be in accordance with the city's complete streets policy. (Please refer to city council Resolution No. 09-301, June 15, 2009.)

2. Project initiation and preliminary engineering shall be initiated at the earliest opportunity for right-of-way improvements to the traveled way, roadside and intersections of University Avenue between Interstate 25 and Interstate 10.

3. Future amendments to this section are anticipated and shall convey design parameters for University Avenue as a walkable thoroughfare.

4. Callecitas shall be considered and alleys shall be preserved, whenever possible for improving pedestrian connectivity and providing vehicular access to properties. (Please refer to section F. Definitions.)

L. *Parking, general—All zones.*

1. *Parking requirements.*

Requirements:

1. Parking ranges are set for land uses in each zone, as noted in article IV, section 38-33 of the 2001 Zoning Code, as amended. Requests to reduce parking requirements shall be evaluated on a case-by-case basis by the Community Development Director or designee. Requests to exceed maximum parking requirements shall be granted for parking structures that meet the development and urban design standards set forth in this Code.

2. Shared parking and access agreements among neighboring properties are encouraged and will count toward off-street parking requirements. Section 38-58 (Off-street parking) dictates the requirements for this application.

3. Off-street parking requirements can be met by entering into a shared parking agreement within one-fourth mile, as measured along the street network and pedestrian right-of-way, that shall be used to identify how parking demand will be met and which properties are involved.

4. All standards for parking dimensional and ADA requirements for all development within the district shall be consistent with section 38-58, Off-street parking, of the City Zoning Code.

5. All vehicles are to be parked along designated streets, in designated driveway or parking areas only. Parking on front lawns and/or landscaped areas shall be prohibited.

2. *Parking options:* (Please refer to section G. Permitted uses for allowed parking locations.)

To reduce development costs, parking garages are not required. Parking may be provided within an attached garage, detached garage, parking structure with or without liner building, or surface parking lot. Parking for nonresidential uses may also be provided off-site in a public parking lot or structure if a parking management district is formed for the area. Dedicated surface parking areas shall meet the landscape requirements of section J. Development and urban design standards of this overlay.

3. *Parking access:*

Alleys. Alleys are required for projects that create new blocks to provide access to parking areas and to minimize driveway curb cuts along streets. Alleys are encouraged (but not required) for projects on existing blocks to provide access to parking areas. Driveway access from the street is only allowed on lots where an alley cannot be provided.

Driveways. Driveway width shall comply with city design standards.

Pedestrian connectivity. In parking lots larger than one acre or equal to or greater than 200 feet wide, walkways shall link perimeter sidewalks to primary building entrances.

Parking prohibition. A parking management plan would improve mobility and access to shops and business centers as well as controlling the amount of land dedicated to surface parking lots and parking structures. Until a parking management plan is adopted, parking shall be prohibited from 8:00 a.m. to 5:00 p.m., Monday through Friday, on the following streets:

Chaparral St. between University Ave. and Plain St. (east side only);

Hagarty Ave. between University Ave. and Plain St. (west side only);

Mesa St. between Jordan St. and Espina St. (south side only).

M. *Demolition.* To preserve any contributing structure listed on the historic register (state or national) in the University District Overlay; this section creates a 60-day demolition permit review process that allows time for interested parties to explore alternatives to the demolition of historic structures. Demolition for all other structures shall follow chapters 30-491 and 38-63 of the 2001 Las Cruces Zoning Code, as amended.

1. *Demolition permit.* Demolition permit applications shall be submitted to the community development department prior to any demolition activity taking place. Community development department staff will review the application for compliance with the 2001 Las Cruces Zoning Code, as amended. A proposal for redevelopment of the property must accompany the permit application.

2. *Posting.* At the beginning of the 60-day demolition permit review process, the community development department will issue a sign that is to be posted in a conspicuous place on the property. The applicant is responsible for posting the sign and ensuring that it is in place for the entire 60-day period.

3. At the beginning of the 60-day demolition permit review process, the community development department will inform the neighborhood associations, the New Mexico Historic Preservation Division and the Dona Ana Historic Society that a demolition permit has been applied for.

4. A demolition permit shall be issued upon the completion of the following items: 1) the completion of the 60-day period; and 2) the application meets all City Code requirements and has been approved by the community development department staff. (The applicant may use the 60-day time period to resolve any necessary code compliance comments.) The permit application may be withdrawn by the applicant at anytime without charge.

5. Prior to the demolition of a historic structure, the applicant shall be responsible for fully documenting the structure, both interior and exterior, to provide a permanent record, in accordance with documentation procedures as follows. The demolition permit will not be approved without submittal and approval of this documentation by community development staff.

a) Complete the Historic Cultural Property Inventory (HCPI) forms 1 and 2;

b) Photograph the property:

i. Photo processing, printing and labeling shall follow the protocol established by the National Parks Service; please refer to the National Register Photo Policy Fact Sheet.

ii. Using a 35mm camera with black-and-white print film (or digital camera described in photo documentation policy), take several exterior photos of the primary structure (front, rear, sides, close-up views, details, setting, etc.) and exterior photos of each historic secondary structure, such as a garage, sheds, etc. (Accessory buildings that are not listed on the historic register should not be included.) For assistance in taking quality photographs, please refer to NPS Bulletin #23 at the link listed above.

iii. Include several interior photos of the primary structure, with attention to any distinctive architectural or historic features (vigas, carvings, coping, special flooring, bullet holes, etc.)

iv. Staff strongly suggests that wide-angle camera lenses not be used for exterior photographs since these lenses tend to distort vertical dimensions of buildings. A perspective-correction lens is highly recommended for best results.

v. The submitted photo packet must include one set of black and white (B&W) photographs, the negative strips, and a photo CD-R or DVD-R from the developer. Photographs, whether 35mm or digital, must be printed in B&W. Printed size may be 3½ × 5; 4 × 6; or 5 × 7.

vi. Include a continuation sheet that provides information common to all photographs, followed by a list providing information pertinent to each photograph.

vii. Digital images: When using digital images, the file name for each electronic image on the CD-R or DVD-R must correspond with the photo log included on the continuation sheet and the information labeled on the back of each photograph, and it should reference the county and state in which the property is located.

viii. All photographs and negatives must be put into archival photo or negative sleeves. Label the top of each protective negative sheet with: the property name, location, and the date the photographs were taken.

c) If measured drawings done by the Historic American Building Survey exist, the owner should annotate the drawings, showing changes to the property, interior and exterior, that have occurred up to the current date.

d) If known, a short history of the property should be included, in order to document how that property fits within the historic district or community.

e) The demolition permit will not be approved without submittal and approval of this documentation by community development staff.

6. Compliance with the procedure set out in this section is not required if it is determined by the City of Las Cruces that the immediate demolition of a historic structure is in the best interest of public health, safety, and welfare. The applicant shall be responsible for documenting the structure in accordance with the procedure above to fully demonstrate the need for demolition and to provide a record of the structure. In the event that entering the structure would pose a threat to the health, safety and welfare of the documenter, interior photos are not required. This documentation must accompany the memo of determination for demolition by the building official prior to the issuance of a demolition permit.

N. *Administration.*

Submittal and review process.

1. *Purpose.* Submittal and review procedures are established for all new development to protect persons and property in the University District Overlay as directed in the University District Plan.

2. *Subject to review by the citizens' design review committee (UD-CDRC).*

a) *Subdivisions.* For submittal and review of subdivisions within the district, refer to article V, of chapter 37 pertaining to infill subdivision procedure.

b) *Buildings.*

i. *Pre-application conference:* Prior to filing an application for development of new buildings in the district, the applicant is encouraged to meet with staff of the city community development department to review the proposed project. At this conference, staff shall review the development proposal and advise the applicant concerning the compatibility of

the proposal with the intent and standards of the University District Plan and all other applicable city codes.

ii. *Application procedure:* Upon completion of the pre-application conference, the applicant shall submit at minimum, one copy of all application materials for new development to the community development department for review. Upon submittal, staff shall review the submittal for completeness. If all the required items have been submitted, the community development department shall issue a receipt for submittal.

iii. *University District Citizens' Design Review Committee (UD-CDRC):* Applicants shall meet with the UD-CDRC and city staff at a public hearing for a formal recommendation by the UD-CDRC regarding the proposed project.

iv. *Final approval:* An application shall be effective for no more than one year from the date of approval. If development proposed by the application has not been initiated within the one year stipulated, the application must be resubmitted for approval as established in this section. The applicant may submit a request for extension of approval prior to the expiration date, if desired. The request will be reviewed by the community development department.

c) *Variances.* Variances in the numerical requirements for development within the district will be considered in accordance to fulfilling the policies of the University District Plan and not contradictory to the policies therein. Variances may be granted by the Planning and Zoning Commission at a public hearing in accordance with section 38-10.

i. An application for a numerical variance will be processed to applicable city departments and the citizen's design review committee.

ii. Applicants must present their request to the citizen's design review committee for their recommendation to the Planning and Zoning Commission. Recommendations from the UD-CDRC shall be delivered to the Planning and Zoning Commission prior to the public hearing.

iii. Decisions of the Planning and Zoning Commission may be appealed to city council, in accordance with provisions of section 38-13.

d) *Special use permit (SUP).* The Community Development Director or designee determines SUP needed for uses not listed in this overlay.

e) *Zone change.* Applicants must present requests for zone change to the citizen's design review committee for the committee's recommendation to the Planning and Zoning Commission. Recommendations from the design review committee shall be delivered to the Planning and Zoning Commission prior to the public hearing. Decisions of the Planning and Zoning Commission may be appealed to city council in accordance with section 38-13.

f) *Plan amendments, code amendments.* Applicants must present requests for plan amendments and code amendments to the University District Citizen's Design Review Committee (UD-CDRC) for the committee's recommendation to the Planning and Zoning Commission. Such requests will be considered once a year at the January meeting of the UD-CDRC. An exception to the once-a-year rule and expedited review applies to cases deemed necessary by the city in order to ensure successful implementation of the goals and objectives of the plan and ordinance where there is direct conflict between the plan and overlay. The UD-CDRC will determine which amendments may be processed gratis; all others incur a fee established by Resolution No. 00-360, July 3, 2000. Recommendations from the UD-CDRC shall be delivered to the Planning and Zoning Commission prior to the public hearing. Recommendation of the Planning and Zoning Commission are made to city council which makes the final decision.

g) *Property alteration, remodel or renovation.* Any related activities to existing buildings within the district shall require review by the community development department and the citizen's design review committee to insure that the building and the property of the site will be brought into conformance with all applicable urban design standards of the University District Plan and this section.

A portion of the submittal requirements may not be required in all renovation cases. Upon receipt of a written request justifying the deletion of required information, the community development department may waive any submittal requirement.

3. *Courtesy review of NMSU projects.* Although NMSU is neither within the city limits, nor subject to its jurisdiction, the campus and city share a stake in development along University Avenue and in the region as a whole. As such, the UD-CDRC respectfully requests "courtesy design review" of the university's projects, particularly those planned for and close to University Avenue.

4. *Subject to administrative review by community development department staff.*

a) Request to vacate alley;

b) Signs;

c) Minor modifications. A modification or change to a property that is less than a cumulative total of 15 percent of gross floor area, nor exceeds a cumulative total of $25,000.00 in valuation.

5. *Application materials and fees.* Applications for development in the University District Overlay shall be obtained from the community development department. All applicants with submittals requiring public notice, such as new development and/or property renovation, shall be required to submit a development statement with their application. Development statement forms may be obtained from the community development department. Application and permitting fees are waived for development in the University District. Requirements for applications for all types of development shall include the following:

a) *A letter of intent* stating the following:

i. A statement of the purpose and use of the property.

ii. All property improvements to be made.

iii. A statement of the sustainable building practices to be employed.

iv. A development schedule indicating the approximate dates at which construction or phases of construction will begin and end.

b) *A boundary survey* as prepared by the appropriate licensed professional that is accurate and complete shall be made of the land to be developed. Property lines shall be shown giving the bearings in degrees, minutes and seconds. Distances shall be shown in feet and hundredths. Curved boundaries or lines on the survey shall provide sufficient data to enable the re-establishment of curves on the property. The location and description of all monuments set or found shall be included when applicable.

c) *Site plan.* The site plan shall be at a scale that adequately represents the information. Copies provided shall be legible and of a good quality, with no limit to the number of sheets used. The plans shall indicate the following:

i. Title of site plan.

ii. Total acreage of site.

iii. Date of preparation, north arrow, written and graphic scale.

iv. Identification of district planning area.

v. Identification of site by lot, block, subdivision, if applicable.

vi. A statement of ownership, signed by the property owner.

vii. Name and address of property owner.

viii. Name and address of applicant, if applicable.

ix. Name and address of consulting firm or representative, if applicable.

x. Location and type of all land uses.

xi. All site improvements with all setbacks indicated.

xii. Dimensions of all buildings.

xiii. 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.

xiv. A landscaping plan, to include the location, size, common name, and biological name of all landscaping materials.

xv. Where applicable, pedestrian and bicycle circulation system, and its relation to surrounding circulation.

xvi. Where applicable, location and arrangement of all open space, common recreational space, and private open space.

xvii. Architectural renderings or artistic drawings. Copies provided shall be legible and of a good quality, with no limit to the number of sheets used. The drawings shall illustrate the following:

a) All new development illustrating all exterior building design, materials and colors.

b) All new development illustrating relationships to neighboring uses, including site lighting.

c) Sign location, materials, color, size, shape and lighting.

d) Quality of materials: Application materials which are illegible and/or otherwise of a low quality will not be accepted.

e) *Three-dimensional model.* For projects proposed in the convention zone (CZ), provide computer-generated or physical modeling to enhance public understanding and review of the buildings within the context of the district as a whole.

f) *Waivers.* A portion of the submittal requirements may not be required in all development cases. Upon receipt of a written request justifying the deletion of required information, the community development department may waive any submittal requirement.

O. *Enforcement of overlay zone district.* Provisions to enforce this section shall be consistent with the enforcement provisions of article II of the Municipal Code.

(Ord. No. 2571, § I)exh. A), 4-5-10; Ord. No. 2775, § I(Exh. A), 2-16-16; Ord. No. 2799, § III(Exh. B), 11-7-16)

Editor's note(s)—Ord. No. 2571, § I(exh. A), adopted Apr. 5, 2010, repealed the former § 38-44, which was entitled "UAC—University Avenue Corridor plan overlay zone district" and enacted a new § 38-44 as set out herein.

Former § 38-44 derived from: Ord. No. 2354, § I, adopted Jan. 22, 2007; Ord. No. 2432, § I, adopted Feb. 25, 2008; Ord. No. 2433, § I, adopted Feb. 25, 2008; and Ord. No. 2496, § I, adopted Jan. 26, 2009.

Sec. 38-45. AdM—Avenida de Mesilla Gateway overlay zone district.

A. *Purpose.* The purpose of the Avenida de Mesilla Gateway overlay zone district is to implement land use and urban design policies as established in the Avenida de Mesilla Gateway plan. Specifically, the purpose of this zone is to utilize special provisions to provide guidance in future decisions regarding zoning, land use, urban design, and transportation. The overall intent of the district is to create a gateway which promotes an aesthetically pleasing yet functional environment in which citizens from both the city and the Town of Mesilla can interact socially, where the business community can exist in a commercially viable environment, and where both endeavors can co-exist with little or no conflict with one another.

B. *Delineation of overlay zone district.* The Avenida de Mesilla Gateway overlay zone district shall include all properties in their entirety, regardless of any future partitions thereof, having frontage directly on Avenida de Mesilla, from Valley Drive, west to the city limits. The applicable properties affected by this overlay zone district are indicated by the district map in this section. This map reflects all applicable parcels as of March 20, 2000.

C. *Permitted uses and development standards.* There shall be no development or alteration of the lands, uses, or structures within this overlay zone district except as provided for by this section of this Code from the date of its enactment, and other sections of this Code and other codes where applicable.

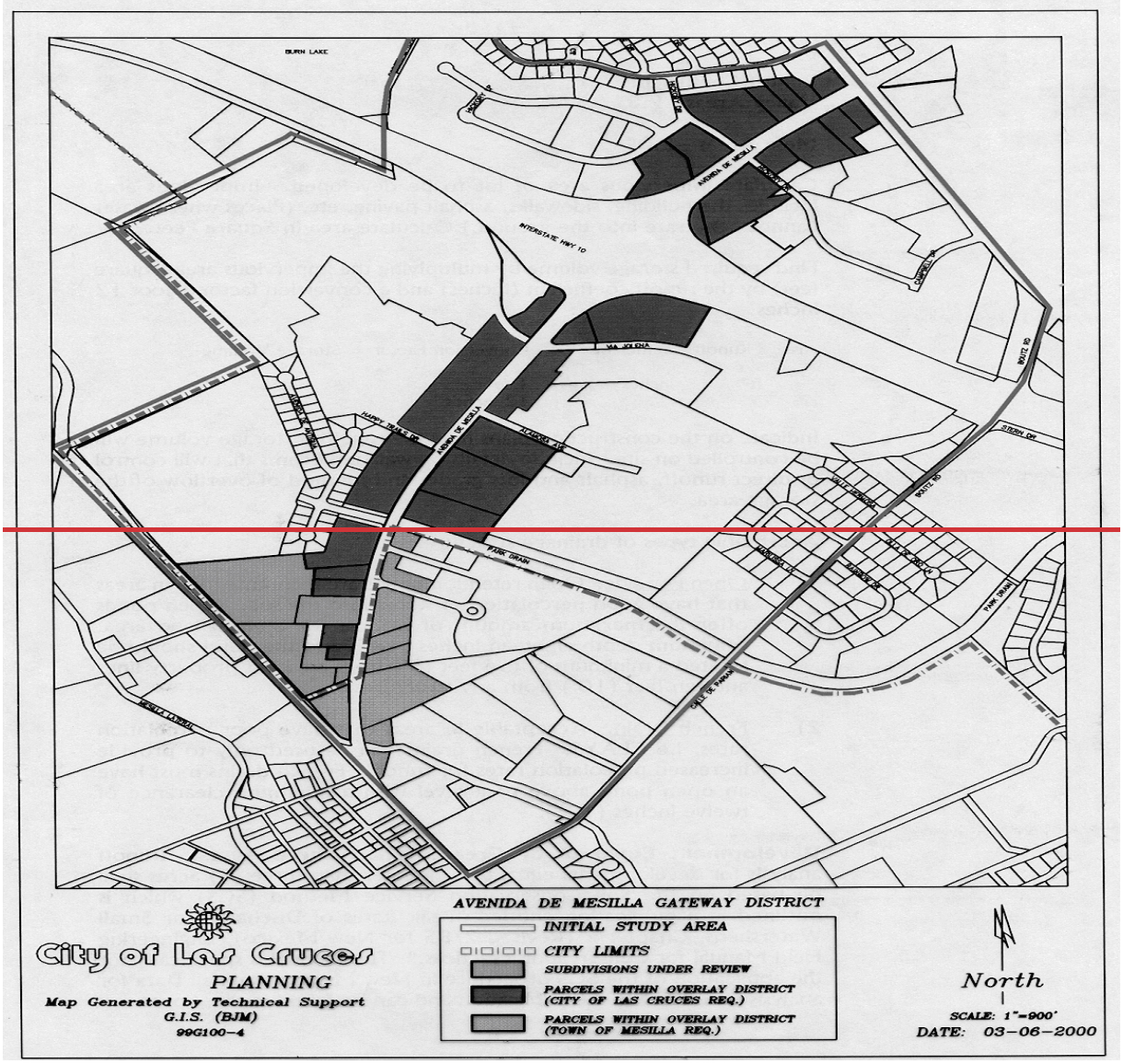
1. *Permitted uses—No conditions.* Unless expressly prohibited by this section or modified by conditions, all permitted uses and special uses will adhere to the underlying zoning of the property.

2. *Permitted uses—With conditions.* The following uses are permitted in accordance with stated provisions. The following list is intended to supplement any permitted use, with or without conditions.

a. *Automobile parking lot/parking garage.* Permitted only when all applicable urban design requirements are followed.

b. *Bus terminal.* Permitted only when all applicable urban design requirements are followed. No storage of buses on-site and no repair facilities permitted.

c. *Commercial or trade school (totally enclosed).* Permitted only when related activities occur within an enclosed building and when there are no materials, equipment, or machinery used in the conduct of said activity stored outside. The use shall not pose any adverse impacts to adjacent properties due to noise, odor, dust, or vibration.



~~d. *Cottage industry.* Such use shall meet the following requirements:~~

~~1) Permitted only when such use occurs within a totally enclosed building on the premises where the primary use (retail/service) is conducted;~~

~~2) The processing of goods shall be clearly accessory to the primary use (retail or service) where a maximum of 49 percent of the total business floor area, not to exceed 3,000 square feet, shall be used in the conduct of the cottage industry.~~

~~3) The use shall not pose any adverse impacts to adjacent properties due to noise, odor, dust, or vibration.~~

~~4) No more than three separate cottage industries may operate on any one parcel.~~

~~e. *Dance/music academy.* Permitted only when used for instruction and/or the conduct of activities related to the performing arts.~~

f. *Dwellings as an accessory use for a proprietor, resident watchman, or caretaker.* Permitted only when said dwelling meets all applicable urban design criteria and is constructed on-site.

g. *Engraving shop.* All related activity shall be completely enclosed within the building used for the primary use and there shall be no outside storage of parts, inventory, or related materials whether temporary or permanent.

h. *Food/beverage production or packaging.* Such use shall meet the following requirements:

1) Permitted only when such use occurs within the same building as the primary use;

2) The use must remain secondary to the primary use (retail or service).

3) In no event shall the square footage for any production/assembly process associated with the commercial activity exceed 49 percent of the total business floor area (not to exceed 3,000 square feet).

4) All ancillary activity (processing) uses shall conform to the following:

a) Shall be conducted in a manner which serves to enhance the general retail and/or service atmosphere.

b) Examples of establishments which may conduct this ancillary activity include cafes/restaurants, taverns, and other like uses involving food/beverage related products (human consumption) within applicable zoning districts.

c) The ancillary activity shall not pose any adverse impacts to adjacent properties due to noise, odor, dust, or vibration.

i. *Gasoline station.* Permitted only when vehicle repair activities are not associated with the use.

j. *Temporary uses.* Temporary uses shall follow provisions as outlined in section 38-50; except as further stated. For purposes of the Avenida de Mesilla Gateway overlay district, temporary uses shall be limited to:

1) Christmas tree stands. Sales of Christmas trees shall not occur before November 15 or after December 31. These uses shall be permitted only in C-2, C-3, M1/M2 and M-3 underlying zoning districts.

2) Yard, garage or rummage sales. These types of uses shall be conducted for no more than four days, three times at one location in a calendar year. No permits are required for these uses and they must be conducted from an individual's dwelling. The conduct of these activities from a business or other property not used primarily for residential purposes is prohibited. This use is permitted in all applicable underlying zones.

3) Community wide event. Temporary uses at the time of a community wide event are permitted to begin one week (seven calendar days) before the beginning of the community wide event and shall end three calendar days from the last day of the community wide event. For purposes of the Gateway, a community wide event is defined as a celebration or event that primarily promotes the community as a whole and not a single business or group of businesses per se. The activities may or may not involve retail special sales related to the specific celebration. Furthermore, the celebration/event must be sponsored by either local government(s) or not-for-profit organizations. These events may involve the use of tents and other temporary structures. Examples of community wide events include, but are not limited to The Mesilla Valley Hot Air Balloon Rally, custom car shows, public expositions, etc. These uses are permitted in R-4, O-2, C-2, C-3, M1/M2 and M-3 zones. (Also see Municipal Code Chapter 18, Article IV.)

3. *Prohibited uses.* The following identifies those uses which are prohibited regardless of the underlying zoning district:

Acid manufacture

Adult amusement establishment

Adult bookstore/video store

Airport and heliport

Amusement park or enterprise (temporary or permanent)

Assembly of electronic or mechanical parts and equipment

Auto, truck, camper, and recreational vehicle sales and service

Automotive washing establishment

Boat sales, service, and repair

Body shop

Bus garage/storage/repair

Cement, lime, gypsum or plaster manufacturing or mixing

Cemetery

Cigarette and cigar stand (temporary or permanent)

Clothing manufacturer

Construction or contractor's yard (permanent)

Dance hall

Drive-in theater

Dyeing establishment

Electrical shop (contractor)

Explosive manufacture or storage

Fabrication shop

Fat rendering

Fertilizer manufacture/processing

Flea market

Firewood sales

Fraternity house

Freight house or truck terminal

Frozen food locker

Glue manufacture

Heavy equipment sales and service

Junk yards, salvage, or wrecking yards

~~Kennel (commercial)~~

~~Lumber yard (outside storage)~~

~~Manufacturing of consumer goods such as: appliances, batteries, garments, etc.~~

~~Metal work and machine shop~~

~~Microwave radio relay structure~~

~~Mini storage units~~

~~Mobile/manufactured homes~~

~~Mobile home park~~

~~Mobile home sales and service~~

~~Mobile home subdivision~~

~~Monopole~~

~~Motorcycle sales and service~~

~~Open or exterior storage and display of merchandise and/or materials (except when products offered and displayed on the premises are either:~~

~~1) Grown on or off the premises; or~~

~~2) Home-crafted, hand-crafted, or hand-assembled by crafts-persons on or off the premises.~~

~~Examples of acceptable products include, but may not be limited to, nursery stock, fruits and vegetables, leather crafts, paintings, woodwork, metalcraft, ceramics, sculpture, basketry, weaving and yarn work. Items shall typically be considered "non-durable commodities" which serve to foster the cultural and historical characteristics of the Mesilla Valley region. Examples of unacceptable products include, but may not be limited to, motorized vehicles, or equipment, bicycles, trailers, clothes washers, cloth dryers, fabricated storage sheds, playhouses, animal shelters, and goods commercially produced through mechanized means. Structures/walls/fences used to enclose and/or protect the display of goods shall be compatible to the architectural design of the primary building located on site. When no architectural style is defined within these regulations pre-exist on the property, one of the required styles shall be used for purposes herein stated.)~~

~~Packaging of cosmetics, pharmaceuticals, toiletries~~

~~Paint shop (spraying/mixing—nonretail sales)~~

~~Petroleum refining~~

~~Plumbing and heating shop (contractor)~~

~~Public utility installation, substation, and water well~~

~~Racetrack~~

~~Radio and TV broadcasting~~

~~Raw materials manufacturing, processing, and extraction~~

~~Recreational vehicle park~~

~~Recycling/purchase center~~

~~Sign construction and sales (exclusive of signs created pursuant to a cottage industry)~~

Smelting of ores

Sorority house

Stables (commercial)

Stadium: Baseball, football, soccer, track

Stock yards or slaughter of animals

Storage of wrecked or dismantled vehicles and parts (primary or accessory use)

Street vendors

Television and radio towers and all other free standing towers (public or private)

Temporary uses—Pursuant to temporary use permits (except those specifically identified elsewhere in this section.)

Tire sales and service

Warehouse/storage/distribution center

Welding shop (primary or accessory use)

Wrecker services

4. *Development standards.* The following development standards shall apply to all fronting properties along the Gateway:

Minimum lot area/size/dimensions: Refer to underlying zone development standards.

Minimum setback provisions: Refer to underlying zone development standards.

Maximum building height: 40 feet. Not to contain no more than two stories. Pertains to all allowed uses within underlying zoning districts.

D. *Nonconforming uses.* The following nonconforming use provisions shall apply to properties within the Gateway. Provisions pursuant to section 38-45.D.2.d below which allow increases in floor, building, or lot square footage shall not nullify minimum compliance requirements (i.e. parking and landscaping) established elsewhere in this Code or in other companion codes.

1. *Permitted uses with nonconforming urban design features.*

a. When nonconforming urban design features involving parking, landscaping, lighting, and fencing/walls are located on properties within the Avenida de Mesilla Gateway overlay zone district, these features shall be brought into compliance with Gateway standards when:

1) The property remains vacant for a period of one continuous year or greater; or

2) Any one-time or cumulative increase of ten percent to the gross square footage of building area occurs; or

3) Any exterior remodel, renovation, or alteration occurs to the building. This provision shall not nullify allowances as identified in item 1.a.2); or

4) A change in use occurs on the property which results in the alteration of the uses intensity (i.e. low volume to high volume business activity) or orientation (i.e. service to retail activity).

b. When the architectural characteristics of the building are nonconforming, the architecture shall be brought into compliance with current standards when:

1) The property remains vacant for a period of one continuous year or greater; or

2) Any one-time or cumulative increase of 30 percent is made to the gross square footage of building area; or

3) Any exterior remodel, renovation, or alteration occurs to the building. This provision shall not nullify allowances as identified in item 1.b.2).

c. When a sign on the property is nonconforming, it shall be brought into conformance with current standards when:

1) The property remains vacant for a period of one continuous year or greater; or

2) A change in use occurs on the property which results in altering the uses intensity (i.e. low volume to high volume business activity) or orientation (i.e. service to retail activity).

2. *Prohibited uses with nonconforming urban design features.*

a. Commercial uses that existed within the Gateway prior to plan/ordinance adoption and which are specifically identified as a prohibited use, may be allowed to expand or enlarge (either one-time or cumulative increase) provided that:

b. Said increase is no greater than 49 percent of the gross square footage of the lot, if said increase involves the incorporation of additional land area; or

c. Said increase is no greater than 49 percent of the gross square footage of building area, if said increase is through the addition of building floor area; and

d. All nonconforming urban design features are brought into compliance with Gateway standards when the lot area or building floor area has increased by 25 percent.

e. In the event that a prohibited use is discontinued, removed, or otherwise ceases to exist on the subject parcel for any duration of time, said use shall lose its nonconforming status. Thereafter, any subsequent use and nonconforming urban design feature shall be made to conform with all applicable development requirements.

For purposes herein stated, a change in ownership of a nonconforming use shall not constitute a loss of nonconforming status. Additionally, maintenance of an official business registration in the absence of the corresponding bonafide use of the property, shall not be considered a continuation of a land use and may at the Community Development Directors or his/her designees discretion, trigger compliance requirements.

3. For purposes of this section, exterior remodel, renovation, or alteration shall be defined as: any change or rearrangement in the supporting members of an existing building, such as bearing walls, columns, beams, girders, as well as any change in roof lines, or any enlargement to or diminution of a building or structure, whether horizontally or vertically. Normal maintenance activities as verified by the city's building official or his/her designee are exempt from this provision.

E. *Urban design standards.* To insure quality property development and renovation, the following requirements regulating urban design are established in this overlay zone district.

1. *Architectural design.*

a. *Purpose*. Architectural design standards are established for this district in order to create uniformity of physical design consistent with the district's unique architectural characteristics.

See appendix I for a visual guide of the architectural design portion of this ordinance.

1) Architectural design standards are established as follows: For properties along the Gateway, Pueblo, Spanish Colonial, Territorial, Mission, and other southwest vernacular

architectural styles shall be required. The Pueblo, Spanish Colonial, Territorial, and Mission architectural styles represent those which are strongly encouraged within the Gateway. For information regarding other allowable styles, please refer to New Mexico Historic Building Inventory Manual, section VI, Introduction To New Mexico Architectural Styles, which is available in the city planning office.

a) Pueblo.

(1) Required facade features.

(a) Walls shall be surfaced with a smooth stucco surfacing and shall incorporate soft rounded corners or buttressed corners in order to emphasize structural massing.

(b) Parapet walls above the roof line shall be used in the design and shall have rounded edges and variations in height. Variations in height of parapet walls are recommended.

(c) The use of bell coates (espadañas) or other design strategies which simply vary the heights of the facade shall be incorporated in large scale (business center or apartment complex) commercial or residential buildings.

(d) Structures which are more than one story in height shall have the top story setback further from the front property line than the first story.

(2) Roofs.

(a) Required roof features. Roofs shall generally lie flat except that sloping of the surface will be allowed to facilitate the shedding of moisture.

(b) Recommended roof features. Canales made of clay or treated wood shall be incorporated along appropriate areas of the roof and facade to aid in the removal of the surface moisture.

(3) Required color features. Stuccoed walls and applied ornamentation shall be of a desert or earth tone.

(4) Ornamentation.

(a) Required ornamentation features.

(i) Although the pueblo architectural style is generally limited in ornamentation, the use of exposed/treated wood lintels above windows and entryways and wood vigas shall be required.

(ii) Vigas, applied as decoration, shall be placed along the exterior wall in a single orientation (i.e. north/south or east/west) in order to avoid the appearance of crossed or misplaced supports (buildings of more complicated design may be allowed multi-directional placement).

(iii) Vertical supports for portales/loggias, if used in the design, shall consist of round wood columns with corbel bracketed capitals.

(b) Recommended ornamentation features.

(i) Application of exposed/treated wood lintels above windows and entryways and wood vigas may be used in their true structural form or may be applied simply as decoration.

(ii) The use of portales/loggias are strongly encouraged but are not required elements.

(iii) If chimneys are incorporated as a design feature, all components shall be appropriately constructed and detailed in a manner consistent with the rest of the structure.

b) Spanish Colonial.

(1) Facade.

(a) Required facade features.

(i) Walls shall be surfaced with a smooth stucco surfacing.

(ii) Structures which are more than one story in height shall have the top story setback further from the front property line than the first story.

(b) Recommended facade features. Walls are encouraged to include a belt mold which encircles the building along the top of the facade.

(2) Roofs.

(a) Required roof features.

(i) Roofs shall be pitched using a 4 in 12 to 5 in 12 pitch.

(ii) Roofs over balconies and other such features may have pitches of 2 in 12 or 3 in 12.

(iii) Roofs shall be surfaced with clay barrel tiles or a material giving a similar appearance.

(b) Recommended roof features.

(i) Roofs are encouraged to have clipped eaves, generally flush with the wall.

(ii) When overhangs are created, exposed and treated timbers should be used.

(3) Color.

(a) Required color features.

(i) Stuccoed walls shall be white or contain otherwise light desert colors.

(ii) If color accents are used, they shall not be of a stark contrast to the primary color of the wall.

(iii) Roof color shall contain red tones.

(b) Recommended color features. Color accents are a recommended feature of the Spanish Colonial style.

(4) Ornamentation.

(a) Required ornamentation features.

(i) Windows shall be of a divided light variety and shall be recessed or otherwise defined and accentuated with molded surroundings.

(ii) Walls for courtyard and patios, if used, shall be thick and/or otherwise appear massive.

(iii) If shade structures are used, they shall have strong timber accents such as beams or joists.

(b) Recommended ornamentation features.

(i) Limited arches should be used in the overall design of the structure.

(ii) Arches serving primary entryways are typical and are encouraged.

(iii) All doors should be constructed of or give the appearance of heavy carved wood.

(iv) Courtyards and patio designs incorporated into the building design are strongly encouraged.

(v) Shade structures are also encouraged.

(vi) If chimneys are incorporated as a design feature, all components shall be appropriately constructed and detailed in a manner consistent with the rest of the structure.

c) Territorial.

(1) Facade.

(a) Required facade features.

(i) Walls shall be surfaced with either a smooth stucco or brick. If brick is used, the brick must be antiqued or otherwise treated to give the appearance of a weathered and aged brick.

(ii) Parapet walls above the roof line shall be used in the design and shall be capped with brickwork, masonry, or wood unless a folk territorial design is used, in which case, no parapet shall be used.

(iii) Structures which are more than one story in height shall have the top story setback further from the front property line than the first story.

(b) Recommended facade features.

(i) Overall building form should be clean and simple in appearance.

(ii) Structures should have facades of varying heights.

(2) Roofs.

(a) Required roof features.

(i) Roofs shall generally lie flat except that sloping of the surface will be allowed to facilitate the shedding of moisture.

(ii) Folk territorial designs shall have pitched gable roofs surfaced with tin or corrugated sheet metal which has been factory painted/treated in a manner which eliminates its reflective properties yet contributes to the design characteristics of the selected architecture.

~~(b) Recommended roof features. Dormer windows are not required in folk territorial designs, but are strongly encouraged.~~

~~(3) Color.~~

~~(a) Required color features.~~

~~(i) Stuccoed walls shall have earth tones such as tan, sand, and beige.~~

~~(ii) Brick facades shall consist of muted colors such as red brick which has been "antiqued."~~

~~(b) Recommended color features. Trim materials shall have light or neutral colors which contrast to primary surface colors.~~

~~(4) Ornamentation.~~

~~(a) Required ornamentation features.~~

~~(i) In designs which incorporate parapets, the cornice shall be detailed with decorative brick or wood and contain dentil ornamentation.~~

~~(ii) Window and door openings shall be set flush with the wall and shall have trim treatments of brick or wood surrounding the fenestration.~~

~~(iii) The use of pediments (wood trim treatment) above doors and windows is required.~~

~~(iv) Windows shall be of a divided light variety.~~

~~(v) Ornamentation treatments for porches or porticos, if used, shall be similar to those incorporated on the primary structure (wood cornice and dentil treatments are typical) and shall be supported by wood columns.~~

~~(b) Recommended ornamentation features.~~

~~(i) Canales should be square or rectangular in shape and be constructed of a natural material such as wood, or have surface treatment which is consistent with the primary structure.~~

~~(ii) If window shutters are used, they shall be paneled.~~

~~(iii) Doors should be constructed of wood or treated to give the appearance of wood and should also be paneled.~~

~~(iv) Designs incorporating porches or porticos along the facade are strongly encouraged.~~

~~(v) Separate shade structures or treatments over balconies are not required but, if used, shall incorporate exposed timber in the design.~~

~~(vi) If garden walls are used, they shall be surfaced with stucco and shall have a brick cap similar in treatment to that used for the primary building walls.~~

~~(vii) Chimneys are not required but, if incorporated as a design feature, all components shall be appropriately constructed or otherwise detailed in a manner consistent with the rest of the structure.~~

~~d) Mission.~~

~~(1) Facade.~~

~~(a) Required facade features.~~

~~(i) Walls shall be surfaced with a smooth stucco finish and maintain clean edges or corners.~~

~~(ii) Walls shall give the appearance of mass through their construction.~~

~~(iii) Larger structures (i.e. business center, hotel etc.) which contain two stories shall:~~

~~(aa) Create two distinct levels,~~

~~(bb) Feature an arched portal feature along the first level,~~

~~(cc) Incorporate a vertical element such as an espandana or bell coate in the design,~~

~~(dd) The portal shall characteristically contain curvilinear openings or archways to emphasize the portal and assist in defining the two levels, and~~

~~(ee) The second story shall be set back further from the front property line than the first story.~~

~~(ff) All facades regardless of building size shall incorporate arched entryways in the design.~~

~~(gg) Arched window openings or detailing is strongly encouraged for all such openings and shall be required for windows which figure prominently in the facade design.~~

~~(hh) Facades shall also incorporate curvilinear parapets projecting above gabled rooftops.~~

~~(b) Recommended facade features.~~

~~(i) Smaller structures used for single uses or a small number of uses will comply with the following:~~

~~(aa) May incorporate similar design features as what is required of the larger structures; and~~

~~(bb) Greater design latitude shall be afforded to smaller structures in order to ensure that scale and mass do not overwhelm the overall appearance.~~

~~(2) Roofs.~~

~~(a) Required roof features.~~

~~(i) Roofs shall be pitched in a gable fashion and shall be surfaced with a red colored tile.~~

~~(ii) Emphasis to the roof detailing shall be provided through the use of curvilinear parapets.~~

~~(b) Recommended roof features. Projecting eaves, if utilized, shall be accentuated with exposed rafters.~~

~~(3) Required color features.~~

~~(a) Stuccoed walls shall have light or neutral tones.~~

(b) Roof tiles shall have a red tone.

(4) Ornamentation.

(a) Required ornamentation features. Curvilinear parapets shall be required.

(b) Recommended ornamentation features.

(i) Any projecting eaves shall be required to be accentuated by exposed rafters.

(ii) Detailing which emphasizes rounded or curved openings such as windows or portal entry arches is encouraged.

b. *Wall surfacing.*

1) For all other architectural styles not outlined above, stucco or brick shall be the material used for all exterior wall surfacing (exclusive of trim details, etc.).

2) Freestanding walls/fences if used as a design feature shall be constructed of adobe or cinder block layered with stucco, or wrought iron or any combination thereof except that all wall treatments shall be consistent with the architectural style used for the building(s).

3) Slump block shall not be used as a finish surface for any facade or freestanding wall.

4) No chain link fencing shall be permitted unless used for temporary purposes related to construction which occurs on site.

c. *Multiple story structures.*

1) Two story structures, regardless of architectural type, shall have their stories terraced or staggered so as to provide a transitioning of structural bulk and scale.

2) Special design features such as espadañas (bell coates) are exempt from this provision.

3) Portals incorporated in the design and placed along the facade may be considered an acceptable transition mechanism, as identified in c.1), above.

d. *Accessory structures.*

1) All accessory structures such as storage buildings, work shops, and structures used to enhance indoor/outdoor space (i.e. pergolas or other shade devices within courtyards etc.) shall be constructed and otherwise detailed in a manner consistent with the architecture of the primary building.

e. Sensitive building design

1) All building facades shall become an integral part of the overall design and reflect the architectural style chosen.

2) When necessary, the use of landscaping shall be required to break up building facades which by their design may have long, continuous surfaces with limited fenestrations or other openings.

2. *Landscaping.*

a. *Purpose.* The landscaping standards for new development, and the encouragement of landscaping for existing property along the Gateway, are established to represent the agricultural theme prevalent within the Gateway area and the Mesilla Valley in general. Landscaping will also screen/buffer parking lots from the right-of-way and soften their overall impact.

1) Definitions.

a) *Landscape* shall be defined as the following per 1000 square feet of landscape area required:

(1) Two two-inch caliper trees as measured six inches above soil level and which reach a minimum height of 25 feet at maturity as referenced in The New Western Garden Book (most recent edition), and

(2) Fifteen five-gallon shrubs, and

(3) A choice of either five one-gallon shrubs or 50 square feet of ground cover for every 500 square feet of lot area excluding building area and parking lot area in addition to five one-gallon shrubs.

2) Landscaping for new development along the Gateway shall be provided to cover 15 percent of the lot area exclusive of building area.

3) All landscaping shall be provided on site.

4) Of the total area to be landscaped, fifty percent (50 percent) shall be located within the front setback of the property. Of this percentage, one-half (2) shall be located between the front property line and the parking lot.

Note: Front setback of the property shall be defined as: the area between the back of sidewalk and the property's principal structure.

5) A minimum of 25 percent of the total required landscape area and 25 percent of required plant material shall be located along the rear and sides of any principal and/or ancillary building.

6) The remaining 25 percent of the required landscaping shall be incorporated in areas adjacent to service areas (loading docks/bays, dumpsters, etc.), building/utility equipment, and within ponding areas as a means of providing a screen or buffer to these potentially harsh/contrasting development features.

7) In addition to the 15 percent required landscaping percentage, all development exclusive of single-family and duplex properties shall be required to plant trees within the parking areas for shade and visual relief.

a) Trees located within the parking area shall maintain a minimum height of six feet before the first lateral branch and shall reach a minimum canopy diameter, at maturity, of 20 feet.

b) All parking areas shall have a minimum requirement of one 24-inch box tree per every ten parking spaces within the parking lot.

Trees shall be located in an island and/or planters which will protect tree trunks from cars.

(1) Addition of a barrier such as a curb, wheel stop, or bollard shall be required to be used as protection.

(2) Islands shall be a minimum of three feet wide.

(3) Islands shall be located so as to relieve the large expanses of paving and to provide shade and contribute to orderly multi-modal circulation.

c) Trees should be planted along the edge and/or between parking stalls in planter areas which have a minimum area of 49 square feet, dimensional

requirements as provided in Appendix I at the end of this section, and a raised border of at least four inches in height.

d) Where a landscape border or similar feature abuts parking stalls, trees within those areas may count toward the parking area tree requirement, provided:

(1) The trees are planted within ten feet of the parking stall area perimeter; and

(2) The number of parking area trees required pursuant to these regulations is not reduced by more than half as a result of this condition's implementation; and

(3) A minimum of one tree is provided within the parking area.

8) Ground cover material consisting of bark, pecan shell, decorative stone, or river rock shall be used on any ground surface which would otherwise be exposed. Excessively large expanses (greater than 500 square feet) of ground covered landscape areas shall be avoided unless vegetation and variety in ground cover textures are incorporated to help mitigate incompatible scale concerns.

9) The property owner shall be responsible for maintenance of all plantings and for a sufficient irrigation system to water all plant material, but should also conserve water, as per the city design standards.

a) In the event the required maintenance is not being provided 20 days after notice from the city, the property owner shall be subject to a fine as per the Municipal Code.

b) Each day of such and infraction shall be deemed a separate offense.

3. *Site design elements.*

a. *Buffering—Purpose.* Visual screens/buffers are established to soften the harsh look of parking lots and other physical features from the right-of-way and to ease their overall impact. Through the use of required landscaping, landscaping elements, garden walls, berms, hedges, and/or other landscape features, this separation will exist. The following provisions shall be considered when creating this separation:

Buffer strip.

1) A minimum ten-foot wide buffer strip shall be required between parking lots and the property line which is most parallel with Avenida de Mesilla.

2) Buffers shall have a minimum vertical height of two feet and a maximum vertical height of three feet, as measured from top of buffer element to top of curb. All clear site triangle provisions shall apply as stated in article III, definitions.

3) Berms.

a) Berms shall have a maximum design slope of one foot of rise for every five feet of distance (grass) or one foot rise for every three feet of distance (ground cover).

b) Walls, if used in conjunction with berms or as the sole buffering mechanism, shall be placed at the farthest location away from the property line, closest to the parking area. Head-in-parking adjacent to walls must use wheel stops or be offset at least 2.5 feet from the curb.

c) Design considerations shall be implemented to control erosion where berms abut sidewalks.

4) All landscaping used within the buffer strip may count toward fulfilling the landscaping requirements pursuant to applicable provisions.

5) Aesthetically incompatible service areas and building mechanical/utility equipment.

a) Dumpsters.

(1) Dumpster locations shall be surrounded by a wall having a minimum height of at least one foot above the refuse container and which is compatible with the architectural character of the development in material and location.

(2) Landscaping shall also be placed in close proximity to the dumpster so as to cause a more appropriate transition or blending of physical features.

b) Freestanding building mechanical/utility equipment.

(1) This equipment shall be screened from view using landscaping or walls in a manner that conceals the equipment and remains consistent with the landscape/ architectural character of the project to which it pertains.

(2) Equipment that is on the rooftop or otherwise attached to the building shall be screened from view through the use of building design elements such as parapets or similar strategies.

(3) When the chosen architectural style selected does not lend itself to using these techniques, equipment shall be placed toward the rear of the building rooftop or facade and shall be painted with a color that most accurately matches the building element to which it is attached.

4. *Sidewalks.* Sidewalk installation requirements shall adhere to the city design standards and the city sidewalk ordinance requirements, except that:

a. Future large scale (block lengths or greater) sidewalk reconstruction and new installation efforts shall require the matching of sidewalk surfacing consistent with that found along Avenida de Mesilla near the Avenida de Mesilla/Calle de El Paso intersection.

b. Small scale (less than block length) installation of new lengths of sidewalk and small scale sidewalk reconstruction shall be examined on a case by case basis to see if surface matching is appropriate.

c. Piecemeal surface matching should be avoided.

5. *Signs.*

a. Purpose. The Avenida de Mesilla Gateway overlay zone district sign code shall be established for aesthetics, height, overall size, type and lighting considerations for signage consistent with the district's urban design standards.

b. In determining applicable sign standards, chapter 36 shall apply, except as provided below:

1) Off-premise signs. No off-premise signs shall be allowed along the Gateway except for the following:

a) Political signs that are no greater than 32 square feet in area and six feet in height. Signs shall be erected no sooner than 30 days before the election to

which they pertain and shall be removed within seven days following same election.

b) Off-premise sign displays regarding community events or holidays may be permitted, if approved by the city manager or designee.

2) Temporary signs/displays. Temporary signs/displays shall be limited to banners, pennants, streamers, balloons and real estate signs.

a) Banners, pennants, streamers, and balloons shall be subject to applicable provisions identified within the city sign code pursuant to commercial promotional display (section 36-118) and residential promotional display (section 36-119).

b) Real estate signs shall be no greater than 15 square feet in sign area. Sign height shall be no greater than six feet. When signs are greater than eight square feet in sign area, they shall be constructed entirely of wood and shall incorporate corporate logos, illustrations, or other graphics along with the text to create a more aesthetically pleasing sign display. Signs in excess of eight square feet shall utilize a combination of differing geometric shapes in the design of the sign face's outline or silhouette.

3) On-premise attached signs.

a) Wall, window, and canopy signs shall be the only attached sign types allowed within the Gateway.

b) The maximum total sign area shall be no greater than one square foot of signage per linear foot of street frontage along Avenida de Mesilla only. For a single business located on one or more lots, the total attached sign area shall not exceed 250 square feet. For a development involving business/shopping centers, the maximum total sign area shall be limited to that authorized by the sign area calculation using Avenida de Mesilla frontage.

c) Except for canopy signs, there shall be no limit to the number of signs used provided that their cumulative square footage does not exceed the maximum allotment (see also, window sign design standards, on-premise point-of-sale and accessory use signs) allowed.

d) No more than 20 percent of the window area shall be covered by a window sign.

e) Canopy signs shall be placed on no more than two sides of the canopy. Sign(s) may either be attached to the canopy through the use of either channel letters (construction characteristics), or the sign(s) may be painted, imprinted, or stamped on the canopy face. Only one sign type may be used per canopy. Canopy signs shall not occupy more than 33 percent of the canopy side to which they are attached and shall be primarily used for corporate/business identification only and not advertising pre se. For purposes of these regulations, canopies shall be defined as provided in article III and shall not include portales, poticos, loggias, zagguans, miradors, and other similar architectural design features/elements customarily used in southwestern architectural vernacular.

4) On-premise freestanding signs.

a) Ground signs shall be the only freestanding sign allowed within the Gateway.

b) If two signs are allowed, the second sign may be of a design, size, and height permitted pursuant to the city's sign ordinance and shall be located toward the property line which is furthest from and most parallel to Avenida de Mesilla, at a distance from that line which shall not exceed 15 feet. All other applicable sign setbacks and related provisions shall apply for the sign.

c) Ground signs located along Avenida de Mesilla shall be no larger than six feet in height and no greater than 32 square feet in sign area.

d) Each ground sign shall maintain a ten-foot setback from front and side property lines.

e) Wood shall be the predominant material used in the construction of the ground sign's copy.

f) The illumination of the ground sign must not be positioned so as to interfere or visually impair passing motorists, bicyclists, or pedestrians.

g) If the lighting standard is visible, it shall be decorative in its construction and shall be consistent with the architectural style of the property.

h) Properties developed as business centers shall conform to the following:

(1) One ground sign identifying the name of the center.

(2) One directory ground sign will be allowed.

(a) The directory ground sign shall be no greater than six feet in height.

(b) The sign shall provide no more than four square feet of sign area for the identification of each tenant.

(3) Overall sign area is dependent on the number of businesses within the business center.

(4) All other provisions set forth in article VIII and this section regarding setbacks, construction materials, and illumination shall apply.

(5) On-premise point-of-sale and accessory use signs.

(a) These sign types shall follow all applicable provisions identified within the sign code.

(b) For purposes of the Gateway, the square footage of these sign types shall be part of the total square footage allowed under the provisions for attached signage.

c. *Sign design standards.*

1) Signs shall not be placed in a manner which interferes, covers, or otherwise disrupts the intended purpose of important architectural building features such as display windows, cornices, vigas, entrances, eaves, and other decorative/integral elements.

2) Signs shall be designed (shape, color, and material) in a manner consistent with the building to which it relates.

a) Signs of excessively complicated design, which disrupt the architectural character of the building, shall not be permitted.

b) In order to facilitate this compatibility, the following shall apply:

(1) Freestanding signs.

(a) Design elements and/or finish treatments such as stucco or brick surfacing, freestanding wall designs/treatments, etc. shall be incorporated into a monument sign's overall design except that the copy portion of the sign shall be constructed of wood.

(b) Color. The color of surface or finish materials used on the building shall be incorporated into the sign's supporting structure.

Contrasting colors may be used on the copy portion of the sign for purposes of increased legibility and clarity.

A maximum of two contrasting colors shall be used.

(c) When multiple ground signs are allowed (i.e. business centers), the design of each sign shall maintain a similar design appearance, and colors and lettering styles shall remain consistent.

(d) The base of all ground signs shall be landscaped with shrubs and ground cover.

(2) Attached signs.

(a) Signs may be constructed of channel letters, or wood; except, only one style may be used per building or development. If channel letters are used, a logo of the same construction type may also be incorporated into the sign(s) design.

(b) Contrasting colors may be used in the sign's design for clarity and legibility; however, a maximum of two such colors, exclusive of background color, are allowed for signs used by each business. For purposes of this provision, the background color must not be used to highlight the sign message and must, therefore, be a color applied in a consistent manner to building or structure walls/surfaces within the development.

d. *Lighting.*

1) If a sign is externally lighted, the lighting fixture shall be decorative in its construction and be compatible to the architectural style of the building to which it relates.

2) Other illumination options include both internal and back lighting.

3) When a sign is lighted, there shall be no glare off the sign due to the lighting utilized with the sign.

e. *Neon signs.*

1) The use of neon is permitted provided it is used for back lighting purposes only. The neon tubing shall be completely shielded from view (as viewed from the front of the subject sign) by the sign's letters or sign structure it is intended to back light. Only one color of neon may be used to back light signs placed upon a building or within a development.

f. *Legibility and clarity.*

1) To facilitate legibility and sign clarity, the number of different lettering styles or fonts and font sizes on a sign shall be kept to a minimum.

2) Lettering shall not be crowded onto a sign and ample space surrounding the copy shall be maintained.

6. *Transportation.*

a. *Purpose.* To improve access to and circulation within the Avenida de Mesilla Gateway overlay zone district, to minimize traffic conflicts along the Gateway, and to encourage the integration of all modes of transportation into the Gateway. The following transportation regulations shall be complied with:

1) Appropriate striping, placement of barriers, surfacing treatments, and other applicable demarcation strategies shall be used to clearly identify circulation patterns. Developments are encouraged to provide bicycle access and parking.

2) The following access/curb cut provisions shall be required along Avenida de Mesilla pursuant to New Mexico State Highway and Transportation Department final approval.

The provisions are based on the linear frontage of property along Avenida de Mesilla and are intended to promote shared access and increase overall ingress/egress efficiency and safety.

Frontage	Provision
<200 feet	One shared or one two-way or one one-way pair
>200—<300 feet	Two shared or one two-way or one one-way pair
>300 feet	Two shared (and either one two-way or one one-way pair) or two two-way or two one-way pair

a) Access designs which incorporate acceleration/deceleration lanes and other similar traffic flow strategies, which may impact access/curb cut needs, will require the review and approval of plans by the city's public works director or designee and New Mexico State Highway and Transportation Department.

b) Non-shared curb cuts shall maintain a five-foot side yard setback.

c) A 50-foot separation between curb cuts as measured along the property line shall be maintained regardless of type.

d) The width for one-way curb cuts shall be 15 feet. The width for two-way and shared curb cuts shall be no less than 25 feet and no greater than 35 feet.

e) Shared access shall be strongly encouraged.

f) Shared access provisions shall be secured by a shared access agreement between affected property owners and shall be approved as to form and content by the city attorney's office. Final agreements shall be filed at the county clerk's office.

3) Parking. In order to minimize the impacts often created by parking lots, parking requirements along the Gateway shall follow all applicable parking standards as provided in section 38-58, off-street parking, of this Code, except as follows:

a) Businesses located along the Gateway are encouraged to seek shared parking agreements with businesses on adjoining properties.

(1) These agreements shall be approved as to form and content by the city attorney's office and once completed, filed with the county clerk's office.

(2) Agreements may be made with adjoining property owners regardless of each business' hours of operation.

(3) In combining parking requirements, 100 percent of the required off-street parking for all subject businesses shall be met.

(4) For businesses requiring a shared parking arrangement in order to meet parking provisions, the agreement shall pertain to no more than 40 percent of the number of parking stalls they are responsible to provide. The remaining 60 percent must be provided on that business' site.

b) Lighting standards used to illuminate parking lots shall relate in design, material, and color to the architectural and/or historical character of the property.

c) All lighting shall be fully shielded fixtures with full cut-off, 20 percent below horizontal.

F. *Administration of overlay plan district.*

1. *Purpose.* All new development, including subdivisions and signs, shall require city approval. Proposals involving any development within the Avenida de Mesilla Gateway area shall be processed through the city's staff to aid in enforcing area standards.

a. *Submittal and review process.*

1) Purpose. Submittal and review procedures are established for all new development to protect persons and property within the district as directed in the Avenida de Mesilla Gateway Plan.

2) Subdivisions. For submittal and review of subdivisions within the district, refer to article VI, alternate summary procedures, City Subdivision Code.

3) Buildings.

a) Pre-application conference.

(1) Prior to the filing of an application for developments in the district, it is strongly encouraged that the applicant meet with staff of the city community development department to review the proposed project.

(2) At the conference, staff shall review the development proposal and advise the applicant concerning the compatibility of the proposal with the intent and standards of the Avenida de Mesilla Gateway plan and all other applicable city codes.

b) Application procedure. Upon submittal of the required items, the application materials will be processed to the appropriate city departments. Written comments and recommendations from the reviewing agencies will be forwarded to the community development department within ten working days from the date of submittal.

c) Application materials.

(1) Applications for development within the Avenida de Mesilla Gateway overlay zone district shall be obtained from the community development department, building permit section.

(2) Development submittal requirements, including the development statement shall, at a minimum, reflect the following information: (Number of copies to submit with the application is outlined in the Avenida de Mesilla Gateway overlay zone district application packet, available at the city community development department.)

(a) A statement of objectives to be achieved by the development inclusive of a description of the character and anticipated use of the proposed development.

(b) Scaled site plan.

(i) Property boundaries.

(ii) Location of all structures.

(iii) Parking layout.

(iv) Location of service and loading areas.

(v) Pedestrian and bicycle circulation.

(vi) Dumpster location.

(vii) Areas proposed for landscaping.

(viii) Ingress/egress access points.

(ix) Identification of proposed uses within each structure.

(x) Storm water ponding areas.

(xi) Surfacing material for impervious surfaces.

(xii) Setbacks.

(xiii) Any other information which conveys how the proposal will meet development requirements.

(c) Scaled floor plan. The scaled floor plan shall clearly identify the internal boundaries, size, and storage areas of each use.

(d) Scaled landscaping plan.

(i) This plan shall include the location, size, and common name of all landscaping.

(ii) A complete irrigation plan shall be included, clearly identifying how the landscape will be sustained.

(e) Scaled elevations.

(i) The diagram shall include each directional view of all structures clearly identifying exterior building materials and treatments.

(ii) Location and treatment of all fenestrations and other building openings shall also be indicated on plans.

(iii) Building ornamentation shall be shown.

(iv) Roof design and roof surfacing material shall be indicated on diagram.

(f) Architectural/artistic renderings.

(i) Renderings shall reflect the exterior building.

(ii) Drawings shall demonstrate the use of building materials.

(iii) Renderings shall indicate selected colors.

4) Signs.

a) Sign permits shall be required for all signs within the district. While sign permits are approved separately from all other required permits and applications, the department strongly encourages the display of signage included in the aforementioned submittal material F.1.a.3)c)(2)(b) through F.1.a.3)c)(2)(f).

b) All application and submittal material can be obtained from the city planning office. Once the application has been deemed complete and approved, a sign permit will be issued by the city's sign administrator.

b. Appeals.

1) Any applications for developments must be approved by the city in order for a building permit to be issued.

2) In the event that an application is denied by the city staff, based on interpretation of the Gateway plan and this Code, an agreement of interpretation cannot be reached, and all other procedures established by this section have been exhausted, the applicant may file for an appeal, in writing, to the Planning and Zoning Commission within 15 days of the city staff's denial decision.

3) The appeal will be processed by the city to be considered at the next available public hearing in accordance with notice requirements of section 38-10 of this Code.

4) Any aggrieved person that is affected by a decision of an administrative official, commission, committee, or board in the enforcement of the Avenida de Mesilla Gateway plan and this section may appeal such decision to the city council in accordance with section 38-13 of this Code.

5) Any person aggrieved by a determination of the city council may appeal to the district court within 30 days after the determination made by city council, in accordance with section 38-14 of this Code.

c. *Variances.*

1) Variances in the numerical requirements for development within the district may be granted by the Planning and Zoning Commission at a public hearing in accordance with section 38-11 of this Code.

2) An application for a numerical variance will be processed to applicable city departments.

3) Written comments from the applicable city departments shall be forwarded to the city community development department within ten working days of the submittal.

4) Comments from the community development department shall be delivered to the Planning and Zoning Commission prior to the public hearing.

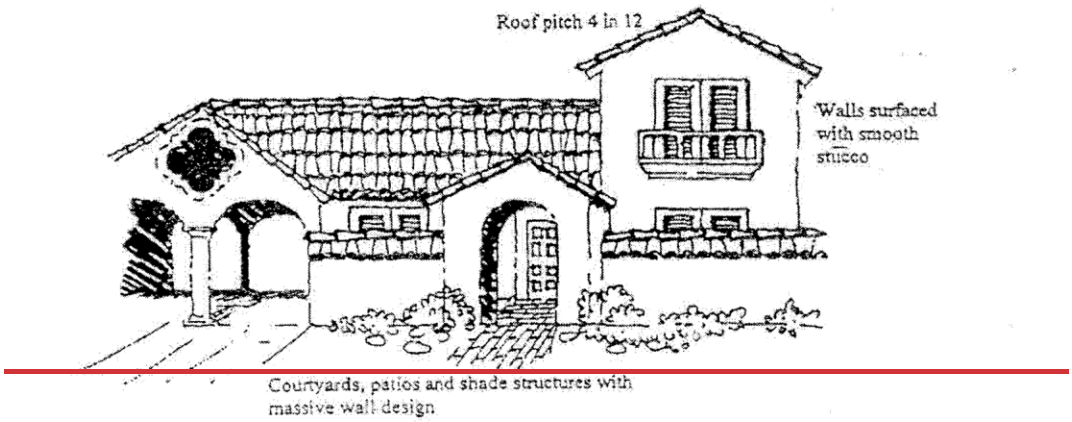
~~5) Decisions of the Planning and Zoning Commission may be appealed to city council, in accordance with the provisions of section 38-13 of this Code.~~

~~G. *Enforcement of overlay zone district.* Provisions to enforce this section shall be consistent with the enforcement provisions of section 38-16 of this Code.~~

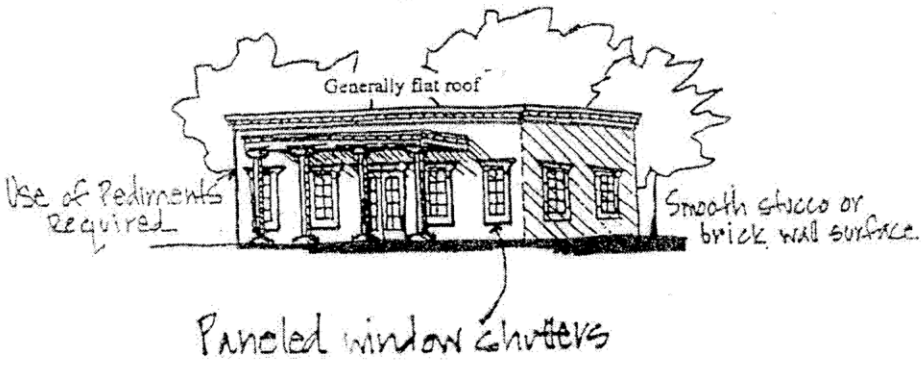
APPENDIX I. ARCHITECTURAL DESIGN IN AVENIDA DE MESILLA GATEWAY OVERLAY ZONE DISTRICT*

PICTORIAL GUIDE TO ARCHITECTURAL DESIGN WITHIN THE AVENIDA DE MESILLA GATEWAY OVERLAY ZONE DISTRICT

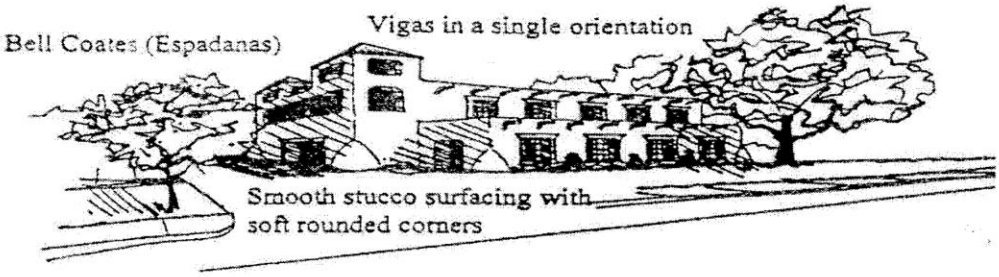
Example of a Spanish Colonial Architectural Design



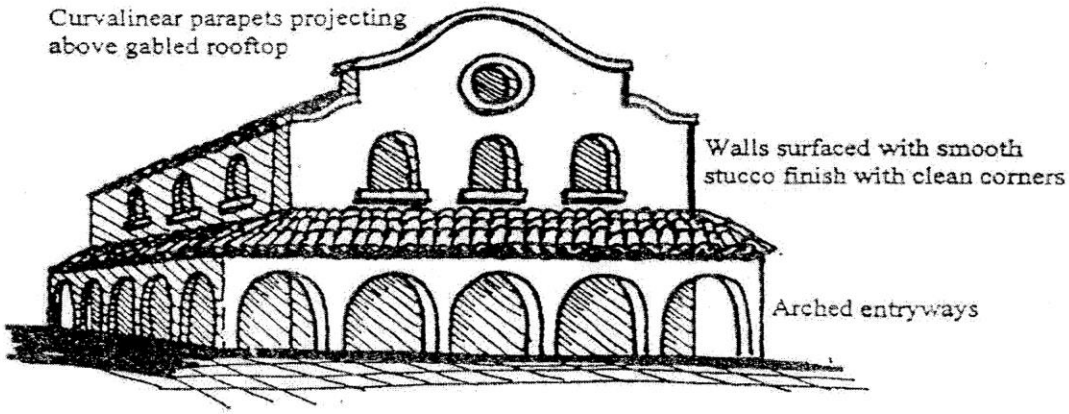
Example of Territorial Architectural Design

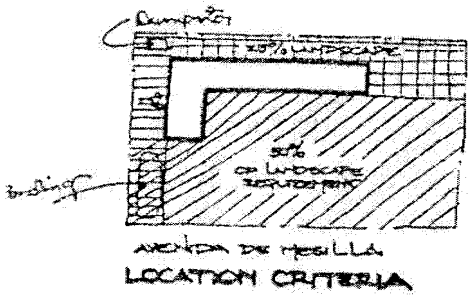


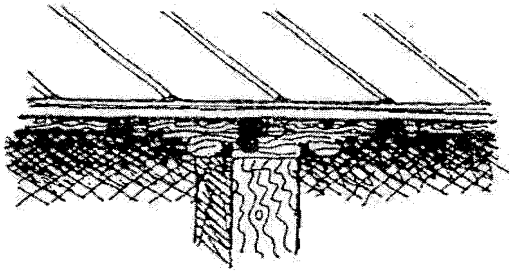
Example of a Pueblo Architectural Design



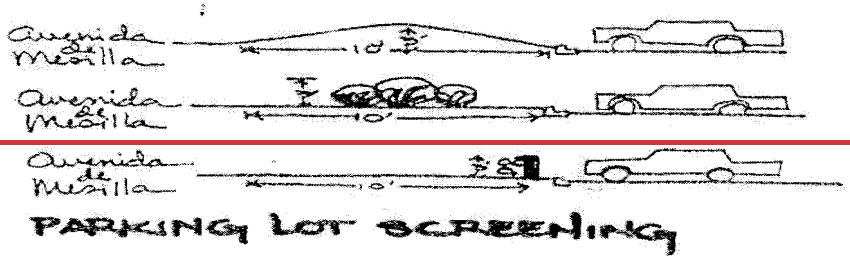
Example of Mission Architectural Design



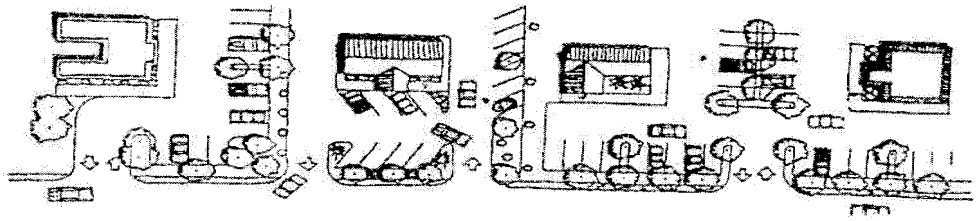


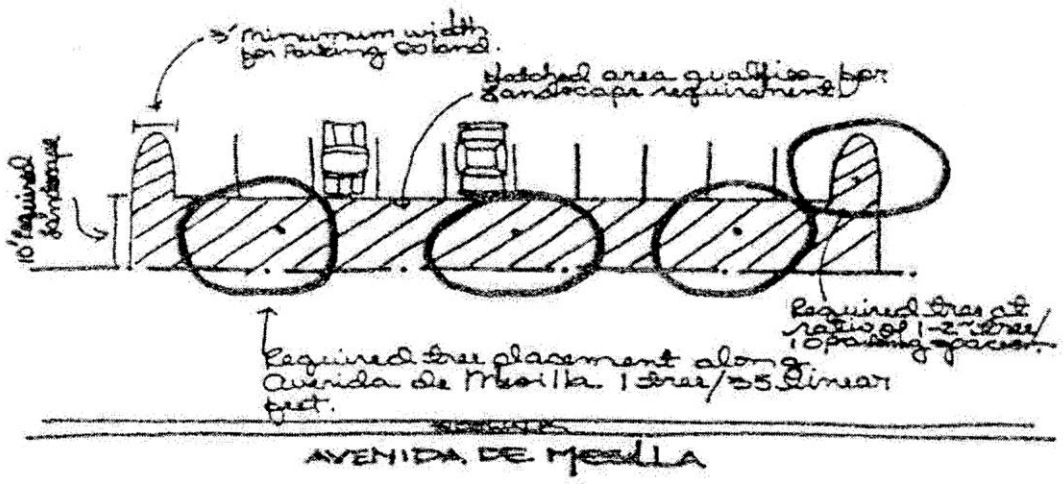


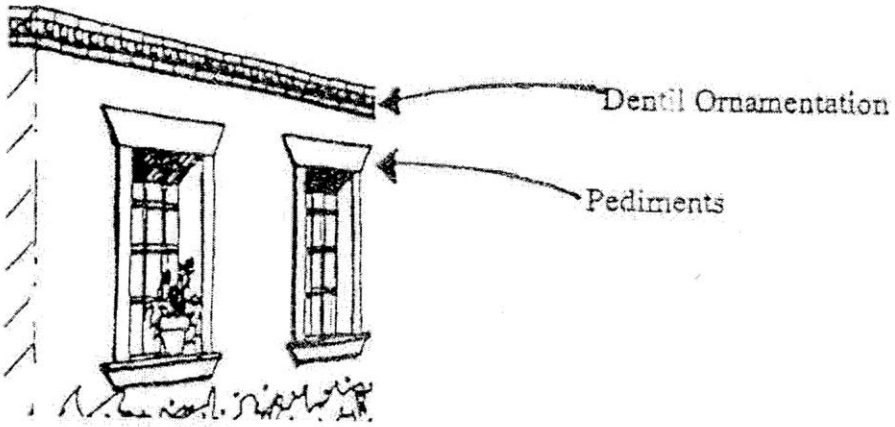
Example of Corbel Detail



Example of Shared Access







~~(Ord. No. 2354, § I, 1-22-07)~~

~~Sec. 38-46. LCIIP—Las Cruces Innovation and Industrial Overlay Zone District.~~

~~A. *Purpose.* The purpose of the Las Cruces Innovation and Industrial Park Overlay Zone District is to guide development within the Park and implement the policies found in the LCIIP Master Plan. It aims to promote the natural and existing environment within the Park, and encourage employment options for residents while enhancing the overall aesthetic features of the Park.~~

~~B. *Applicability of Industrial Park Overlay Zone District boundaries.* The Las Cruces Innovation and Industrial Park Overlay Zone District shall apply to all properties within the Overlay Zone District as identified in "Figure 1. Las Cruces Innovation and Industrial Park Overlay Zone & Districts" below. Most of the Park is regulated by the Overlay Zone District requirements except a few parcels, as indicated in "Figure 2. Las Cruces Innovation and Industrial Park Zoning Designations." The Overlay Zone District includes permitted and prohibited uses along with development standards for site, architecture, landscape, and parking.~~

C. *Land Use Districts.* As established in Elevate Las Cruces, "Business Park and Industrial areas are reserved for concentrations or warehousing, trade, transportation, research and development, manufacturing, and industrial uses" (Elevate Las Cruces, Volume I, pg. 35).

The goal of the Land Use Framework is to accommodate a range of uses, with the intent of creating synergy between businesses with similar or complementary activities. The Land Use Framework also establishes a commercial district adjacent to Interstate 10. Uses such as restaurants and retail are permissive here to provide and encourage services to the local workforce. The Land Use Framework establishes four districts with specific permissive land uses. Since the Las Cruces Innovation and Industrial Park Overlay Zone District allows a wide variety of uses and covers almost all the land area within the Park boundary, the Land Use Framework establishes land use districts to group similar or complementary uses to provide a more organized built environment. The Land Use Framework, as illustrated in "Figure 1. Las Cruces Innovation and Industrial Park Overlay Zone & Districts," breaks the Park down into four districts:

1. Value added agriculture;

2. Manufacturing/warehousing/distribution;

3. Aerospace/aviation/defense; and

4. Commercial.

The Value-Added Agriculture district is located south of Interstate 10 in the southeastern portion of the Park. It is intended to accommodate agriculture-related manufacturing and other processes that enhance the value of basic agricultural commodities. Most of the parcels are larger in size to provide sufficient land for these types of activities.

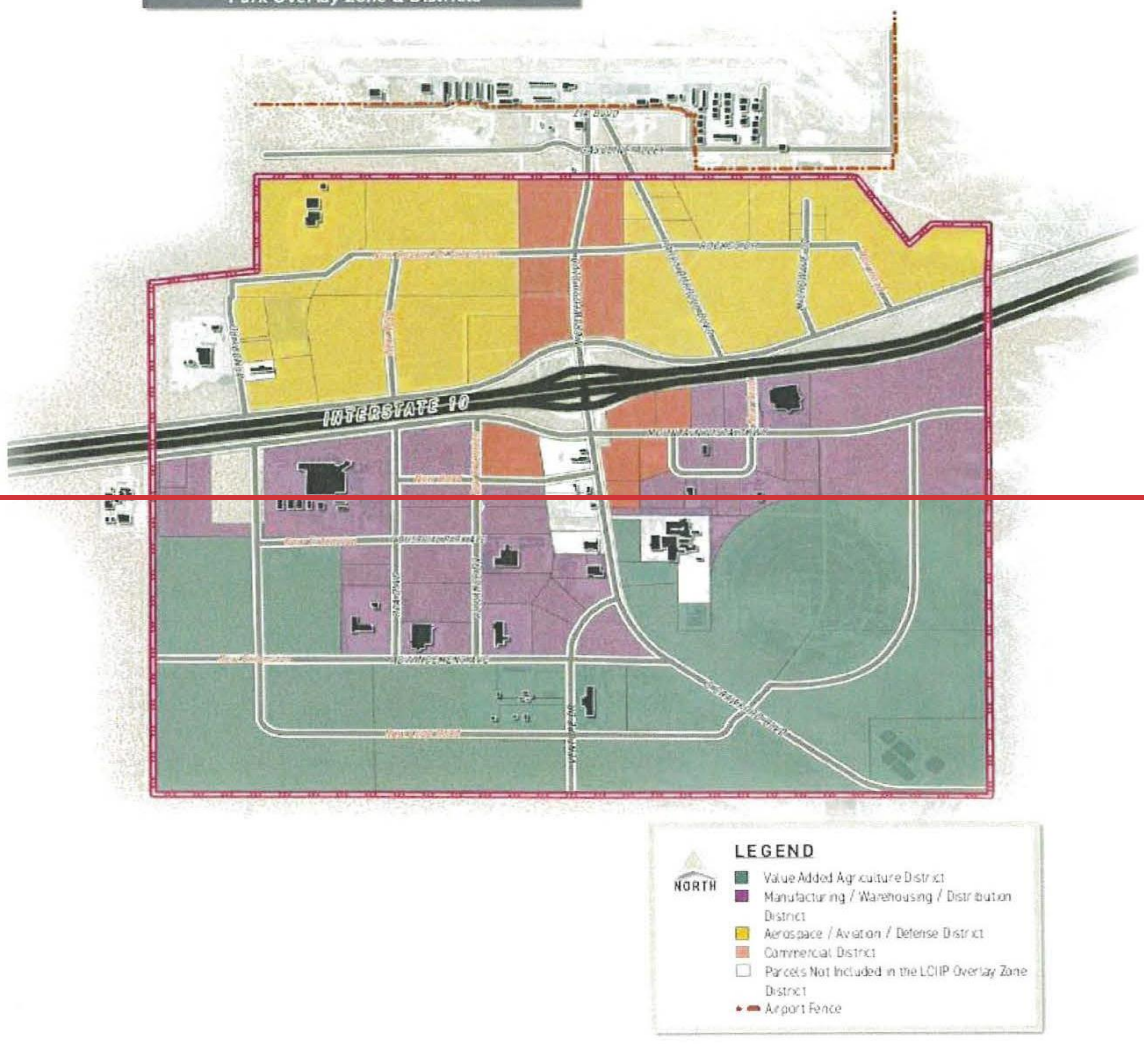
The Manufacturing/Warehousing/Distribution district is located south of Interstate 10 in the southwestern portion of the Park. It is intended to accommodate manufacturing, warehousing, and distribution types of uses. It offers a range of parcel sizes and has good access to the interstate.

The Aerospace/Aviation/Defense district is located north of Interstate 10 and is adjacent to the Las Cruces International Airport. It is intended to accommodate aviation- and defense-related uses and offers a range of parcel sizes with direct access to the airport.

The Commercial district is located adjacent to Crawford Boulevard, on both sides of the Interstate 10 interchange. It is intended to accommodate commercial uses that offer services to the local workforce and interstate-associated business opportunities. This district has smaller parcel sizes more suited for uses like restaurants, with good visibility and access from the interchange.

D. *Development Process.* All development within the Overlay Zone District shall follow the applicable City of Las Cruces development processes.

FIGURE 1. Las Cruces Innovation and Industrial Park Overlay Zone & Districts



~~E. *Land uses.* "Table 1. Use Table" allocates uses into four Land Use Districts. A dash ("—") indicates the use is not permitted while a "P" indicates that a use is permitted. An "A" indicates that a use is accessory. Associated Conditional Use Standards are indicated with an "X" and detailed in Section "Conditional Use Standards." This indicates that a use is permitted with conditions. Uses not specified in "Table 1. Use Table" will be determined by the City of Las Cruces Community Development Director in consultation with the City of Las Cruces Economic Development Director.~~

TABLE 1. Use Table					
— = Not permitted P = Permitted Use A = Accessory Use X = Existing Conditional Use Standard(s)	Commercial District	Manufacturing/ Warehousing	Aerospace/ Aviation/ Defense	Value Added Agriculture	Conditional Use
RESIDENTIAL USES					
All Residential Uses (except accessory dwelling units as outlined under the Accessory Use category)	—	—	—	—	

CIVIC AND INSTITUTIONAL USES					
Higher Education, Vocational School	P	P	P	P	
Fire and Police Station	P	P	P	P	
Military and Law Enforcement Agency	—	P	P	P	
Parks and Open Space	P	P	P	P	
COMMERCIAL USES					
Agriculture & Animal Related					
General Agriculture	—	P	—	P	X
Small Animal Facilities	P	P	—	P	X
Food, Beverage, Entertainment & Lodging					
Brewery, Microbrewery Facilities, Tasting Rooms	P	P	—	P	X
Food, Beverage, Hotel or Motel	P	—	—	—	
Indoor Entertainment/Recreation Venues	P	—	—	—	
Nightclub and Bar	P	—	—	—	
Motor Vehicle Related					
Freighthouse or Truck Terminal	—	P	P	P	
Vehicle Services	P	P	—	P	X
Offices and Commercial Services					
Offices and Research Facility	P	P	P	P	
Commercial Services and General Retail	P	—	—	—	
Construction Contractor Facility and Yard	—	P	P	P	X
Outdoor Entertainment					
Outdoor Entertainment	P	P	-	-	X
INDUSTRIAL USES					
Manufacturing, Fabrications & Assembly					
Cannabis Cultivation, Infused Products Manufacturing	—	P	—	P	X
Light Manufacturing	P	P	P	P	X
Heavy Manufacturing	—	P	P	P	X
Special Manufacturing	—	P	—	P	X
Natural Resource Extraction	—	P	—	—	
Recycling Sort Facilities and Electronics Recycling (paper/plastic/metal sorting-only and electronics recycling)	—	P	—	—	
Film and Media Production					
Film and Media Production	P	P	P	P	
Telecommunications, Towers, and Utilities					
Drainage & Major Utility, other	P	P	P	P	
Solar Energy Generation	—	—	P	P	X
Telecommunications, towers, and utilities	P	P	—	P	X
Wholesaling and Storage					
Outdoor Storage	P	P	P	P	X
Warehousing, Logistics, and Distribution	—	P	P	P	
TEMPORARY USES					
Construction Staging Area, Trailer, or Office	P	P	P	P	
Seasonal Outdoor Sales, Events	P	—	—	—	
ACCESSORY USES					
Commercial/Office Uses	A	A	A	A	X

Residential Use—Non-Primary	A	A	A	A	X
Parking Garage with/without Liner Building	A	A	A	A	

1. *Prohibited Uses.* The following uses are prohibited:

    a. All uses prohibited under FAA regulations;

    b. All adult amusement establishments;

    c. All residential uses, except as established under the accessory use category.

2. *Conditional Use Standards.*

    a. *Aerospace/Aviation/Defense District.*

        1) All uses in the Aerospace & Aviation District shall comply with all applicable FAA regulations.

    b. *Commercial Uses.*

        1) Agriculture and Animal Related.

            a) General Agriculture.

                i. Animals shall be confined to graze within the appropriate boundaries and cannot graze on surrounding properties and streets.

                ii. The keeping of large and small livestock animals shall comply with the City of Las Cruces Municipal Code.

            b) Small Animal Facilities.

                i. Kennels must be conducted within fully enclosed building. Outdoor pens shall be enclosed on all sides by a wall or fence at least six feet high.

                ii. This use must be screened as required by section "Walls, Fences and Screening."

        2) Food, Beverage, Hotel or Motel.

            a) Brewery and micro brewery facilities, including tasting rooms.

                i. Alcohol sales for on-premises consumption is allowed, provided that the establishment complies with all New Mexico State law requirements.

        3) Motor Vehicle-Related.

            a) Vehicle Services.

                i. This use must be screened as required by section "Walls, Fences and Screening."

                ii. Vehicle repair, servicing, and maintenance shall be conducted within a fully enclosed building.

        4) Offices and Commercial Services.

            a) Construction Contractor Facility and Yard.

                i. This use must be screened as required by section "Walls, Fences and Screening."

5) Outdoor Entertainment.

a) Outdoor Entertainment.

i. Drive-In Theater use shall be enclosed with a wall, fence, or vegetative screen of at least six feet in height. A screen located less than 500 feet from Interstate 10 shall be shielded so that the picture surface cannot be seen from Interstate 10.

ii. All other outdoor entertainment uses shall include fencing or screening meeting the standards established in section "Walls, Fences, and Screening" designed to prevent any objects from passing beyond the property line and onto surrounding properties and streets. Uses shall be limited to one acre in size.

3. *Industrial Uses.*

a. *Manufacturing, Fabrications & Assembly.*

1) Cannabis cultivation, Infused Products Manufacturing.

a) This use shall comply with all New Mexico State law requirements.

2) Light Manufacturing.

a) All activities in this use shall be conducted within a fully enclosed building unless a Special Use Approval is obtained pursuant to the City of Las Cruces Special Use Permit Process.

b) Incidental outdoor storage is permitted but must comply with section "Walls, Fences and Screening."

c) This use may include a sales/display room for items manufactured on the property.

3) Heavy Manufacturing.

a) This use may be conducted outside of a building, provided the activities are screened from view according to section "Walls, Fences and Screening."

b) Incidental outdoor storage is permitted but must comply with section "Walls, Fences and Screening."

4) Special Manufacturing.

a) This use must obtain all applicable State and federal permits or approvals for the activity and comply with the terms of those permits and approvals throughout the duration of the activity.

b) This use may be conducted outside of a building, provided the activities are screened from view according to section "Walls, Fences and Screening."

b. *Telecommunications, Towers, and Utilities.*

1) Solar Energy Generation.

a) This use must obtain all applicable State and federal permits or approvals for the activity and comply with the terms of those permits and approvals throughout the duration of the activity.

2) Telecommunications, Towers, and Utilities.

a) This use shall comply with the City of Las Cruces Municipal Code.

c. *Wholesaling and Storage.*

1) Outdoor Storage.

a) This use must be screened as required by section "Walls, Fences and Screening."

4. *Accessory Uses.*

a. *Accessory Commercial Uses.*

1) In all districts, all uses listed under the 'Food, Beverage, Entertainment & Lodging' use and 'Offices and Commercial Services' use category shall be permissive as an accessory use not to exceed a maximum of 40 percent of the gross floor area of the building for commercial purposes associated with that specific industrial or manufacturing use.

b. *Accessory Residential Use—Non-Primary.*

1) Residential use—non-primary is allowed for caretakers of the primary non-residential use and may be attached or detached.

F. *Administration and Enforcement.*

1. *Applicability.* The following development standards shall apply to all parcels located within the Overlay Zone District's boundary as identified on "Figure 1. Las Cruces Innovation and Industrial Park Overlay Zone & Districts." City of Las Cruces Municipal Code standards shall apply unless otherwise stated in the document.

2. *Non-Conforming.*

a. Uses and structures that are non-conforming with the standards of the Las Cruces Innovation and Industrial Park Overlay Zone District shall comply with this section.

1) There are two instances of non-conformance:

a) Instance 1: A non-conforming use/structure which was initiated/constructed prior to the adoption of the Overlay Zone District standards.

b) Uses that are classified as instance 1 may continue in perpetuity unless the use ceases for a period of no less than 12 consecutive months. However, the use/structure cannot be expanded, enlarged, or extended.

c) Instance 2: A non-conforming use/structure initiated/constructed after the adoption of the Overlay Zone District standards.

d) Uses that are classified as instance 2 shall be brought into compliance immediately and shall not be permitted to expand.

G. *General Development Standards.*

1. *Streets and Public Right-of-Way.*

a. All streets within Las Cruces Innovation and Industrial Park must adhere to City of Las Cruces Design And Roadway Construction Standards currently amended/adopted.

b. Property owners shall provide dedicated right-of-way including easements for trail corridors and pedestrian facilities.

c. The property owner is responsible to provide landscaping in accordance with standards outlined in this section in contiguous parkways and medians at the time of site development.

d. All additions, rehabilitation, remodeling, or structural modifications to existing buildings with a value of $100,000.00 or more, including all new parking lots require installation of parkway and median landscaping.

e. Landscape in parkways and medians shall be maintained by the property owner of the contiguous property.

2. *Dimensional Standards.*

a. All buildings and structures within Las Cruces Innovation and Industrial Park will be limited to the following development requirements:

TABLE 2. Dimensional Standards	
Minimum Lot Width	60 feet
Minimum Lot Depth	70 feet
Front Setback, Minimum	25 feet
Side Yard Setback, Minimum	20 feet
Rear Setback, Minimum	25 feet
Building Height, Maximum	100 feet

3. *Site Layout.*

a. Orient building entries, office areas, showrooms and/or lobbies, and amenities to front the primary public street.

b. Conceal loading docks, service areas, and mechanical equipment with the placement of buildings and circulation from primary streets.

c. Public and visitor areas shall be separated from truck delivery and maneuvering areas, as illustrated in "Figure 3. Site Orientation."

d. On-site circulation shall have an adequate length of stacking for industrial facilities, e.g. loading docks, terminals, etc. that do not interfere with the movement of traffic (on- or off-site) and/or pedestrian areas.

e. Outdoor lighting shall follow the regulations provided in the City of Las Cruces Outdoor Lighting Ordinance.

f. Provide on-site pedestrian walkways at a minimum six-foot clear width that are separate from drive aisles to connect to primary building entrances.

g. A public space such as an outdoor patio space, plaza, or courtyard shall be provided for any buildings greater than or equal to 75,000 square feet. For lots with more than one building, shared public spaces are permitted.

4. *Parking.*

a. No parking supply minimums are required.

b. Accessible parking shall be provided according to Federal ADA parking standards.

c. Motorcycle and bicycle parking spaces shall be provided according to the Off-Street Parking Regulations of the City of Las Cruces Municipal Code.

d. Landscaped islands and medians shall be incorporated into parking areas to provide shade, define parking areas and pedestrian access, and allow for passive water harvesting. See "Landscaping" for requirements.

e. Surface runoff in parking lots shall be directed to landscaped passive water harvesting areas.

f. A minimum of 20 percent of parking spaces provided shall use previous materials such as previous concrete, previous asphalt, permeable pavers, compacted gravel or gravel. If gravel is used, a minimum of four-inch base course that is compacted to ensure stabilization of gravel is required.

g. Carports, including solar carport canopies, are allowed within surface parking lots, provided the materials are compatible with the building architecture.

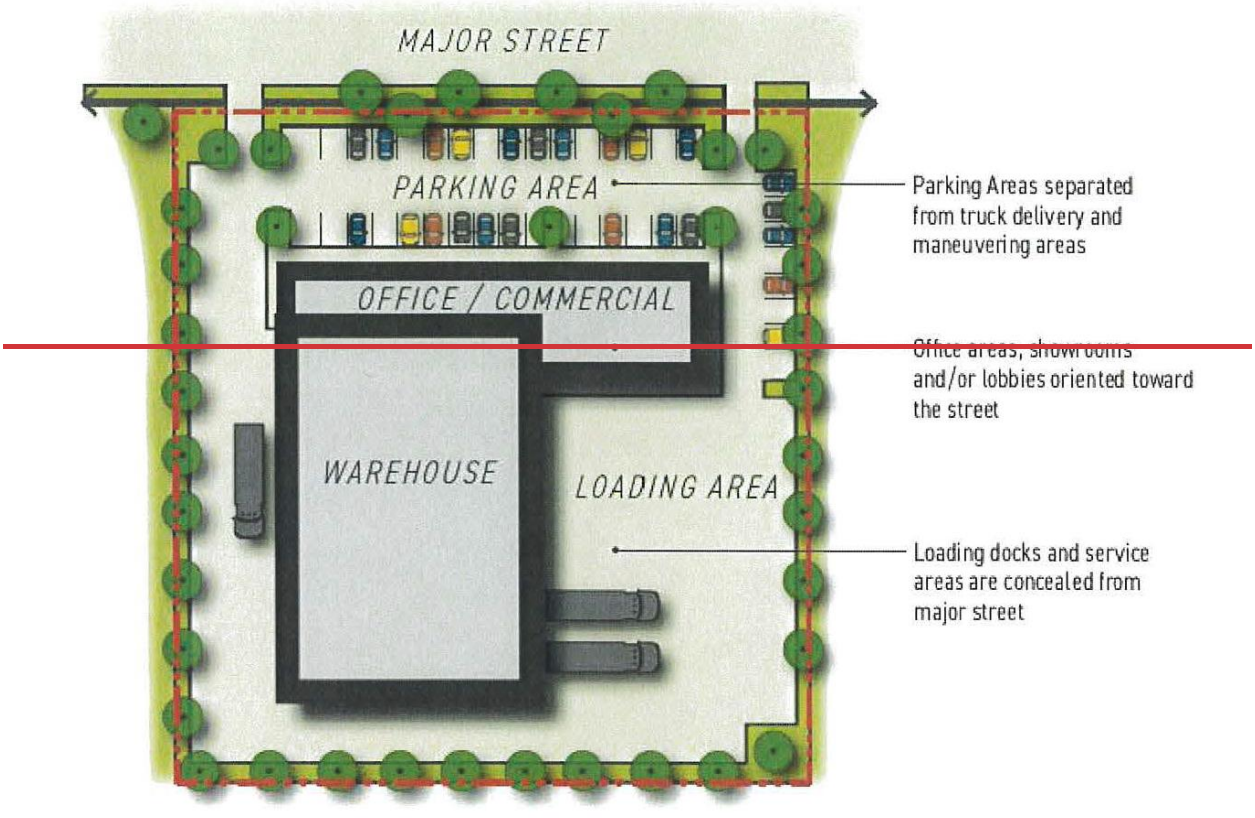
h. Fleet vehicle parking and loading docks shall not be located along the site main frontage. The placement of such facilities shall be located in the rear half of the site or behind the principal structure. For corner lots, the frontage that includes the main entrance to the building shall serve as the site main frontage.

i. Outdoor storage areas used for fleet vehicles shall be paved or use a similarly compacted material that is stable and does not produce dust.

j. Bike racks shall be provided per the City of Las Cruces Municipal Code which requires two bicycle parking spaces per 20 employees on maximum shift.

k. Bike parking shall be located at the primary entrance of the primary building.

FIGURE 3. Site Orientation



5. *Architecture.*

a. *Building Materials.*

1) Buildings shall be designed to incorporate contemporary architectural styles and materials to create the appearance of a state-of-the-art industrial park. Common elements such as architectural style, color, materials and ornamentation shall be used to create a cohesive park identity.

2) Permitted materials include:

a) Exterior plaster or stucco.

b) Architectural metal; decorative panels, structural elements and decorative support or trim members.

c) Precast concrete and tilt-up wall systems.

d) Textured, patterned and/or integrally colored cast-in-place concrete.

e) Integrally colored, precast CMU (concrete masonry units), provided that surfaces are molded, serrated or treated to give wall surfaces a three-dimensional texture.

f) Brick.

g) Natural stone.

h) Glass curtain wall systems.

3) Higher quality materials shall be utilized to draw attention to the office areas and entrances. Higher quality materials include architectural metal, decorative panels, structural elements and decorative support or trim members, brick and natural stone, among others.

4) The use of reflective or shiny metallic roofs shall be prohibited.

b. *Massing.*

1) Building heights, massing and setbacks shall be varied, to define the different functions within a building such as offices and warehousing.

2) Primary buildings shall have clearly defined entries. To emphasize entries, one or a combination of the following elements shall be applied; portals, overhangs, fenestration, canopies, material and color changes. The "large box" components of the industrial buildings that are visible from a public right-of-way shall feature both vertical and horizontal articulation and be compatible with the more articulated office area.

3) Metal structures are acceptable; however, they must visually tie to other building elements, such as the office, storage areas, etc.

4) Temporary or portable buildings shall be limited in use for construction purposes only.

c. *Screening.*

1) Exposed industrial systems and equipment shall be architecturally integrated or screened unless otherwise determined by the Community Development Director upon consultation with the Economic Development Director.

2) All heavy industrial processing, assembling of materials shall be conducted within an enclosed structure or be screened according to "Walls, Fences and Screening."

6. *Landscaping.*

a. *General Provisions.*

1) A minimum of ten percent of the site must be landscaped.

2) One-half of the total area required to be landscaped shall be located within the front setback area of the property.

3) Where the site exceeds one acre, only the portion of the site that includes the operational area where the primary building is situated and is being developed/disturbed shall be calculated. If the area to be left undeveloped/undisturbed is disturbed during construction, replacement of vegetation is required.

4) Where buildings occupy corner lots, double fronting lots or triple fronting lots, a minimum of one-fourth of the required landscaping shall be located within each of the front setback areas.

5) Passive water harvesting drainage swales shall be installed within landscape areas to capture runoff from impervious surfaces as illustrated in "Figure 4. Drainage Swales."

6) Impervious areas shall be graded to drain into drainage swales. Drainage swales shall be designed as follows:

a) Swale channel alignments and side slopes must be designed in close coordination with civil engineers to ensure that they convey stormwater while minimizing erosion damage.

b) Swales shall capture at minimum the first flush of a storm event.

c) Swale side slopes shall not exceed 4:1. Where adjacent to walkways or accessible hardscape areas they shall not exceed 6:1.

d) Runoff that enters the swale in a sheet flow fashion requires that the edge of the swale be flush with grade. Where curbs are necessary, intermittently spaced curb cuts shall be installed to allow runoff to enter the swale. Curb cuts shall be at least 18 inches wide and spaced from three to 15 feet apart.

7) For further guidance on design and installation of drainage swales in landscape areas, refer to the NMDOT National Pollutant Discharge Elimination System (NPDES) Manual.

b. *Plant/Landscape Materials.*

1) The Las Cruces Airport Landscape Plan shall be used as a guide for acceptable plant materials.

2) Living plant material shall be provided according to the following:

a) A minimum of one live tree shall be provided for every 1,000 square feet of required landscaped area.

b) A minimum of 20 live shrubs shall be provided for every 1,000 square feet of required landscaped area.

c) One hundred square feet of ground-over or ten one-gallon size plants shall be provided for every 1,000 square feet of required landscaped area.

3) A minimum of five species must be used in the landscaped area.

4) Minimum plant material sizes at the time of installation shall be:

a) Deciduous Canopy Trees and Deciduous Accent Trees—Two-inch Caliper.

b) Evergreen Trees—Ten-foot Minimum height.

c) Shrubs and groundcover—One gallon minimum.

5) Xeriscape or drought tolerant landscaping is required for all provided landscaping areas.

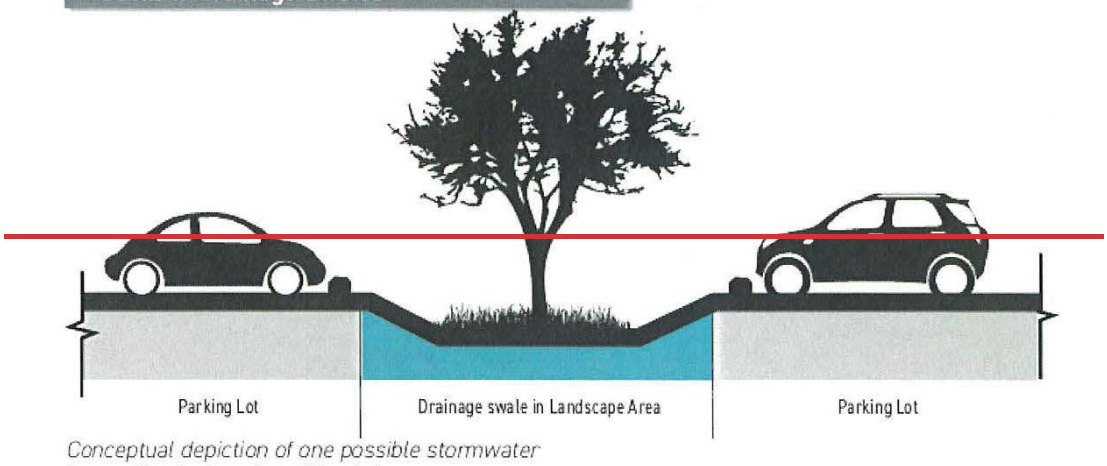
6) Gravel, rock mulch or organic mulch, and similar mulch materials are acceptable within landscape areas. If gravel is used as ground cover, its use shall be limited to a maximum of 75 percent within landscape areas.

7) Gravel, colored rock, and similar mulch materials shall not be permitted north of Interstate 10.

8) All plant material shall be maintained by the owner in a living, attractive condition. All areas shall be free of weeds.

9) If used, weed barriers shall be permeable to optimize stormwater infiltration and prevent runoff.

FIGURE 4. Drainage Swales



Conceptual depiction of one possible stormwater harvesting feature in parking lot.

c. *Off-street parking lots.*

1) Off-street parking lots shall have one tree for every ten parking spaces. Where covered carports are utilized, this requirement may be reduced or eliminate the tree requirement within parking lots through a determination of the Community Development Director. The Community Development Director shall consider the overall landscaping plan and the scale of the development to determine if covered carports shall either reduce or eliminate the tree requirement within parking lots.

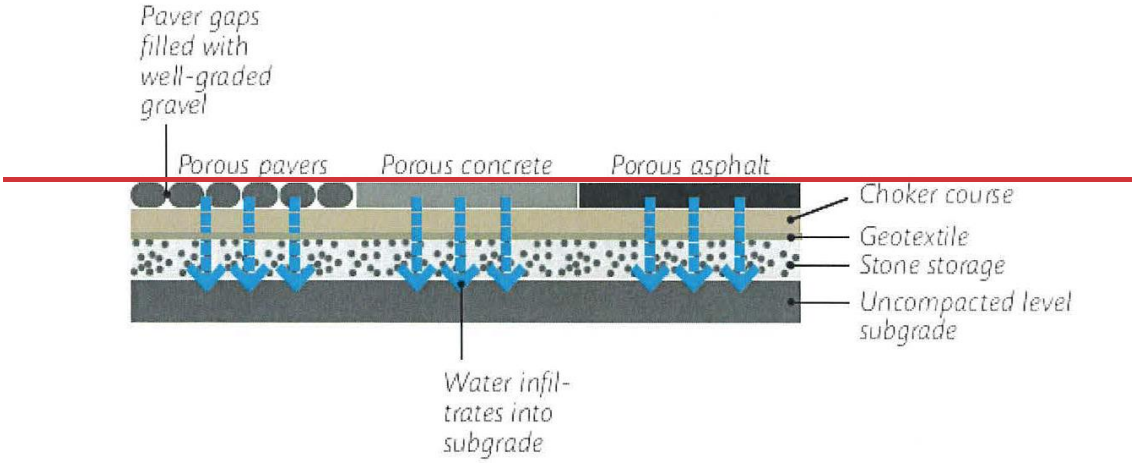
2) The minimum size of tree planters within off-street parking lots shall be 60 square feet per tree.

3) In parking lots of 100 spaces or more, the ends of parking aisles shall be defined as landscaped islands no narrower than eight feet in any dimension.

4) Off-street parking lot landscaping standards do not apply to fleet vehicle parking areas.

5) Any landscaping provided to meet the off-street parking lot standards will be credited towards the overall site ten percent landscape requirement.

FIGURE 5. Porous Surface with Typical Features



7. *Walls, Fences and Screening.*

a. The maximum allowed height for a fence depends on where the fence is located on a property. All fences and walls shall comply with the height limits established in "Table 3. Maximum Wall Height Standards" and illustrated in "Figure 6. Wall Height."

TABLE 3. Maximum Wall Height Standards	
Within required primary front yard setback	8'
Within secondary front yard setback	10'
Within tertiary front yard setback	10'
Within required sideyard setback	10'
Within required rearyard setback	10'
Within the clear sight triangle at the intersections of streets and driveways	3'

FIGURE 6. Wall Height

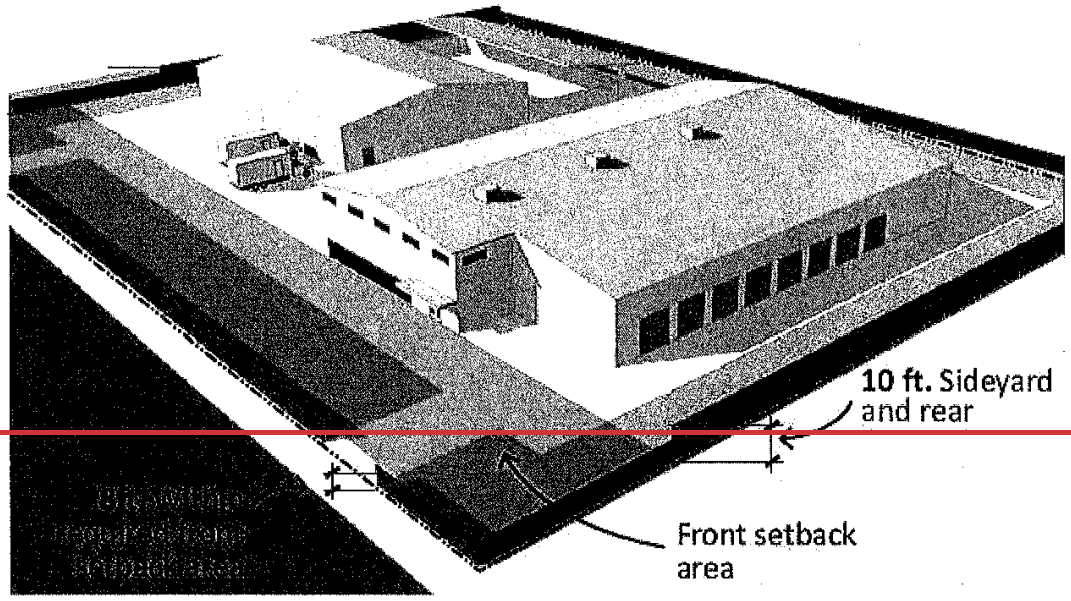


FIGURE 7. View Fencing in the Front Setback Area

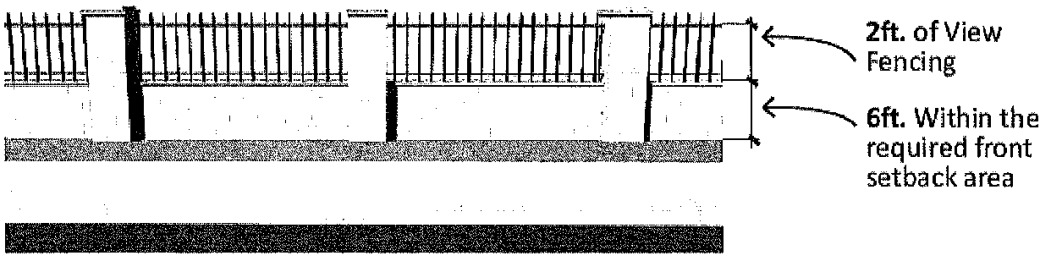
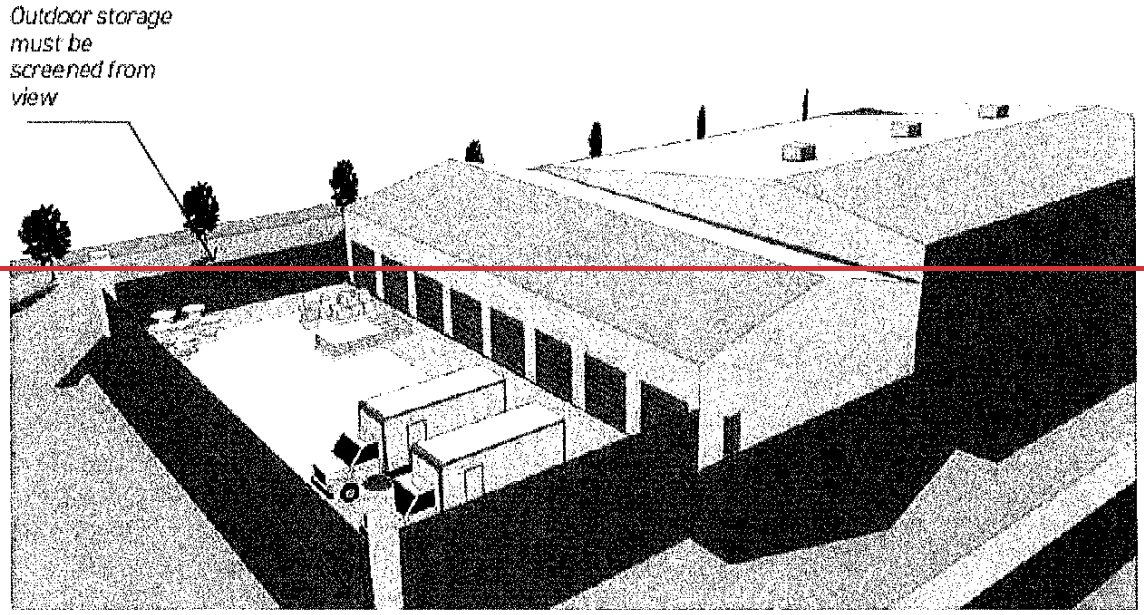


FIGURE 8. Storage Screening



~~b. Within the required front setback area, the maximum allowable fence height is eight feet if two feet consists of view fencing. If opaque fencing is applied, the maximum height is six feet.~~

~~c. The finish of walls and fences shall be constructed of durable materials manufactured for exterior use and shall be weather and decay-resistant, which are compatible with the adjacent building(s) in regard to materials, detailing, and color. Acceptable materials include:~~

~~1) Stucco over concrete masonry units (CMU).~~

~~2) Split face block.~~

~~3) Brick.~~

~~4) Stone.~~

~~5) Curved interlock blocks.~~

~~6) Gabions.~~

~~7) Tubular steel, wrought iron bars, or other grill work.~~

~~d. Unfinished solid CMU or chain link are acceptable materials, except in areas visible from the public rights-of-way.~~

~~e. The use of razor ribbon (concertina), barbed wire, or cyclone fencing is prohibited.~~

~~f. Any required screening of mechanical equipment and support/services areas shall be accomplished by one of the following:~~

~~1) An architectural building element, such as a wing wall, that screens the equipment or area being screened;~~

2) A wall or fence of a height equal to or greater than the height of the equipment or area being screened. Walls or fences shall incorporate at least one of the primary materials and colors of the nearest wall of the primary building; or

3) A vegetative screen planted along the full length of the equipment or area to be screened of a height equal to or greater than the height of the equipment or area to be screened at the time of planting.

8. *Signage.*

a. All signs shall comply with the City of Las Cruces sign code except as outlined below.

b. All signs shall be designed in accordance with the Overlay Zone District's adopted signage plans and regulations.

c. At key locations such as intersections, joint tenant/monument signs shall include language in Spanish, Braille and larger print for sight-impaired populations.

d. Vehicular directional signage within public right-of-way or on City property shall be exempt from signage standards.

e. Freestanding Monument Signs.

1) Freestanding monument signs will be limited to a maximum of one per 100 feet of street frontage.

2) The maximum signage size shall not exceed 50 square feet.

3) The maximum height of monument signs shall not exceed 12 feet.

4) Monument signs shall match the architectural style, color, materials and ornamentation of the primary building(s).

5) For all lots with more than one monument sign, all signs shall be of uniform design and materials.

6) Free standing monument signage is permissive at the primary park entrances.

f. Building Mounted Signs.

1) One building mounted sign per tenant is permitted.

2) Buildings that front more than one public right-of-way may have one (1) building mounted sign per facade facing one public right-of-way.

3) Building mounted sign size shall not exceed ten percent of the building facade to which it is applied.

4) Building mounted signs may not project more than 15 inches from the wall.

5) Building mounted signs shall have contrasting colors from the background and text height and font that ensures readability, but must blend with the architectural style, color, materials and ornamentation of the main building(s).

6) No building mounted sign shall intrude upon architectural features including windows, columns, or canopies or decorative features.

g. Temporary Signage.

1) Temporary construction signs shall be permitted in accordance with the City of Las Cruces sign code, with the following exceptions:

a) For properties less than ten acres, one sign is permitted not to exceed 64 square feet in sign area and eight feet in height.

b) For properties in excess of ten acres, one sign is permitted not to exceed 96 square feet in sign area and eight feet in height.

h. Prohibited Signage.

1) The following sign types are prohibited within the Las Cruces Innovation and Industrial Park:

a) Banners.

b) Billboards.

c) Portable or temporary signs, except for those permitted above.

d) Window Signs.

i. Signage Illumination.

1) Exterior and interior illumination will be allowed for both attached and freestanding signs, provided they comply with the following standards:

a) Signs that are illuminated shall have concealed lighting fixtures. This provision applies also to neon tubing and fluorescent fixtures.

H. *Definitions.*

Accessory, commercial/office uses. Any offices and commercial services and food, beverage uses listed in "Table 1. Use Table." These uses must be incidental to the primary use.

Accessory, residential use—non-primary. An accessory dwelling on a nonresidential premise, occupied by the person who oversees the nonresidential operation 24 hours a day.

Cannabis cultivation and *cannabis-infused products manufacturing.* A facility in which cannabis is grown, harvested, dried, cured, or trimmed. This use may also include the process in which a product is infused with cannabis that is intended for use or consumption other than by smoking including but not limited to, edible products, ointments, and tinctures.

Commercial services and *general retail.* An establishment providing for the retail sale of general merchandise or food directly to the consumer; this includes, but is not limited to, sale of general merchandise, clothing and other apparel, flowers and household plants that are not grown on-site, dry goods, convenience and specialty foods, hardware and similar consumer goods, or other retail sales.

Construction contractor facility and yard. A building and related outdoor area used to store and maintain construction equipment and materials including, but not limited to, plumbing, electrical, carpentry, roofing, and landscaping, and facilities customarily required in the building trade by a construction contractor.

Contemporary style architecture. The use of innovative and new construction technologies and materials with a focus on steel, reinforced concrete, and glass, clean lines and a form that follows function.

Drainage and major utility, other. A facility regulated as a public utility or common carrier by the state or other relevant jurisdiction or agency, including, but not limited to, major telephone facilities, natural gas facilities, water treatment plants, water pump stations, sewage treatment plants, stormwater drainage facilities, irrigation facilities, or similar public services. Major facilities are those sized or designed to serve the entire park, or a wide area of the park.

Film and media production. Outdoor or enclosed entertainment-related facilities including, without limitation, movie studios and production facilities, distribution facilities, editing facilities, catering facilities, printing

facilities, postproduction facilities, set construction facilities, sound studios, special effects facilities and other entertainment-related production operations.

Fire and police station. A public facility operated by a governmental agency where fire engines and other equipment are housed, and from which calls for emergency fire responses are handled. This use may include administrative offices, storage of equipment, temporary detention facilities, and the open or enclosed parking of patrol vehicles excluding, however, correctional institutions.

Fleet vehicle. Any vehicle owned or operated by the person, company or business which is used for purposes of delivery, pick up or service to patrons of the primary use. A fleet vehicle may also be a commercial vehicle.

Fleet vehicle parking. Parking of fleet vehicles.

Freight house or *truck terminal.* Property or building used primarily for freight pick-up or distribution and the temporary parking of trucks of common or contract carriers during loading or unloading, including necessary warehouse space for storage of transitory freight. May also include intermodal distribution facilities for truck or shipping transport. Accessory uses may include, but are not limited to, a truck wash and loading and unloading from rail spurs.

General agriculture. Any use of land for the purpose of production of crops and horticulture specialties, the raising of livestock and poultry, and the processing, packaging, storage and sale of agricultural products which are raised on the premises, and including all the types of structures normally associated with these uses, such as storage bins, barns, sheds, tool houses, greenhouses, garages, and any other use or facility ancillary to farming or open land. This use may also include the growing of plants for wholesale or retail sales, which may take place outside or in greenhouses. Outdoor sales of plants are allowed.

Heavy manufacturing. Mechanical or chemical transformation of materials or substances into new products, including the assembling of component parts, the manufacturing of products, and the blending of materials, such as lubricating oils, plastics, resins, or liquors. This use ordinarily creates a greater than average impact on the environment or has significant impacts on the use and enjoyment of other properties in terms of noise, smoke, fumes, odors, glare, or health or safety hazards. However, this use does not include processes that input or create hazardous byproducts, as defined by federal regulation, in the course of manufacturing, assembly, fabrication, or materials treatment, or that uses manufacturing, assembly, fabrication, or treatment processes that create potentially hazardous impacts including, but not limited to, explosions or leakage of nuclear or electromagnetic radiation into the environment or surrounding areas. These processes are covered under the special manufacturing zone.

Higher education, vocational school. A private institution that provides full-time or part-time education beyond high school, including college, university and vocational schools that provides specialized training and education beyond the high school level.

Indoor entertainment/recreation venues. A commercial indoor entertainment venue where food, nonalcoholic beverages or other refreshments may be obtained for consumption on the premises and where floor shows, bands or other forms of entertainment may be provided for customers. This use also includes health club or gyms, and non-medical service establishment intended to maintain or improve the physical condition of persons.

Light manufacturing. Assembly, fabrication, or processing of goods and materials, primarily conducted within an enclosed building, which is designed, built and maintained so as to prevent smoke, noise, glare, dust, odors or other development impacts from being detected beyond the boundaries of the property. Assembly, fabrication, or processing may include compounding, processing, assembling, packaging or testing of goods. This use does not include any use that meets the definition of Heavy Manufacturing or Special Manufacturing.

Military and law enforcement agency. A public facility operated by the federal government where engines and other equipment are housed. This use may also include administrative offices, storage of equipment, and grounds for training and practice.

Natural resource extraction. On-site extraction of surface or subsurface mineral products or natural resources, including solids, such as coal and ores; liquids, such as crude petroleum; and gases, such as natural gases. Uses may include quarries, borrow pits, sand and gravel operation, mining, soil mining, rock crushing, screening, and the accessory storage of explosives

Nightclub and *bar.* An establishment that is devoted to the selling or serving of alcoholic beverages for consumption by patrons on the premises and in which the serving of food is only incidental to the consumption of those beverages, including taverns, nightclubs, cocktail lounges and cabarets.

Offices and *research facility.* A premise where professional, clerical, business management or public administration work is carried out and where the sale of merchandise on the premises is totally absent or a very limited activity in support of the work being carried on. This use may also include a medical or dental clinic for patients that are not lodged overnight and research and testing facilities for scientific research, investigation, testing, or experimentation, but not facilities for the manufacture or sale of products, except as incidental to the main purpose of the laboratory.

Outdoor entertainment. An outdoor commercial or entertainment activity that is open to the general public. This use may include outdoor markets, drive-in theater, stadium or other entertainment and recreation activities like batting cages, golf driving ranges, miniature golf courses, go-cart tracks, skating rinks, skateboard parks, swimming pools, tennis courts, or sports courts.

Outdoor storage. The keeping of any goods, material, or merchandise outside of a building in the same place.

Parking garage with/without liner building. A combination of structures for parking and a mix of uses (commercial, residential, office) where parking is designed to be concealed from view and levels of parking are at-grade, above grade, or partially below grade (but not fully underground). A liner building is a specialized building that may be built as part of the parking structure or separate; it is parallel to the street and designed to conceal a parking structure from the street with active ground floor uses such as retail shops or residential stoops. A parking garage may be designed without a liner building provided that it is designed in such a way so as to incorporate active ground floor uses, architectural features and articulated elements to mitigate blank walls and screen parking.

Recycling sort facilities and *electronic recycling.* A facility that sorts reusable materials in preparation for introduction into an industrial process by which the material is transformed into a new product in such a manner that the original identity as a product is lost. Material is limited to paper, plastic, and metal as well as electronics recycling.

Small animal facilities. A facility that serves small animals for their care and treatment. This use may include outdoor pens for temporary animal holding. This use does not include animal raising.

Solar energy generation. The use of land or buildings as locations for mounting of solar collectors or other devices that rely on sunshine as an energy source and are capable of collecting, distributing, or storing the sun's radiant energy.

Special manufacturing. Mechanical or chemical transformation of materials or substances into new products, including the assembling of component parts, the manufacturing of products, and the blending of materials, such as lubricating oils, plastics, resins. This use ordinarily creates a greater than average impact on the environment or has significant impacts on the use and enjoyment of other properties in terms of noise, smoke, fumes, odors, glare, or health or safety hazards. This use includes processes that input or create hazardous by-products, as defined by federal regulation, in the course of manufacturing, assembly, fabrication, or materials treatment, or that uses manufacturing, assembly, fabrication, or treatment processes that create potentially hazardous impacts including but not limited to explosions or leakage of nuclear or electromagnetic radiation into the environment or surrounding areas.

Telecommunications, towers, and utilities. Any facility used for wireless communications, usually consisting of a support structure for antennas, equipment shelters or cabinets, and/or other transmission and reception devices used for business or commercial purposes.

Temporary, construction staging area, trailer, or office. Temporary use of a structure, including a mobile office, as a construction site office by a building contractor while a specific project is under construction, or as a real estate office during the construction and initial marketing phase of a new development.

Temporary, seasonal outdoor sales, events. Temporary outdoor or indoor retail display and sales of new or used goods, produce, and/or handcrafts or services associated with the season or a cultural event such as sales of fireworks, pumpkins, Christmas trees, or other seasonal items; semi-annual sales of art or handcrafted items in conjunction with community festivals or art shows; sidewalk or parking lot sales. Incidental sales of food and beverages is allowed.

Vehicle services. Commercial services dealing with vehicles. This use may include car wash, vehicle and equipment sales, rental, fueling, and repair

Warehousing, logistics and distribution. Building or premise in which goods, merchandise or equipment are stored and frequent heavy trucking activity may occur. Open storage of material, or nuisances such as dust, noise, and odors may be part of this use.

(Ord. No. 2982, § (I)(Exh. A), 8-16-21)

Editor's note(s)—Ord. No. 2982, § (I)(Exh. A), adopted Aug. 16, 2021, repealed the former § 38-46 and enacted a new § 38-46 as set out herein. The former § 38-46 pertained to WMIP—West Mesa Industrial Park Overlay Zone District, and derived from Ord. No. 2354, § I, adopted Jan. 22, 2007.

Sec. 38-46.1. AOD—Las Cruces International Airport Operations Overlay Zone District.

A. *Purpose.* The purpose of the Las Cruces International Airport Operations District is to protect the operations of the Las Cruces International Airport ("Airport") from encroachment of land uses that could inhibit or restrict present airport operations or negatively affect the future growth and operation of the airport. Since the boundaries associated with this district are dependent upon the physical boundaries of specific airport features, the boundaries shall change as necessary with respect to any changes in these features.

B. *Delineation of airport operations overlay zoning district boundary.* The boundaries of this district are shown on Map 2 and shall be defined as follows:

1. *Precision instrument runway approach zone.* The inner edge of this approach zone coincides with the width of the primary surface and is 1,000 feet wide at a point 200 feet from the end of the precision instrument approach runway of the airport. The primary surface is a surface longitudinally centered on an airport runway, ending at each end of the runway when it has no specially prepared hard surface and 200 feet beyond each end of the runway when it has a specially prepared hard surface.

   The precision instrument runway approach zone expands outward uniformly to a width of 16,000 feet at a horizontal distance of 50,000 feet from the horizontal surface of the precision instrument runway. The zone's centerline is an outward continuation of the centerline of the runway.

   The height limit for this zone is defined by a slope extending upward and outward one foot of vertical elevation for each 50 feet of horizontal distance for the first 10,000 feet beginning at the end of and at the same elevation as the primary surface. From 10,000 to 40,000 feet, this slope extends at a rate of one foot of vertical elevation for each 40 feet of horizontal distance.

2. *Horizontal zone.* The horizontal zone is established by swinging arcs of 10,000 feet radii from the center of each end of the primary surface of each runway and connecting the adjacent arcs by drawing lines

tangent to those arcs. The horizontal zone does not include the approach and transitional zones. The horizontal zone extends for 10,000 feet as described above to the boundary of the conical zone.

The height limit of structures in the horizontal zone is established at 150 feet above the airport elevation of 4,456 feet for a total height limit of 4,602 feet above mean sea level (MSL).

3. *Conical zone.* The conical zone is the area that commences at the periphery of the horizontal zone and extends to a horizontal distance of 4,000 feet.

The height limit for this area is defined as a slope extending upward and outward one foot of vertical elevation for each 20 feet of horizontal distance beginning at the periphery of the horizontal zone and extending to a height of 350 feet above the airport elevation.

4. *Transitional zones.* These are the areas that extend outward at 90 degree angles to each runway centerline and extended at a slope of one foot of vertical elevation for each seven feet of horizontal distance from the sides of the primary and approach surfaces to where they intersect the horizontal and conical surfaces.

The height limit for these areas is defined as the slope described above, extending to 150 feet above the airport elevation.

C. *Area of disclosure.* This area is defined as all lands within the Las Cruces City Limits as noted by the area of disclosure boundary on Map 1. Within this area, the subject property's proximity to the airport shall be disclosed by any person or entity subdividing land. The area of disclosure boundary shall be noted in all development proposals.

D. *Restrictions.* No residential uses shall be allowed within the area of disclosure (shown on Map 1) unless the following requirements are met. These requirements are necessary to mitigate the encroachment of land uses that could inhibit or restrict present airport operations or negatively affect the future growth of the airport.

1. No use may be made of land, water, or electrical power within any zone (includes approach, horizontal, conical, and transitional zones) in such a manner as to create electrical interference with navigational signals or radio communication between airport and aircraft, make it difficult for pilots to distinguish between airport lights and others, result in glare in the eyes of pilots using the airport, impair visibility in the vicinity of the airport, create bird strike hazards or otherwise in any way endanger or interfere with the landing, takeoff or maneuvering of aircraft intending to use the airport.

2. No structure shall be erected, altered or maintained, and no tree shall be allowed to grow in any zone to a height in excess of applicable height limits established by that zone (includes approach, horizontal, conical, and transitional zones).

3. Effective on the date of this overlay approval, all land subdivisions within the area of disclosure shall require disclosure of the land's proximity to the airport by any person or entity subdividing land within this area. Disclosure of this information shall be required on the final subdivision plat to be recorded with the Office of the Dona Ana County Clerk

4. Development within the area of disclosure shall adhere to all applicable restrictions stated and outlined in F.A.R. Part 77 (Height Restrictions) and F.A.R. Part 150 (Noise and Land Use Compatibility) as amended.

E. *Submittal and review requirements.* Submittal and review requirements are established for all new development to protect persons and property in the district.

1. *Subdivisions.* Submittal, review, and approval of all subdivisions, including replats of previously platted lots will follow Chapter 37 of the City of Las Cruces Municipal Code.

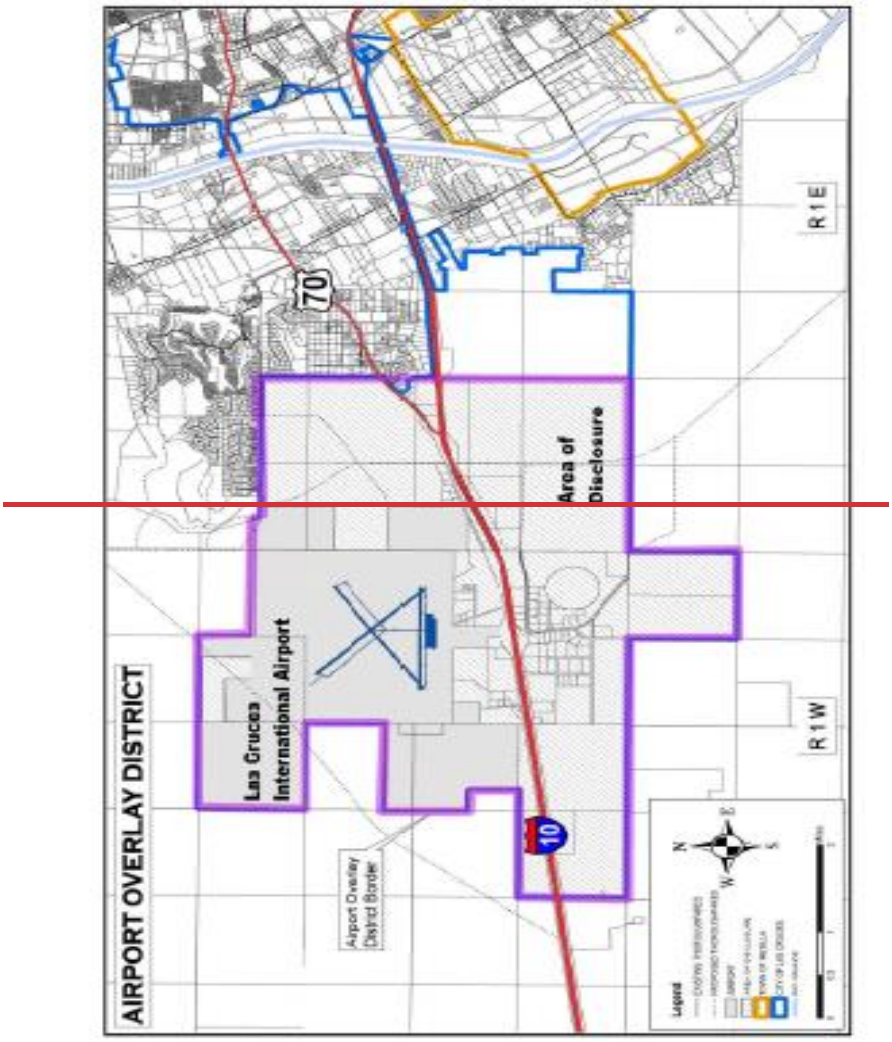
2. *Buildings and signs.* Building plans and sign permit applications will be submitted for approval to the community development department in accordance with their respective codes (Chapters 30 and 36 of the Municipal Code).

3. *Variances.* The Planning and Zoning Commission is authorized to grant variances in accordance with the criteria established within subsection 38.10.I of this Code, as amended. Said requests shall be accompanied by a written determination by the airport manager as to the merits of the request.

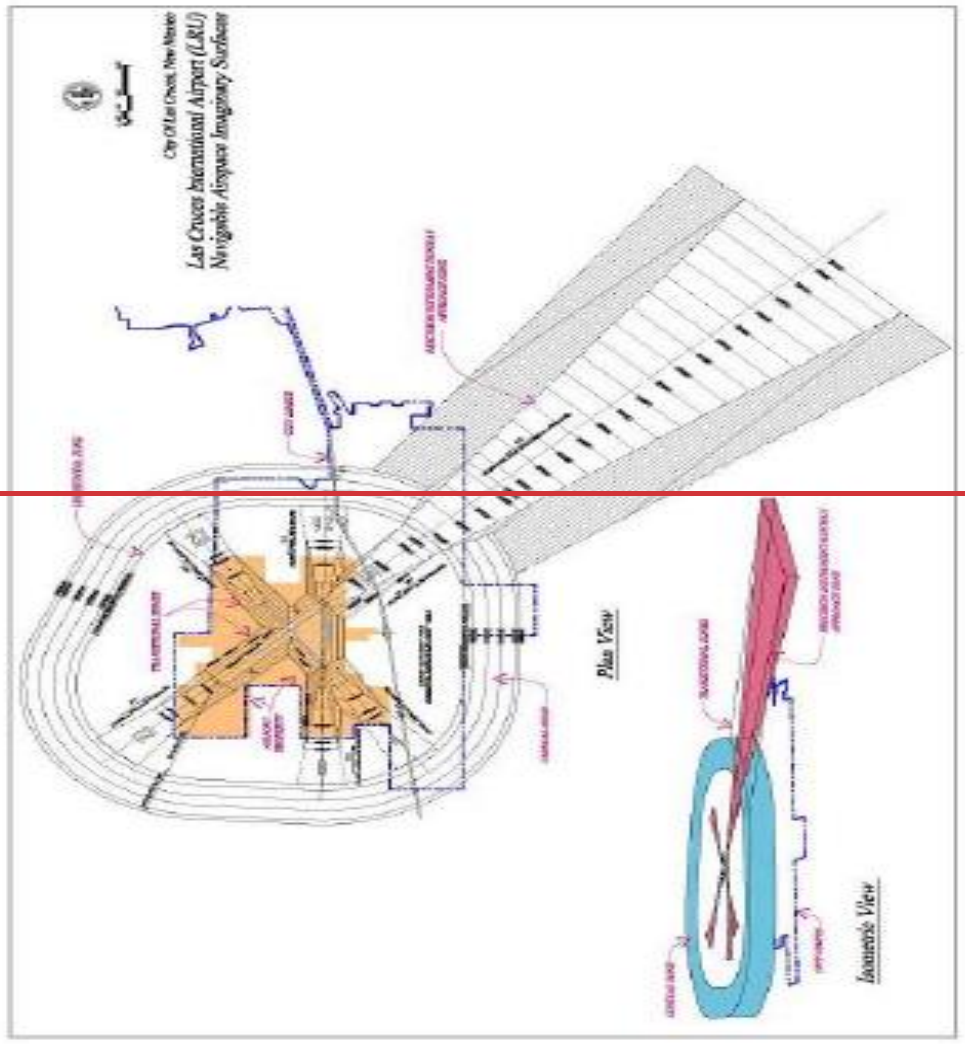
F. *Appeals.* Appeal procedures are established for any person that is affected by a decision of an administrative official, commission, committee, or board in the enforcement of this section in accordance with section 38-13 of this Code.

(Ord. No. 2460, § I, 6-23-08)

Map 1 – Las Cruces International Airport Overlay District (AOD)



Map 2 – Delineation of Airport Operations Zones and FAR 77 Navigable Airspace Imaginary Surfaces



~~Sec. 38-47. LAO—Lohman Avenue Overlay District.~~

~~A. *General.*~~

~~1. *Purpose.* The purpose of the Lohman Avenue Overlay District is to implement land use and urban design policies as established in the Lohman Avenue plan. Specifically the purpose of this overlay district is to specify architectural and urban design provisions to improve this important entrance into our community and promote an attractive image for the city as a whole.~~

~~2. *Delineation of district.*~~

~~(a) The Lohman Avenue Overlay District follows Lohman Avenue from the city limits (the eastern boundary) to Walnut Street (the western boundary). The overlay district includes those properties that are located within 350 feet from the edge of Lohman Avenue right-of-way to determine the overlay district's northern and southern boundaries.~~

(b) The applicable properties affected by this overlay district are indicated by the overlay district map at the end of this section. This map is subject to change as the city's limits expand in an easterly direction.

(c) If a property is bisected by this 350-foot boundary, any construction beyond the designated boundary are required to follow the urban design standards for consistency purposes.

(d) Residential developments that are bisected by the designated boundaries are expected to create a development theme as a part of their master plan/preliminary plat requirement. The development theme must conform to the design principles of the overlay district. Adherence to the development's master plan and/or preliminary plat requirement will be a part of the condition approving the development's final plat or site plan.

3. *Issues not addressed here.* Any issue not addressed in this division, such as subdivision, zone change, special use permit, variance requests, parking, and general fence/wall height, will revert to the appropriate sections of the Municipal Code, as amended.

B. *Permitted uses, development standards, urban design requirements, and nonconforming uses.*

1. *Compliance*. There shall be no development or alteration of the lands, uses, or structures within the overlay district except as provided for by this subdivision and other sections of this chapter and other codes where applicable.

2. *Permitted uses and development standards.* All permitted uses, special uses, and development standards (e.g., setbacks, building height, and densities) in the Lohman Avenue overlay district will adhere to the underlying zoning of the property.

3. *Urban design requirements.*

(a) *Purpose*. Flexible architectural and urban design standards are established for the Lohman Avenue overlay district in order to create an aesthetically pleasing environment in this ever-busy and important gateway which will also assist in creating a positive image for our community as a whole.

(b) *Standards established*. Architectural and urban design standards are established as follows:

(1) *General requirements.*

a. All new construction, additions, and exterior remodeling efforts shall comply with the spirit and intent of the Lohman Avenue plan.

b. The planning director or designee shall have final approval on all design issues. Planning director or designee shall also have the authority to allow flexibility in design when dealing with unusual situations provided that a project meets the spirit and intent of the goals, objectives and policies found in both the 1999 comprehensive plan's urban design element and The Lohman Avenue plan.

(2) *Architecture.*

a. All new construction shall be required to utilize architectural styles that reinforce our New Mexico/Southern New Mexico architectural vernacular and heritage whether contemporary or traditional.

b. All new construction shall be required to utilize stucco, adobe and/or brick dependent upon the architectural style chosen. Exposed metal exterior walls are expressly prohibited.

c. If choosing a traditional New Mexico/Southern New Mexico architectural style, architectural features typically associated with said style of architecture must

be incorporated into the design. Examples include vigas, parapets, and portals with pueblo styles (see appendix A for further examples).

d. If choosing a contemporary style of New Mexico/Southern New Mexico architecture, interpretations of the architectural features associated with traditional architectural elements and features, such as vigas, parapets, portals with pueblo styles must be incorporated (see appendix A for further examples).

e. Architectural styles must be similar in nature throughout a project. For example, if a traditional architectural style is utilized, then a traditional style must be used throughout the project. Conversely, if a contemporary architectural style is utilized, then a contemporary style must be used throughout the project.

f. All structures must be in scale with one another throughout a project. For instance, gas stations canopies must be in scale with its associated service and/or retail area.

g. Chain-link fencing shall be prohibited on property lines adjacent to collector and/or arterial streets.

h. Rooflines must be designed to reduce the exterior mass of a building, add visual interest, and be appropriate to the architectural style.

i. Reflective materials are prohibited unless its significance can be demonstrated with respect to the architectural style chosen, such as Folk Territorial style utilizing metal roofing materials (window glazing is exempted from this provision).

j. Playgrounds associated with a business locating in the Lohman Avenue overlay district must be secondary to the primary business/use. All playgrounds must be located within a structure and must be compatible in scale and architectural design to the primary business/use.

k. All sales, storage, and/or displays must be included within a structure that complies with the architectural requirements of this section (temporary, seasonal sales, such as Christmas tree and pumpkin stands, locating in zones which allow their use are not required to follow these architectural standards).

(3) *Landscaping.*

a. Unless otherwise stated in this section, all projects shall follow the landscaping requirements found in the city's design standards (matrix 1 requirements shall be observed).

b. Of the total area to be landscaped, 50 percent shall be located within the front setback of the property. Of this percentage, one-half (½) shall be located between the front property line and the parking lot.

Note: Front setback of the property shall be defined as the area between the back of sidewalk and the property's principal structure. Required landscaping may be placed within city right-of-way as per the city's design standards.

c. A variety of landscaping materials must be employed to create visual interest. Utilizing softscape (plants) and hardscape elements (gravel, walkways, walls) must be incorporated into the design. Plant materials must be those best suited to the Chihuahua Desert.

d. In addition to the current landscaping requirement, one tree shall be placed within the parking lot for each ten parking stalls. Parking trees must be evenly distributed throughout the parking area and must be suitable for planting around non-impervious surfaces (tolerant of reflective heat, deep rooting vegetation, etc.). Parking trees must adhere to the following:

1. Parking trees must maintain a minimum height of six feet before the first lateral branch and must reach a minimum canopy diameter, at maturity, of 20 feet;

2. Parking trees must be planted along the edge and/or between parking stalls in planter areas which have a minimum area of four-foot by four-foot and a raised border of at least four inches in height. If a planter(s) is to be used as a wheel stop, the planter(s) must be a minimum four-foot by six-foot and a raised border of at least four inches in height (it may be possible to increase the size of planter and decrease the length of the parking stall. Interested parties must submit a design proposal to the planning director for waiver approval); or

3. Where a landscape border or similar feature abuts parking stalls, trees within these areas may count towards the parking area tree requirement if the trees are planted within ten feet of the parking stall area perimeter, the number of parking trees are not reduced by more than half by this exception, and a minimum of one tree is provided within the parking area.

(4) *Site design.*

a. Architectural features must be included on all building walls that are immediately adjacent to city streets and/or residential areas. Architectural features can include, but are not limited to recesses, projections, wall insets, window display areas, awnings, balconies, window projections, landscaping structures, and other features that complement the building's design and are acceptable to the planning director (if a project is developing adjacent to vacant property, the vacant property's existing zoning will be used to determine wall detail requirements.)

b. Parking areas shall adhere to one or more of the buffering methods listed here. Large commercial complexes, must utilize two or more of the listed methods must be used in order to buffer parking areas from Lohman Avenue:

1. Locate parking areas away from adjacent streetfronts;

2. Place a landscaped buffer with berm when in between the parking area and streetfront (one foot of rise for every five feet of distance when in grassed landscapes and one foot rise for every three feet of distance when in landscapes consisting of groundcover);

3. Place a landscaped buffer with a low wall/or fence (minimum three feet in height) between the parking area and streetfront;

4. Place a landscaped drainage pond between the parking area and streetfront; and/or

5. Distribute parking areas throughout a development as a means of breaking up large parking lots.

c. All freestanding walls or fencing shall relate in design, material, and color to the building's architectural style. Walls that are constructed in individual projects that front along a particular street segment must provide continuity in design and compatibility in texture and color with adjacent projects along that particular street segment. Combining trees, shrubs, and/or climbing vines must be employed along the periphery of the fence or wall to avoid the monotony of a large, blank surface.

d. If due to the property's topography constraints, a retaining wall is required for slope/soil stabilization and increased buildable area, terracing or a similar mechanism will be required to prevent walls that are out of scale with the development and to avoid visual monotony.

e. Service areas must be screened and/or buffered from Lohman Avenue and any adjacent residential uses. Service areas include but are not limited to loading bays/zones and dumpsters.

f. All utility/mechanical equipment shall be screened from view using the following techniques:

1. Ground set utility and/or mechanical equipment must be screened with landscaping or walls in a manner that conceals the equipment. Screening must be consistent with the project's landscaping. Walls must be consistent with the building's architectural character (especially in terms of color, physical style and scale.)

2. Mechanical and/or utility equipment located on a rooftop or is otherwise attached to a building must be screened from view from all angles through the use of building design elements, such as varied roof heights, parapets, etc.

If adjacent rights-of-way are significantly higher in elevation to adjacent properties, rooftop equipment should be screened to the best extent possible. The planning director or designee must approve of screening strategies in these instances.

3. Exterior mechanical/utility equipment mounted on building facades shall be prohibited unless they are an integrated architectural design feature and painted such a color as to blend in with their background and/or building to which they are attached.

4. If the chosen architectural style does not lend itself to using the techniques described above, such equipment must be shielded from view by an opaque screen that is treated in a manner that most accurately matches the building's look, design, and texture to which it is attached.

g. All stacking lanes/drive-up aisles (associated with a drive-up service) must be de-emphasized. Techniques to de-emphasize stacking lanes/drive-up aisles include, but are not limited to utilizing landscaping as a screen or placing lanes/aisles where they are not readily seen from streets and sidewalks.

h. Lighting used to illuminate parking lots and buildings should relate in design, material, and color to the architectural and/or historical character of the subject property. Lighting must utilize fixtures as mandated by local lighting requirements.

i. Where possible, agreements to share driving aisles and parking areas to minimize traffic conflicts, lessen visual clutter, and promote greater traffic circulation efficiency are encouraged. Agreements may be made with adjoining property owners regardless of each business' hours of operation. Those seeking shared driving aisles and parking areas must observe the following:

1. Agreements shall be approved as to form and content by the city attorney's office and once completed, filed with the county clerk's office.

2. In combining parking requirements, 100 percent of the required off-street parking for all subject businesses shall be met.

3. For a businesses that is sharing parking in order to meet parking provisions, the agreement shall pertain to no more than 40 percent of the number of parking stalls they are responsible to provide. The remaining 60 percent must be provided on that business' site.

j. The final site plan for commercial, office, and/or residential complexes must be approved by the planning director or designee. Complexes designed in a traditional "strip" fashion are prohibited.

(5) *Signage.*

a. Freestanding signage will be limited to monument/ground signs for properties located east of Nacho Road. Monument/ground signs in this area shall have a maximum height of seven feet and a maximum of 40 square feet in area. Monument/ground signs are required to incorporate a landscaped base into its design. Monument/ground signs shall be placed no closer than five feet from the property line and must not violate clear sight triangles. The number of freestanding signage shall be determined according to chapter 36 of the Municipal Code, as amended. All other freestanding signs, i.e., those west of Nacho Road, shall comply with chapter 36 and item b. and c. of this section.

b. Billboards shall not be permitted.

c. Signs shall be designed (shape, color, and material) in a manner consistent with the building(s) to which it/they relate via the following:

1. Design elements and/or finish treatments such as stucco or brick surfacing, freestanding wall designs/treatments, etc., shall be incorporated into a monument/ground signs overall design. The color of surface or finish materials used on the building shall be incorporated into the sign's supporting structure.

2. When multiple monument/ground signs are allowed, the design of each sign shall maintain a similar design appearance, and colors and lettering styles shall remain consistent.

d. Attached signage shall follow the requirements as established in chapter 36 of the Las Cruces Municipal Code, as amended.

C. Nonconforming uses.

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:

Exterior remodel, renovation, or alteration means any change or rearrangement in the supporting members of an existing building, such as bearing walls, columns, beams, girders, as well as any change in rooflines, or any enlargement to or diminution of a building or structure, whether horizontally or vertically. Normal maintenance activities as verified by the city's building official or designee are exempt from this definition.

2. *Applicability.* The following nonconforming use provisions in this chapter shall apply to properties within the Lohman Avenue overlay district. Provisions pursuant to this subdivision which allow increases in floor, building, or lot square footage shall not abrogate minimum compliance requirements (e.g., parking, landscaping, and drainage) established elsewhere in this chapter or in other companion codes.

3. *Nonconforming urban design features.*

(a) When nonconforming urban design features involving parking, landscaping, lighting, and fencing/walls are located on properties within the Lohman Avenue overlay district, these features shall be brought into compliance with Gateway standards when:

(1) The property remains vacant for a period of one continuous year or greater;

(2) Any one-time or cumulative increase greater or equal to ten percent to the gross square footage of building area occurs;

(3) Any exterior remodel, renovation, or alteration occurs to the building. This provision shall not nullify allowances as identified in subsection (a)(2) of this section; or

(4) A change in use occurs on the property which results in the alteration of the use's intensity (i.e. low volume to high volume business activity) or orientation (i.e. service to retail activity).

(b) When the architectural characteristics of the building are nonconforming, the architecture shall be brought into compliance with current standards when:

(1) Any one-time or cumulative increase greater or equal to 30 percent is made to the gross square footage of building area; or

(2) Any exterior remodel, renovation, or alteration occurs to the building. This provision shall not nullify allowances as identified in subsection (a)(2) of this section.

(c) When a sign on the property is nonconforming, it shall be brought into conformance with current standards when:

(1) The property remains vacant for a period of one continuous year or greater;

(2) The entire sign structure is removed for any purpose.

D. *Administration.*

1. *Purpose.* In the Lohman Avenue overlay district, all new development, exterior remodeling/additions, signage, and those alterations dealing with urban design features discussed in this chapter shall require city approval. Proposals involving all new development, exterior remodeling/additions, signage, and those alterations dealing with urban design features discussed in this chapter shall be reviewed by city staff to aid in enforcing area standards.

2. *Submittal and review process.*

(a) *Building permit.* The submittal and review procedures for buildings and walls/fences are as follows:

(1) *Preapplication conference.*

a. Prior to filing an application for a development in the Lohman Avenue overlay district, it is strongly encouraged that applicants meet with community development department staff to review the proposed project.

b. At the conference, staff shall review the development proposal and advise the applicant concerning the compatibility of the proposal with the intent and standards of the Lohman Avenue plan, Lohman Avenue overlay district ordinance, and 1999 comprehensive plan.

(2) *Application procedure*. Upon submittal of the required items, the application materials will be processed to the appropriate city departments. Written comments and recommendations from the reviewing agencies will be forwarded to the community development department within ten working days from the date of submittal.

(3) *Application materials*.

a. Applications for development within the Lohman Avenue overlay district shall be obtained from the community development department, building permit section.

b. The number of copies to submit with the application is outlined in the Lohman Avenue overlay district application packet, available at the city community development department. Development submittal requirements shall, at minimum reflect the following information:

1. A statement of objectives to be achieved by the development, inclusive of a description of the character and anticipated use of the proposed development.

2. Scaled site plan including the following:

i. Property boundaries.

ii. Location of all structures.

iii. Setbacks.

iv. Parking layout.

v. Ingress/egress access points.

vi. Pedestrian and bicycle circulation.

vii. Areas proposed for landscaping.

viii. Surfacing material for impervious surfaces.

ix. Storm water ponding areas.

x. Dumpster location(s).

xi. Location of service and loading area(s).

xii. Location of cart collection areas, when applicable.

xiii. Freestanding sign location(s).

xiv. Any other information which conveys how the proposal will meet development requirements.

3. Scaled landscaping plan shall include:

i. Location, size, and common name of all landscaping.

ii. A complete irrigation plan shall be included, clearly identifying how the landscape will be sustained.

4. Scaled elevations shall include:

i. Directional view of all structures, including signs, clearly identifying exterior building materials and treatments.

ii. Location and treatment of all fenestration and other building openings.

iii. Building ornamentation.

iv. Roof design and surfacing.

v. All signage design and placement.

5. Architectural/artistic renderings shall:

i. Reflect all aspects/views of exterior buildings.

ii. Demonstrate the use of building materials through the drawings.

iii. Indicate/demonstrate selected colors to be used throughout the project.

(b) *Sign permits.*

(1) Sign permits shall be required for all signs within the district. Freestanding signage designs must be submitted at the time of building permit review. Once the building permit for the development has received a certificate of occupancy, a sign permit may then be issued by the city's sign administrator. Attached signage permits may be approved separately from the building permit.

(2) All application and submittal material can be obtained from the city community development department. Once the application has been deemed complete and approved, a sign permit will be issued by the city's sign administrator. Signs may not be erected until a sign permit is granted.

3. *Appeals.*

(a) In the Lohman Avenue overlay district, any applications for development must be approved by the city in order for a building permit or sign permit to be issued.

(b) If an application is denied by the city staff based on an interpretation of the Lohman Avenue plan and this division, and an agreement of interpretation cannot be reached and all other procedures established by this division have been exhausted, the applicant may file for an appeal, in writing, to the Planning and Zoning Commission within 15 days of the city staff's denial decision.

(c) The appeal will be processed to the Planning and Zoning Commission to be considered at the next available public hearing in accordance with notice requirements of 38-10.

(d) Any aggrieved person who is affected by a decision of an administrative official, commission, committee, or board in the enforcement of the Lohman Avenue overlay district and this division may appeal such decision to the city council in accordance with subsections 38-13.

(e) Any person aggrieved by a determination of the city council may appeal to the district court within 30 days after the determination made by city council, in accordance with section 38-14.

4. *Enforcement.* Provisions to enforce this division shall be consistent with the enforcement provisions of article III of this chapter.

Appendix A

Examples of features associated with traditional southwestern architectural styles are listed in this appendix. For information regarding a variety of acceptable southwestern styles not noted here, please refer to the New Mexico Historic Building Inventory Manual, Section VI, Introduction to New Mexico Architectural Styles.

Pueblo Style features include, but are not limited to:

- Walls with smooth stucco surfacing
- Walls with soft rounded corners or buttressed corners
- An emphasis on structural massing
- Parapet walls above roof lines which have rounded edges and vary in height
- The use of bell coates (espadañas)
- Flat roofing style
- Canales
- Wood lintels above windows and entryways
- Wood vigas
- Portales/loggias
- Desert or earth tones

Spanish Colonial features include, but are not limited to:

- Walls with smooth stucco surfacing
- Balconies
- Pitched, red-tiled roofs
- Roofs with clipped eaves
- White or light desert colors
- Divided light windows
- Windows accentuated with molded surroundings
- Arches serving primary entryways
- Heavy, carved wood doorways.
- Courtyards or patios

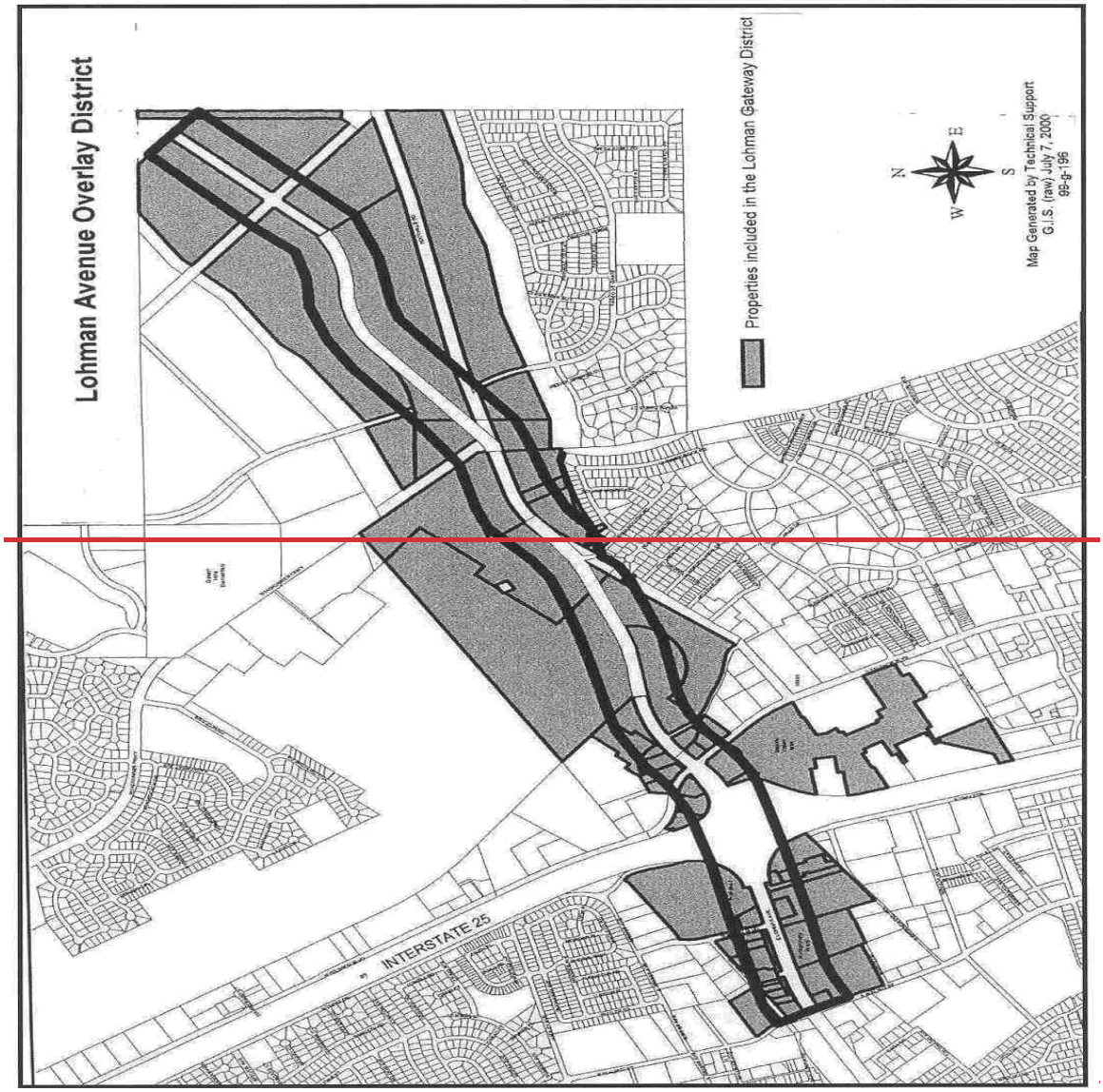
Territorial style features include, but are not limited to:

- Walls with smooth stucco surfacing or "antiqued" brick
- Parapet walls above roof lines (except for Folk Territorial)
- Parapets capped with brickwork, masonry, or wood
- Clean and simple in appearance
- Flat roofing style

- ~~Light earth tones such as sand, tan, and beige with lighter contrasting trim materials (such as white)~~
- ~~Pediments above doors and windows~~
- ~~Divided light windows~~
- ~~Porches or porticos along the primary facade~~
- ~~Folk Territorial styles may utilize pitched gable roofs surfaced with tin/corrugated sheet metal (treated in a manner which eliminates its reflective properties)~~

~~Mission style features include, but are not limited to:~~

- ~~Walls with smooth stucco surfacing, clean edges and/or corners~~
- ~~Walls giving the appearance of mass~~
- ~~The use of bell coates (espadañas)~~
- ~~Arched window openings~~
- ~~Curvalinear openings or archways above portals~~
- ~~Arched doorways~~
- ~~Curvalinear parapets~~
- ~~Pitched, red-tiled roofs~~
- ~~Light or neutral tones~~
- ~~Exposed rafters under projecting eaves~~



~~(Ord. No. 2354, § I, 1-22-07)~~

~~Sec. 38-48. IDO—Infill development overlay district.~~

~~A. *Purpose.* The purpose of the infill development overlay district is to implement land use and development policies as established in the infill policy plan. Specifically, the purpose of this overlay zone is to provide a streamlined review process for the development of vacant and underutilized parcels or those parcels ready for redevelopment within the urban core area of Las Cruces regardless of the property's zoning. The goal is to develop active uses that are compatible with surrounding land uses while promoting economic development in the central part of [the] city, in accordance with the comprehensive plan.~~

~~B. *Definitions.*~~

~~An "infill parcel" is defined as any vacant or underutilized tract, lot, or parcel of real property, including those parcels currently used for agricultural purposes, that falls within the infill area (See Figure 1).~~

An "underutilized parcel" is any tract, lot, or parcel of real property on which additional development or redevelopment may occur without significantly altering neighborhood character. A parcel may be considered underutilized for a number of reasons, including but not limited to:

- Presence of a structure that has no active utility service;
- Presence of a multi-unit commercial or residential structure with sustained high vacancy rates;
- Undeveloped land area sufficient to construct an additional, non-accessory structure;
- Land use that is less dense/intense than current zoning allows.

A determination as to whether a parcel is underutilized, and therefore a qualified infill parcel, shall be made by community development staff. This judgment shall be confirmed or denied by the Planning and Zoning Commission unless the decision is an administrative one (see subsection F herein).

A "vacant parcel" is any tract, lot, or parcel of real property that currently has no building on premises, but may contain utility, transportation, agricultural or other non-building structures (including but not limited to utility poles, alleys, garden plots).

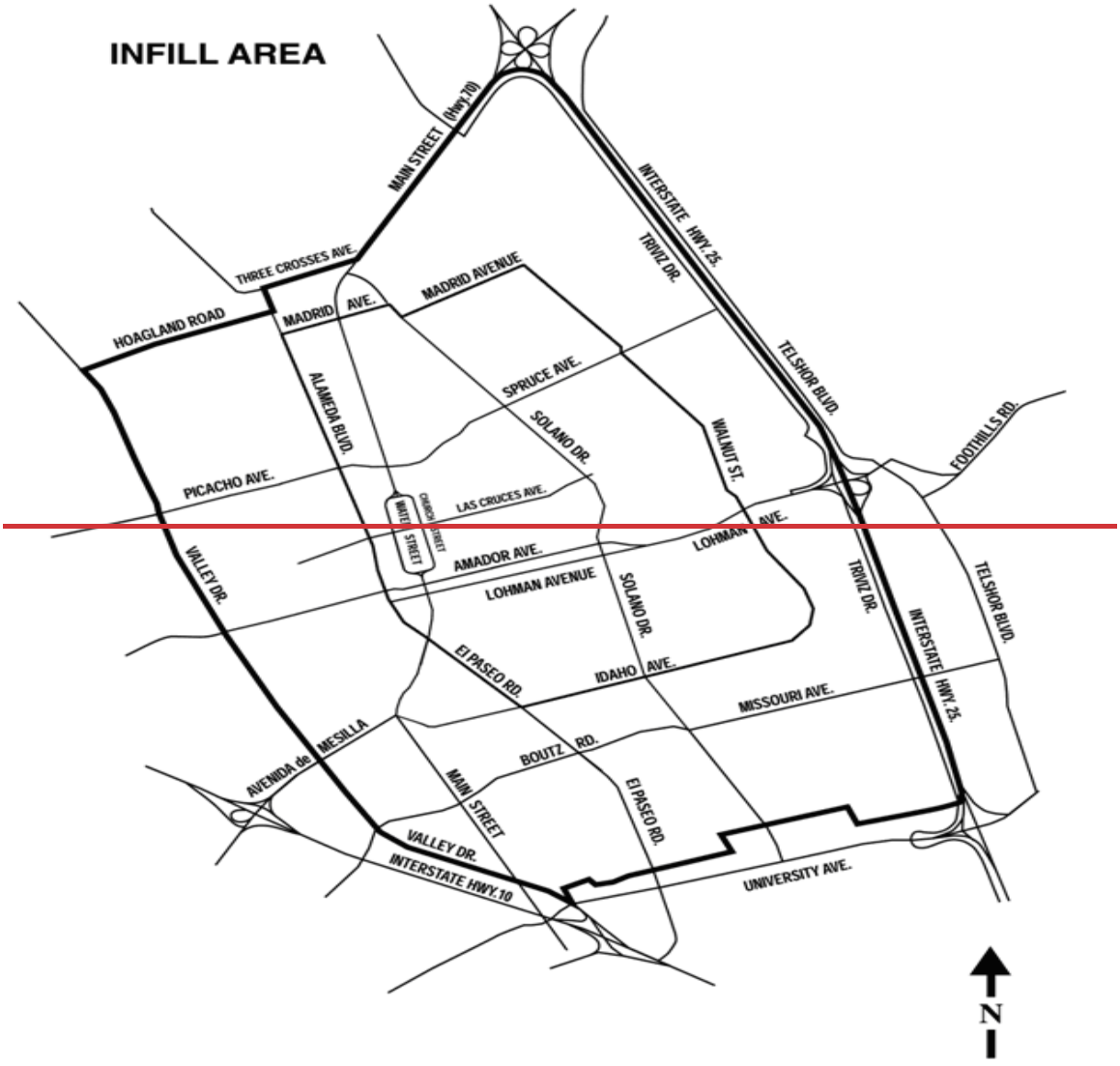
C. *Delineation of overlay district.* The infill development overlay district is defined as all property contained within the following boundary: (See Figure 1)

1. Interstate Highway 25,
2. The northern boundary of the University Avenue Corridor Overlay Zone,
3. Valley Drive (NM Highways 188 & 185),
4. Hoagland Road,
5. Alameda Boulevard,
6. Three Crosses Avenue, and
7. North Main Street (U.S. Highway 70).

D. *Infill development process.* The infill development process (IDP) is a streamlined development process for qualifying infill parcels. The IDP can be used for the following types of requests:

1. Variances, (including signs)
2. Special use permits
3. Planned unit developments (Including land uses not allowed in the parcel's existing zone)
4. Subdivisions (See City of Las Cruces Subdivision Code, Article V)
5. Building permits
6. Sign permits
7. Business registrations

E. *Application procedure.* The application, including the development statement, indicating what type of action is being requested along with necessary support information (see application packet) shall be submitted to the community development department. An applicant may submit multiple requests at once (i.e. building permit, sign permit, variance and special use permit) so that all requests are reviewed simultaneously. This allows for all necessary permits for development and use of an infill parcel to be issued at once. There shall be no submittal fee required for an IDP proposal. However, an application will not be accepted if all required information is not included. If the application is complete, the application will then be processed for review by the appropriate staff.



~~Figure 1~~

~~If required, the proposal will then be scheduled for review by the Planning and Zoning Commission at a public hearing on the first Tuesday following the public notice period.~~

~~Public notice will be sent in accordance with section 38-12, excluding subdivisions, which shall conform to the requirements of the Las Cruces Subdivision Code, chapter 37 of the Las Cruces Municipal Code, for public notification.~~

~~F. *Approval Procedure.* An IDP proposal will either be processed administratively (IDPA) or brought before the Planning and Zoning Commission for final action (IDPPZ). As previously explained in subsection E, once an application is submitted, the staff will process said application via the appropriate process.~~

~~*IDPA.* For IDP proposals that only require administrative approval, i.e. business registrations, summary subdivisions, building permits, and sign permits, staff shall review the submittal in an expedited manner. The initial review period for commercial/industrial building permits shall be three business days. Any subsequent review~~

beyond the first submittal shall be accomplished within two business days. Single-family residential building permits may be issued over-the-counter or go through a review period as provided for in articles IV and VI of Chapter 30 of the Municipal Code. Business registrations and sign permit applications shall be reviewed and either approved or denied within three business days. A business registration will be issued with the certificate of occupancy for the property. A sign permit can be issued at anytime following approval.

IDPPZ. The Planning and Zoning Commission is the final authority on all types of requests as indicated in subsection D that would require a public hearing. Any decision of the Planning and Zoning Commission may be appealed to the city council in accordance with section 38-13 of this Code and/or Article V of Section 37-13 of the City Subdivision Code depending on the type of request. IDP proposals requiring Planning and Zoning Commission approval will be heard by the Planning and Zoning Commission in a public hearing when the public notice requirements of section 38-12 of this Code or Article V of the Las Cruces Subdivision Code, Chapter 37 of the Las Cruces Municipal Code, as applicable, are met and in accordance with subsection E above.

The Planning and Zoning Commission shall consider an IDP proposal based on the criteria and authority granted it by section 38-10. In addition, the Goals, Objectives, Policies, and Design Matrices within the Elements of the city's comprehensive plan shall be used to guide decisions. IDP proposals may contain various applications, but shall be considered as a unified proposal, and as such, the Planning and Zoning Commission should evaluate whether the project as a whole advances the purpose as defined in subsection A herein. The Planning and Zoning Commission may approve, approve with conditions, or deny any IDP proposal brought before it. The Planning and Zoning Commission shall not postpone an IDP proposal unless agreed upon by the applicant. An action form shall be issued to the applicant detailing the action taken by the Planning and Zoning Commission and any conditions required by the commission.

(Ord. No. 2354, § I, 1-22-07; Ord. No. 2519, § I, 5-26-09)

Sec. 38-49. PUD—Planned Unit Development.

A. *Purposes.* The purposes of planned unit developments (PUD) are to:

(1) Comply with Growth Management Policy as established in the Land Use Element, other applicable elements and all companion documents to the Comprehensive Plan.

(2) Produce more flexibility in development than would result from a strict application of this Code.

(3) Permit design flexibility that will encourage a more creative approach to the development of land and that will result in more efficient and aesthetically desirable alternatives to the housing and other development needs of the community.

(4) Permit flexibility in land use, density, placement of buildings, arrangement of open space, circulation facilities, and off-street parking areas, and maximize the potential of individual sites under development.

(5) Promote the infill of vacant land.

(6) Create developments that balance the benefits to the community with the developer's interests.

B. *General Provisions.*

(1) The PUD process shall be required for those proposed developments that are to be subdivided and multi-phased and that request three or more deviations to planning-related minimum development standards, e.g., setbacks. An applicant whose proposed development is not required to follow the PUD process may request to use the PUD process.

(2) The Infill Development Process (IDP) described in Section 38-48 authorizes the Planning and Zoning Commission to take final action on PUD's. However, proposed development in Infill Areas is not required to use the PUD process, but may use the Infill Development Process.

(3) Proposed deviations to engineering standards, e.g., street construction standards, will be acted on by the Public Works Department Director or designee with appeal to the Engineering Review Committee. However, the PUD process shall not be used if only deviations to engineering standards are proposed.

(4) A developer shall not be granted a deviation to planning-related minimum standards (private incentive) without providing a public benefit to the City/community. The Land Use Element of the City's Comprehensive Plan provides guidance in determining appropriate public benefits in relation to private incentives. One or more public benefits are to be provided for each private incentive. For example, the private incentive request to reduce the amount of open space below the standard shall result in an equivalent amount of recreation equipment being provided or a combination of benefits that relate to the private incentive requested.

(5) A PUD may be used to correct any legal nonconforming situation. However, a PUD shall not be used to make an illegal situation legal.

(6) All contiguous property owned or legally controlled by the developer shall be included within the PUD.

C. *Specific Provisions.* A Planned Unit Development shall meet minimum development standards. The existing development standards, e.g., Zoning Code requirements, shall be met, or minimum development standards, as proposed by the applicant, and approved as part of the PUD, shall be met. The applicant shall clearly describe the PUD in terms of all of the following specific provisions. In addition, the Community Development Director or designee may recommend conditions and the Planning and Zoning Commission or the City Council may impose conditions and require compliance with such other standards as deemed necessary.

(1) *Land Use.* A PUD may contain any land use or combination of land uses.

(2) *Location.* A PUD may be located anywhere within the City except within the University Avenue Corridor Plan Overlay Zone District. However, the PUD process shall not be used to circumvent the requirements of any overlay zoning district.

(3) *Size.* There is no acreage minimum or maximum.

(4) *Density.* There is no minimum or maximum number of dwelling units per acre.

(5) *Intensity.* There is no minimum or maximum square footage requirement for nonresidential uses.

(6) *Off-Site Roadway and Intersection Improvements.* Contributions to or the provision of off-site roadway and intersection improvements shall be required based on the proportionate share of the PUD's impact on off-site roadway segments and intersections. Off-site roadway and intersection improvements necessary in whole or in part because of the PUD's impacts shall be provided according to the improvements schedule outlined in the required traffic impact analysis called for in the Transportation Element of the Comprehensive Plan (Policy 1.5 of Goal 7, Growth Management, of the Transportation Element of the Comprehensive Plan). Furthermore, improvements shall be consistent with Growth Management policy of the Land Use Element.

(7) *Architecture.* PUD architecture shall be compatible with and enhance the existing architecture on adjacent property.

(8) *Design.* The City may alter the design of the proposed PUD to insure the public health, safety and welfare.

(9) *Context.* The City may alter the proposed PUD to insure compatibility with existing and potential land uses adjacent to the proposed PUD.

(10) *Antennas, Towers, Communication Structures, and Other Vertical Structures.* See Section 38-59.

(11) *Height.* See Subsection 38-3I.D and Section 38-32.D.

(12) *Landscaping.* See Chapter 32 of the Municipal Code.

(13) *Mobile Home Parks/Recreational Vehicle Parks.* See Section 38-57.

(14) *Open Space.* See Chapter 32 of the Municipal Code.

(15) *Off-Street Parking.* See Section 38-58.

(16) *Roadway Access.* See Chapter 26, Article III, Access and Median Cuts. The proposed PUD shall be accessed by at least one paved roadway (meeting the City of Las Cruces Standard Specifications for Road Construction) within the minimum right-of-way for the roadway width having the capacity necessary to serve the first phase of the PUD. Additional access may be required before other phases of the PUD are allowed to proceed.

(17) *Setbacks/Buffervards/Screens.* (See Matrix 1 at the end of this section.)

(18) *Signage.* See Chapter 36 of the Municipal Code.

(19) *Walls and Fences.* See Section 38-60.

(20) *Accessory Uses and Structures.* See Section 38-51.

(21) *Private Incentives/Public Benefits.* For each private incentive (deviation to existing Municipal Code planning-related minimum standards listed above) requested, one or more public benefits shall be provided. For example, a private incentive request to reduce the amount of open space below the standard shall result in an equivalent amount of recreation equipment being provided or a combination of benefits that relate to the private incentive requested.

D. *Review Procedures.*

(a) *Authorization.* A Planned Unit Development (PUD) is a zoning district change and is not permitted by right in any zoning district. The procedures and requirements in this Article shall govern the development of a PUD.

For each PUD, there shall be a Pre-Application Conference, Concept Plan, one or more Final Site Plans and, if required, one or more Final Plats. The following table summarizes actions to be taken on a PUD:

	Staff	P and Z	City Council
Pre-App. Conf.	R		
Concept plan	R	R (FA*)	FA (A*)
Final Site Plan	R	FA (R**)	A (FA**)
Final Plat***	FA	A	A

Recommendation (R), Final Action (FA), and Appeal (A).

* The Planning and Zoning Commission is authorized to take final action using the Infill Development Process within Infill Areas.

** The City Council shall take final action on final site plans when one or more is submitted along with the Concept Plan.

*** A Final Plat may not be required in every case.

(b) *Pre-Application Conference*. Any proposed PUD shall first be reviewed at a pre-application meeting scheduled and held by the Community Development staff. The pre-application process shall be subject to the provisions provided for in Subsection 38-10.C. This meeting does not require a written application or fee. The results of this meeting shall not obligate the Planning and Zoning Commission or City Council.

(c) *Concept Plan Review.*

(1) *Concept Plan Application.* The Concept Plan is similar to, and replaces, a subdivision master plan in that it is intended to serve as a tool that can assist in identifying the appropriateness of a proposed development within the context of its surroundings. The Concept Plan forms the basis for approval of the PUD.

The Concept Plan and supplemental material shall be submitted to the Community Development Department no later than 60 calendar days prior to the date of the regular meeting of the Planning and Zoning Commission. The staff shall review the submittal for completeness. If all the required items have been submitted as per Subsection 38-49.E, the Community Development Department shall issue a receipt for submittal. A Concept Plan and supplemental material shall not be accepted for review if incomplete. All items required on a Concept Plan must be present for acceptance unless accompanied by a written request justifying the deletion of required information. The Community Development Director or designee may waive any submittal requirement. However, after reviewing the Concept Plan, the Community Development Director or designee, the Planning and Zoning Commission and/or the City Council may require additional items and resulting information in addition to the submittal requirements as per Subsection 38-49.E. Additional items and/or information requested by staff may include, but not be limited to, the need for early notification to a neighborhood group(s) and/or defined noticed area. Additional requests by staff shall be justified in writing.

A written staff report with recommendations shall be provided to the Planning and Zoning Commission along with the Concept Plan. The report shall recommend that the Concept Plan be approved, conditionally approved, disapproved, or postponed.

(2) *Concept Plan Public Hearing(s).* Public hearing and notice requirements shall be in accord with provisions of Section 38-10. The applicant or applicant's representative shall be present at the public hearing for the proposal to be considered. If the applicant or representative is not at the public hearing, the Concept Plan shall be postponed until the next regular Planning and Zoning Commission meeting or City Council meeting.

The Planning and Zoning Commission shall review the Concept Plan, staff report, applicant presentation, and information submitted by interested citizens. Action by the Planning and Zoning Commission shall be a recommendation to the City Council for approval, conditional approval, or disapproval. The Planning and Zoning Commission is authorized to take final action on a PUD using the Infill Development Process within Infill Areas. An Official Notification of Decision that describes the decision of the Planning and Zoning Commission and/or City Council shall be furnished to the applicant in compliance with State law.

The Concept Plan may be approved only if it includes the following findings:

a. The proposed construction and use of the PUD will not be detrimental to the health, safety or welfare of the community or adjacent neighborhood;

b. There is or will be adequate sewage capacity, roadway capacity, energy supply, and potable water supply to serve the PUD at the time a certificate of occupancy or letter of acceptance, as applicable, is to be issued;

c. The PUD conforms to the intent, goals, objectives, policies, and standards of all City plans and codes;

d. The uses proposed, including their density and intensity, are appropriate to the character of the neighborhood and will have a positive aesthetic effect on the neighborhood in which the PUD will be located; and

e. The proposed uses will not subject surrounding properties and pedestrians to significant hazardous traffic conditions.

Final approval may be granted subject to compliance with such conditions required by the Planning and Zoning Commission and/or the City Council. The conditions that the Planning and Zoning Commission and/or City Council find necessary shall be made part of the terms under which the PUD is granted. The Planning and Zoning Commission and/or the City Council may require such conditions to be included as covenants or deed restrictions in any subsequent conveyances of PUD property. Such covenants and deed restrictions shall be properly recorded with the Dona Ana County Clerk. Furthermore, the Planning and Zoning Commission and/or City Council may require that all or part of any utility corridor, roadway, walkway, bike facility, park, playground, or other public area shown on the Concept Plan be dedicated for public use as an easement, right-of-way, or other conveyance.

If the Concept Plan is approved or conditionally approved by the Planning and Zoning Commission and/or the City Council, the PUD shall be shown on the Official Zoning District Map as PUD replacing the existing zoning districts.

(3) *Concept Plan Effective Period.* The approval of the Concept Plan shall be effective for a period of five years. If a Final Site Plan for all or part of the area has not been approved by the Planning and Zoning Commission and/or City Council by the expiration of the five-year period, the Concept Plan approval shall expire. The zoning of the property shall automatically revert to the underlying

zoning districts that existed for the property at the time the Concept Plan was approved. Prior to the expiration date, the staff may approve a request for an extension of time of up to two years. After the first time extension, the Planning and Zoning Commission and/or City Council shall consider any other time extension request. When at least one Final Site Plan has been approved, the Concept Plan shall remain effective until amended.

(4) *Concept Plan Amendment.* Any substantial change proposed that would affect the approved Concept Plan shall require re-submittal of the Concept Plan in its entirety. Minor changes are those changes that are not substantial and may be approved by the staff; however, staff may determine that any proposed change should be reviewed by the Planning and Zoning Commission and City Council. Substantial changes to the Concept Plan are subject to the same requirements as the original application. Substantial changes shall include but are not limited to:

a. Any change that would increase the intensity of the land uses;

b. Fifteen percent cumulative increase in vehicular traffic to any roadway segment or intersection;

c. Fifteen percent cumulative increase in residential density;

d. Fifteen percent cumulative increase in nonresidential square footage;

e. Any change in private incentives and public benefits;

f. Increase in size of property;

g. Any reduction in screening, bufferyards and setbacks at the PUD property line;

h. Fifteen percent cumulative increase in the buildable area for structures including signs; and

i. Fifteen percent cumulative reduction in open space.

(d) *Final Site Plan Review.*

(1) *Final Site Plan Application, Public Hearing and Effective Period.* A Final Site Plan shall substitute for a subdivision preliminary plat when an applicant must otherwise comply with the subdivision requirements. Upon approval of the Concept Plan, the applicant may submit a Final Site Plan for part or all of the land area covered by a Concept Plan for Planning and Zoning Commission consideration. However, an applicant may submit a Final Site Plan along with the Concept Plan. One or more final site plans submitted with the Concept Plan shall be submitted along with the Concept Plan to the City Council for final consideration. Subsequent final site plans shall be submitted to the City Council for final consideration.

The Final Site Plan and supplemental material shall be submitted to the Community Development Department no later than 60 calendar days prior to the date of the regular meeting of the Planning and Zoning Commission. The staff shall review the submittal for completeness. If all the required items have been submitted as per Subsection 38-49.E., the Community Development Department shall issue a receipt for submittal. A Final Site Plan and supplemental material shall not be accepted for review if incomplete. All items required on a Final Site Plan must be present for acceptance unless accompanied by a written request justifying the deletion of required information. The staff may waive any submittal requirement. However, after reviewing the Final Site Plan, the Planning and Zoning Commission and/or the City Council may require additional items and resulting information in addition to the submittal requirements as per Subsection 38-49.E. Additional items and/or information requested by staff may include, but not be limited to, the need for early notification to a neighborhood group(s) and/or defined noticed area. Additional requests shall be justified in writing.

A written staff report with recommendations about the Final Site Plan shall be provided to the Planning and Zoning Commission along with the Final Site Plan. The report shall recommend that the Final Site Plan be approved, conditionally approved, disapproved, or postponed.

The review procedures for the Final Site Plan shall be the same as for the Concept Plan except that:

a. The Planning and Zoning Commission shall take final action instead of the City Council unless a Final Site Plan has been submitted along with the Concept Plan. One or more final site plans submitted with the Concept Plan shall be submitted along with the Concept Plan to the City Council for final consideration. Subsequent final site plans shall be submitted to the City Council for final consideration.

b. No findings are required except that the Final Site Plan conforms to the Concept Plan.

c. A Final Site Plan shall be effective for two years from the date of approval. When at least one Final Plat or at least one Building Permit has been approved, the Final Site Plan shall be effective until amended.

Approval of a Final Site Plan shall not constitute approval of a Final Plat when a Final Plat is required. Such approval shall constitute the permission to prepare and submit a Final Plat for part or all of the land area covered by the Final Site Plan and construction drawings of all improvements for the Final Site Plan land area. Final platting shall not be considered until a Final Site Plan is approved. If a Final Plat is not required, an approved Final Site Plan shall allow for a building permit to be issued that is in compliance with Chapter 30, Buildings and Building Regulations. Notation on documents shall clearly indicate that the project receiving the building permit is part of a PUD and is subject to the approved Concept Plan and approved Final Site Plan.

In granting approval of a Final Site Plan, the Planning and Zoning Commission shall require adequate guarantees of compliance with all conditions of approval. Such guarantees may include, but are not limited to, performance bonds, lien agreements, or escrow deposits in an amount sufficient to ensure compliance. Moreover, the construction of a PUD following approval of a Final Site Plan shall be in accordance with the Concept Plan and Final Site Plan conditions. Failure to comply with such conditions and standards shall be deemed a violation of this Code.

(2) *Final Site Plan Amendment.* Any substantial change proposed that would affect the approved Final Site Plan shall require resubmittal of the Final Site Plan in its entirety. Minor changes are those changes that are not substantial and may be approved by the staff; however, staff may determine that any proposed change should be reviewed by the Planning and Zoning Commission and City Council. Substantial changes are subject to the same requirements as the original application. Substantial changes shall include but are not limited to:

a. Increased drainage impact;

b. Change in location and size of utilities and easements;

c. Change in required, specific landscape features such as buffers, screens and setbacks at the PUD property line;

d. Change in proposed roadways above major local class;

e. Change in structure location, including signs, by more than five feet; and

f. Change in architectural style or character.

(e) *Final Plat Review and Contents.* If required, the Final Plat(s) review procedures and contents shall comply with Article IV of Chapter 37, the City's Subdivision Code.

E. *Submittal Requirements.*

(a) *Concept Plan Submittal Requirements.* A request for review of a Concept Plan shall include the following information:

(1) Official Application and Development Statement;

(2) Submittal Fee;

(3) Waiver request and justification to delete submittal information, if applicable;

(4) Descriptions of deviations to planning-related development standards and the public benefits to be provided;

(5) Association by-laws (may be submitted with each Final Site Plan.);

(6) Concept Plan. The following information shall be provided on the Concept Plan and supporting maps and drawings:

a. Name of Concept Plan.

b. Name, address and telephone number(s) of property owner(s), developer(s) and consultant(s) preparing the Concept Plan.

c. Detailed area map showing the surrounding area within a half mile and the PUD in relationship to adjacent parcels, existing roadways, and natural or manmade features that may impact or be impacted by the PUD.

d. North arrow, date of preparation, and written and graphic scale.

e. Legal description.

f. Boundary lines of Concept Plan area with approximate length of lines and boundary lines of phases.

g. For each lot, parcel, or tract, list proposed land uses and acreage and show building area boundaries within which each structure will be located:

1. Maximum number of dwelling units and maximum density.

2. Maximum square footage of nonresidential uses.

h. Proposed screening and bufferyard/setback distances along the PUD property line.

i. Existing land uses and zoning on adjacent lots, parcels, or tracts.

j. Name of adjacent subdivisions (including the filing date, book and page numbers), property owners, and zoning. If not subdivided, name of property owner.

k. Twenty-foot contour intervals minimum or as appropriate.

l. Proposed alignment of roadways and how they relate to the Metropolitan Planning Organization (MPO) Transportation Plan and the Transportation Element of the Comprehensive Plan and the impacts created on the area road network, neighborhood, and other land uses. Impact data shall include the anticipated traffic volume generated by the proposed development, identification of the affected road network, and the additional traffic volumes associated for each road. If required, provide a Traffic Impact Study, including a roadway improvement schedule, consistent with the requirements of the Transportation Element of the Comprehensive Plan (Policy 1.5 of Goal 7, Growth Management, of the Transportation Element) and based on the latest recommendations from the Institute of Traffic Engineers. Thoroughfare System: Identification of adjacent

roadways and other transportation lines by functional classification; proposed location, length, width of all roadways, bikeways, trails, walkways, and any other transportation lines. Identify existing and proposed classification of roadways as per City of Las Cruces Design Standards and based on the current Las Cruces MPO Transportation Plan and the Transportation Element of the Comprehensive Plan.

m. Location and sizes of existing and proposed utilities.

n. Significant natural features, such as arroyos and 100-year floodplains.

o. All easements.

p. Tabular Information:

1. Land uses of each lot, parcel, or tract.

2. Total acreage of the PUD, acreage for each land use, and acreage of each land use by phase.

3. Maximum number of dwelling units and maximum density by phase.

4. Total square footage of nonresidential uses by phase.

5. Total acreage for open space, private and public facilities, and right-of-way.

6. Maximum height of proposed structures for each lot, parcel or tract.

q. Approval block signifying the final approved Concept Plan to be signed by the Zoning Administrator upon approval by the City Council and resolution of all outstanding staff comments.

(7) Other Impact Studies, if required by the Planning and Zoning Commission, are to be submitted prior to City Council consideration:

a. Impacts on any public facilities outside the PUD area. Impact data shall include expected population generated by the proposed development, identification of public facilities, e.g., utilities, parks, that are anticipated for use by said population and level of capacity of said utilized public facilities.

b. Impacts on air quality, specifically solid particulates known as PM10. (Small airborne particulates, particulate matter less than or equal to ten microns in diameter, are an important health concern because they are far more likely than larger particles to be inhaled deep into the lungs. This particulate matter is a respiratory irritant, can aggravate asthma and other lung diseases, and act as a medium of transport that allows the body to absorb heavy metals through oxidation. These small, suspended particulates also play some role in obscuring light, thus degrading visibility.) Impact data shall include identification of proposed uses that generate air pollution substances into the environment and the projected impact.

c. Impacts on views and noise to adjacent property. Impact data shall include identification of proposed uses that generate excessive noise, anticipated maximum height for proposed structures, identification of existing physical features that are viewed from the PUD and adjacent properties, and how these views will be altered by the PUD. Proposals to mitigate impacts shall be provided.

d. Geological and Soils Hazards. Report on the Geologic and Soils Hazards in relation to slope conditions, drainage problems and suitability for septic system use, if applicable, as identified by the Soil Survey of Dona Ana County Area, New Mexico. This report shall also

include either an aerial photograph or a map with existing contours at an appropriate interval to establish accurate ground contour of the PUD area.

(8) Copy of early notification letter to neighborhood group(s) and/or defined noticed area and copy of minutes (summary or verbatim) from any required meeting pursuant to Subsection 38-10.C.1.(d)(v).

(b) *Final Site Plan Submittal Requirements.* A request for review of a Final Site Plan (FSP) shall include the following information:

(1) Official Application and Development Statement.

(2) Submittal Fee.

(3) Waiver request and justification to delete submittal information if applicable.

(4) Master Drainage Study consistent with Section 37-81 of the Subdivision Code and Article III, Drainage, of the City Design Standards.

(5) Master Utilities Report and Plan consistent with Section 37-81 of the Subdivision Code.

(6) A Final Site Plan. A FSP shall be at a scale that adequately represents the required information. A FSP shall be prepared on 18" × 24" sheets of paper. Copies shall be legible with no limit to the number of sheets provided. A FSP and supporting maps and drawings shall show existing conditions and all proposals, including the following:

a. Name of the FSP.

b. Total acreage of the FSP area to the nearest 1/10 of an acre.

c. Date of preparation, north arrow, written and graphic scale.

d. Vicinity Map to locate the FSP within the Concept Plan area. The Vicinity Map shall show relationship to existing major roadways.

e. Name and address of applicant.

f. Name and address of the person, corporation, or organization preparing the FSP.

g. Number to identify each lot. Letter of the alphabet to identify each tract or parcel.

h. Proposed lot lines and right-of-way lines; rights-of-way and street widths; rights-of-way and easement widths for public services or utilities and any limitations thereof.

i. Dimensions, acreage, and purposes of tracts or parcels.

j. Sites and acreage for any multi-family dwellings or nonresidential uses.

k. Dimension of all buildings, setbacks, bufferyards, parking, walkways, lighting, signs, landscaping, walls, fences, open space, and recreation areas.

l. Architectural elevation drawings of all buildings, signs, and other structures.

m. On separate sheets, if necessary, include existing conditions of the proposed FSP area. If applicable, include the following:

1. FSP name.

2. Location, width, and purpose of all easements on site.

3. Public rights-of-way on and within 150 feet of the site: name, width, and classification.

4. Utilities on and adjacent to the site: Location and size of water wells, water reservoirs, water lines, sanitary and storm drains, and drainage facilities; location of all irrigation channels and drains; location of gas lines, fire hydrants, electric and telephone poles, and street lights. If water mains and sewers are not on or adjacent to the tract, indicate the direction, distance, and size of nearest lines.

5. Existing topography guidelines:

i. For land with average slope of less than five percent, show contour lines at intervals of not more than two feet.

ii. For land with average slope of more than five percent, show contour lines at intervals of not more than five feet.

6. Conditions on adjacent land significantly affecting design of the FSP: direction and gradients of ground slope, character and location of development, access points from adjacent points, and building types.

n. Approval block signifying the Final Site Plan approved to be signed by the Zoning Administrator upon approval by the Planning and Zoning Commission and resolution of all outstanding staff comments.

(7) Copy of early notification letter to neighborhood group(s) and/or defined noticed area and copy of minutes (summary or verbatim) from any required meeting pursuant to Subsection 38-10.C.1.(d)(v).

F. *Existing Planned Unit Developments.* A PUD existing on the effective date of this Code may continue to develop based on the approved PUD conceptual plan and final site plan. However, a proposed substantial change as defined in this Division shall require that an existing PUD comply with all the requirements of this Code.

Sec. 38-49. Buffer Matrix 1 (Separation and Landscaping Requirements between Land Use/Zones): Listed here are separation and landscaping requirements that all forms of development are required to follow when a proposed use is located next to differing adjacent land uses/zones. Other separations distances and landscaping screens may be followed other than what is listed here with the approval of the planning director or designee.

Adjacent Use														
Proposed Use		EE, RE, REM VLD. Res.	R-1c, R-1cM LD Res.	R-1a, R-1aM, R-1b, R-1bM, R-2, R-3 MD Res.	R-4 (Density to be established) HD Res.	O-1 Neigh. Office	O-2 Pro Office	C-1 Low Inten. Comm.	C-2 Med. Inten Comm.	C-3 Reg. Comm.	MT Indust. Tech	M-1/M-2 Indust. Standard	M-3 Indust. Heavy	
	VLD Res. EE, RE, REM	R	R	R	R	R	R	R	SB 25'	SB 25'	SB 25'	SB 25'	SB 30'	
	LD Res. R-1c, R-1cM	R	R	R	R	R	R	R	SB 25'	SB 25'	SB 25'	SB 25'	SB 30'	
	MD Res. R-1a, R-1aM, R-1b, R-1bM, R-2, R-3	R	R	R	R	R	R	R	SB 25'	SB 25'	SB 25'	SB 25'	SB 30'	
	HD Res. R-4 (Density to be established by City)	BY 10' B/BY 5' A	BY 10' B/BY 5' A	BY 10' B/BY 5' A	R	R	R	R	R	R	SB 25'	SB 20'	SB 30'	
	Neigh. Office O-1	BY 10' B/BY 5' A	BY 10' B/BY 5' A	BY 10' B/BY 5' A	R	R	R	R	R	R	R	R	R	
	Pro. Office O-2	BY 15' B/BY 10' A	BY 15' B/BY 10' A	BY 15' B/BY 10' A	R	R	R	R	R	R	R	R	R	
	Low Inten. Comm. C-1	BY 15' B/BY 10' A	BY 15' B/BY 10' A	BY 15' B/BY 10' A	R	R	R	R	R	R	R	R	R	
	Med. Inten. Comm. C-2	BY 15' B/BY 10' A	BY 15' B/BY 10' A	BY 15' B/BY 10' A	BY 10' B/BY 5' A	R	R	R	R	R	R	R	R	
	High Inten. Comm. C-3	BY 15' B/BY 10' A	BY 15' B/BY 10' A	BY 15' B/BY 10' A	BY 10' B/BY 5' A	R	R	R	R	R	R	R	R	
	Indust. Standard M-1/M-2	BY 60'C/BY 40' B/BY 20' A	BY 60' C/BY 40' B/BY 20' A	BY 60' C/BY 40' B/BY 20' A	BY 20' B/BY 15' A	R	R	R	R	R	R	R	R	

	Indust. Heavy M-3	BY 100' C/BY 75' B/BY 50' A	BY 100' C/BY 75' B/BY 50' A	BY 100' C/BY 75' B/BY 50' A	BY 40' B/BY 30' A	R	R	R	R	R	R	R	R

Key:

1)
The first letter denotes a total setback or buffer that is required for that particular zone/land use

SB = Setback. (A setback is the distance between the property line and where a permanent structure may be constructed. Limited construction may take place, such as sheds and parking.)

BY = Bufferyard. (Only open space and drainage areas may be placed within the bufferyard.)

R = Regular setback required for that zoning district (Buffering and/or screening are not required.)

2)
The second letter denotes the type of screening required for the particular zone/land use. (Refer to the Design standards for screen standards.)

A = Opaque screen

B = Semi-opaque screen

C = Broken Screen

3)
Types of land uses:

VLD Res. = Very Low Density Residential

LD Res. = Low Density Residential

MD Res. = Medium Density Residential

HD Res. = High Density Residential

Neigh. Office = Neighborhood Office

Pro. Office = Professional Office

Low Inten. Comm. = Low Intensity Commercial

Med. Inten. Comm. = Medium Intensity Commercial

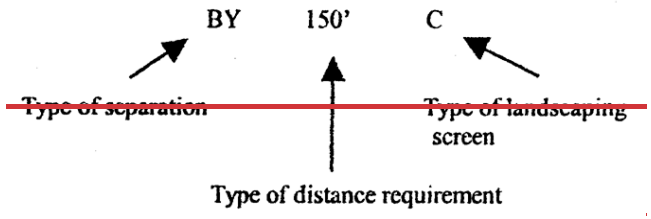
High Inten. Comm. = High Intensity Commercial

Reg. Comm. = Regional Commercial

L. Indust. = Light Industrial

S. Industrial = Standard Industrial

H. Industrial = Heavy Industrial



~~(Ord. No. 2354, § I, 1-22-07; Ord. No. 2687, § I(Exh. A), 8-5-13)~~

Sec. 38-49.1. NMO—North Mesquite Neighborhood Overlay Zone District.

A. *Purpose.* The North Mesquite Neighborhood district is designed to deal with issues unique to one of the city's older neighborhoods. Specific provisions in this Code deal with issues such as setbacks and zoning designations that are better suited to this older part of the city. Via neighborhood participation, it was decided to closely follow the zoning designations and permitted land uses of the city's former 1981 Zoning Code, as amended, with some modifications.

B. *Delineation of North Mesquite overlay district boundaries.* The North Mesquite overlay district shall include all properties noted on the associated map (figure 1).

C. *Development standards and permitted uses.* There shall be no development or alteration of the lands, uses, or structures within this overlay zone district except as provided for by this section of this Code from the date of its enactment and other sections of this Code and other city codes and ordinances where applicable. Development requirements and permitted uses shall be established for all areas in this overlay zone district as follows:

1. *Development standards.* The following development standards shall apply to all areas within the overlay zone district.

Minimum lot area/size: 3,500 square feet

Minimum lot width/frontage: 40 feet

Minimum lot depth: 70 feet

Minimum side setback: Five feet*, ***

Minimum rear setback: Five feet*, ***

Minimum front setback(s): The average of the two adjacent properties on either side of the subject property. If this situation does not exist, a minimum of ten feet**, ***. At the minimum, all setbacks shall meet clear site triangle**.

Maximum building height:

North Mesquite R-1: 35 feet

North Mesquite R-2: 35 feet

North Mesquite R-3: 45 feet

North Mesquite R-4: 60 feet

North Mesquite O-1: 45 feet

North Mesquite C-1: 45 feet

North Mesquite C-2: 60 feet

*Overhangs are not permitted within the required setbacks.

**Clear-Site-Triangle requirements must be met or applicable encroachment agreements must be entered into when applicable.

***All projects must meet the city's design standards, including drainage. The public works department will determine on-site drainage requirements. Permitted setbacks as noted here may need to be modified/increased if on-site drainage facilities are required.

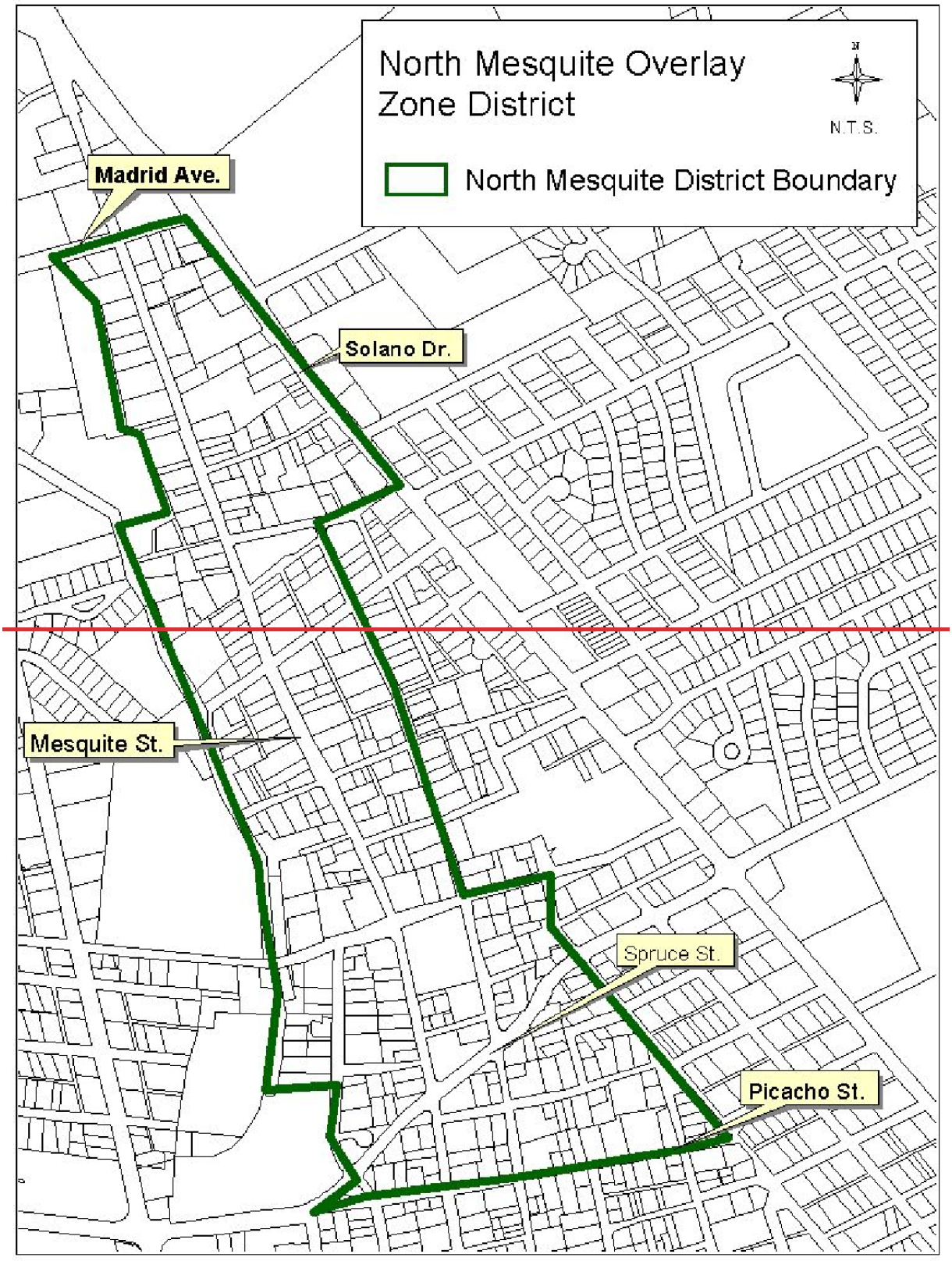

North Mesquite Overlay Zone District
N.T.S.
North Mesquite District Boundary
Madrid Ave.
Solano Dr.
Mesquite St.
Spruce St.
Picacho St.

Figure 1

2. *Zoning.* There shall be no development or alteration of the lands, uses, or structures within this overlay zone district except as provided for by this section of this Code from the date of its enactment, and other sections of this Code and other codes where applicable.

(a) Permitted uses and development standards are established as described hereafter:

(1) North Mesquite R-1 single-family low density residential district (maximum of eight dwelling units per acre).

Purpose. The North Mesquite 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 North Mesquite R-1 district are also permitted.

a. *R-1 permitted uses.* The following uses are permitted with their noted conditions the North Mesquite R-1 districts.

Above ground storage tanks for liquid petroleum (LP) gas. Tanks shall be permitted only when meeting Uniform Fire Code requirements as adopted by the city and when receiving approval from the state LP gas bureau.

Accessory building. See "accessory building/structure.

Accessory dwelling unit. Shall follow requirements found in section 38-33.A.

Construction yard or building (temporary). Such yard or building shall be removed upon completion of construction or within three 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 fence five feet in height. However, there shall be no fence or wall more than three feet in total height above street-curb level located within 30 feet of a street intersection. Above ground storage tanks for flammable and combustible liquids within construction yards shall meet the Uniform Fire Code as adopted by the city and be approved by the city fire department.

Garage or yard sale or similar use for individual residences. Three sales are permitted in a one-year period at a single address. A sale shall not exceed three consecutive days.

Greenhouse (noncommercial), garden sheds, tool sheds. When detached from the main dwellings, such structures are subject to the provisions of accessory buildings, article 10.

Home for the disabled. See section 38-21.

Home occupation. Subject to the provisions of this section and section 38-52.

Kennel (private, residential).

Public park, playground, or ballfields. See section 38-33.E.

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 years from date permit issued, whichever is sooner.

Religious institution (over ten persons)/columbarium. Religious institutions, with or without a columbarium, shall be located on a major local or higher designated roadway. Structures or parking located within 25 feet of a residential zoning district shall provide an opaque buffer consisting of landscape and walls or fences. Dumpsters or other garbage collection facilities shall not be located within 25 feet of property used for residential purposes.

Storage of recreational vehicles and motor vehicle appurtenances. Storage of personal recreational vehicles, boats, trailers, or similar uses shall be limited to a maximum of one per dwelling unit in the front or side yard, with no limit in the rear yard, separated at least five feet from any property line.

Swimming pool (private). Permitted only when a protective fence, four feet in height, is provided around the yard, lot or pool area. The pool shall be no closer than five feet from any property line, and approval from all utilities is required to insure overhead safety.

Utility installation: The site shall be developed and maintained in conformance with the general character and appearance of the district, and such development shall include landscaping and suitable opaque screening in the form of a solid wall, fence or compact shrubbery around the entire perimeter of the lot or tract, or around the installation itself in cases such as transformers. A wall or fence may be up to ten feet high. A solid wall or fence shall surround the installation. Landscaping shall be provided to screen and/or buffer the installation as necessary to allow the use to blend with the surrounding properties and minimize noise and visual pollution.

b. *North Mesquite R-1 Special Uses.* The following uses require a public hearing and approval of the Planning and Zoning Commission. Specific conditions and provisions for each use may be referred to in part D of this section.

Cemetery/columbarium.

Community building.

Golf course and country club.

Group child care home.

Halfway house.

Nursing home.

School (private, public, and parochial).

(2) North Mesquite R-2: Medium density residential district (maximum of 15 dwelling units per acre).

Purpose. The North Mesquite R-2 district is intended to accommodate an overall maximum density of 15 dwelling units per acre. This district is intended for single-family, duplex or apartment units in which a medium density residential character is protected and maintained.

a. North Mesquite R-2 permitted uses with their noted conditions:

Above ground storage tanks for liquid petroleum (LP) gas. Tanks shall be permitted only when meeting Uniform Fire Code requirements as adopted by the city and when receiving approval from the state LP gas bureau.

Accessory building. See *accessory building/structure.*

~~Child care center, nursery, or similar use. Child care center, group child care home, family child care home, preschool, nursery school, day nursery, kindergarten, and similar uses shall be in accord with State licensing requirements. Care of 13 or more children at one time is prohibited in the residential zoning districts listed. Refer to section 38-52 of the Municipal Code, home occupation business registration, for babysitting service/child care when 12 or fewer children are cared for.~~

~~Condominiums. Maximum of four attached units.~~

~~Construction yard or building (temporary). Such yard or building shall be removed upon the completion of construction or within three 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 fence five feet in height. However, there shall be no fence or wall more than three feet in total height above street curb level located within 30 feet of a street intersection. Above ground storage tanks for flammable and combustible liquids within construction yards shall meet the Uniform Fire Code as adopted by the city and be approved by the city fire department.~~

~~Dwellings. Maximum of four attached or detached dwelling units, not to exceed a maximum density of 15 dwelling units per acre.~~

~~Garage or yard sale or similar use for individual residences. Three sales are permitted in a one-year period at a single address. A sale shall not exceed three consecutive days.~~

~~Greenhouses (noncommercial), garden sheds, tool sheds. When detached from the main dwelling, such structures are subject to the provisions of accessory buildings, article 10.~~

~~Home for the disabled. See section 38-21.~~

~~Home occupation. Subject to the provisions of this section and section 38-52.~~

~~Public park, playground, or ballfield.~~

~~Kennel (private, residential).~~

~~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 years from date permit issued, whichever is sooner.~~

~~Religious institution (over ten persons)/columbarium. Religious institutions, with or without a columbarium, shall be located on a major local or higher designated roadway. Structures or parking located within 25 feet of a residential zoning district shall provide an opaque buffer consisting of landscape and walls or fences. Dumpsters or other garbage collection facilities shall not be located within 25 feet of property used for residential purposes.~~

~~Storage of recreational vehicles and motor vehicle appurtenances. Storage of personal recreational vehicles, boats, trailers, or similar uses shall be limited to a maximum of one per dwelling unit in the front or side yard, with no limit in the rear yard, separated at least five feet from any property line.~~

~~Swimming pools: Private. Permitted only when a protective fence four feet in height is provided around the yard, lot or pool area. The pool shall be no closer than five~~

feet from any property line, and approval from all utilities is required to insure overhead safety.

Townhouses. Maximum of four attached units.

b. *North Mesquite R-2 special uses.* The following uses require a public hearing and approval of the Planning and Zoning Commission. Specific conditions and provisions for each use may be referred to in part D of this section.

Automobile parking lot.

Cemetery/columbarium.

Community building.

Golf course and country club.

Mobile home park.

Mobile home subdivision.

Nursing home/assisted living facility.

School (public, private, parochial).

Swimming pool (public or commercial).

(3) North Mesquite R-3 high density residential district (maximum of 30 Dwelling units per acre).

Purpose. The North Mesquite R-3 district is intended to accommodate multiple family dwelling units and accessory structures and uses. The zone is intended to maintain and protect high density residential development that is characteristic of apartments, townhouses, condominiums, and other similar dwelling complexes. The North Mesquite R-3 zone is intended to be located in areas that have access to main thoroughfares.

a. North Mesquite R-3 permitted uses with their noted conditions:

Above ground storage tanks for liquid petroleum (LP) gas. Tanks shall be permitted only when meeting Uniform Fire Code requirements as adopted by the city and when receiving approval from the state LP gas bureau.

Accessory building. See "accessory building/structure.

Boarding house.

Condominiums.

Child care center, nursery, or similar use. Child care center, group child care home, family child care home, preschool, nursery school, day nursery, kindergarten, and similar uses shall be in accord with State licensing requirements. Care of 13 or more children at one time is prohibited in the residential zoning districts listed. Refer to section 38-52 of the Municipal Code, home occupation business registration, for babysitting service/child care when 12 or fewer children are cared for.

Construction yard or building (temporary use). Such yard or building shall be removed upon the completion of construction or within three 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 fence five feet in height. However, there shall be no fence or wall more than three feet in total height above street curb located within 30 feet of a street intersection.

~~Above ground storage tanks for flammable and combustible liquids within construction yards shall meet the current fire code as adopted by the city and be approved by the city fire department.~~

~~Dwellings. Single or multi-family units, apartments, townhouses, and condominiums with a maximum density of 30 dwelling units per acre.~~

~~Fraternity house.~~

~~Garage or yard sale or similar use for individual residences. Three sales are permitted in a one-year period at a single address. A sale shall not exceed three consecutive days.~~

~~Greenhouses (noncommercial), garden sheds, and tool sheds. When detached from the main dwelling, such structures are subject to the provisions of accessory buildings, article 10.~~

~~Home for the disabled. See section 38-21.~~

~~Home occupation. Subject to the provisions of this section and section 38-52.~~

~~Nursing home/assisted living facility.~~

~~Kennel (private, residential).~~

~~Private club or lodge. Permitted when used in conjunction with nonprofit organizations such as Lions Club, Elks Lodge, and the like. Building(s) shall not be located within 100 feet of an R-1 or R-2 zone. 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 50 feet of an R-1 or R-2 zone.~~

~~Public park, playground, and ballfield.~~

~~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 years from date of permit, whichever is sooner.~~

~~Religious institution (over ten persons)/columbarium. Religious institutions, with or without a columbarium, shall be located on a major local or higher designated roadway. Structures or parking located within 25 feet of a residential zoning district shall provide an opaque buffer consisting of landscape and walls or fences. Dumpsters or other garbage collection facilities shall not be located within 25 feet of property used for residential purposes.~~

~~Sorority house.~~

~~Swimming pool: Private. Permitted only when a protective fence four feet in height is provided around the yard, lot, or pool area. The pool shall be no closer than five feet from any property line, and approval from all utilities is required to insure overhead safety.~~

~~Townhouses. Maximum of eight attached units.~~

~~b. North Mesquite R-3 special uses. The following uses require a public hearing and approval of the Planning and Zoning Commission. Specific conditions and provisions for each use may be referred to in part D of this section.~~

~~Amusement park.~~

~~Automobile parking lot.~~

~~Cemetery/columbarium.~~

~~Community building.~~

~~Flea market.~~

~~Golf course and country club.~~

~~Halfway house and quasi-institutional house.~~

~~Mobile home park.~~

~~Mobile home subdivision.~~

~~School (public, private, parochial).~~

~~Swimming pool (public or commercial).~~

~~(4) North Mesquite R-4 high density residential and limited office district (maximum of 40 dwelling units per acre).~~

~~*Purpose.* The North Mesquite R-4 district is intended to accommodate a mixture of high density multiple family dwelling units and limited offices in which no merchandise or goods are sold as the primary business. The North Mesquite R-4 zone is intended to be located in areas that have access to main thoroughfares and are large enough in area to accommodate large-scale apartment complexes or limited office developments.~~

~~a. North Mesquite R-4 permitted uses with their noted conditions:~~

~~Above ground storage tanks for liquid petroleum (LP) gas. Tanks shall be permitted only when meeting Uniform Fire Code requirements as adopted by the city and when receiving approval from the state LP gas bureau.~~

~~Accessory building. See "accessory building/structure."~~

~~Boarding house.~~

~~Child care center, nursery, or similar use. Child care center, group child care home, family child care home, preschool, nursery school, day nursery, kindergarten, and similar uses shall be in accord with State licensing requirements. Care of 13 or more children at one time is prohibited in the residential zoning districts listed. Refer to section 38-52 of the Municipal Code, home occupation business registration, for babysitting service/child care when 12 or fewer children are cared for.~~

~~Condominiums.~~

~~Construction yard or building (temporary use). Such yard or building shall be removed upon the completion of construction or within three 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 fence five feet in height. However, there shall be no fence or wall more than three feet in total height above street-curb level located within 30 feet of a street intersection.~~

~~Above ground storage tanks for flammable and combustible liquids within construction yards shall meet the Uniform Fire Code as adopted by the city and be approved by the city fire department.~~

~~Dwellings. Single or multi-family units, apartments, townhouses, and condominiums with a maximum density of 40 dwelling units per acre.~~

~~Fraternity house.~~

~~Garage or yard sale or similar use for individual residences. Three sales are permitted in a one-year period at a single address. A sale shall not exceed three consecutive days.~~

~~Greenhouses (noncommercial), garden sheds, and tool sheds. When detached from the main dwelling, such structures are subject to the provisions of accessory buildings, article 10.~~

~~Home for the disabled. See section 38-21.~~

~~Home occupation. Subject to the provisions of this section and section 38-52.~~

~~Nursing homes/assisted living facility.~~

~~Kennel (private, residential).~~

~~Offices (limited). Offices which provide health services as a convenience to the neighborhood such as medical, chiropractic or dental, and certain professional offices which have a very low traffic volume such as attorneys, accountants, and architects are permitted, provided such uses maintain the residential character of the neighborhood and zoning district in which they are located. There shall be no goods or merchandise prepared or sold on the premises. Uses such as barbershops, hairdressers, banks, and similar commercial and business offices which generate moderate or high volumes of traffic are prohibited in the North Mesquite R-4 district.~~

~~Private club or lodge. Permitted when used in conjunction with nonprofit organizations such as Lions Club, Elks Lodge, and the like. Building(s) shall not be located within 100 feet of an R-1 or R-2 zone. Private clubhouses and game rooms are also permitted when used as a part of an apartment, condominium, or townhouse complex, provided such buildings shall not be located within 50 feet of an R-1 or R-2 zone.~~

~~Public park, playground, and ballfield.~~

~~Religious institution (over ten persons)/columbarium. Religious institutions, with or without a columbarium, shall be located on a major local or higher designated roadway. Structures or parking located within 25 feet of a residential zoning district shall provide an opaque buffer consisting of landscape and walls or fences. Dumpsters or other garbage collection facilities shall not be located within 25 feet of property used for residential purposes.~~

~~Sorority house.~~

~~Swimming pool: Private. Permitted only when a protective fence four feet in height is provided around the yard, lot or pool area. The pool shall be no closer than five feet from any property line, and approval from all utilities is required to insure overhead safety.~~

~~Townhouses. Maximum of ten attached units.~~

~~b. North Mesquite R-4 special uses. The following uses require a public hearing and approval of the Planning and Zoning Commission. Specific conditions and provisions for each use may be referred to in part D of this section.~~

~~Amusement park.~~

~~Automobile parking lot.~~

~~Cemetery/columbarium.~~

~~Community building.~~

~~Flea market.~~

~~Golf course or country club.~~

~~Halfway house and quasi-institutional house.~~

~~Hospital and overnight clinic.~~

~~Institution: Public, educational, religious, and philanthropic.~~

~~Mobile home park.~~

~~Mobile home subdivision.~~

~~School (public, private, parochial).~~

~~Swimming pool (public or private).~~

~~(5) North Mesquite O-1 office district:~~

~~*Purpose.* The North Mesquite O-1 district is intended to accommodate office, service and institutional uses in which merchandise or goods are not prepared or sold as the primary business. This zone is designed to be a transition between commercial and residential uses and serve specified business, personal and professional services that can function efficiently without generating large volumes of vehicular traffic. The North Mesquite O-1 district should maintain a predominantly residential character. Residential uses are not permitted in the North Mesquite O-1 zone, except in cases where a proprietor uses a part of an office building as a dwelling. Limited landscaping is also required in the North Mesquite O-1 zone:~~

~~*Landscaping requirements:*~~

~~• A landscaping buffer, a minimum of five feet, excluding sidewalks, shall be provided and maintained along all street frontages. This landscaping shall be accomplished by the use of greenery, trees, lawn grass, shrubs, crushed stones, cactus, lava rock, or similar materials. In addition, all areas not devoted to buildings, structures, paved drives, walks and off-street parking facilities shall be covered with one of the above materials~~

~~• The entire lot width shall be landscaped with the exception of approved driveways.~~

~~• Landscaping shall not interfere with visibility for safe ingress and egress.~~

~~a. North Mesquite O-1 permitted uses.~~

~~Art studio~~

~~Automobile parking lot~~

~~Barber shop~~

~~Beauty shop~~

~~Clinic (excluding animal clinic)~~

~~Community or public office building~~

~~Cosmetologist shop~~

~~Dentist office~~

~~Funeral home, mortuary, excluding crematoriums~~

~~Insurance office~~

~~Law office~~

~~Lessons (art, dance, music, and the like)~~

~~Office complex~~

~~Photographic studio~~

~~Physicians office~~

~~Private club or lodge~~

~~Professional and business offices~~

~~Real estate office~~

~~b. Permitted uses—With conditions: The following uses are permitted in accord with stated conditions:~~

~~Above ground storage tanks for liquid petroleum (LP) gas. Tanks shall be permitted only when meeting Uniform Fire Code requirements as adopted by the city and when receiving approval from the state LP gas bureau.~~

~~Accessory building/structure. See "accessory building/structure."~~

~~Construction yard of building (temporary use). Permitted only during construction, provided such yard or building shall be removed upon the completion of construction or within three 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 fence of a minimum of five feet in height. However, there shall be no fence or wall more than three feet in total height above street-curb level located within 30 feet of a street intersection.~~

~~Above ground storage tanks for flammable and combustible liquids within construction yards shall meet the Uniform Fire Code as adopted by the city and be approved by the city fire department.~~

~~Dwelling use. Only when used as an incidental or accessory use to a business by a proprietor and when located in the same building as the primary business.~~

~~Electronic banks. Buildings shall not exceed 2,500 square feet of floor area. There shall be no interior commercial use and no drive-up window facilities.~~

~~Laboratory: Medical, dental, or similar uses. Permitted only when entirely contained within an office building and used strictly for the purpose of serving the occupants of the office complex. There shall be no direct entrance from the exterior of the building, and no advertising signs or other visible displays indicating the use from the exterior of the building.~~

~~Prescription sales shop. Permitted only for the purpose of serving the occupants of a medical, dental, or similar office facility and with no direct entrance from the exterior of the building. There shall be no advertising signs or other visible displays indicating the use from the exterior of the building.~~

Public utility installations, substations, and waterwells. The site shall be developed and maintained in conformance with the general character and appearance of the zoning district and shall include landscaping and suitable screening in the form of a solid wall, fence or compact shrubbery around the perimeter of the lot or tract.

Religious institution (over ten persons)/columbarium. Religious institutions, with or without a columbarium, shall be located on a major local or higher designated roadway. Structures or parking located within 25 feet of a residential zoning district shall provide an opaque buffer consisting of landscape and walls or fences. Dumpsters or other garbage collection facilities shall not be located within 25 feet of property used for residential purposes.

c. North Mesquite O-1 special uses. The following uses require a public hearing and approval of the Planning and Zoning Commission. Specific conditions and provisions for each use may be referred to in part D of this section.

Drive-in bank.

Golf course or country club.

Halfway house or quasi-institutional house.

Home for disabled.

Institution: Public, educational, religious, and philanthropic.

Public building (other than offices).

Schools (public, private, parochial).

Swimming pools (public or commercial).

(6) North Mesquite C-1 neighborhood commercial district.

Purpose. The North Mesquite C-1 district is intended to accommodate limited retail and service establishments as a convenience to nearby residential neighborhoods. This zone is designed to be compatible and consistent with the needs and character of a residential neighborhood. Uses such as the sale, service and repair of motor vehicles, engines, and mobile homes; gasoline service stations and body shops; dancing establishments; the wholesaling and warehousing of merchandise; pet shops; and similar uses are not permitted in the North Mesquite C-1 zone. Uses which exceed 3,000 square feet of gross floor area per business require a special use permit after public hearing of the Planning and Zoning Commission, in order to insure that the size of the business does not create undue traffic congestion, noise or other problems that would be detrimental to the residential character of the neighborhood.

Residences in North Mesquite C-1 shall comply with North Mesquite R-4 development standards.

a. North Mesquite C-1 permitted uses. The following uses are permitted by right in the North Mesquite C-1 district provided the gross floor area of each business does not exceed 3,000 square feet. Uses exceeding 3,000 square feet may be considered for approval only as a special use permit after a public hearing before the Planning and Zoning Commission in accord with section 38-10.

Arts and crafts studio

Bakery

~~Barber shop~~

~~Beauty parlor~~

~~Bicycle sales and service~~

~~Bookstores and stationery shops~~

~~Cigarette and cigar shops~~

~~Clinic (excluding animal clinics)~~

~~Coffee shop and snack bar~~

~~Community building (publicly or privately owned)~~

~~Cosmetologist shop~~

~~Delicatessen (walk-in with 16 seats maximum)~~

~~Dressmaking shop~~

~~Dry-cleaning and steamcleaning (receiving shop)~~

~~Florist shop~~

~~Gift shop~~

~~Grocery store~~

~~Hobby shop and toy store~~

~~Household appliance and repair shop~~

~~Knit and yarn shops~~

~~Laundry (self service)~~

~~Lessons (art, dance, music, and the like)~~

~~Library~~

~~Meat and seafood markets~~

~~Messenger service~~

~~Newspaper distribution office~~

~~Offices: Professional and business~~

~~Photographic studio~~

~~Post office~~

~~Prescription shop~~

~~Private club or lodge~~

~~Public park, playground, recreational use~~

~~Real estate office~~

~~Residences~~

~~Restaurant (walk-in with 16 seats maximum)~~

~~Shoe repair shop~~

~~Tailor shop~~

~~Variety store~~

~~b. Permitted uses—With conditions: The following uses are permitted in accord with stated conditions.~~

~~Above ground storage tanks for flammable and combustible liquids. Tanks shall be permitted only when meeting Uniform Fire Code requirements as adopted by the city and when receiving approval from the city fire department.~~

~~Above ground storage tanks for liquid petroleum (LP) gas. Tanks shall be permitted only when meeting Uniform Fire Code requirements as adopted by the city and when receiving approval from the state LP gas bureau.~~

~~Accessory building/structure. See "accessory building/structure."~~

~~Child care center, nursery, or similar use. Child care center, group child care home, family child care home, preschool, nursery school, day nursery, kindergarten, and similar uses shall be in accord with state licensing requirements. Care of 13 or more children at one time is prohibited in the residential zoning districts listed. Refer to section 38-52 of the Municipal Code, home occupation business registration, for babysitting service/child care when 12 or fewer children are cared for.~~

~~Construction yard or building (temporary use). Permitted only during construction, provided use or building shall be removed upon the completion of construction or within three 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 solid fence of a minimum of five feet in height. However, there shall be no fence or wall more than three feet in total height above street-curb level located within 30 feet of a street intersection.~~

~~Above ground storage tanks for flammable and combustible liquids within construction yards shall meet the Uniform Fire Code as adopted by the city and be approved by the city fire department.~~

~~Christmas tree sales. Temporary, not prior to November 15 and provided lots are removed by December 31.~~

~~Drive-in bank. Stacking lanes shall be provided and designed to insure that no bank or ATM traffic backs into the street giving access to the bank. Banks or ATMs shall have access to a major local or higher designated roadway. See the Municipal Code for stacking lane requirements.~~

~~Firewood sales. Maximum of ten cords per business stored on site.~~

~~Home for handicapped, disabled, retarded, or retired. See section 38-21.~~

~~Home occupation. Subject to the provisions of this section and section 38-52.~~

~~Retail sales: Specialized merchandise. Retail sales, except as otherwise stated, shall be limited to stores that specialize in a particular type of merchandise such as clothing, records, shoes, home appliances, or other similar convenience goods to serve nearby residential neighborhoods.~~

~~Shopping center (less than two acres). Provided a site plan for the entire development is approved.~~

Public utility installation, substation, and waterwell. The site shall be developed and maintained in conformance with the general character and appearance of the zoning district and shall include landscaping and suitable screening in the form of a solid wall, fence or compact shrubbery around the perimeter of the lot or tract.

Religious institution (over ten persons)/columbarium. Religious institutions, with or without a columbarium, shall be located on a major local or higher designated roadway. Structures or parking located within 25 feet of a residential zoning district shall provide an opaque buffer consisting of landscape and walls or fences. Dumpsters or other garbage collection facilities shall not be located within 25 feet of property used for residential purposes.

Storage: Incidental to primary use. Storage shall be permitted only for merchandise incidental to the primary use of the business. Such storage shall be totally enclosed within the building of primary use, and at least ten percent of the gross floor area shall be used for retail sales or service. Exterior or open storage is prohibited.

Swimming pools. Permitted only when a protective fence four feet in height is provided around the yard, lot or pool area. The pool shall be no closer than five feet from any property line, and approval from all utilities is required to insure overhead safety.

c. C-1 special uses. The following uses require a public hearing and approval of the Planning and Zoning Commission. Specific conditions and provisions for each use may be referred to in part D of this section.

Gas pumps (accessory to a grocery store).

Gross floor area: Exceeding 3,000 square feet.

Golf course and country club.

Halfway house and quasi-institutional house.

Hospital and overnight clinic.

Institutions: Public, educational, religious, and philanthropic.

School (public, private, and parochial).

Shopping center (limited to a maximum of five acres).

Auto washing establishment.

(7) North Mesquite C-2 general commercial district.

Purpose. The intent of the North Mesquite C-2 zoning district is to provide for certain commercial/retail uses which generate large volumes of automobile traffic. The district is intended for areas surrounding major arterial intersections where a wide range of automobile-related service facilities, convenience goods and personal services are desirable and appropriate as a land use.

*Total lot area must be equal to, or greater than, 3,500 square feet.

Residences in the North Mesquite C-2 zoning district shall comply with North Mesquite R-4 zoning district development standards.

a. North Mesquite C-2 permitted uses. The following uses are permitted by right in the C-2 North Mesquite district:

~~Animal hospital and clinic~~

~~Arts and crafts studio~~

~~Automobile and camper sales and service~~

~~Automobile parking lot~~

~~Automobile washing establishment~~

~~Bakery~~

~~Banking and financial institution~~

~~Barber shop and beauty parlor~~

~~Bicycle sales and service~~

~~Boat sales and service~~

~~Bowling alley~~

~~Bus terminal~~

~~Business service establishment~~

~~Butcher shop/meat market~~

~~Catering~~

~~Cigarette and cigar stand~~

~~Clothing store and apparel shop~~

~~Coffee shop and cafe~~

~~Columbarium~~

~~Community and public building~~

~~Convention or exhibition hall~~

~~Country club~~

~~Dance hall or music academy~~

~~Department store~~

~~Dressmaking shop~~

~~Drugstore~~

~~Dry cleaning and steam cleaning~~

~~Electrical shop~~

~~Firewood sales~~

~~Florist~~

~~Food store~~

~~Fraternity~~

~~Frozen food locker~~

~~Funeral home, mortuary (including crematorium)~~

~~Gasoline station~~

~~Glass cutting and finishing~~

~~Golf course~~

~~Gymnasium~~

~~Hardware store~~

~~Hospital or overnight clinic~~

~~Hotel and motel~~

~~Household appliance sales, service and repair~~

~~Institutions, public and quasi-public~~

~~Laboratory (medical and dental)~~

~~Laundry~~

~~Lessons (art, music, dance, and the like)~~

~~Liquor store~~

~~Lumber store~~

~~Medical center~~

~~Microwave radio relay structure~~

~~Miniature golf course~~

~~Motion picture theater~~

~~Motorcycle sales and service~~

~~Newspaper establishment, including distribution office~~

~~Newsstand~~

~~Nursing or convalescent home~~

~~Office (business and professional)~~

~~Paint sales~~

~~Parking garage/lots~~

~~Plumbing/heating/cooling/sheet metal business (refer to contractor-type yard, e.g. associated with cooling, heating, plumbing, and sheet metal shops if a yard is associated with the business)~~

~~Pet shop~~

~~Photographic studio and supply store~~

~~Plant nursery~~

~~Pool and billiard room~~

~~Printing and engraving shop~~

~~Private club or lodge~~

~~Public park, playground, recreational use~~

~~Radio, television, music store~~

~~Residence~~

~~Restaurant~~

~~Retail sales~~

~~Shoe repair~~

~~Show and sales room for business products~~

~~Skating rink~~

~~Sorority~~

~~Sporting goods store~~

~~Steamcleaning establishment~~

~~Tailoring~~

~~Tavern~~

~~Taxicab stand~~

~~Telegraph and messenger service~~

~~Tire sales and service~~

~~Upholstery shop~~

~~Variety store~~

~~Other: Businesses in existence at the time of this Code's adoption and have a current business registration shall be heretofore known as permitted uses, as such, all will be allowed to continue their operations in the manner in which they currently operate at the time of this Code's adoption. (Please note that all permits, regulations, etc., which are mandated by state and/or federal law must be adhered to.)~~

~~b. Permitted uses with conditions. Applies to new businesses and (refer to section 38-70.4 for further information). The following North Mesquite C-2 uses are permitted in accord with stated provisions.~~

~~Above ground storage tanks for flammable and combustible liquids. Tanks shall be permitted only when meeting Uniform Fire Code requirements as adopted by the city and when receiving approval from the city fire department.~~

~~Above ground storage tanks for liquid petroleum (LP) gas. Tanks shall be permitted only when meeting Uniform Fire Code requirements as adopted by the city and when receiving approval from the state LP gas bureau.~~

~~Amusement park or enterprise. Subject to the provisions and requirements of the Municipal Code. Temporary amusement enterprises are prohibited within 300 feet of any residential zoning district. Permanent amusement enterprises are prohibited within 500 feet of any residential zoning district.~~

~~Assembly of arts and crafts. Only when such assembly is for display and sale on the premises or when such assembly occupies less than 1,500 square feet of a building.~~

~~Bank drive-up windows. Stacking lanes shall be provided and designed to insure that no bank or ATM traffic backs into the street giving access to the bank. Banks or ATMs~~

~~shall have access to a major local or higher designated roadway. See the Municipal Code for stacking lane requirements.~~

~~Body shop. Buildings shall be located a minimum of 300 feet from a residential district boundary and shall have fire department approval.~~

~~Child care center, nursery, or similar use. Child care center, group child care home, family child care home, preschool, nursery school, day nursery, kindergarten, and similar uses shall be in accord with State licensing requirements. Care of 13 or more children at one time is prohibited in the residential zoning districts listed. Refer to section 38-52 of the Municipal Code, home occupation business registration, for babysitting service/child care when 12 or fewer children are cared for.~~

~~Christmas tree sales. Temporary, not prior to November 15, provided lots are cleaned and removed by December 31.~~

~~Construction yard or building (temporary). Such yard or building shall be removed upon completion of construction or within three 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 fence five feet in height. However, there shall be no fence or wall more than three feet in total height above street-curb level located within 30 feet of a street intersection. Above ground storage tanks for flammable and combustible liquids within construction yards shall meet the Uniform Fire Code as adopted by the city and be approved by the city fire department.~~

~~Contractor-type yards (e.g. Associated with cooling, heating, plumbing, and sheet metal shops). Yards shall be maintained in a neat and orderly fashion and enclosed by a solid wall or fence a minimum of six feet in height (clear-site-triangle requirements must be met).~~

~~Cottage industry. A cottage industry is defined as any manufacturing, compounding, and/or assembly process, including food preparation, which is subordinate to a primary use of retail sales or service. This use is not to be confused with or treated as a home occupation. Cottage industry land use listings may be found in section 38-33.I. of the Las Cruces Municipal Code. Cottage industries are limited to 5,000 square feet of retail sales space or retail sales space limited to 49 percent of the total building square footage, whichever is less. Cottage industry may only occur within a totally enclosed building where the primary use (retail/service) is conducted. The processing of goods shall be clearly secondary to the primary use, shall be sold on site only, and shall not pose any significant adverse impact to adjacent properties due to noise, odor, dust, or vibration. A maximum of 49 percent of the total business floor area, not to exceed 3,000 square feet, may be used in the conduct of the cottage industry.~~

~~Firewood sales. No more than 20 cords stored on site.~~

~~Flea market. Subject to the requirements of Ordinance No. 625 in the Municipal Code.~~

~~Furniture assembly (accessory use). Permitted only as an incidental or accessory use to retail sales. Maximum floor area for assembly shall not exceed 3,000 square feet, not to exceed 30 percent of the total business floor area, and shall be within the same building.~~

~~Heavy equipment repair (accessory use). Permitted only as an incidental or accessory use to heavy equipment sales. Floor area for repair shall not exceed 3,000 square feet and not exceed 30 percent 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.~~

~~Home for handicapped, disabled, retarded, or retired. See section 38-21.~~

~~Home occupation. Subject to the provisions of this section and section 38-52.~~

~~Meat processing. Meat processing of wild game and custom orders is allowed provided that the meat that is processed is not for wholesale distribution.~~

~~Mini-storage units. Units shall not be used for commercial sales of products, merchandise, service, or repair.~~

~~Paint shop. Spraying or mixing is allowed provided such use shall be located at least 100 feet from any residential zoning district and provided there shall be fire department approval.~~

~~Public utility installation, substation, and waterwell. The site shall be developed and maintained in conformance with the general character and appearance of the zoning district and shall include landscaping and suitable screening in the form of a solid wall, fence or compact shrubbery around the perimeter of the lot or tract.~~

~~Schools. Elementary, middle or high schools shall be located on a collector or higher designated roadway. Commercial, trade or technical schools, college or university shall be located on a minor arterial or higher designated roadway. All sites shall have a minimum of one acre. Structures or parking located within 25 feet of a residential zoning district shall provide an opaque buffer consisting of landscape and walls or fences. Dumpsters or other garbage collection facilities shall not be located within 25 feet of property used for residential purposes.~~

~~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 approved by a special use permit in the C-2 district. Such use shall meet the following requirements:~~

1. ~~Storage shall be within an enclosed building or within a site-obscuring fence at least six feet in height;~~
2. ~~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 customers;~~
3. ~~Exterior storage of vehicles shall not remain on the premises for a period exceeding three months;~~
4. ~~There shall be a maximum of five wrecked vehicles stored at the building exterior during any one time; and~~
5. ~~Exterior storage shall be a minimum of 100 feet from a residential zoning district.~~

~~Storage as an accessory use. Storage shall be permitted only when incidental or accessory to sales of merchandise. Such storage shall be within a totally enclosed~~

area and at least five percent of the gross floor area shall be used for retail sales or service.

Temporary uses. Temporary uses, such as fireworks stands, shall be allowed in the North Mesquite C-2 district and shall follow the timelines and other such requirements established in section 38-50 of the Municipal Code.

Recycling purchase centers. This business is limited to the inspection, weighing, purchasing and temporary storage of aluminum and scrap metal, cloth, glass and paper products. Said materials are to be purchased for the purpose of transporting to local and area processing centers.

1. Storage shall be within an enclosed building; or
2. Storage may be located within mobile trailer units within a sight obscuring fence at least six feet in height, and not to be a contamination, rodent, insect, or health hazard;
3. Materials to be recycled shall not remain on the premises for a period exceeding eight weeks; and
4. Recycling purchase centers shall be located a minimum of 300 feet from any residential zoning district.

Religious institution (over ten persons)/columbarium. Religious institutions, with or without a columbarium, shall be located on a major local or higher designated roadway. Structures or parking located within 25 feet of a residential zoning district shall provide an opaque buffer consisting of landscape and walls or fences. Dumpsters or other garbage collection facilities shall not be located within 25 feet of property used for residential purposes.

Swimming pools. Permitted only when a protective fence four feet in height is provided around the yard, lot, or pool area. The pool shall be no closer than five feet from any property line and approval from all utilities is required to insure overhead safety.

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-2 zone. Welding for the purpose of assembly is prohibited. Welding uses shall be approved by the fire department and shall be in accord with the provisions found in the Municipal Code.

Wrecker services. In accord with storage of wrecked vehicle provisions in the Municipal Code.

c. North Mesquite C-2 district special uses. The following uses require approval of the Planning and Zoning Commission. Specific conditions and provisions for each use may be referred to in part D of this section.

Halfway house or quasi-institutional house

Kennel (commercial).

Racetrack

Mobile home park

D. *Special uses.* A special use is a use that is not permitted by right in a zoning district. A special use requires review and approval by the Planning and Zoning Commission to determine impacts on the surrounding area. The procedures for approval may be found in sections 38-54 A.1—5 of the Municipal Code.

Automobile parking lot (North Mesquite zones: R-2, R-3 and R-4): Parking lots must be within 300 feet of any office, commercial, business, or industrial district. The parking area shall be suitably landscaped, paved and drained, lighted, and maintained free of debris.

Automobile washing establishment (North Mesquite zone C-2).

Bus garage (North Mesquite zone C-2): A traffic plan shall be approved by the city traffic engineer showing the location, size, and width of streets giving access to the garage. Such use shall be located on a designated arterial or collector street.

Flea market (North Mesquite zones: R-3, R-4). Flea markets shall not be approved if there is a protest of 51 percent within the area of property ownership 100 feet from the proposed use.

Cemetery or similar uses (North Mesquite zones: A-2, R-1a, R-1b, R-1c, R-1aM, R-1bM, R-1cM, R-2, R-3, R-4). Any cemetery site shall contain at least five acres and shall be located on a major local or higher designated roadway. A columbarium shall be located on a major local or higher designated roadway with the lot size meeting the zoning district minimum lot size.

Community buildings (North Mesquite zones: R-1, R-2, R-3, R-4).

Drive-in bank (North Mesquite zone: O-1): Stacking lanes shall be provided and designed to insure that no bank and/or ATM traffic backs into the street giving access to the bank. Banks or ATMs shall have access to a major local or higher designated roadway. See section 38-58 for stacking lane requirements.

Golf courses and country club (North Mesquite zones: R-1, R-2, R-3, R-4, O-1, C-1): There shall be screening and buffering on property lines abutting residential areas and no structures shall be within 50 feet of a residential property line.

Gross floor area: Exceeding 3,000 square feet (North Mesquite zone: C-1): The maximum gross area per business may exceed 3,000 square feet in a North Mesquite C-1 district provided it can be shown that the increase in size will not be inconsistent with the purpose of the North Mesquite C-1 district and will not create traffic congestion. Businesses shall not exceed 6,000 square feet of gross floor area.

Halfway house (North Mesquite zones: R-3, R-4, O-1, C-1, C-2).

Hospital and overnight clinic (North Mesquite zones: R-4, C-1).

Institution: Public, educational, religious, and philanthropic (North Mesquite zones: R-4, O-1, C-1).

Kennel—Commercial (North Mesquite zones: C-2, M1/M2): Such uses shall be a minimum of 400 feet from any residential zoning district boundary.

Mobile home park (North Mesquite zones R-2, R-3, R-4).

Mobile home subdivision (North Mesquite zones: R-2, R-3, R-4).

Nursing home/assisted living facility (North Mesquite zones: R-1, R-2). Must be located on a collector or higher designated roadway.

Racetrack (North Mesquite zones: C-2, M1/M2): All parking areas and interior streets shall be surfaced in accordance with requirements of section 9.8, and the building complex shall be located a minimum of 300 feet from any residential zoning district boundary.

School—Public, private, parochial (North Mesquite zones: R-1, R-2, R-3, R-4, O-2, C-2): Elementary, middle or high schools shall be located on a collector or higher designated roadway. Commercial, trade or technical schools, college or university shall be located on a minor arterial or higher designated roadway. All sites shall

have a minimum of one acre. Structures or parking located within 25 feet of a residential zoning district shall provide an opaque buffer consisting of landscape and walls or fences. Dumpsters or other garbage collection facilities shall not be located within 25 feet of property used for residential purposes.

Swimming pool—Public or commercial (All North Mesquite residential "R" districts and North Mesquite O-1): A protective fence or wall no less than six feet in height shall be provided which completely encloses the pool area, and the pool shall be no closer than 25 feet from any property line. Approval from the electric utility is required to insure safety.

E. *Parking requirements.* The following exceptions to the parking requirements found in chapter 38 of the Municipal Code shall be used in the North Mesquite Neighborhood district:

1. Buildings within the North Mesquite Neighborhood district constructed prior to 1955 shall not be required to provide off-street parking.

2. Buildings within the North Mesquite Neighborhood district constructed after 1955 shall be eligible to use the historic district parking requirements found in section 38-58 of the 2001 Zoning Code, as amended.

3. The city traffic engineer shall determine which streets will be prohibited from use for on-street parking.

F. *Nonconforming uses, structures, and property.* Many people refer to nonconforming uses as the "Grandfather Clause." If a use, structures, etc., was established legally under the previous code, it is considered a legal nonconforming use. Within the North Mesquite Neighborhood overlay zone district, all existing land uses with a valid business registration are considered as permitted uses at the time of this Code's adoption. As such, there should be limited nonconforming uses in this district. Those uses that do exist should comply with the nonconforming use provisions found in section 38-70 of the Municipal Code with the following exception:

(a) If a nonconforming use becomes and remains vacant, no time limit shall be placed on reestablishing the nonconforming use at that location.

G. *Accessory building/structure.* An accessory building/structure is incidental to and customarily found in connection with the principal dwelling on the same property. Examples: gazebo, greenhouse, tool shed, and detached garage. An accessory building shall not be used for a business or dwelling purposes.

1. *Permanent accessory building/structure.*

(a) A maximum height of 15 feet is permitted.

(b) An accessory building/structure shall not occupy more than 30 percent percent of the rear yard. Accessory structure shall not be used for living quarters.

(c) Accessory use or structure closer than ten feet from the main use or structure shall meet the minimum setback requirements of this zoning district and shall be reviewed and approved by the public safety department before a building permit is issued. Drainage/water run-off contributed by an accessory structure shall be contained on site and be consistent with the city's design standards unless approved by the community development department director or designee. Furthermore, no accessory structure shall be located in the required on-site ponding area. Calculations shall be provided to indicate that all water runoff will be accommodated on site consistent with the city's design standards.

(d) Setback requirements:

(1) North Mesquite R-1:

a. Interior lot. No less than ten feet from main use or structure and three feet from property lines on rear and side yards.

b. Lots with more than one street frontage. No less than ten feet from main use or structure, three feet from property line on rear yard (yard without street frontage), and shall meet the required setbacks on all frontages in accordance to the zone.

c. Exception: Accessory use or structure less than three feet from property lines and no less than ten feet from main use or structure shall have one hour fire resistant exterior walls and no openings in walls facing the property lines.

(2) North Mesquite R-2, R-3, C-1 (residential), and C-2 (residential) zones.

a. Interior lot. No less than ten feet from main use or structure and five feet from property lines on the rear and side yards.

b. Lots with more than one street frontage. No less than ten feet from main use or structure, five feet from property line on the rear yard (yard without street frontage), and shall meet the required setbacks on all frontage in accordance to the zone.

c. Exception: Accessory use or structure less than five feet from property line and no less than ten feet from main use or structure shall have one hour fire resistant exterior walls and no openings in walls facing the property lines.

(3) R-4 Zone Residential.

a. Interior lot. No less than ten feet from main use or structure and five feet from property lines on the rear and side yards.

b. Lots with more than one street frontage. No less than ten feet from main use or structure, five feet from property line on the rear yard (yard without street frontage), and must meet the required setbacks on all frontages in accordance to the zone.

c. Exception: Accessory use or structure less than five feet from property lines and no less than ten feet from main use or structure shall have one hour fire resistant exterior walls and no openings in walls facing the property lines.

(4) R-4 (offices), O-1, C-1 (commercial), C-2 (commercial), M1/ M2 zones.

a. Interior lot. No less than ten feet from main use or structure and shall meet the requirements set forth in the Uniform Building Code for said accessory use or structure.

b. Lots with more than one street frontage. No less than ten feet from main use or structure, shall meet the required setbacks on all frontages in accordance to the zone, and meet the requirements set forth in the Uniform Building Code for said accessory use or structure.

2. *Accessory building exceptions: Large lots.* On lots that are one-half acre or more in size, one accessory building may be permitted which exceeds 400 square feet of gross floor area up to 800 square feet, provided it shall have a minimum rear yard setback of 15 feet and a side yard of seven feet, and provided all other requirements of this Code are met.

H. *Home occupation.* Home occupation requirements shall follow the provisions set forth in chapter 38-52 with the following exceptions:

(a) Residential uses located in the North Mesquite C-2 zone may have direct sale of products off display shelves or racks.

(b) Residential uses located in the North Mesquite C-2 zone may have a maximum of six vehicles at the dwelling at any one time for the purpose of conducting business. Both on-street and off-street parking may be utilized.

I. *Administration of the overlay zone district.*

(a) *Land use/zone change requests.* It is possible to request an additional land use not already noted within the permitted use lists on a specific parcel within the North Mesquite overlay district. Each request will be considered on a case-by-case basis. These requests will be processed per Section 38-10 of the Municipal Code. The utilization of the infill development process, Section 38-48, is allowed in the North Mesquite Neighborhood overlay zone district.

(b) *Subdivision requests.* For submittal and review of subdivisions within the district, refer to Chapter 37 of the Municipal Code.

(c) Issues not addressed here. Any issue not addressed in this division will revert to the appropriate section(s) of the Municipal Code, as amended.

J. *Enforcement of the north mesquite neighborhood overlay zone district.* Provisions to enforce this section shall be consistent with the enforcement provisions the Municipal Code.

(Ord. No. 2354, § I, 1-22-07)

Sec. 38-49.2. SMO—South Mesquite Overlay District.

A. *Purpose.* The South Mesquite Overlay District is designed to positively address issues unique to Las Cruces' Original Townsite and surrounding area. This area is addressed in the 2005 adopted Mesquite Neighborhood Plan and the 2007 adopted Mesquite Historic District Neighborhood Design Plan. Specific provisions in this Ordinance deal with issues such as compatible design, parking, setbacks, and land use/zoning designations that are better suited to this older part of the city characterized by smaller lots with multiple dwellings and scarce off-street parking resources. Additionally, neighborhood design guidelines and standards have been created that will help enhance and preserve the unique character of Las Cruces' first neighborhood.

B. *Delineation of Overlay District Boundaries.* The South Mesquite Overlay (SMO) District shall include all properties located within the boundaries shown on Figure 1.

C. *Definitions.* Definitions shall rely on those noted in Section 38-20 of the 2001 Zoning Code, as amended unless otherwise noted here:

Accessory Structure: See Section 38-51 of the 2001 Zoning Code, as amended.

Accessory Dwelling Unit (ADU): See Section 38-53 of the 2001 Zoning Code, as amended.

Compatible: Capable of existing together in harmony. Parts of a whole that work well together when pieced together. Compatibility with existing elements does not mean uniformity.

Consistent: That which is similar to, or nearly the same.

Contributing: A resource that is listed as "contributing" on the National Register of Historic Places, the State Register of Cultural Properties, or the 1994-1995 State or National Mesquite Street—Original Townsite Historic District of Las Cruces, New Mexico Inventory. In the law regulating historic districts in the United States, a contributing resource is any building, structure, site, or object which adds to the historical integrity or architectural qualities that make the historic district important. In this document, "contributing" and "significant" may be used interchangeably [see Significant definition below].

District Boundary: The boundaries of the South Mesquite Overlay District are shown in Figure 1. The properties that are included within the Overlay District include all those within the boundary shown on Figure 1.

Demolition: An act that destroys or removes in whole or in part the exterior of a building or structure of a historic property.

Design Standards: Regulations intended to preserve the historic and architectural character within the South Mesquite Overlay District.

Exterior Appearance: The visual character of all outside surfaces of a structure, including facades, fenestration pattern, signage, light fixtures, steps, or character-defining features, such as corbelled posts, exposed vigas, tiles, canales, etc. Fencing or walls surrounding the structure also contribute to the exterior appearance of a property.

Exterior remodeling, exterior renovation, and exterior alteration: Any change or rearrangement in the supporting members of an existing building, such as exterior bearing walls, columns, beams, girders, as well as any substantial change in rooflines, number of doors and/or windows added, removed, replaced, or resized, or any enlargement to or diminution of a building or structure, whether horizontally or vertically or any installation or replacement of fencing viewed from the street. Maintenance or repair shall not be construed as exterior remodeling, renovation, and/or alteration.

Facade: Typically the front of a building; however, any elevation on view is considered a facade.

Historic: In this document, structures that are listed as contributing or significant by the National Register of Historic Places, the New Mexico Register of Cultural Properties, the State or National Mesquite Street-Original Townsite Historic District of Las Cruces, New Mexico.

Historic Districts: The boundaries of the State "Mesquite Street-Original Townsite Historic District of Las Cruces New Mexico" and the National "Mesquite Street-Original Townsite National Historic District of Las Cruces New Mexico" are found in Figure 2.

Historic Integrity: The authenticity of a property's historic identity, evidenced by the survival of physical characteristics that existed during the property's period of significance.

Historic Preservation Commission (HPC): The board created by the City Council authorized to direct and assist in the preparation and updating of the City of Las Cruces historic preservation plan; to create and review design guidelines for historic districts and cultural properties; to review and render decisions upon Certificate of Appropriateness applications; and to advise the Historic Preservation Specialist in initiating and implementing relevant preservation planning programs.

Historic Register: In this document, the National Register of Historic Places or the New Mexico Register of Cultural Properties.

LCMC: Most current edition of the Las Cruces Municipal Code.

New Construction: The erection of a new primary structure or accessory structure on a lot or property.

Ordinary Maintenance or Repair: Any change that is not new construction, removal, or alteration. Repair may include patching, piecing-in, splicing, consolidating, or otherwise reinforcing or upgrading historic materials such as masonry, wood and architectural metals according to recognized preservation methods. Repairing also includes the limited replacement in kind. or with compatible substitute material, of extensively deteriorated or missing parts or features when there are surviving examples, such as adobe bricks, brackets, dentils, or portions of slate or tile roofing.

Primary Façade(s): Any and all sides of a building which face a public right-of-way. A building may have more than one primary façade.

Primary Structure(s): In this document, the structure(s) for which the use is the main use of the parcel (not an Accessory Use as defined in Section 38-51 of the 2001 Zoning Code, as amended). Note: It is possible to have more than one primary structure on a parcel, for example two residences, or a retail shop and a residence.

Rehabilitation: Making possible a compatible use for a property through repair, alterations, and additions while preserving those portions or features which convey its historical, cultural, or architectural values. Most projects in the South Mesquite Overlay are expected to be rehabilitation projects.

Relocation: Any relocation of a structure from its originally installed site to another site.

Secondary Residence: A dwelling unit that is subordinate in size and location to the main dwelling on a single property, and may be rented or leased as an independent dwelling unit. A secondary residence is different from a guest dwelling or accessory structure in that it is distinct dwelling unit containing a kitchen. Examples include a traditional guest house, apartment, cottage or converted garage.

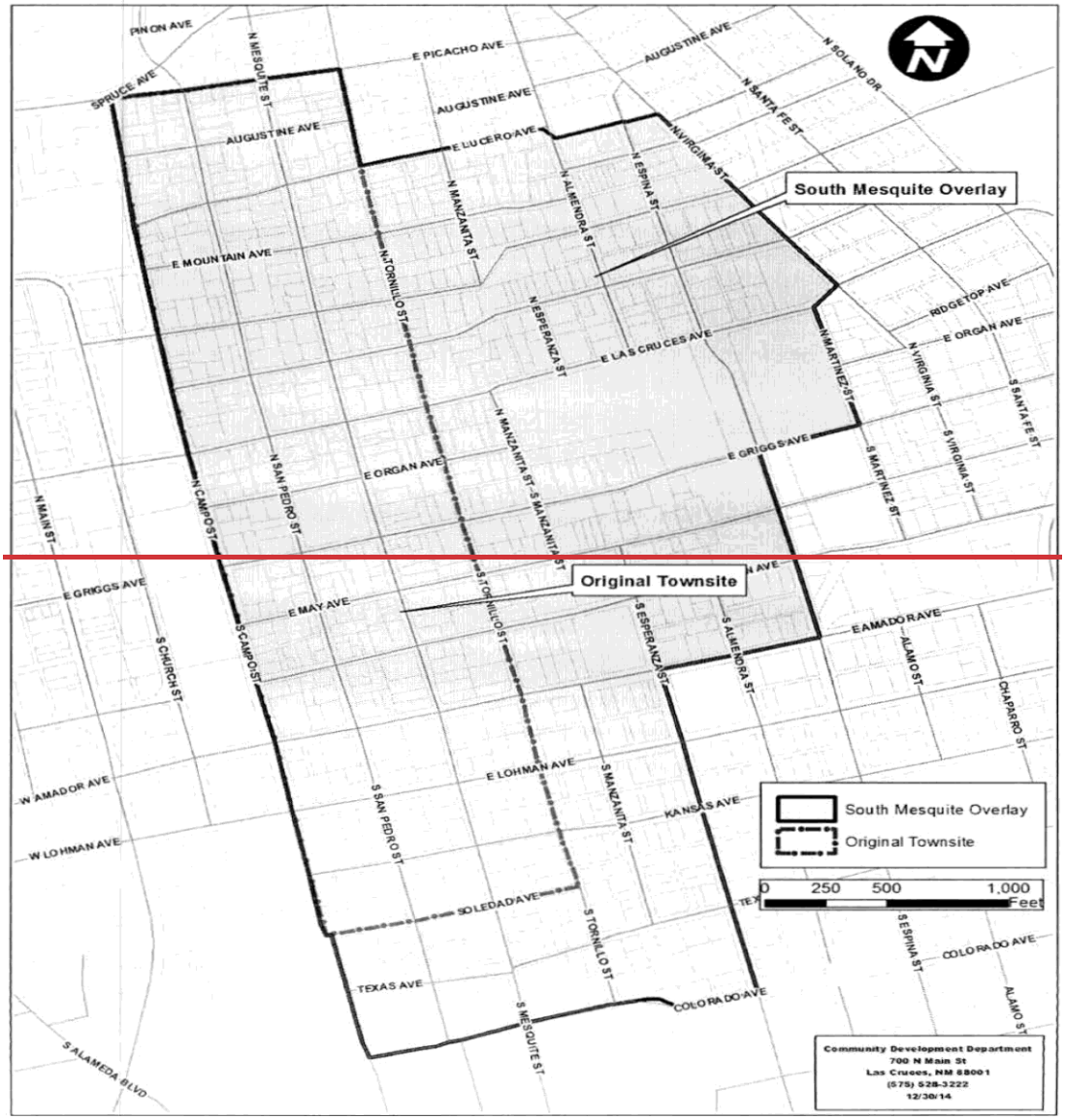
Significant: A resource that is listed as "significant" on the National Register of Historic Places, the State Register of Cultural Properties, or the 1994-1995 State or National "Mesquite Street—Original Townsite Historic District Inventory." In the law regulating historic districts in the United States, a significant resource is any building, structure, site or object which adds to the historical integrity or architectural qualities that make the historic district worthy of registration. In older nominations, the terms "significant" and "contributing" were used to "rank" buildings, but in newer nominations, the status of a resource is either contributing or non-contributing. "Significant" is no longer used as a separate term. In this document, "significant" and "contributing" may be used interchangeably.

SMO: South Mesquite Overlay District.

SMDRB: South Mesquite Design Review Board.

Structure: That which is built or constructed, an edifice or building of any kind, or any place of work artificially built up or composed of parts joined together in some definite manner. Note: Although "structure" and "building" have different meanings for many preservationists, in this document the two words are used interchangeably.

~~Figure 1 South Mesquite Overlay Boundaries~~



~~Figure 2: Boundary of the Mesquite Street—Original Townsite State & Federal Historic Districts~~

D. *Development Standards.* There shall be no development or alteration of the lands, uses, or structures within the SMO except as provided for by this Section of the 2001 City Zoning Code, as amended, other sections of the City Zoning Code, and other City Codes and Ordinances where applicable. Development requirements are established for the entire SMO, as follows (unless indicated in other sections of this Overlay):

Table 1: Development Standards		
D.1	Lot Area/Size	3,500 square feet minimum
D.2	Lot Width/Frontage	50' minimum
D.3	Lot Depth	50' minimum
D.4	Front Setback	Within the range of existing setbacks and compatible with the surrounding area*
D.5	Side Setback	5' minimum **
D.6	Rear Setback	5' minimum**
D.7	Garage Setback	20' minimum

~~D.8~~	~~Building Height~~	~~14' in the Original Townsite and 25' elsewhere.***~~
~~D.9~~	~~Townhouses~~	~~Zero lot lines are permitted for townhouse development provided the structure meets the attachment requirements of Chapter 38-62 of the LCMC.~~
~~D.10~~	~~Accessory Structures~~	~~There shall be no limit to the number or square footage of accessory structures per Sec. 38-51.D~~
~~D.11~~	~~Residential Density~~	~~Lot size, setbacks, parking requirements and building heights shall determine residential density per property.~~

~~* Surrounding area generally mean all primary structures on the same side of the block. If there aren't at least two primary structures on the same side of the block, both sides of the block shall be used. The Applicant shall work with Community Development Department staff to determine a front setback distance with staff having the final determination.~~

~~** Overhangs are not permitted within required setbacks. Canales and viga ends are not deemed overhangs for the purpose of this limitation.~~

~~***Any requests for building heights greater than those stated above require an application for a height exception be reviewed and approved by the SMDRB; applications shall meet the design criteria noted in Section 38-49.2. K, Design Guidelines.~~

~~The regulations of this Overlay District shall supersede any regulations of the citywide 2001 Zoning Code. as amended. However, when the regulations of this SMO do not address a particular design or development standard or regulation, the applicable City, State, or Federal regulation shall apply. The provisions of Section 38-58 which allow for Flexible Development Standard waivers shall apply within the SMO; however, such requests shall be approved by the SMDRB for recommendation to the Community Development Director.~~

Diagram 1 Setbacks

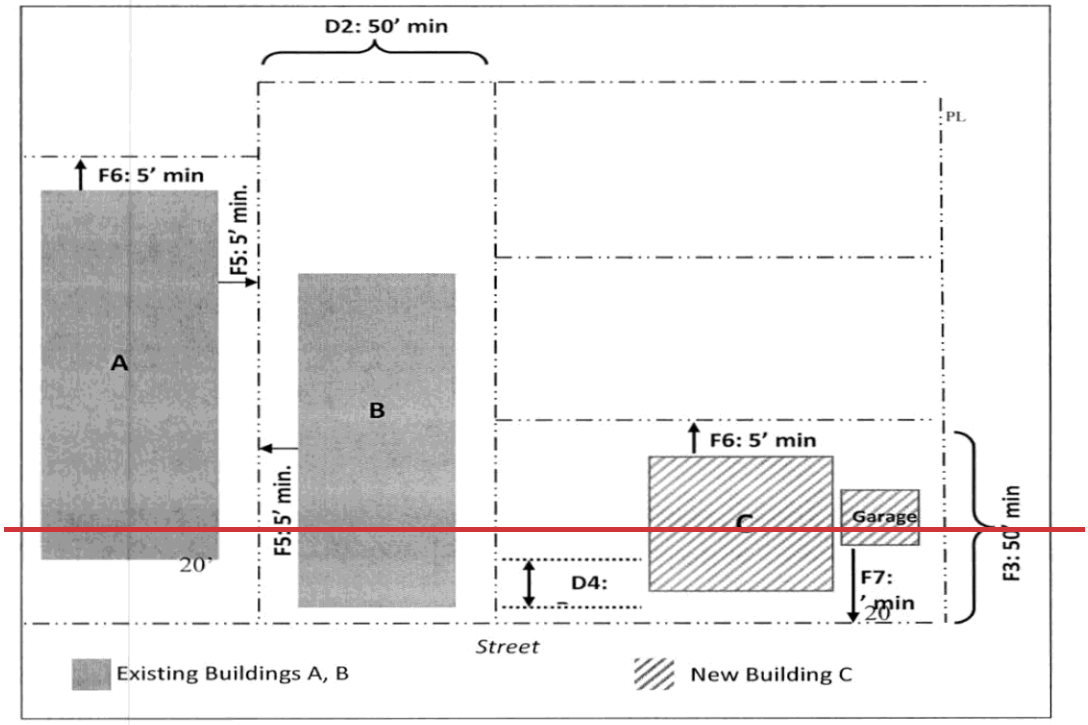
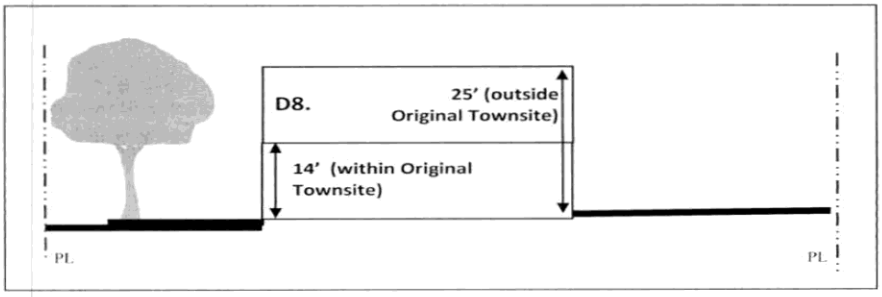


Diagram 2 Maximum Height



~~E. *Landscape Requirements.* Landscaping shall follow standards set forth in Chapter 32 of the LCMC with the following modifications:~~

~~1. Applicability: Landscaping standards apply to all new development in the SMO with the exception of single family dwellings and duplexes, unless noted elsewhere in this section.~~

~~2. A variety of landscaping materials shall be employed to create visual interest and to complement other plantings in the neighborhood. Care should be taken when planting too close to adobe structures which can be damaged by plant watering. Plant materials, including shade trees, shall be native and/or draught tolerant, as these are best suited to the Chihuahua Desert. This is not to say that the landscape plan needs to adhere to Xeriscaping. On the contrary, plants should be chosen that will survive and thrive in the local climate. Appropriate species include, but are not limited to, the following:~~

~~TREES~~	~~SHRUBS~~	~~GROUNDCOVER~~
~~Arizona Ash~~ ~~Arizona Cypress~~	~~Euonymus~~ ~~Pyracantha~~	~~Bermuda~~ ~~TIFF, various~~

Arizona Mesquite Canyon Hackberry Chinese Pistache Desert Willow Italian Cypress Lacebark Elm Palo Verde Pecan Pines Southern Live Oak Texas Honey Mesquite Texas Red Oak Sycamore Western Hackberry	Sages (Texas, Desert Chihuahuan, Cherry, Russian, etc.) Silverberry Spanish Broom	Vinca Trailing Rosemary Iceplant Creeping Thyme Powis Castle Artemesia Dalea capitata Clover Fern

3. All new development, except single-family dwellings and duplexes, and adaptive reuse of properties (such as a change of use) shall be required to plant trees within parking lots for shade and visual relief (see subsection 5 below).

4. Landscaping gravel, decorative stone or other organic landscaping materials may be used for landscaping, provided such materials blend visually with other landscaping material and planting style standards and meet the City's wind erosion control ordinance).

5. Landscaping for Parking Lots: All new construction, except single family dwellings and duplexes and adaptive reuse of properties, shall require landscaped parking areas. Landscaping in parking areas shall follow Chapter 32 of the LCMC, "Development Standards for Landscaping," with the following modifications:

   a. Trees in parking lots shall be located in an island or planter in which the tree trunks shall be protected from motor vehicles. Islands shall be a minimum of six feet wide, have a minimum area of thirty-six (36) square feet and a raised border of at least four (4) inches in height.

   b. One tree shall be planted for every five (5) parking spaces within parking lots as they pertain to the uses listed for each area.

6. The HPC shall have the authority to modify or waive landscaping requirements of Chapter 32 of the LCMC or this Section if the HPC determines that such modification would result in a project that better advances the purposes of the SMO and positively addresses it design standards.

7. Community Development Department staff shall review landscape plans.

F. *Permitted Uses.* There shall be no land uses within this Overlay District except as identified in this land use matrix. Zoning districts are as follows:

1. R-1a: Single-family Low Density Residential District

2. R-2: Medium Density Residential District

3. R-3: High Density Residential District

4. R-4: High Density Residential and Limited Office District

5. O-1: Neighborhood Office District

6. O-2: Professional Office with Limited Retail Service

7. C-1: Neighborhood Commercial District

8. C-2: General Commercial District

9. C-3: High Density Commercial. C-3 zoning and land uses are not permitted in the Overlay District with the exception of those uses which existed at the time of SMO adoption, Ordinance 2200, May 24, 2005. Uses that were pre-existing at the time of adoption and are no longer permitted by right shall be considered non-conforming and shall follow the provisions of NON-CONFORMING USES, STRUCTURES, AND PROPERTY below and Sec. 38.70-76.

10. PUD: Planned Unit Developments are allowed as part of a specific rezoning.

Permitted Land Uses in the South Mesquite Neighborhood Overlay Zoning District A= Allowed by right; C=Conditional Use with the conditions noted; and S= Special Use Permit with public hearing required.

Land Use	R-1a	R-2	R-3	R-4	O-1	O-2	C-1	C-2	Comments
Accessory dwelling units	A	A	A	A	A	A	A	A	
Apartments		A	A	A	A	A	A	A	
Assisted Living, Retirement home		A	A	A	A	A	A	A	
Detached single-family dwelling	A	A	A	C	C	C	C	C	C: residential densities in R-4 and commercial zones limited to a maximum of 40 DU/acre.
Guest dwelling unit	C	C	C	C	C	C	C	C	C: see Sec. 38-51 and 38-53
Duplex		A	A	A	C	C	C	C	C: residential densities in R-4 and commercial zones limited to a maximum of 40 DU/acre.
Triplex		A	A	A	A	A	A	A	
Quadplex		A	A	A	A	A	A	A	
Home for the Elderly	A	A	A	A	A	A	A	A	
Home for the Disabled	C	C	C	A	A	A	A	A	C: 10 or fewer persons allowed
Hostel				C	C	C	C	C	C: limited to 10 persons per establishment and a maximum stay of 14 continuous days per guest.
Nursing Home	C	C	C	A	A	A	A	A	C: 10 or fewer persons allowed
Halfway house	S	S	S	S	S	S	S	S	See Sec 38-21
Fraternity/sorority house			C	C	C	C	C	C	C: Limited to 10 persons per establishment;
Temporary/homeless shelter	S	S	S	S	S	S	S	S	

Manufactured home	A	A	A	C	C	C	C	C	All manufactured homes shall meet the design standards of the SMO and skirting and exterior wall materials shall be consistent with the architecture of adjacent structures. Residential densities in R-4 and commercial zones are limited to a maximum of 40 DU/acre.
Townhouse [one room attached to the neighboring single-family dwelling]		A	A	A	A	A	A	A	
Patio home [100% built to side property line]	C	C	C	C	C	C	C	C	C: see Sec 38-62, setback exceptions.
Accessory uses and structures	A	A	A	A	A	A	A	A	
Bed & Breakfast Establishment	C	C	C	C	C	C	C	C	C: Number of guest rooms is limited to 8.
Greenhouse, private (non-commercial)	A	A	A	A	A	A	A	A	
Community Gardens (neighborhood based)	A	A	A	A	A	A	A	A	
Home occupations	C	C	C	C	C	C	C	C	C: See Sec. 38-52
Kennel/cattery, private residential	C	C	C	C	C	C	C	C	C: Permitted in accordance with Chapter 7 of the LCMC; noise from barking dogs and odors from this activity shall not be discerned off the premises.
Recreational court, tennis, etc., private	S	S	S	S	S	S	S	S	Must mitigate off-site noise and light glare.
Storage of RVs and motor vehicle appurtenances	C	C	C	C	C	C	C	C	C: Maximum 1 per parcel located within any open area between the front setback and the rear setback

									and shall otherwise meet the standards of Sec. 38-58.D.7.
Swimming pool, private	C	C	C	C	C	C	C	C	C: A swimming pool shall be at least 5 feet from property lines; also see Sec. 38-60 Walls and Fences.
Temporary uses	C	C	C	C	C	C	C	C	C: See Sec. 38-50.
Produce stands	C	C	C	C	C	C	C	C	C: Allowed per State law; may be accessory to community gardens.
Veterinary facility								C	C: Noise from barking dogs shall not be discerned off the premises.
Cemetery/columbarium	S	C	C	C	C	C	C	C	C: See Sec. 38-53; S: See Sec. 38-54.
Family child care home (up to 6 children)	A	A	A	A	A	A	A	A	See Sec. 38-52.D and 38-53.
Group child care home (7 to 12 children)	S	A	A	A	A	A	A	A	S: See Sec. 38-52.D and 38-53.
Child care center or preschool		S	S	S	S	S	S	S	S: See Sec. 38-52.D and 38-53.
Community buildings/uses	C	C	C	C	A	A	A	A	C: Shall be located on a major local or higher classification road.
Convention center/exhibition hall					C	C	C	C	C: Must be accessed from an arterial road (Lohman, Amador); size is limited to 5,000 GFA.
Library/museum		A	A	A	A	A	A	A	
Religious institutions	C	C	C	C	C	C	C	C	C: Shall be located on a major local or higher classification road; all sites shall have a minimum 1 acre; structures or parking located within 25 feet of a residential use shall provide an opaque buffer consisting of

									landscaping and walls or fences. Dumpsters or other garbage collection facilities shall not be located within 25 feet of a residential use.
School, college, trade school, private or public	S	S	S	S	S	S	S	S	S: On a case-by-case basis, application shall address safe access, off-street parking demand, screening and landscaping, noise and other relevant impacts of the development on adjacent residential uses. Structures or parking located within 25 feet of a dwelling unit shall provide a Type A opaque buffer consisting of landscaping and walls or fences. Dumpsters or other garbage collection facilities shall not be located within 25 feet of property used for residential purposes.
Arcade, game room							A	A	
Batting cage, indoor							A	A	
Billiard, Pool Hall							A	A	
Bowling alley							A	A	
Miniature golf course								A	
Health/exercise club/gymnasium/sports instruction				C	C	C	C	C	C: Noise from this activity shall not be discerned off-premises.
Park	C	C	C	C	C	C	C	C	C: Limited to neighborhood park or private park. See Sec. 38-53. Public parks shall also comply with

									Chapter 20 of the LCMC.
Mini-race tracks e.g. go carts								C	C: Hours of operation limited to between 10 AM and 10 PM.
Recreation courts, public			S	S	S	S	S	S	S: Must mitigate off-site noise and light glare.
Skating rink, Indoor				A	A	A	A	A	
Swimming pool, commercial or public; indoor only					S	S	S	S	S: See Sec. 38-54.
Botanical garden				A	A	A	A	A	
Personal or business service office uses		C	C	C	A	A	A	A	C: In R districts, non-residential uses are permitted only on the ground floor; no more than 35% of the GFA of the buildings on the parcel, combined, is permitted to be non-residential uses.
Art studio		C	C	C	C	C	C	C	C: Noise from activities shall not be discerned off the premises.
Barber/beauty/hair salon and related personal care services		A	A	A	A	A	A	A	
Medical/dental office; counselor/therapy services		A	A	A	A	A	A	A	
Bank, bonding and financial institution/facility; no drive-through						C	C	C	C: Each business establishment is limited to a sole practitioner and only one such business establishment per parcel.
Business office: consulting; credit reporting & collection; desktop publishing, graphic design; institutional office, public or private; educational office; religious office;					A	A	A	A	

~~philanthropic office; mailing & stenographic services; motion picture production; noncommercial research organization~~									
~~Adult day care services/facility~~					~~A~~	~~A~~	~~A~~	~~A~~	
~~Funeral home; laboratory~~					~~A~~	~~A~~	~~A~~	~~A~~	
~~Pharmacy; no drive-through~~						~~C~~	~~C~~	~~C~~	~~C: Permitted only as accessory to a medical, dental or similar office use and strictly for the purpose of serving the patients of the medical office use.~~
~~Auto/truck parts store~~								~~A~~	
~~Auto/truck repair & service~~								~~C~~	~~C: No salvage yard or related activities shall be permitted. No outside storage of parts, materials, or equipment is permitted. All outdoor storage of non-operable vehicles must be screened with opaque fencing.~~
~~Auto/truck self-service/automated or full service wash/wax/detailing~~								~~C~~	~~C: Limited to a collector or higher classification road.~~
~~Bar/pub/tavern (no dancing)~~								~~A~~	
~~Sale of building material~~								~~A~~	
~~Café, cafeteria, coffee shop, restaurant, etc. No drive-thru~~				~~A~~	~~A~~	~~A~~	~~A~~	~~A~~	
~~Sale of carpet/window treatments~~								~~A~~	
~~Cleaning & maid services~~							~~A~~	~~A~~	
~~Clothing store~~							~~A~~	~~A~~	
~~Convenience store (no gas sales)~~							~~C~~	~~C~~	~~C: No drive-through facility.~~
~~Delicatessen, produce/meat market; No eating facilities~~							~~A~~	~~A~~	

~~Delicatessen, produce/meat market with eating facilities~~							~~C~~	~~C~~	~~C: No drive-through facility.~~
~~Firewood sales~~								~~C~~	~~C: If displayed outside a building, a semi-opaque screen around the perimeter of the use shall be provided; 20 cord maximum stored on site; see Sec. 38-50.~~
~~Furniture store~~								~~A~~	
~~Sale of garden supplies~~								~~A~~	
~~Grocery store~~							~~A~~	~~A~~	
~~Hardware store~~							~~C~~	~~A~~	~~C: No outside storage of supplies or materials.~~
~~Home furnishings~~							~~A~~	~~A~~	
~~Kennel/cattery, commercial or non-profit~~								~~C~~	~~C: Use allowed in accordance with Chapter 7 of the LCMC; noise from barking dogs shall not be discerned at the nearest dwelling unit.~~
~~Laundry/dry cleaning services~~							~~A~~	~~A~~	
~~Newspaper distribution~~								~~A~~	
~~Pawn shop~~								~~A~~	
~~Petroleum/propane sales~~								~~C~~	~~C: Sale of portable propane tanks and similar gas only is allowed as an accessory use to a retail establishment; use of such equipment is allowed as an accessory use when meeting current Fire Code standards. Gas stations are not permitted.~~
~~Plant nursery~~								~~A~~	
~~Private club or lodge~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C~~	~~C: See Sec. 38-53. A private club or~~

									~~lodge shall be located on a major local or higher designated street. Structures or parking located within 25 feet of a dwelling unit shall provide a Type A opaque buffer consisting of landscaping and walls or fences. Dumpsters or other garbage collection facilities shall not be located within 25 feet of property used for residential purposes.~~
~~Radio/TV station~~								~~A~~	
~~Seasonal sales of fireworks, agricultural products (non-temporary), snowcone stand, etc.~~							~~C~~	~~C~~	~~C: All structure locations shall meet setback requirements; if sited on property with other uses, there shall be no obstruction of the driving aisles or parking stalls unless it can be proven that there is an excess of parking areas. If the use does not follow temporary use provisions, the property shall be subject to all applicable development requirements.~~
~~Small item repair shop~~							~~A~~	~~A~~	
~~Specialty foods store (bakeries, candies, etc.)~~							~~A~~	~~A~~	
~~Specialty store (books, music, toys, sports equip, stationary, etc.)~~							~~A~~	~~A~~	

Telephone communication business (call center)								A	
Temporary Use (non-seasonal)				C	C	C	C	C	C: See Section 38-50.
Theater (non-drive in)								A	
Tire sales/repair								A	
Upholstery shop							A	A	
Variety store							A	A	
Video/DVD rental/sales (non-adult oriented)							A	A	
Cab stand								A	
Distribution centers								A	
Parking facilities, commercial (garages & parking lots)	S	S	S	S	S	S	S	S	
Storage outside of buildings of materials, equipment and supplies not for sale								C	C: All outside storage shall be enclosed with an opaque, Type A screen.
Storage, warehousing accessory to office, retail trade, service or industry businesses								C	C: Maximum of 95% of the total square footage may be used for this storage.
Storage/display of merchandise for sale (except manufactured buildings, manufactured homes, mobile homes & operable cars, trucks, motorcycles and RVs)					C	C	C	C	C: Outdoor display of goods sold on the premises is limited to 25% of the gross floor area devoted to the business use.
Wholesale trade, any product								C	C: No outdoor storage allowed.
Construction yard or buildings, temporary	C	C	C	C	C	C	C	C	C: See Section 38-53: Such yard or building(s), including a mobile home or recreational vehicle for a temporary residence or construction office, or any other facilities or arrangement approved by the Community Development

									~~Director or designee shall be removed upon completion of construction and in compliance with the Chapter 30 of the Municipal Code. Construction yards and buildings or any other facilities shall be maintained in a neat and orderly fashion. Open yards shall be enclosed by a fence at least five (5) feet in height.~~
~~Contractor's Yard~~								~~C~~	~~C: All outdoor storage shall be enclosed with an opaque Type A screen~~
~~Cottage Industry with retail sales or service (manufacture or processing of goods such as beer or food products for sale on the premises)~~							~~C~~	~~C~~	~~C: Allowed only when such use occurs within a totally enclosed building where the primary use (retail/service) is conducted. The processing of goods shall be clearly secondary to the primary use, shall be sold on site only, and shall not pose any significant adverse impact to adjacent properties due to noise, odor, dust, or vibration. A maximum of 49% of the total business floor area, not to exceed 3,000 square feet, may be used in the conduct of the cottage industry manufacturing or processing.~~

~~Crematorium~~								~~C~~	~~C: See Sections 38-53 and 38-54.~~
~~Antennas, towers, communication structures and other utility vertical structures~~							~~S~~	~~S~~	~~See Section 38-59 and Section 38-54.~~
~~Facial mounted antennae (attached to the primary use)~~							~~C~~	~~C~~	~~C: Facial mounts must be placed or erected to the primary use/structure in a manner which conceals, to the extent possible, the antenna or face mount. No more than ten (10) additional feet in height to the maximum building height shall be allowed as a result of application or erection of the antenna or face mount. See also Section 38-59.~~
~~Private/public utility (e.g. substations, water wells, transformers, regulators, lift stations, telecommunications site)~~	~~S~~	~~S~~	~~S~~	~~S~~	~~S~~	~~S~~	~~S~~	~~S~~	~~See Section 38-53. A solid wall or fence shall surround the installation. Landscaping as per Subsection E above shall be provided to screen and/or buffer the installation as necessary to allow the use to blend with the surrounding properties and minimize noise and visual pollution.~~
~~Recycling collection centers (neighborhood scale only)~~				~~S~~	~~S~~	~~S~~	~~S~~	~~S~~	~~Hours of operation may be limited to mitigate noise to adjacent residences; equipment rooms~~

									and outdoor storage of materials shall be screened with opaque fencing; trash shall be contained and properly disposed of; the DRB and Planning and Zoning Commission may impose conditions to insure that noise, fumes, odors and congestion is avoided.
Private "Ham" radio telecommunication antennae	C	C	C	C	C	C	C	C	C: Antennae shall not exceed the building height limit.

G. *Non-Conforming Uses, Structures, and Property.* Many people refer to non-conforming uses as the "Grandfather Clause." If a use, structure, etc., was established legally under the previous code, it is considered a legal non-conforming use or non-conforming or non-complying structure. Except for the following, requirements stated in Sections 38.70-76 of the 2001 Zoning Code, as amended, shall apply.

1. If a legal non-conforming use becomes and remains vacant, a two (2) year time limit shall be placed on reestablishing the non-conforming use at that location.

H. *Parking Requirements.* The following exceptions to the parking requirements found in Sections 38-33 (land use matrix) and 38-58 of the 2001 Zoning Code, as amended, shall be used in the SMO:

1. Buildings within the SMO constructed prior to 1955 shall not be required to provide off-street parking.

2. Buildings within the SMO constructed after 1955 shall be required to provide off-street parking pursuant to the requirements of Sections 38-33 (land use matrix) and Section 38-58 of the Zoning Code, as amended. These buildings and properties shall be eligible to use:

   a. The historic district parking exceptions found in Section 38-58.G.2. of the 2001 Zoning Code, as amended, whether the development is commercial or residential; and/or

   b. The on-street parking allowance found in Chapter 38-58.G.3, for new development, subject to any restrictions placed by Traffic Engineering for applicable roadways; and

   c. Surface materials for parking areas for residential or non-residential developments may be pervious materials such as stone or brick pavers or compacted crushed stone (gravel). If gravel is used, single-family and duplex parking areas may use compacted crusher fine or "pea" gravel, but multi-family and non-residential development parking areas shall be limited to using a minimum one-inch diameter size, compacted gravel. Concrete parking pads are not permitted to be installed abutting adobe walls to avoid damage due to "wicking" (transfer of moisture trapped beneath the concrete to the adobe wall).

3. Parking areas for new development of non-residential and multi-family uses, including garages and carports, are not permitted in the required front setback of the subject property.

4. The HPC shall have the authority to modify or waive requirements of the off-street parking Section 38-58 of the Zoning Code or of this Section, with the concurrence of the City's Traffic Engineer, if the HPC determines that such modification would result in a project that better advances the purposes of the SMO and positively addresses its design standards.

I. *Signage*. All signage shall be of materials and design that are compatible with the architecture of the structure and the residential character of the neighborhood. Electronic moving/digital signs are not permitted in the SMO. Sign permit applications shall be submitted for approval to the Community Development Department in accordance with Chapter 36 of the LCMC with the following modifications:

1. *Off-Premises Signs:* No off-premises signs shall be allowed in the SMO except for the following:

a. Political signs, which shall follow regulations stated in Chapter 36 of the LCMC

b. Yard/Garage sales, etc., and displays regarding community events or holidays, which shall follow regulations stated in Chapter 36 of the LCMC

c. Existing legally permitted off-premise signs such as billboards shall be considered legally non-conforming and shall be regulated in accordance with Chapter 38-70 through 76 of the LCMC.

2. *On-Premises Freestanding Signs:*

a. Ground signs shall be the only freestanding sign allowed within the SMO, except on Lohman and Amador Avenues, and shall be no greater than five feet in height. Only one ground sign per commercial property shall be permitted. Ground signs must be set back at least five feet from any property line and must be at least five feet away from the wall of the building.

b. Ground signs shall be no greater than two square feet in overall size.

c. Ground signs may be illuminated and shall follow regulations stated in Chapter 39 of the LCMC (Outdoor Lighting).

d. Properties developed as business centers shall conform to the following:

i. One ground sign identifying the name of the center and individual businesses is permitted if desired.

ii. A property containing a business center sign may not have additional freestanding signs, except for Temporary signage, which shall follow Chapter 36 of the LCMC.

e. All ground signs shall comply with Clear Sight Triangle requirements.

f. On-premises pole signs on Lohman and Amador Avenues are allowed and shall follow the standards of Chapter 36 of the LCMC.

3. *On-Premises Attached Signs.* Attached signs shall follow size and placement regulations for attached signage in Chapter 36 of the LCMC.

4. *Portable A-frame signs.* An A-frame sign means a self-supporting, portable sign with one or two faces that are adjoined at the top and displayed at an angle, which is designed to be placed where pedestrians walk or gather and ADA accessibility is assured. The sign shall not be permanently anchored or secured and shall be removed at the end of the establishment's business hours. Sign language is limited to advertising the business name, location, and goods or services provided.

a. All agents, employees or representatives displaying an A-frame sign on public property in the CBD shall comply with the following provisions:

i. One A-frame sign per business may be displayed during regular business hours;

ii. A-frame signs shall be no greater than 6 square feet on one side, no more than 12 square feet total, and shall be no greater than 3 1/2 feet in height;

iii. An A-frame sign shall be installed and removed by the business or property owner;

iv. No A-frame sign shall be erected in such a manner so as to obstruct ADA access or vehicular traffic;

v. A-frame signs shall only be displayed immediately in front of the business;

vi. No A-frame sign may be located on public property such as sidewalks or parkways;

vii. No business or property owner shall display any sign advertising another business or a business no longer open to the public;

viii. The business or property owner shall be responsible for any damage caused to public property by the sign;

ix. The business or property owner assumes all risks with setting up an A-frame sign and shall not hold the City responsible for any accidents or loss in the installation, removal, or operation of the sign.

5. *Inflatable Signs or Pennants.* Temporary inflatable pennants, streamers and other fluttering devices shall be permitted for a special event lasting up to 14 days per event and only four such events shall be allowed per parcel per calendar year.

6. *Prohibited Signs.* The following signs are prohibited:

a. Variable electronic message display boards, whether temporary or permanent.

b. Permanent banners.

c. Pennants, streamers, and other fluttering devices exceeding the time limits of temporary uses noted above.

d. Real estate, construction, contractor and "coming soon" signs over 12 square feet in area or over five feet tall.

e. All other signs as prohibited in Chapter 36 of the LCMC.

7. Existing legally permitted signs shall be considered legally non-conforming and shall be regulated in accordance with Chapter 38-70 through 76 of the LCMC.

J. *Transfer of Duties to the Historic Preservation Commission (HPC).* To ensure quality property development and renovation and to protect the historic character of the neighborhood, the design review duties previously assigned to the South Mesquite Design Review Board shall be transferred to the Historic Preservation Commission. In accordance with LCMC Chapter 40 Historic Preservation, Section 40-07, the HPC shall evaluate and determine the exterior design appropriateness of proposals for new construction, additions, exterior alterations, and rehabilitation of properties within the South Mesquite Overlay.

1. The Historic Preservation Commission is established in Chapter 40 Historic Preservation, Section 40-06, Historic Preservation Commission.

2. Duties of the HPC relevant to the South Mesquite Overlay (SMO).

a. The HPC shall review the following permit applications for properties lying within the SMO and shall have final authority on these permits relative to exterior design criteria for:

i. Any new primary structure(s);

ii. Manufactured homes for compliance to SMO design standards, with limitations pursuant to State statute;

iii. Any new accessory structure in excess of 120 square feet;

iv. The conversion of an accessory structure to a primary structure such as a garage or shed to a casita;

v. Additions to an existing primary structure that was constructed 50 years prior to the current building permit application, whether or not it is listed as Contributing on the State or National Mesquite Street-Original Townsite Historic District Inventory. The Applicant shall provide evidence of the year built;

vi. Additions to accessory structures in excess of 120 square feet (one time or cumulative);

vii. Window or door replacement on street-facing facades;

viii. Any alterations to the street facade of the primary structure or any alternations to an accessory structure over 120 square feet in size; and

ix. Any alterations, replacement, or changes to the roof resulting in an alteration of the style of roof of a primary structure or accessory structure over 120 square feet in size.

b. The HPC shall establish criteria for issuance of Certificates of Appropriateness (CoA) which shall reflect the purposes of the design guidelines, standards, and criteria of this Section. These criteria shall be attached to the permit application for Applicants to review prior to submittal.

c. The HPC shall review and make recommendations to the Community Development Director for the following:

i. Flexible Development Standard Waivers. The HPC shall be the recommending body to the Community Development Director for Tier 1 and Tier 2 FLEX waivers.

d. The HPC shall review and make recommendations to the Planning and Zoning Commission for the following:

i. Planned Unit Development (PUD).

ii. Variances. Except when this Section authorized the HPC to make the final decision on waivers, exceptions, or variances, the HPC shall be the recommending body to the Planning and Zoning Commission.

iii. Special Use Permits.

iv. Land Use/Zone Changes. It is possible to request an additional land use for a specific parcel that is not already noted within the permitted use list within the SMO. Each request will be considered on a case-by-case basis and shall be deemed compatible with neighboring land uses and shall satisfy the purposes of the SMO. These requests will be processed per the rezoning process noted in Section 38-10 of the 2001 Zoning Code, as amended and this section. The HPC shall be a recommending body to the Planning and Zoning Commission. Final action on this additional land use request shall be made by the Planning and Zoning Commission unless appealed to the City Council.

e. Cases not listed above shall go before the HPC if design issues related to the historic integrity of the neighborhood are involved or at the discretion of the Department Director or designee.

f. Infill Development District Projects. The Infill Development Overlay District provisions of Section 38-48 of the 2001 Zoning Code, as amended, shall not apply to development projects within the SMO. The SMO lies entirely within the Infill Development Overlay District and development

proposals subject to the SMO regulations shall be reviewed by the HPC for recommendation to the legislative body, Community Development Director, Subdivision Administrator, Building Official, or other applicable person or body, as appropriate.

g. State- or Nationally-funded projects requiring review by the State Historic Preservation Officer (SHPO) are exempt from review by the HPC. In New Mexico, "State-funded" includes funding by municipalities.

3. Decisions of the HPC.

a. Members of the HPC shall state the factual basis and the findings of their vote. Findings shall be based on Design Standards found herein, information from staff reports and staff presentations, public comment, and one or more of the following:

i. References to the Zoning Code or other applicable codes;

ii. Design Guidelines for the South Mesquite District;

iii. The Secretary of Interior Standards for Rehabilitation;

iv. *The New Mexico Historic Cultural Properties Inventory Manual*; and

v. Projects other than those requiring approval by the HPC shall be reviewed for compliance to design standards by Community Development staff and are required to meet all other applicable City Codes.

b. Decision of Approval. If the HPC approves an application, it shall articulate the conditions (if any) to the approval and instruct staff to issue a Certificate of Appropriateness (i.e., action form). A copy of the Certificate shall be placed in the case file and a copy shall be provided to the Applicant and to the permitting and inspections sections.

c. Decision of Denial. If the HPC denies an application, the Notice of Decision shall identify the design standards or other requirements of this Section 38-49.2 that the proposed work conflicts with and shall also explain the Applicant's right to appeal the denial to City Council (as per Subsection P of this Section 38-49.2). A copy of the Notice of Decision shall be placed in the case file and a copy shall be provided to the Applicant.

4. Issuance of Certificates of Occupancy or Completion. Staff having prepared the Certificate of Appropriateness (CoA) shall review the final completion of the project for consistency with CoA prior to the issuance of the Certificate of Occupancy or Completion for the project.

K. *Design Guidelines:* Specific design guidelines, standards, and criteria shall be used by staff and the HPC to determine the appropriateness of construction and rehabilitation projects, and to determine whether the request is consistent or inconsistent with existing development.

1. Applicable development must ultimately utilize architectural styles, methods, and materials that are visually compatible with the original structure, surrounding structures (especially where new construction is proposed), and the overall character of the historic district. This should not be interpreted as a requirement to mimic existing styles or construction materials, but as a means for these types of projects to result in a visually compatible transition between old and new structures within the general neighborhood and/or on a single parcel of land.

2. When evaluating proposals for new development, additions, or rehabilitation in the SMO, the structure's contribution to the neighborhood comes in to play. Most of the SMO historic structures are located within the Original Townsite. These historic structures deserve the most protection and, therefore, the design standards for these are stricter than for newer buildings. There are also many structures listed as contributing on the historic register outside of the Original Townsite; these, too, follow the same design standards as those in the Original Townsite.

3. In addition to the standards stated herein, staff and the HPC shall review projects based upon *The Secretary of the Interior's Standards and Guidelines for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitation, Restoring, and Reconstructing Historic Buildings,* and *The New Mexico Historic Building Inventory Manual* (1980). These resources are available for public review in the Community Development Department or on the City's website.

4. Ordinary maintenance and repair of any exterior architectural feature in or on a contributing building may be undertaken without a Certificate of Appropriateness provided this work is in keeping with the architecture or character of the building and does not cause a loss of its historic integrity. If such work requires a permit, Community Development staff shall evaluate these permits for consistency with the Design Standards of this Section.

5. Criteria for Requesting and Granting Building Height Exceptions. Pursuant to Section D.8 of the SMO, the building heights within the SMO are limited to 14 feet and one story. Through a variance procedure to the HPC, a property owner may request a variance from this maximum building height or number of stories limitation provided that the HPC finds that the proposed building satisfies the following criteria:

   a. For new construction: (a) The building is similar in height to another building or buildings within the same block; (b) the second story is set back from the first story by a minimum of 15 feet; (c) second story windows facing the street shall be small or clerestory; (d) second story windows facing adjacent residential properties shall be frosted to insure neighbors' privacy; and (e) the design of the building shall satisfy the design standards and guidelines of the SMO.

   b. For additions: (a) the addition is limited to 20 percent of the total footprint of the primary building; (b) the addition must be setback or stepped back from the street-facing facade; (c) for additions to buildings deemed Contributory to the Historic District, materials and colors of the addition shall distinguish the addition from the original structure; (d) second story windows facing the street shall be small or clerestory; (e) second story windows facing adjacent residential properties shall be frosted to insure neighbors' privacy; and (f) the design of the building shall satisfy the design standards and guidelines of the SMO.

   c. The maximum building height allowed with a variance procedure shall be 25 feet. The maximum number of building stories allowed with a variance shall be two stories

L. *Design Standards.* Additional components that must be given specific attention include the following criteria:

1. *Design Standards for All Properties in the SMO:*

   a. New construction shall reflect a style consistent with those found in *The New Mexico Historic Building Inventory Manual* (1980) and shall be consistent with the styles of Design Guidelines or Manual established by the HPC for the SMO and with other historic structures found on the same street segment.

   b. New construction shall maintain a visual balance and rhythm of the walls, doors and windows along any given street segment.

   c. Manufactured homes shall meet design criteria for new construction to the greatest extent possible without altering the structural integrity of the home. This shall include the style and type of materials forming the exterior facade as well as the type and material of skirting that shall be is compatible in type and materials with adjacent and nearby historic structures.

   d. Additions and remodeling projects shall utilize materials that are consistent with the character and architecture of the existing structure. The same materials must be used on all sides of a structure.

   e. Changes in materials on a single structure, such as stucco to wood siding or visa-verse, may be made if the different material is also in keeping with the architecture or character of the

structure and does not diminish the historic integrity of the structure to any great extent. Changes in materials must also be consistent with other materials used in the neighborhood.

f. Fences/walls shall be of a material that is compatible with the structure or compatible with other fences/walls in the neighborhood.

i. Chain link or square wire fencing is prohibited except if used in a small area within the interior of a lot, such as for a dog run or surrounding a private swimming pool, and cannot be viewed from a public street.

ii. Existing chain link or square wire fencing may be temporarily removed if necessary, but the same fencing must be replaced exactly as it was.

iii. An old chain link or square wire fence may not be replaced with new chain link or square wire fencing; if replaced, the new fence must come into compliance with this Section.

iv. If a chain link or square wire fence is damaged through no fault of the property owner, the fence may be replaced exactly as it was.

v. The HPC has the authority to modify or waive the above wire fence restrictions on a case-by-case basis with a Certificate of Appropriateness.

g. Construction fencing must be removed from site within three (3) days of issuance of a Certificate of Occupancy or a Certificate of Completion.

h. Dumpsters for commercial or multi-family developments are required to be screened from any streetside facade.

i. Second story elements and single-story structures built to the side or rear property lines shall incorporate window types (e.g. clerestory, frosted) and placement in such a way as to protect the privacy of adjacent neighbors.

j. Outdoor lighting shall meet the City's Outdoor Lighting Ordinance (Chapter 39 of the LCMC) and light fixtures shall be consistent with the architectural character of the structure and neighborhood. Fluorescent tube lighting fixtures are prohibited.

2. *Design Standards for Structures Listed as Contributing on the State or National Mesquite Street-Original Townsite Historic District Inventory.*

a. Additions are not permitted to primary façades, it must be set back from the front façade.

b. Additions and remodeling projects shall have architectural treatments and styles, features, and details as the existing structure, but shall not duplicate those of the existing structure in a manner that will make the addition indistinguishable from the existing structure. Distinguishing characteristics could include, but are not limited to:

i. Setting back the addition from the original structure a distance to be determined by the proposed addition's relation to the scale and form of the original structure;

ii. Varying trim, finish texture, facade height, color, etc. to some slight degree;

iii. Separating the addition from the original structure by a connector;

iv. Varying the window or brick pattern from the original.

c. If applicable, to the extent architecturally practicable, new additions should be attached to any existing noncontributing portion of the structure instead of attaching them to the contributing portion.

d. The owner shall make every attempt to repair or restore historic windows. Historic windows that cannot be repaired or restored shall be duplicated in size, style, and material of the original to the greatest extent possible. No opening shall be widened or narrowed except as required to comply with building code standards, unless historic documentation supports its prior existence. Vinyl-clad or aluminum windows may be used if they resemble the original windows in size and style. Thermal double pane glass may be used.

e. Original doors shall be retained, and repaired or restored to the greatest extent possible. If existing doors are beyond repair, new ones shall match the original material and should also be similar in design. Flat surfaced and contemporary doors with small decorative windows shall be avoided. No door opening shall be widened or narrowed except as required to comply with Building Code standards, unless historic documentation supports its prior existence.

f. Existing porches or portals shall not be enclosed, unless historic documentation supports its prior existence.

g. No new opening shall be made where one presently does not exist unless historic documentation supports its prior existence. An exception may be made to comply with Building Code standards for egress.

h. No existing opening shall be enclosed unless historic documentation shows that the existing opening is not original to the structure.

i. Existing roof styles and materials shall be maintained or replaced in kind. The addition of parapets, canales, or other roof features should only be considered if they are in keeping with the architectural style of the structure.

j. Specific colors of structure and trim shall not be criteria in evaluating the proposal.

M. *Installation of Solar Panels or Other Alternative Energy Equipment.* Enhancing the energy efficiency of a historic building is important. To that end, it is often possible to install features such as solar panels and photovoltaic cells provided they are installed in a sensitive manner. However, for some historic buildings, it may not be possible to incorporate solar panels and meet the Secretary of the Interior's Standards for Rehabilitation. The following standards for installation of these systems shall apply:

1. Installation of panels must be reversible and not damage the historic integrity of the building and district.

2. Solar panels should be installed on rear slopes or other locations not highly visible from the public right of way whenever possible. Panels should be installed flat and not alter the slope of the roof.

3. Flat roof structures should have solar panels set back from the roof edge to minimize visibility. Pitch and elevation should be adjusted to reduce visibility from the public right-of-way.

4. Use solar panels and mounting systems that are compatible in color to established roof materials. Mechanical equipment associated with the solar panel system should be treated to be as unobtrusive as possible.

5. Use of solar systems in windows or on walls, siding, awnings or shutters should be installed with limited visibility from the public right-of-way.

6. In circumstances where solar collectors are not placed on rooftops, they should only be positioned in limited or no-visibility locations in secondary areas of the property. Use vegetation or a compatible screen if necessary to further reduce the visual impact of these features on a historic property.

N. *Submittal and Review Process.* The following submittal and review procedures are established to protect persons and property in the South Mesquite Overlay District. Applications shall be obtained from the Community Development Department, Building Permit Section.

1. Buildings/Structures. Prior to the filing of an application for development and/or signs, a pre-application conference to meet with Community Development Department Staff to review the proposal is required.

2. Following the pre-application meeting, the Applicant shall submit one copy of all application materials for the development to the Community Development Department for review. Upon submittal, staff shall review the submittal for completeness. If all the required items have been submitted, the Community Development Department shall deem the application complete and shall begin its review process.

3. The minimum submittal requirements for development proposals shall include the following information that is relevant to the proposal:

    a. A Development Application, with appropriate materials required for the SMO, as determined by Community Development staff at the pre-application meeting. The submittal shall include a scaled site plan that includes the following, as applicable:

        i. Property boundaries.

        ii. Location of all structures.

        iii. Age of structures.

        iv. Setbacks of all structures, existing and proposed.

        v. Parking layout, if applicable.

        vi. Ingress/egress access points.

        vii. Areas proposed for landscaping.

        viii. Surfacing material for impervious surfaces, if applicable.

        ix. Storm water ponding areas.

        x. Dumpster location(s).

        xi. Location of service and loading area(s).

        xii. Freestanding and attached sign locations where applicable.

        xiii. North arrow.

        xiv. Any other information which conveys how the proposal will meet development requirements.

    b. A statement of objectives to be achieved by the development, inclusive of a description of the character and anticipated use of the proposed development.

    c. If the structure is listed as contributing on the State or National Mesquite Street—Original Townsite Historic District inventory, a description of the known history of the structure shall be included. Photos are encouraged to support the purpose of the application.

    d. Scaled elevations or renderings which are detailed enough so that a realistic picture is given of the proposed project to a close approximation of the finished project. It should be apparent from the submission that the design criteria herein have been met to the greatest extent possible. Color architectural/artistic renderings shall:

        i. Reflect all aspects/views of the exterior of the structure

        ii. Demonstrate the use of building materials through the drawings or with a legend or an attached list.

iii. Detail the fenestrations, other building openings, rooflines, ornamentation, woodwork, and other features of the structure.

e. If required, the Applicants shall present their proposal to the HPC at a public hearing. At that time, a formal decision by the HPC regarding the proposed project will be made and a Certificate of Appropriateness or Letter of Denial will be issued by staff within five days. This record of the HPC shall be entered into the Case File for reference by building inspectors, plan examiners, and other relevant City staff. Public hearing procedures and notice requirements will follow that of the Planning and Zoning Commission found in Section 28-10.D.3.

f. Those projects not required to be reviewed by the HPC shall be reviewed by Community Development staff using the same criteria and procedures found herein.

g. A scaled landscaping plan shall include:

i. Location, size, and common name of all landscaping

ii. A complete irrigation plan shall be included, clearly identifying how the landscape will be sustained.

h. Community Development staff shall ensure that the Applicant satisfies any conditions of approval stated in the Certificate of Appropriateness (CoA); if the Applicant proposes any changes to the project involving architectural or structural elements, location, or materials that alters the CoA approval conditions, the Applicant shall submit revised plans for review by the HPC. If the Community Development staff, upon inspection prior to issuance of a Certificate of Occupancy or Completion, notices that the Applicant changed a design element that is inconsistent with the CoA, the Applicant shall submit a revised plan showing the changed element and the HPC shall review the change to see if it meets the SMO design guidelines, standards, and criteria. The HPC shall have the authority to recommend to the City's Building Official that the substituted element be removed and replaced with one that is approved by the HPC.

4. Variances. A variance shall be defined as a variation in the numerical requirements of the 2001 Zoning Code, as amended, or the Sign Code. Numerical variances to the clear-sight-triangle requirements shall be considered, reviewed, denied, or approved by the Public Works Director or designee. Height exceptions may be granted by the HPC pursuant to the provisions and design guidelines of subsections D and K.5. The Flexible Development Standard provisions of Section 38-56 of the 2001 Zoning Code, as amended, are applicable to the SMO provided that the Applicant for the waiver or exception submit the request to the HPC for a recommendation to the Director of the Community Development Department.

O. *Demolition.* To preserve the character of the State and National Mesquite Street-Original Townsite Historic Districts and surroundings, this ordinance creates a sixty (60) day demolition permit application review process that will allow time for interested parties to explore alternatives to the demolition of historic structures.

1. Property owners intending to demolish any structure located within the SMO must adhere to the following 60-calendar day process. The Applicant may withdraw the permit application at any time with a written notice to the Director of the Community Development Department.

2. Demolition permit applications shall be submitted to the Community Development Department prior to any demolition activity taking place. During the 60-day review, Community Development Department staff will review the application for compliance with the Las Cruces Building Code (Chapter 30 of the LCMC).

3. A proposal for redevelopment of the property, with elevations, must accompany the permit application; this proposal shall describe a potential or proposed development proposal for the property, and whether it is proposed for the near or distant future.

4. Prior to the demolition of a structure designated as Contributing within the State or National Historic District, the Applicant shall be responsible for fully documenting the structure, both interior and exterior, to provide a permanent record, in accordance with documentation procedures as follows. The demolition permit will not be approved without submittal and approval of this documentation by Community Development staff:

   a. Completion of the New Mexico Historic Cultural Properties Inventory (HCPI) Form, available in the Community Development office and online.

   b. Photographing the property: Take several photos (front, rear, sides, close-up views, details, setting, etc.) of the historic structure proposed for demolition (primary structure and/or each historic accessory structure, such as a garage, sheds, etc.) Buildings that are not listed on the historic register need not be included. For more information on documentation, please refer to the National Register Photo Policy Fact Sheet available in the Community Development Department and on-line.

   c. If known, a short history of the property should be included, in order to document how that property fits within the historic district or community.

5. Posting: At the beginning of the 60-day review process, the Community Development Department will prepare a public notice sign that is to be posted by the Applicant in a conspicuous place on the property. The Applicant is responsible for ensuring that it is in place for the entire 60-day period. The Department will publish a legal notice describing the proposed demolition and contact information for the Applicant. A fee shall be charged to the Applicant for the cost of the public notice.

6. At the beginning of the 60-day review process, the Community Development Department will inform the HPC, neighborhood associations, the New Mexico State Historic Preservation Office (SHPO), and other pertinent organizations or interested parties that a demolition permit has been applied for.

7. A demolition permit shall be issued upon the completion of the following items:

   a. The completion of the 60-day period;

   b. Documentation of the structure as described above; and

   c. The application meets all City Code requirements and has been approved by the Community Development Department Staff. (Code compliance comments regarding the proposed demolition may be resolved within the 60-day time period).

8. Compliance with the procedure set out in this Section may be waived by the City Manager or designee if it is determined that immediate demolition of a historic structure is necessary to remove a hazard to the health, safety, and welfare of the public. In such a case, the Community Development Department shall immediately notify the HPC, neighborhood associations, SHPO, and other pertinent organizations and interested parties that demolition of the structure is imminent.

P. *Appeals.* In the South Mesquite Overlay District, any applications for development must be approved by the City in order for a use permit, building permit, or sign permit to be issued. If required by this Section, review and approval by the HPC must precede issuance of a permit.

1. A decision made by staff may be appealed by any aggrieved person to the HPC. Such appeal must be made in writing within 15 calendar days of the staff decision. The appeal will be presented to the HPC at their next regularly scheduled meeting.

2. A decision made by the HPC may be appealed by any aggrieved person to the Planning and Zoning Commission after all other procedures established by this Code have been exhausted. Such appeal must be made in writing within 15 calendar days of the HPC's decision in accordance with Chapter 38-13 of the LCMC.

3. A decision made by the Planning and Zoning Commission may be appealed by any aggrieved person to the City Council after all other procedures established by this Code have been exhausted. Such appeal must be made in writing within fifteen (15) calendar days of the Commission's decision in accordance with Chapter 38-13 of the LCMC.

4. Any person aggrieved by a determination of the City Council may appeal to the District Court within 30 days after the determination made by City Council, in accordance with Section 38-14 of the LCMC.

5. A request that is denied by the HPC and/or City Council shall not be resubmitted or reconsidered for a period of one year. However, after meeting with Community Development Department staff, a different request on the same property may be submitted no less than six months after such denial decision.

Q. *Enforcement of Overlay Zone District*. Provisions to enforce this Section shall be consistent with the Enforcement Provisions of Section 38-16 of the 2001 Zoning Code, as amended.

(Ord. No. 2354, § I, 1-22-07; Ord. No. 2681, § I(Exh. A), 5-6-13; Ord. No. 2765, § I(Exh. A), 10-19-15; Ord. No. 2938, § I(Exh. A), 8-17-21)

Sec. 38-49.3. ADO—Alameda Depot Neighborhood Overlay.

A. *Purpose*. The Alameda Depot neighborhood, with its rich history, diverse architecture and peaceful environment, is an important part of Las Cruces life. The purpose of the Alameda Depot Neighborhood Overlay (ADO) is to implement the policies that were established in the Alameda Depot Neighborhood Plan. As it is impacted by changes in downtown and surrounding neighborhoods, residents and property owners want to protect the characteristics that make the Alameda Depot neighborhood special. Specific provisions in this overlay provide greater flexibility for historic properties and address such things as such as setbacks, land uses, parking and changes to structures that predate the creation of development standards. The Alameda Depot Overlay contains a state historic district and a national historic district, but the neighborhood has not been designated a local historic district, and will be exempt from any future local historic district ordinances should they be adopted by the city.

B. *Applicability*.

1. *Introduction*. This overlay applies to all properties within the Alameda Depot neighborhood boundaries. These properties have been categorized into six sub-areas, and have been given new zoning designations based on the distinct characteristics of each (see Subsection C. below). The overlay shall be used to regulate development standards, land uses, design of new streets, new buildings, and new public spaces.

2. *Terms*. The provisions of this overlay are activated by "shall" when required; "should" when recommended; and "may" when optional. Technical terms used throughout this section may be defined below in section D (Definitions). Those terms not defined in section D shall be accorded their commonly accepted meanings or as defined in sections 38-20, 38-21 of the 2001 Zoning Code as amended. In the event of conflicts between these definitions and the provisions herein stated, the Community Development Director shall have the authority pursuant to Subsection 38-4 B. to determine which will be imposed.

3. *Diagrams and illustrations.* Diagrams and illustrations are an integral part of this overlay and are used to help explain standards and guidelines. The diagrams and illustrations are for illustrative purposes only. When in conflict, written text shall take precedence over diagrams and illustrations.

C. *Delineation of overlay.* The Alameda Depot Neighborhood Overlay District shall include all properties noted on the associated map (Figure 1). Within the overlay, six distinct zones shall be established: ADO-1, the Alameda Corridor; ADO-2, the Griggs/Organ Corridor; ADO-3, the North and South Residential Cores; ADO-4, the Picacho Corridor; ADO-5, Amador Corridor; and ADO-6, the Railroad Corridor. Description of overlay zones:

1. *ADO-1, the Alameda Corridor:* Uses in ADO-1 include single-family residential, multifamily residential, low-intensity office and commercial uses, and public/institutional uses that generate relatively little traffic or parking demand. The residential and historic character of the neighborhood shall be retained as closely as possible.

2. *ADO-2, the Griggs/Organ Corridor:* Uses in ADO-2 include single-family residential, multifamily residential, low-intensity office and commercial uses, and public/institutional uses that generate relatively little traffic or parking demand. The residential and historic character of the neighborhood shall be retained as closely as possible.

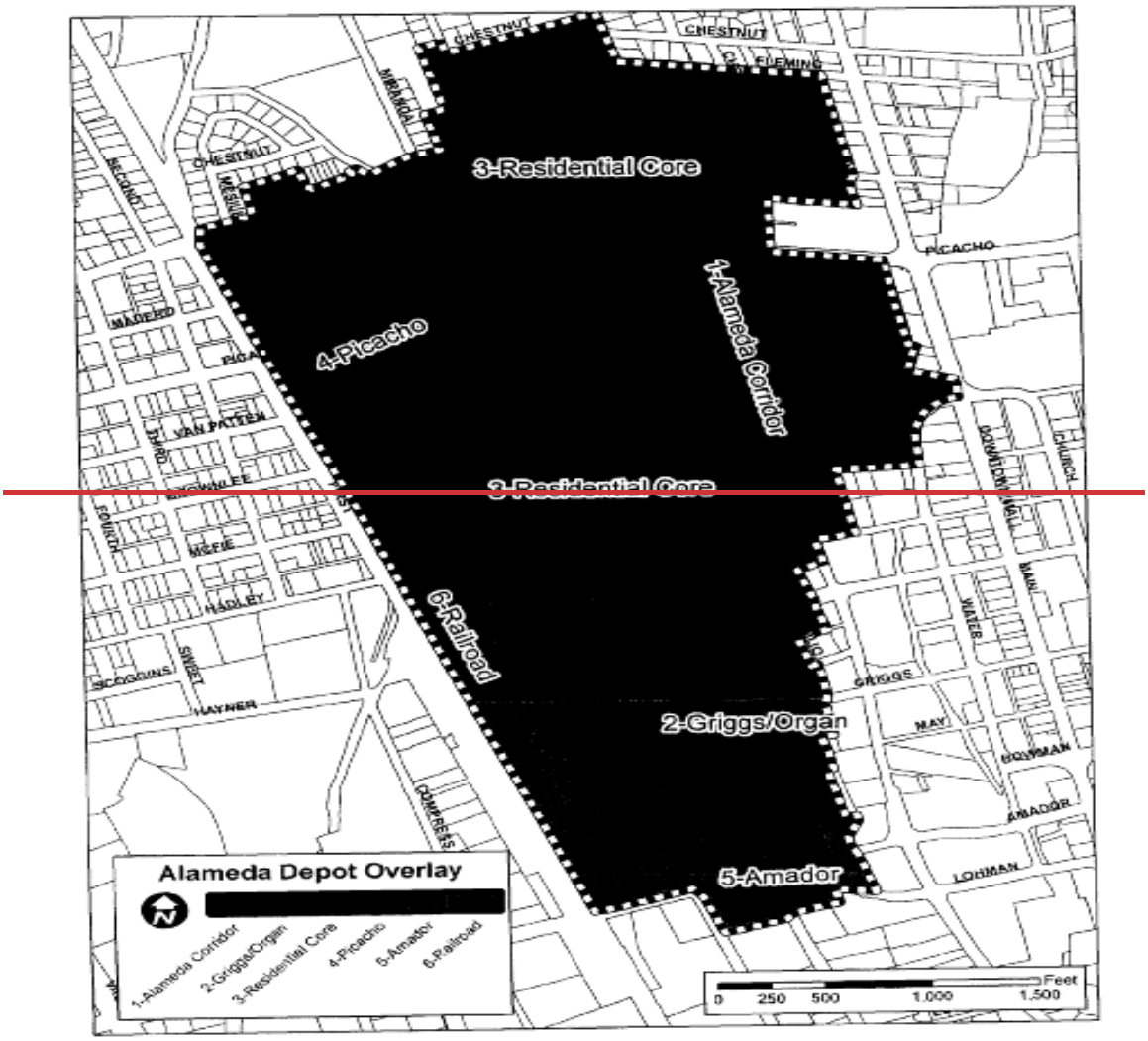
3. *ADO-3 the North and South Residential Cores:* ADO-3, the Residential Core, is intended to accommodate primarily detached single-family dwelling units, with or without secondary residences, to maintain and protect a low-density residential character of development, and to maintain the historic appearance of this central area of the neighborhood as closely as possible.

4. *ADO-4, the Picacho Corridor:* Uses in ADO-4 include single-family residential, multifamily residential and low- and medium-intensity office and commercial uses. The residential and historic character of the neighborhood shall be retained as closely as possible. All office and commercial uses are intended to serve as transition zones between higher intensity uses on Picacho Avenue and the predominantly residential uses of the neighborhood.

5. *ADO-5, Amador Corridor:* Uses in ADO-5 include single-family residential, multifamily residential and low- and medium-intensity office and commercial uses. The residential and historic character of the neighborhood shall be retained as closely as possible. All office and commercial uses are intended to serve as transition zones between higher intensity uses on Amador Avenue and adjacent to the central business district and the predominantly residential uses of the neighborhood.

6. *ADO-6, the Railroad Corridor:* ADO-6, the Mesilla Street/Railroad Track Corridor, is intended to exist as a mixed-use environment allowing low-intensity manufacturing, low- and medium-intensity office and commercial, and limited residential uses. Residential uses must be part of a mixed-use development. Residential uses existing at the time of adoption of this overlay that are not a part of a mixed-use development are considered legally nonconforming, and shall adhere to the nonconforming use provisions stated below in section H, with the exception of section H.1.a). These uses are not subject to the one-year vacancy limit.

Figure 1 Alameda Depot Neighborhood Overlay Boundaries



~~D. *Definitions.* Definitions are in addition to those noted in sections 38-20, 38-21 of the LCMC:~~

~~*Accessory dwelling unit:* A self-contained living quarter containing independent kitchen (cooking/culinary) facilities attached to and under the same roof as the main dwelling, created by: The conversion of an existing single-family dwelling; or the addition to an existing single-family dwelling; or the incorporation of applicable areas into a new single-family dwelling design which is subsequently constructed. (also see section 38-53 of the 2001 Zoning Code as amended).~~

~~*Accessory use or structure:* A subordinate use or structure, the use of which is incidental to and customarily found in connection with the principal dwelling on the same property. Examples: Gazebo, greenhouse, tool shed, detached garage, guest dwelling, swimming pool, tennis court, barn, and flag pole (also see section 38-53 of the 2001 Zoning Code as amended).~~

~~*Brew pub:* A brew pub is a microbrewery which serves food or is combined with a pub. A microbrewery, or craft brewery, is a brewery which produces a limited amount of beer. The maximum amount of beer a~~

brewery can produce and still be classed as a microbrewery in New Mexico is less than or equal to 200,000 barrels a year, according to the New Mexico Alcohol and Gaming Division.

Central business district (CBD): All properties with zoning designation of CBD according to the 2001 Zoning Code as amended.

Compatible: Capable of existing together in harmony. Parts of a whole that work well together when pieced together.

Consistent: That which is similar to, or nearly the same.

Contributing property: A property, structure or object that adds to the historical integrity or architectural qualities that make the historic area significant. In general, a contributing property is key to a historic district's historic associations, historic architectural qualities, or archaeological qualities. (A list of contributing properties in the Alameda Depot Neighborhood Overlay is available from the community development department.)

Demolition: An act that destroys or removes in whole or in part of the exterior of a building or structure on a property.

Dwelling, above ground floor: Dwelling unit(s) located above ground floor office or commercial uses.

Facade: Any exterior wall of a structure.

Guest dwelling: A detached or attached dwelling to be used for temporary occupancy only and is not to be rented or leased. A guest dwelling shall be no more than 50 percent of the main dwelling's heated/cooled square footage and shall not contain a kitchen (also see section 38-53 of the 2001 Zoning Code as amended).

Historic: Structures/buildings deemed historic are those listed as contributing on the federal and/or state historic registers.

Historic district: Area in which historic buildings and their settings are protected by public review. Historic districts comprise the city's significant historic and architectural resources. Inclusion in a historic district signifies that a property contributes to an ensemble that is worth protecting by virtue of its historic importance or architectural quality.

Infill: An area within the core of the city where land use and development policies specify provisions with incentives for development of vacant parcels. The boundaries are Interstate 25, the north boundary of the University Avenue Corridor Overlay District, Valley Drive, Hoagland Road, North Alameda Boulevard, Three Crosses and North Main Street.

LCMC: Most current edition of the Las Cruces Municipal Code.

Live/work unit: A building that may be used flexibly for living and working in the same building. A variety of uses in the buildings is encouraged. Dwelling units may be located above the ground floor, attached to the rear of a shop front, or detached and located in the rear or side yard. Work is of a commercial nature subject to business registration requirements and not a home occupation.

Manufactured home: A manufactured or modular home that is a single-family dwelling with a heated area of at least 36 feet by 24 feet and at least 864 square feet and constructed in a factory to the standards of the United States Department of Housing and Urban Development, the National Manufactured Housing Construction and Safety Standards Act of 1974 and the Housing and Urban Development Zone Code 2 or the Uniform Building Code, as amended to the date of the unit's construction, and installed consistent with the Manufactured Housing Act and with the regulations made pursuant to that Act. (article VI, section 38-57 of the 2001 Zoning Code as amended).

Mixed-use: For the purposes of this overlay, the term refers to the practice of allowing more than one type of land use category (i.e., residential, office or commercial, etc.) in a single building or set of buildings located

on a single parcel. Condominium maps created and filed showing distinct sub-lots on an otherwise single parcel shall be considered as a single parcel for purposes herein stated.

Mobile home: A moveable or portable housing structure larger than 40 feet in body length, eight feet in width or 11 feet in overall height, designed for and occupied by no more than one family for living and sleeping purposes, but does not include structures built to the standards of any municipal building code and other technical codes. (article VI, section 38-57 of the 2001 Zoning Code as amended).

National Historic District: An area that the U.S. Government designates as historically important through the U.S. Department of Interior, under the auspices of the National Park Service. Federally designated historic districts are listed on the National Register of Historic Places. The Alameda Depot Neighborhood Overlay contains a National Historic District.

Outdoor plaza or space: A generally open area that may be used for active or passive purposes by one or more businesses and the public visiting the location. An example may include an outdoor seating area for a cafe or restaurant, outdoor sales and service, a landscaped plaza serving as open space for patrons and visitors alike, etc.

Overlay and special zoning district: Synonymous terms used to define boundaries around an area that has a set of unique or unusual characteristics. Overlays and special zoning districts have a special purpose as defined in an accompanying plan, and may alter general residential, office, commercial or industrial zoning districts or replace them entirely.

Performing arts center: A multi-use performance facility that is intended for use by various types of the performing arts, including dance, music and theatre.

Secondary residence: A dwelling unit that is subordinate in size and location to the main dwelling on a single property, and may be rented or leased as an independent dwelling unit. A secondary residence is different from a guest dwelling or accessory structure in that it is distinct dwelling unit containing a kitchen. Examples include a traditional guest house, apartment, cottage or converted garage.

State historic district: An area that is designated by the state as historically important and which follows criteria similar to the federal standards. State listings can have similar benefits to federal designation, such as qualification for grants and tax incentives. Designation of a district is through a review process at the state historic preservation office. New Mexico's Register of Historic Places lists districts and individual properties. The Alameda Depot Neighborhood Overlay contains a state historic district.

Step-back: In buildings with multiple stories, a reduction in the footprint of each level located successively farther from the ground. Step-backs prevent a "canyon effect," which deprives neighboring properties of sun light, and ensure that streets and yards are provided adequate light and air. In addition, they create articulation and a sense of vertical rhythm in the architecture. The space created by a step-back may be used for terraces, gardens, outdoor seating, etc.

Structure: That which is built or constructed, an edifice or building of any kind, or any place of work artificially built up or composed of parts joined together in some definite manner.

Traditional guest house: A type of secondary residence with kitchen facilities found in the Alameda Depot neighborhood as a result of adaptive reuse of existing structures on the same parcel as the primary dwelling. Historically, these units were converted from nonresidential uses, such as a coach house.

E. *Permitted uses.* Permitted, conditional and special uses shall be established for each zone in this overlay district. Land uses in ADO-1, the Alameda Corridor; ADO-2, the Griggs/Organ Corridor; ADO-4, the Picacho Corridor; ADO-5, Amador Corridor; and ADO-6, the Railroad Corridor shall follow the Land Use Tables in section E.2 below. Uses in ADO-3, the North and South Residential Cores, shall be in accordance with the underlying zoning in place at the time of the adoption of this overlay (see Figure 2 above) and are listed in the Land Use Table in E.3 below.

1. *Land use definitions.* Unless otherwise stated, land uses are as follows:

   a) *Residential:* Low and medium density residential uses in the Alameda Depot Neighborhood Overlay are intended to accommodate single-family site built/manufactured dwelling units, including patio homes and townhouses, and multifamily dwellings up to 20 per acre, with no more than four attached units each.

   b) *Low-intensity office:* These office uses are small-scale, and provide low-intensity service activities. No goods or merchandise are prepared or sold on the premises with the exception of those activities that serve the primary use. Access to streets that are a major local or higher designation is recommended.

   c) *Low-intensity commercial:* Low-intensity commercial uses are those that generate small-scale retail and service activities within a neighborhood area.

   d) *Medium-intensity commercial:* Medium-intensity commercial areas facilitate and encourage development of those uses which provide retail and service activities as a convenience to the general public.

   e) *Public/institutional:* These are uses dedicated to public or nonprofit service, such as schools, religious institutions, government and quasi-governmental agencies, libraries, etc.

   f) *Low-intensity industrial:* Low-intensity industrial uses are those that accommodate a wide variety of light manufacturing, commercial, processing, storage, packaging, compounding, wholesaling and distribution operations. Such uses shall be constructed and operated to ensure that there is: 1) no activity producing noise, glare or heat observable or measurable outside the building; 2) no emission of objectionable dust, fumes, odors, vapors, gases, smoke or other forms of air pollution; 3) no vibration which is discernible beyond the property lines to the human sense of feeling for three minutes or more duration in any one hour of a day.

2. Land uses in ADO-1, the Alameda Corridor; ADO-2, the Griggs/Organ Corridor; ADO-3, the North and South Residential Cores; ADO-4, the Picacho Corridor; ADO-5, Amador Corridor; and ADO-6, the Railroad Corridor.

a) RESIDENTIAL USES	ADO-1 ADO-2	ADO-4 ADO-5	ADO-6	CONDITIONS
Assisted Living or Retirement Facility	C	C	NP	Use shall be located on a collector or higher designated roadway.
Bed and Breakfast	C	C	NP	See Sec. 38-53
Boarding House	A	A	NP	
Dwelling Unit, including: - Accessory Dwelling Unit - Apartments - Detached Site-Built Single-Family DU (incl. manufactured homes) - Duplex, Triplex, etc. - Dwelling, Live-Work - Guest Dwelling	A	A	C	In ADO-6, residential uses are intended to be multi-family and must be part of a live/work or multi-use development project. Proposals must go through Infill Development Proposal (IDP) process.

- Patio Homes - Townhouse (Attached Single Family DU) - Secondary Residences				Project must be no more than 50% residential.
Fraternity/Sorority House	A	A	NP	
Halfway House	S	S	NP	
Home for Disabled	A	A	NP	
Nursing Home	C	C	NP	Use shall be located on a collector or higher designated roadway.
Temporary/Homeless Shelter	A	A	NP	
A = Allowed C = Conditional S = Special Use Permit NP = Not Permitted				

b) RESIDENTIAL RELATED USES	ADO-1 ADO-2	ADO-4 ADO-5	ADO 6	CONDITIONS
Accessory Uses & Structures	C	C	C	See Sec. 38-51
Greenhouse (Noncommercial), Garden Shed, Tool Shed	C	C	C	See Sec. 38-51
Recreational Court, Tennis, etc., Private	C	C	C	See Sec. 38-51
A = Allowed C = Conditional S = Special Use Permit NP = Not Permitted				

c) RECREATIONAL USES	ADO-1 ADO-2	ADO-4 ADO-5	ADO 6	CONDITIONS
Health/Exercise Club/Gymnasium/Sports Institution	NP	A	A	
Park	A	A	A	
Recreational Court, Tennis, etc., Public	A	A	A	
Skating Rink	NP	A	NP	
Swimming Pool, Commercial or Public	C	C	C	See Sec. 38-53
A = Allowed C = Conditional S = Special Use Permit NP = Not Permitted				

d) INSTITUTIONAL RELATED USES	ADO 1 ADO 2	ADO 4 ADO 5	ADO 6	CONDITIONS
Child Care: Family Child Care Home (5—6 children)	C	C	C	See Sec. 38-53
Child Care: Group Child Care Home (7—12 children)	C	C	C	See Sec. 38-53
Child Care: Child Care Center or Preschool (over 12 children)	NP	S	S	See Secs. 38-53 and 38-54
Community Buildings	C	C	NP	See Sec. 38-53
Convention Center/Exhibition Hall	A	A	NP	
Institutional Office (incl. quasi-governmental)	A	A	A	
Library/Museum	C	C	C	See Sec. 38-53
Religious Institution w/Columbarium	C	C	C	See Sec. 38-53
School (K-12) Public, Private, Parochial	C	C	NP	See Sec. 38-53 May be located on local roadway
School, College or University	C	C	NP	See Sec. 38-53
School, Commercial, Trade or Technical	C	C	C	See Sec. 38-53
Theatre, Performing Arts	NP	C	C	Use shall be located on a collector or higher designated roadway.
A = Allowed C = Conditional S = Special Use Permit NP = Not Permitted				

e) OFFICE & COMMERCIAL LAND USES	ADO-1 ADO-2	ADO-4 ADO-5	ADO-6	CONDITIONS
Art Studio	C	C	C	Retail activity is limited to 25% of the gross floor area in ADO-1 and ADO-2, and 50% in ADO-4, ADO-5 AND ADO-6.
Bank, Bonding & Financial Institution (No Drive-Thru)	A	A	A	
Eating and Drinking Establishments (Cafe, Cafeteria, Coffee Shop, Restaurant; Bar, Pub, Tavern (No Dancing); Brewpub; etc.)	C	A	A	No drive-thru permitted.
Equipment (Large) Repair & Service (Non-Vehicular)	NP	C	C	No outside storage of parts, materials or equipment is permitted.
Equipment Rental	NP	C	C	No outside storage of parts, materials or equipment is permitted.
Gas Station	NP	A	A	
General Office and Service (Accounting, Auditing & Bookkeeping; Architectural, Contracting, Engineering, Planning & Surveying; Photo Studio; Barber/Beauty/Hair Salon & Related Personal Care; Cleaning & Maid Services; Consulting Services; Counseling Services; Credit Reporting & Collection; Desktop Publishing & Graphic Design; Funeral Home; Insurance; Laboratory; Legal Services; Lessons (Art, Dance, Music, etc.); Mailing & Stenographic Services; Medical/Dental Office; Motion Picture Production; Real Estate; Research Organization, Noncommercial; Tax Preparation; and other similar Business Offices.)	A	A	A	

General Retail & Commercial (Bicycle Sales, Service and Repair; Building Materials; Delicatessen, Carpet/Window Treatments; Clothing Store; Convenience Store; Department Store; Produce/Meat Market; Grocery Store; Hardware Store w/out outdoor sales or storage; Furniture Store; Garden Supply; Home Furnishings; Laundry/Dry Cleaning Services; Liquor Store; Pawn Shop; Pharmacy; Photography Studio; Plant Nursery; Specialty Foods such as bakeries, confectionaries, etc.; Specialty Store such as books, music, toys, etc.; Variety Store; Video/DVD Rental/Sales; and other typical small-scale Commercial establishments.)	A	A	A	
Health Care Clinic (Non-Hospital)	NP	A	A	
Hotel/Motel/Youth Hostel	NP	A	A	
Petroleum/Propane Sales	NP	C	C	Use shall be screened with an opaque buffer or screen meeting current Fire Code standards. Also see Sec. 38-53
Private Club or Lodge	NP	A	A	
Radio/TV Studio/Station	NP	A	A	
Seasonal Sales, Non-temporary (Fireworks, Agricultural Produces, Snowcone Stand, Firewood Sales, etc.)	C	C	C	All structure locations shall meet all applicable setback requirements. If sited on property where other uses exist, there shall be no obstruction of the driving aisles or parking stalls unless it can be proven that there is an excess of parking area. If the use does not follow temporary use provisions, the property shall be subject to all applicable

				development requirements. See also Secs. 38-50 and 38-53.
Small Item Repair Shop	C	C	C	No outdoor storage of parts, materials or equipment is permitted.
Telemarketing/Mail Order/Call Center	NP	C	C	No warehousing or distribution is permitted
Temporary (Non-Seasonal)	C	C	C	See Sec. 38-50
Theater, Movie	NP	A	A	
Theater, Performing Arts	NP	C	C	Uses shall be located on a collector or higher designated roadway.
Upholstery Shop	C	C	C	No outdoor storage of parts, materials or equipment is permitted.
Vehicle Sales/Service/Rental/Repair (incl. body shop, parts stores, repair & service, wash/wax/detailing (self- or full-service), sales, rental, campers, tire sales/repair, etc.)	NP	C	C	No salvage yard or related activities shall be permitted. No outside storage of parts, materials or equipment permitted.
A = Allowed C = Conditional S = Special Use Permit NP = Not Permitted				

f) INDUSTRIAL LAND USES	ADO 1 ADO 2	ADO 4 ADO 5	ADO 6	CONDITIONS
Above Ground Storage Tanks for Flammable & Combustible Liquids and LP Gas	NP	NP	C	See Sec. 38-53
Cab Stand	NP	NP	A	
Cabinetry and Woodworking	NP	NP	A	
Communication/Vertical Structures	C	C	C	See Sec. 38-59
Contractor's yard (general, plumbing, mechanical and others of a similar nature)	NP	NP	C	All storage outside of buildings shall be enclosed with an opaque screen
Face Mount (attached to primary use)	C	C	C	See Sec. 38-59
Jewelry, Silverware & Plated Ware	NP	NP	A	
Laboratories (Medical/Dental/R & D)	NP	NP	A	
Manufacturing, Low Intensity	NP	NP	A	See "Land Use Definitions" above
Ministorage Units	NP	NP	A	
Musical Instrument Fabrication/Manufacture	NP	NP	A	
Parking Facilities, Commercial (Garages & Public Parking Lots	NP	NP	A	
Printing and Publishing	NP	NP	A	
Railroad Terminal	NP	NP	A	
Signs & Advertising Fabrication/Manufacture	NP	NP	A	
Storage/Display of Merchandise for Sale (except Manufactured buildings, mobile homes & operable cars, trucks, motorcycles & RVs)	NP	NP	C	Outdoor display is permitted and is required to be enclosed behind a solid wall or solid fence no less than 6 feet in height.
Storage outside of buildings of materials, equipment and supplies not for sale	NP	NP	C	All outdoor storage shall be enclosed with a Type A screen.
Storage, warehousing accessory to Office, Retail, Service or Industry	NP	NP	C	All outdoor storage shall be enclosed with a Type A screen.
Utility Installation, Public/Private	C	C	C	See Sec. 38-53
Water Purification, Commercial	NP	NP	A	

Wholesale Trade, any product	NP	NP	A	
A = Allowed C = Conditional S = Special Use Permit NP = Not Permitted				

3. *Land uses in ADO-3.* Land uses in ADO-3, the North and South Residential Cores, follow the underlying zoning designations existing as of the date of adoption of the ordinance from which this section derives, and may be found in sections 38-31—38-33 of the 2001 Zoning Code as amended, with the following modifications:

a) Low-intensity office and commercial uses in predominantly residential areas are conditional and must include a residential component, for example, home occupation or live-work units as described in section 38-52 of the 2001 Zoning Code as amended.

b) Secondary residences, as defined in section D above, are an allowed use in the residential cores.

c) Industrial uses are not allowed in the residential cores.

F. *Development standards.* There shall be no development or alteration of the lands, uses, or structures within the overlay zone district except as provided for by this section of the 2001 City Zoning Code from the date of its enactment and other sections of the City Zoning Code and other city codes and ordinances where applicable. Development requirements and permitted uses shall be established for the entire overlay zone district, as follows (unless otherwise indicated):

1. PLACEMENT OF PRIMARY STRUCTURES—RESIDENTIAL	
Lot Area/Size	Minimum: 3500 square feet Maximum: Not to exceed size of largest existing lot on both sides of the same block. Applications for replats that would result in a larger lot size will be considered on a case by case basis.
Minimum Lot Width/Frontage	40 feet
Minimum Lot Depth	70 feet
Front Setback	Within the range of primary building setbacks on both sides of the same block.
Secondary Front Setback	5 feet
Side Setback	Minimum: 5 feet • Setback may be zero only if there is an existing structure on the same property with a zero setback. • Stormwater required to be contained on subject parcel. • Separation between all structures, on same and adjacent property, must comply with the International Building Code and other companion codes.
Rear Setback	Minimum: 10 feet • Setback may be less than 10 feet only if there is an existing structure on the same property with a setback of less than 10 feet. • Stormwater required to be contained on subject parcel.

	• Separation between all structures, on same and adjacent property, must comply with the International Building Code and other companion codes.
Maximum Building Height	35 feet • Proposed development adjacent to the central business district or Picacho Avenue may obtain a 35% flexible development standard approval for structures greater than 35 feet, and will be considered on a case-by-case basis. If adjacent use is single-family residential, this exception shall not apply. • For buildings greater than 2 stories, the upper stories shall be stepped back from the line of the front facade (see definitions).
Maximum # Attached Units	4
Maximum Density	20 Dwelling Units/Acre
2. PLACEMENT OF PRIMARY STRUCTURES—NONRESIDENTIAL	
Lot Area/Size	Minimum: 5,000 square feet Maximum: Not to exceed size of largest existing lot on both sides of the same block. Applications for replats that would result in a larger lot size will be considered on a case-by-case basis.
Minimum Lot Width/Frontage	60 feet
Minimum Lot Depth	70 feet
Front Setback (Incl. Secondary Front Setback)	5 feet • Setback may be less than 5 feet only if there is an existing structure on the same property with a setback of less than 5 feet. • Buildings that request a greater setback shall use that setback frontage for active or passive open space as defined herein. Under no circumstances shall outdoor sales or service activities encroach on the public right-of-way. • Awnings and entrance canopies may protrude into the setback. • Second story bay windows, porches, decorative elements, landscaping, etc. may protrude into the setback.
Side Setback	Minimum: 5 feet • Setback may be zero only if there is an existing structure on the same property with a zero setback. • Stormwater required to be contained on subject parcel. • Separation between all structures, on same and adjacent

	property, must comply with the International Building Code and other companion codes.
Rear Setback	Minimum: 10 feet • Setback may be less than 10 feet only if there is an existing structure on the same property with a setback of less than 10 feet. • Stormwater required to be contained on subject parcel. • Separation between all structures, on same and adjacent property, must comply with the International Building Code and other companion codes.
Maximum Building Height	35 feet • Proposed development adjacent to the central business district or Picacho Avenue may obtain a 35% flexible development standard approval for structures greater than 35 feet, and will be considered on a case-by-case basis. If adjacent use is single-family residential, this exception shall not apply. • For buildings greater than 2 stories, the upper stories shall be stepped back from the line of the front facade (see definitions).
3. PLACEMENT OF GARAGES, SURFACE PARKING, SECONDARY RESIDENCES & ACCESSORY STRUCTURES	
Front Setback — Residential and Nonresidential	Garage (Single-Family Residential only): To maintain the historic context of buildings in the neighborhood, garages may be placed within the range of garage front setbacks on both sides of the same block. This ensures that the placement of newly constructed garages is compatible with the location of existing garages in the immediate area and is consistent with the existing integrity and character of the street frontage. If there are no garages on the block to provide a range, the garage setback will be 25 feet. Other: No closer than the rear facade of the primary building(s), 40 feet, or at least 50% of the lot depth, whichever is less.
Secondary Front Setback — Residential and Nonresidential	Surface Parking: 8 feet Other: 10 feet
Side Setback — Residential and Nonresidential	A setback is not required. • No encroachment into ROW permitted. • Stormwater required to be contained on subject parcel. • Separation between all structures, on same and adjacent

	property, must comply with the International Building Code and other companion codes.
Rear Setback — Residential and Nonresidential	A setback is not required. • No encroachment into ROW permitted. • Stormwater required to be contained on subject parcel. • Separation between all structures, on same and adjacent property, must comply with the International Building Code and other companion codes.
At the minimum, all setbacks shall meet clear sight triangle requirements, and where applicable, encroachment agreements must be entered into. Variances to clear sight triangle will be considered by the public works department.	

G. *Property alteration, remodel or renovation.*

1. *Purpose.* Property alterations, remodels or renovation standards are established for this district to maintain consistent quality for all development and may be used for the purpose of adaptive re-use of the structure. For the purposes of this section, exterior remodel, renovation, or alteration shall be defined as: Any change or rearrangement in the supporting members of an existing building, such as bearing walls, columns, beams, girders, as well as any change in roof lines, or any enlargement to or diminution of a building or structure, whether horizontally or vertically. Normal maintenance activities as verified by the city's building official or designee are exempt from this provision.

2. *Minor modifications.* In most cases, expansion and/or modifications to a property must comply with the development standards of the Alameda Depot Neighborhood Overlay. However, if, through the determination of the Community Development Director or designee, said compliance would substantially create an undue burden to the property owner or create a condition whereby the expansion and compliance measure, partially applied, would be substantially out of character with the existing development, an exception may be made. In no case shall a minor modification/expansion:

   a. Equal or exceed a cumulative total of 15 percent of the gross floor area; or

   b. Equal or exceed a cumulative total of $25,000.00 in valuation; or

   c. Impact parking or landscape requirements.

3. Any proposal meeting one or more of the above criteria shall not be considered as a minor addition and/or modification, and shall, therefore, be subject to normal review and consideration afforded development in the overlay and may be subject to nonconforming provisions that follow. The applicant must provide estimates for the cost of labor as a means of ensuring compliance with the valuation criteria. Once permission to proceed has been granted by the Community Development Director or designee, the applicant may apply for the permit. Work shall not commence until permit approval is granted. All other nonconforming use requirements are subject to sections 38-70 through 38-76 of the 2001 Zoning Code as amended.

H. *Nonconforming uses, structures, and property.* Nonconforming uses, structures and property that legally existed at the time of adoption of this overlay shall be considered legal nonconforming, and shall comply with the nonconforming use provisions found below.

1. Land uses that were legally in place at the time of adoption of this overlay and remain legal uses may continue to the extent the subject regulations allowed, but shall be required to come into compliance with current overlay standards when the following provisions take place:

a) The property remains vacant for a period of one continuous year or greater; or

b) *Land use.* A change in use occurs on the property which results in the alteration of the use intensity, e.g., low volume retail to high volume retail; use orientation, e.g., service to retail; or density, e.g., eight dwelling units to 15 dwelling units; or change in occupancy type from the building code perspective; or

c) *Right-of-way or lighting.* When nonconforming features regarding access from the right-of-way or lighting are involved, these features shall be brought into compliance with current standards when any one-time or cumulative increase of 15 percent or greater to the gross square footage of building area occurs; or

d) *Signage, landscaping, walls or parking.* When nonconforming features regarding signage, landscaping, walls or parking are involved, these features shall be brought into compliance with current standards when any one-time or cumulative increase of 25 percent or greater to the gross square footage of building area occurs; or

e) *Development standards.* Any noncompliant issues pertaining to setbacks, number of attached units and/or maximum density of existing development shall be brought into compliance with overlay standards to the extent possible. A nonconforming certificate may be issued based on appropriate documentation. Determination of the extent of compliance shall rest with the Community Development Director or designee. Compliance with these matters shall not be triggered when a certificate has been issued as appropriate.

2. Legal uses that existed prior to ordinance adoption (2010), that become a prohibited use with adoption may be allowed to continue to exist and may expand or enlarge (either one-time or cumulative increase) not more than 50 percent in gross square footage of lot or building area, provided that:

a) The property has not remained vacant for a period of one continuous year or greater; or

b) A change in use has not occurred on the property which results in the alteration of the use intensity, e.g., low volume retail to high volume retail; or use orientation e.g., service to retail.

3. *Exceptions.* Regarding any of the above, any one-time or cumulative increase of less than 15 percent to the gross square footage of building area may take place without requiring compliance to any nonconforming element associated with the property. Exceptions to this provision include those matters the city requires compliance on for purposes of meeting health, safety and welfare concerns.

I. *Flexible development standards.* Community development staff shall review applications for flexible development standards based on requirements cited in section 38-56 of the 2001 Zoning Code as amended.

J. *Parking requirements.*

Community development department staff shall review plans for adherence to parking requirements. Parking requirements shall follow section 38-58 of the LCMC, with the exceptions stated below:

1.	Parking Ranges	Parking requirements for automobiles and bicycles are set for land uses in each zone, as noted in section 38-33. Requests to reduce parking requirements shall be evaluated on a case-by-case basis by the Community Development Director or designee.
2.	Off-street Parking Location	Parking areas for nonresidential and multifamily uses shall be located to the side or back of the subject property and screened or buffered when visible from the street. (See

		subsequent section below, "Landscape requirement, planting for parking lots.")
3.	Adjustments in Required On-Site Parking Spaces	The following provisions are methods to reduce the number of required on-site parking spaces. Any combination of the following options may be used, but in no event shall the reduction amount to more than 50% of the total requirement. The minimum number of parking stalls required is two. These provisions may not be utilized for required accessible parking spaces. a. **Flex Standards.** Applicant may utilize "Tier 1" provisions in section 38-56 to reduce the number of required on-site parking spaces by up to 25%. Requests to utilize this option shall be evaluated on a case-by-case basis by the Community Development Director or designee. Applicant may utilize this option in combination with other parking reduction options. b. **On-street Parking.** In areas where the city has determined that on-street parking is permissible, this parking may be used for up to 25% of the required parking. On-street parking shall be permitted on all local roadways or as deemed appropriate through a traffic analysis conducted and/or approved by the city traffic engineer. c. **Shared Off-street Parking Areas.** Multi-dwelling and nonresidential uses are encouraged to seek shared parking agreements with other multi-dwelling and nonresidential uses on nearby properties. In general, shared parking agreements shall follow criteria found in section 38-58.G.1. Properties within one-fourth mile, as measured along the street network and pedestrian right-of-way, may be considered when determining how parking demand will be met. d. For properties in the Alameda Depot Neighborhood Overlay that are listed as "significant" or "contributing" on the state or National Register of Historic Places and are utilized for office or commercial purposes, it is possible to allow exceptions to the number of on-site parking spaces required in exchange for the improvement or maintenance of the subject property in terms of the building and/or landscaping. In these cases, the applicant shall follow requirements for off-street parking in the

		historic districts found in section 38-58. (Note: Flexible standard provisions may not be used in conjunction with this historic district parking exception provision.) e. Other methods to reduce the total number of parking spaces will be considered on a case-by-case basis by the Community Development Director or designee. These provisions follow section 38-58. They include: • Adding more bicycle parking • Adding more landscaping • Building a parking structure • Arranging tandem parking stalls • Providing bus stop or bus shelter at bus stops within one-fourth mile
4.	Walkways	In parking lots larger than one acre or equal to or greater than 200 feet wide, walkways within the lot shall link perimeter sidewalks to primary building entrances.
5.	Prohibited Parking	All vehicles are to be parked along designated streets, in designated driveway or parking areas only. Parking on front lawns and/or landscaped areas shall be prohibited.
6.	Dimensions and ADA Standards	All standards for parking dimensional and ADA requirements for all development within the district shall be consistent with section 38-58.
7.	Driveways	Driveways width shall comply with city design standards.

K. *Landscape requirements.* The abundance of mature shade trees in the Alameda Depot neighborhood contributes to the distinct character of the area. Landscape requirements are intended to protect this verdant landscape through the careful selection of plants and the implementation of water conservation principals. Community development department staff shall review landscape plans for adherence to the landscape requirements. Landscaping shall follow section 32-266 of the LCMC, "Development standards for landscaping," with the following exceptions and specifications:

1. *Applicability:* Landscaping standards apply to all new development and redevelopment in the ADO with the exception of properties that are occupied by single-family residences and duplexes. Where conflict in regulation exists, the provisions of this section shall supersede other landscaping requirements within the Municipal Code.

2. *Areas to be landscaped:* The required area to be landscaped is equal to a minimum of 25 percent of the entire parcel area, excluding the main building area. Landscape consists of native or drought-tolerant species of both overstory (shade and coniferous trees) and understory plantings (ornamental trees, shrubs, cacti and perennial grasses, groundcovers and flowers).

3. *Landscape shall be defined as:*

a) A minimum of one two-inch caliper tree, 15 five-gallon shrubs and either five one-gallon shrubs or 50 square feet of groundcover plants shall be installed per each 500 square feet of provided landscape area.

b) All plant materials shall be species native to the Chihuahuan Desert or adapted to our climate and to the location of the Alameda Depot neighborhood in the valley. This is not to say that the landscape plan needs to adhere to "zero-scaping." Rather, plants should be chosen that will survive and thrive in the local climate. Appropriate species include, but are not limited to, those in the following table. It is recommended that the applicant consult with a professional landscape architect or the Dona Ana County Master Gardeners regarding appropriate plant selection.

TREES	SHRUBS	GROUNDCOVER
Arizona Ash	Euonymus	Bermuda
Arizona Cypress	Juniper	TIFF, various
Arizona Mesquite	Pyracantha	Vinca
Canyon Hackberry	Sages (Texas, Chihuahuan,	Horizontal Juniper
Chinese Pistache	Desert, Cherry, Russian)	Trailing Rosemary
Desert Willow	Silverberry	Iceplant
Italian Cypress	Spanish Broom	Creeping Thyme
Lacebark Elm		Powis Castle Artemesia
Palo Verde		Dalea capitata
Pecan		Clover Fern
Pines		
Southern Live Oak		
Texas Honey Mesquite		
Texas Red Oak		
Sycamore		
Western Hackberry		

c) All landscape planting should serve to enhance the architectural value of the building, ground the building in the site, create a pleasant and attractive environment for pedestrians, and mitigate environmental conditions such as excess heat, strong winds and air pollution.

d) Trees shall include shade producing trees which achieve a mature size of at least 25 feet high and 25 feet spread and ornamental trees which have particular features such as spring blooms, fall foliage color or bark characteristics.

e) Shrubs shall include a mix of deciduous and evergreen plants.

f) Groundcovers shall serve to prevent soil erosion, provide color, and create an oasis feeling.

4. *Installation.* The irrigation system and landscaping shall be installed before the completion of building construction and prior to the issuance of a certificate of occupancy unless a written agreement has been made with the city. Such agreements extending the time of installation will be for a maximum period of nine months, and shall be subject to temporary certificate of occupancy provisions and fees.

5. *Planting for parking lots.* All new construction and adaptive reuse of properties shall require planted parking areas. Landscaping in parking areas shall follow section 32-266 of the LCMC, "Development standards for landscaping," with the following exceptions or specifications:

a) One tree shall be planted for every five parking spaces within parking lots as they pertain to the uses listed for each area.

b) Trees may be located between the parking lot and the building, or within the parking lot itself. In the event that the landscaped area is between the building and the lot, the area shall be no less than eight feet in width.

c) In the event that the parking area is compliant with development standards above and remains adjacent to public right-of-way, there shall be a landscape buffer no less than eight feet wide between the building and the sidewalk or street. The buffer strip shall consist of shade trees and low shrubs or perennial flowers, which may count toward the landscape requirement specified above.

d) Trees in parking lots shall be located in an island or planter in which the tree trunks, at mature size, shall be protected from motor vehicles. Islands and planters shall be a minimum of six feet wide, have a minimum area of 36 square feet and a raised border of at least four inches in height.

6. Property owners wishing to install landscaping in city right-of-way (for example, parkways or medians) shall first complete a maintenance and liability agreement with the city's public works department, with the understanding that liability and maintenance shall be property owner's responsibility.

7. In the event that a tree in city right-of-way must be removed in order to maintain or replace sidewalks, the regulations found in the Municipal Code chapter 26, article II, division 2 Repair and Replacement of Sidewalks, shall be followed.

L. *Walls and fences.*

1. Existing fences within the district shall remain in place so long as they conform to the standards stated herein. Increases in structure height, length or configuration shall require full compliance with fencing/wall requirements.

2. Historic structures. On properties with contributing structures listed on the state or National Historic Register, new walls or fencing should complement or be in keeping with the style of the structure to the greatest extent possible demolition, removal or alteration of existing historic fences, walls, retaining walls, and steps is discouraged.

3. Fences, walls and hedges facing the street shall adhere to clear sight triangle regulations.

4. Fences, walls and hedges that are within the rear and side yards shall be limited to a height of eight feet.

5. Retaining walls shall be designed in a manner limiting their height to what is absolutely necessary for the retaining purpose intended.

6. All other provisions regarding walls and fences not noted herein shall follow those found in section 38-60 of the 2001 Zoning Code, as amended.

M. *Signs.* All signage shall be of suitable materials and design so as to be compatible with the architecture of the structure and the residential character of the neighborhood. Sign permit applications shall be submitted for approval to the community development department in accordance with chapter 36 of the LCMC, unless specified below.

1. *Off-premises signs.* No off-premises signs shall be allowed in the ADO except for the following:

a) Political signs shall follow regulations stated in chapter 36-86 of the LCMC (Sign Code).

b) Off-premises sign displays regarding community events or holidays may be permitted, if approved by the city manager or designee.

2. *On-premises freestanding signs.*

a) Ground signs shall be the only freestanding sign allowed within the ADO, and shall be no greater than 24 square feet in size and four feet in height. One sign per lot shall be permitted.

b) On-premises freestanding signs are not permitted on parcels used for residential purposes, except for a development identification sign.

c) Ground signs may be illuminated, and shall follow regulations stated in chapter 39 of the LCMC (Outdoor Lighting).

d) Properties developed as business centers shall conform to the following:

i. One ground sign identifying the name of the center is permitted, and shall be no greater than 24 square feet in size and four feet in height.

ii. A property containing a business center sign may not have additional freestanding signs, except for temporary signage, which shall follow chapter 36 of the LCMC.

e) Ground signs shall be placed at least five feet from the outside edge of the right-of-way, and at least five feet from adjacent property lines and not within the clear sight triangle as defined by the City of Las Cruces Design Standards. See section 32-405.

f) Freestanding multi-use development directory signs are not permitted.

3. *On-premises attached signs.*

a) *Wall signs:*

i. One square foot of signage for each linear foot of exterior wall space, not to exceed 50 square feet per wall.

ii. The sign(s) shall be placed on the side of the building used to calculate the square footage of the sign.

iii. Window and projecting signage shall be considered types of wall signs.

b) *Multi-use development directory sign:* Exterior directory signs, with the name and location of all businesses within a multi-use development, may be wall-mounted as specified above.

c) *Home-occupation or live-work uses* in residential areas shall be allowed one non-illuminated attached sign no greater than four square feet in size. Freestanding signs shall not be permitted for home-occupation or live-work uses.

d) *Projecting signage:*

i. Projecting signs shall be considered double-faced signs with each sign face of equal size. Only one side shall be used to determine the square footage.

ii. Projecting signs shall not exceed six square feet in sign face area.

iii. Only one projecting sign shall be allowed per business per street frontage.

iv. Only ground floor commercial businesses shall be permitted to utilize projecting signs.

v. Projecting signs must clear walkable areas by at least eight feet as measured from the bottom of the sign to grade and may project no more than four feet from the building or closer than two feet to the sidewalk, whichever is less.

vi. Projecting signs shall be installed at right angles to a building front.

e) *Window signs:*

i. There shall be no more than one permanent window sign per window.

ii. Neon signs displayed indoors constitute permanent window signs. Only one neon sign shall be permitted per business facade.

iii. The total coverage of all permanent, neon and temporary window signs shall not exceed 25 percent of the total glass area of the window.

4. *Prohibited signs:* The following signs are prohibited in the Alameda Depot Neighborhood Overlay:

a) Variable electronic message display boards, whether temporary or permanent.

b) Portable and pole signs, whether temporary or permanent.

c) Permanent banners.

d) Pennants, streamers, and other fluttering devices, whether temporary or permanent.

e) Real estate, construction, contractor and "coming soon" signs over 12 square feet in area or over five feet tall.

f) Billboards.

g) All other signs as prohibited in section H of the Las Cruces Sign Code.

5. *Temporary signs:* Temporary signs shall follow provisions found in the Las Cruces Sign Code, chapter 36 of the LCMC.

N. *Demolition.* To preserve any contributing structure listed on the historic register (state or national) in the Alameda Depot Neighborhood Overlay, this section creates a 60-day demolition permit review process that allows time for interested parties to explore alternatives to the demolition of historic structures. Demolition for all other structures shall follow sections 30-491 and 38-63 of the LCMC.

1. *Demolition permit.* Demolition permit applications shall be submitted to the community development department prior to any demolition activity taking place. Community development department staff will review the application for compliance with the LCMC. A proposal for redevelopment of the property must accompany the permit application.

2. *Posting.* At the beginning of the 60-day demolition permit review process, the community development department will issue a sign that is to be posted in a conspicuous place on the property. The applicant is responsible for posting the sign and ensuring that it is in place for the entire 60-day period.

3. At the beginning of the 60-day demolition permit review process, the community development department will inform the neighborhood associations, the New Mexico State Historic Preservation Office (SHPO) and the Dona Ana Historical Society that a demolition permit has been applied for.

4. A demolition permit shall be issued upon the completion of the following items: 1) the completion of the 60-day period; and 2) the application meets all City Code requirements and has been approved by the community development department staff. (The applicant may use the 60-day time period to resolve any necessary Code compliance comments.) The permit application may be withdrawn by the applicant at anytime without charge.

5. Prior to the demolition of a historic structure, the applicant shall be responsible for fully documenting the structure, both interior and exterior, to provide a permanent record, in accordance with documentation procedures as follows. The demolition permit will not be approved without submittal and approval of this documentation by community development staff.

a) Complete the Historic Cultural Property Inventory (HCPI) forms 1 and 2, available in the community development department and online at:

b) Photograph the historic property: Take several exterior photos of the structure to be demolished (front, rear, sides, close-up views, details, setting, etc.). Photo processing, printing and labeling shall follow the protocol established on the National Register Photo Policy Fact Sheet, available in the community development department and online at: *http://www.nps.gov/history/nr/publications/guidance/Photo_Policy_final.pdf*

c) If measured drawings done by the Historic American Building Survey exist, the owner should annotate the drawings, showing changes to the property, interior and exterior, that have occurred up to the current date.

d) If known, a short history of the property should be included, in order to document how that property fits within the historic district or community.

e) The demolition permit will not be approved without submittal and approval of this documentation by community development staff.

6. Compliance with the procedure set out in this section is not required if it is determined by the City of Las Cruces that the immediate demolition of a historic structure is in the best interest of public health, safety and welfare. The applicant shall be responsible for documenting the structure in accordance with the procedure above to fully demonstrate the need for demolition and to provide a historic record of the structure. In the event that entering the structure would pose a threat to the health, safety and welfare of the documenter, interior photos are not required. This documentation must accompany the memo of determination for demolition by the building official prior to the issuance of a demolition permit.

O. *Land use/zone change requests.* It is possible to request an additional land use not already noted within the permitted use lists on a specific parcel within the Alameda Depot Neighborhood Overlay. Each request for an additional land use must be consistent with the Alameda Depot Neighborhood Plan and will be considered on a case-by-case basis. These requests will be processed per section 38-10 of the 2001 Zoning Code as amended.

P. *Submittal and review process.* The following submittal and review procedures are established for all new development to protect persons and property in the Alameda Depot Neighborhood Overlay. The applicant shall submit at minimum, one copy of all application materials to the community development department for review. Upon submittal, staff shall review the submittal for completeness. If all the required items have been submitted, the community development department shall issue a receipt for submittal.

1. *Buildings/structures.* Prior to the filing of an application for development and/or signs, a pre-application conference with community development department staff to review the proposal is strongly encouraged.

2. *Subdivisions.* For submittal and review of subdivisions within the district, refer to article V, chapter 37 of the LCMC pertaining to infill subdivision procedure. The Planning and Zoning Commission has approval authority.

3. *Signs.* Sign permit applications shall be submitted for approval to the community development department in accordance with chapter 36 of the LCMC and subsection "G" above.

4. *Variances.* A variance shall be defined as a variation in the numerical requirements of the 2001 Zoning Code as amended or the sign code. Numerical variances to the clear sight triangle requirements shall be considered, reviewed, denied or approved by the public works director or designee, as per article III of chapter 26 of the LCMC.

Q. *Appeals.* Any aggrieved person who is affected by a decision of an administrative official, commission, committee, or board in the enforcement of the Alameda Depot Neighborhood Overlay may appeal such decision in accordance with section 38-10 of the Zoning Code as amended.

R. *Enforcement of overlay zone district.* Provisions to enforce this section shall be consistent with the enforcement provisions of article II of the 2001 Zoning Code as amended.

(Ord. No. 2597, § I(exh. A), 12-6-10; Ord. No. 2775, § I(Exh. A), 2-16-16)

ARTICLE VI. SPECIAL PROVISIONS

Sec. 38-50. Temporary uses.

A. *Purpose*. The purpose of this section is to identify specific temporary uses that may be conducted within listed zoning districts for certain time periods and under special conditions.

B. *Definition.* A "temporary use" is a use (business, sale, display or event) which is conducted for a limited time. Temporary uses may be conducted in tents, temporary or permanent buildings, vehicles, trailers or outside. Other temporary uses not listed in this section may be listed under permitted uses for a specific zone.

C. *Submittal requirements.* To obtain a permit for a temporary use, the following information must be provided for the permit:

1. A description of the temporary use.

2. A site plan showing the location of all structures (both temporary and permanent) including the distance from these structures to the property lines and each other. Temporary structures must be at least five feet from all side and rear property lines and at least 15 feet from property lines along a roadway. These structures shall not violate the clear sight triangle. These structures, excluding fences and signs, must be at least ten feet from all other buildings on the property.

3. The site plan must also show the traffic circulation including parking spaces and driving aisles on the property. Temporary uses are not permitted to obstruct more than:

   - 25 percent of the parking area if there are 20 parking spaces or less.
   - 15 percent of the parking area if there are between 21 and 50 parking spaces.
   - Ten percent of the parking area if there are more than 50 parking spaces.

   The temporary use shall not obstruct disabled accessible parking spaces. There shall be adequate room for traffic circulation around the temporary use.

4. The date the temporary use will start and end and the hours of operation.

5. The name and address of the property owner at the location of the temporary use. Property owners must consent in writing to the temporary use on their property.

6. The Municipal Code has additional submittal requirements for various uses which must be submitted with the permit application. Listed in the next section are time limitations for specific temporary uses and the sections of the Municipal Code that apply to that use.

7. All uses proposed to be located in city parks shall comply with chapter 20 of the Municipal Code (see section 38-53).

D. *Time limitations.* Temporary uses are restricted to the time limits and zoning districts listed below. Temporary uses not listed in this section shall be permitted for up to 14 calendar days at one location in a calendar year. A nonconforming property (including but not limited to the use, structure, or lot) shall not be permitted to be used for temporary uses for more than a total of 90 calendar days in a calendar year. A single temporary use conducted for longer than the time limits stated in this section for that use shall be considered a permanent use and shall comply with all Municipal and other Code requirements.

Carnival, amusement park or hall, circus: These uses are permitted for no more than 14 calendar days at a single location one time in a calendar year (not including the time required to set up and take down the structures associated with the use). Permitted in OS-R, C-3, M1/M2 and M-3 zones (also see Municipal Code, chapter 6, article II and chapter 16, article IV). If the use will be for more than 14 calendar days, a special use permit shall be required (see section 38-54).

Christmas tree stands: Sales of Christmas trees shall not occur before November 15 or after December 31. Permitted in C-2, C-3, M1/M2 and M-3 zones.

Community wide event. Temporary uses at the time of a community wide event are permitted to begin one week (seven calendar days) before the beginning of the community wide event and shall end three calendar days from the last day of the community wide event. These temporary uses are permitted in addition to other types of temporary uses such as tent sales and outdoor sales and displays. Permitted in OS-R, R-4, O-2, C-2, C-3, M1/M2 and M-3 zones (also see Municipal Code chapter 16, article IV).

Firework stands: Sale of fireworks shall not occur before June 20 or after July 6. Sale of fireworks is also permitted three calendar days preceding and including New Year's Day, Chinese New Year and Cinco de Mayo of each year. Permitted in C-3, M1/M2 and M-3 zones (also see Municipal Code, chapter 11, article III).

Flea markets: Temporary flea markets shall operate for no more than 30 calendar days at one location in a calendar year. Permitted in C-3, M1/M2 and M-3 zones (also see Municipal Code, chapter 21.)

Kiddie ride carnival and exhibits: These uses shall be permitted for no more than 14 calendar days at a single location one time in a calendar year. Permitted in OS-R, C-3, M1/M2 and M-3 zones (also see Municipal Code chapter 6, article II and chapter 16, article IV.)

Special events: These events shall be permitted for no more than 14 calendar days at a single location one time in a calendar year. Permitted in OS-R, CBD, C-3, M1/M2 and M-3 zones (also see Municipal Code, chapter 16, article IV). Equestrian-related and agricultural-related events in the EE and REM zoning districts shall be permitted for no more than a cumulative grand total of 30 calendar days within a calendar year at a single location.

Temporary outside sales and displays: These types of sales and displays shall be permitted for no more than 21 calendar days at a single location one time in a calendar year. Permitted in C-2, C-3, M1/M2 and M-3 zones (also see Municipal Code chapter 16, article IV).

Temporary stands: These uses are permitted for no more than three months for the sale of seasonal merchandise and for no more than 30 calendar days for nonseasonal merchandise. Permitted in OS-R (when associated with a community wide or special event), C-3, M1/M2 and M-3 zones (also see Municipal Code, chapter 16, article IV).

Tent sales and activities: These types of sales and activities shall be permitted for no more than 21 calendar days at a single location one time in a calendar year. Permitted in OS-R (when associated with a community wide or special event), O-2, C-2, C-3, M1/M2 and M-3 zones (also see Municipal Code chapter 16, article IV). The fire department has several requirements for tents which must also be met.

Yard, garage or rummage sales, fund raising or celebration activities for nonprofit organization. These types of uses shall be conducted for no more than four calendar days, three times at one location in a calendar year. No permits are required for these uses when conducted from an individual's dwelling or an institution. If conducted from a business or other property not used mainly for residential or institutional purposes, all requirements for temporary uses must be met. This use is permitted in all zones.

E. *Signs.* Signs for temporary uses shall comply with the sign code requirements for temporary signs.

F. Conversion from temporary to permanent. When an applicant wants a temporary use to become a permanent and legal use or when the temporary use exceeds the stated time limits, the use must meet all applicable city codes. After meeting the requirements of all city codes, approvals must be obtained from all reviewing agencies within the business registration review process. Specific requirements that shall be met include, but are not limited to:

1. *Landscaping.* This issue shall be reviewed by the city community development department to determine if the minimum landscaping requirement is met, and

2. *Parking and drainage.* The city community development department shall review these issues to determine if the minimum parking and drainage requirements are met.

(Ord. No. 2354, § I, 1-22-07)

Sec. 38-51. Accessory uses and structures.

A. *Purpose.* The purpose of this section is to define the regulations regarding accessory uses and structures related to a residential use in residential zoning districts. All permitted nonresidential uses and associated structures in any zoning district are considered principal or primary and shall comply with all other requirements of this Code. Special zoning districts, e.g., University District Overlay, rely upon this section for regulating accessory uses and structures or have specific requirements for accessory uses and structures.

B. *Definition.*

Accessory use or structure is a subordinate use or structure, the use of which is incidental to and customarily found in connection with the principal dwelling on the same property. Examples: gazebo, greenhouse, tool shed, detached garage, guest dwelling, swimming pool, tennis court, barn, and flag pole.

C. *Accessory uses and use of accessory structures.*

1. An accessory structure shall not be utilized for human habitation, except in the case of a guest dwelling.

2. An accessory use or an accessory structure may be proposed on a separate lot adjacent to the lot containing the residential use; however, the lots shall be replatted to create one property. This provision shall not apply to properties in an EE or REM rural residential zoning district when complying with chapter 7, animals, of the Municipal Code and for agricultural, farm, or equestrian uses.

3. No accessory use or accessory structure may be permitted on a property without a residential use, except in the case of property located in an EE or REM rural residential zoning district when complying with chapter 7, animals, of the Municipal Code and for agricultural, farm, or equestrian uses.

4. Development standards, such as setbacks and height, for a residential use and its associated accessory uses and structures in an office, commercial or industrial zoning district shall be the same as the zoning district in which the residential use is located. See section 38-32D.

5. Metal shipping containers (a.k.a. cargo containers and intermodal freight containers) are not allowed to be used as accessory structures in single-family residential zones or multi-family residential zones consisting of single-family dwellings, except in the case when the primary structure/dwelling is constructed using shipping containers. The shipping container shall be required to follow the urban design requirements of this section.

   Said shipping containers used for storage purposes are permitted within multi-family, commercial and industrial zoned or other non-residential zones and uses provided they comply with urban design requirements of section 38-61 LCMC.

Shipping containers are allowed on private property in all zones temporarily to store building materials and/or construction tools during construction pursuant to an active building permit on the same property or within a centralized location within a construction area. Said container(s) shall be removed upon completion of the project and/or issuance of a certificate of occupancy or completion.

Shipping containers, PODS or similar "you pack" type moving containers are allowed within the front yard (driveway only) of residential uses for the purposes of packing/unpacking in preparation of or after a move to or from the subject property. Use of such containers shall be limited to 21 days (three weeks) after which the unit shall be removed from the property.

D. *General development standards and exceptions.*

1. No structure, whether a building permit is required or not, shall be permitted within the setback of the required front yards, primary and secondary, except flag poles, walls and fences, or decorative structures such as a bird bath.

2. Tier development requirements—Residential zoning districts:

Tier 1:

a. Uses: Uses within this category are storage, recreational and pet uses, such as storage buildings, doghouses and kennels, playhouses, swing sets, and sand boxes.

b. Cumulative number and size limits: There is no limit on the number of such structures, provided all storage buildings, doghouses, kennels, playhouses, swing sets, and sand boxes do not exceed a cumulative square footage of 300 square feet and no single structure exceeds 120 square feet.

c. Building permit required: No.

d. Development standards:

(1) Maximum height: Same as the principal structure on the same parcel.

(2) Maximum coverage of the required rear yard: Not applicable.

(3) Minimum building separation: Not applicable.

(4) Separation (setbacks) for interior and corner lots: Not applicable.

(5) Urban design compliance: Not applicable.

Tier 2:

a. Uses: Uses within this tier are swimming pools and tennis courts.

b. Cumulative number and size limits: There is no limit on the number or size of such structures, provided the required setback listed in d(4) is met.

c. Building permit required: Yes.

d. Development standards:

(1) Maximum height: Not applicable.

(2) Maximum coverage of the required rear yard: Not applicable.

(3) Minimum building separation: Not applicable.

(4) Setbacks for interior and corner lots: Five feet from all property lines.

(5) Urban design compliance: Not applicable.

Tier 3:

a. Uses: This category includes all accessory uses, buildings and structures when:

(1) A structure exceeds 120 square feet, or

(2) The cumulative square footage of all structures exceeds 300.

(3) Tier 2 uses are excluded.

b. Cumulative number and size limits: There is a limit of three such structures for each property. The maximum cumulative, combined square footage for all structures is 1,089 square feet for property one-half acre or less. For property more than one-half acre, the maximum cumulative, combined square footage for all structures is five percent of the total land area of the property.

c. Building permit required: Yes.

d. Development standards:

(1) Maximum height: Same as the principal structure on the same parcel. If no principal structure is required by that zoning district, the maximum building height for that zoning district applies, except in EE and REM rural residential districts where 45 feet is the maximum when complying with chapter 7, animals, of the Municipal Code and for agricultural, farm, or equestrian uses.

(2) Maximum coverage of the required rear yard: 30 percent.

(3) Minimum building separation: The minimum building separation between structures located on the same lot, tract or parcel shall meet the requirements of the adopted Building Code.

(4) Separation (setbacks) for interior and corner lots: Accessory uses or structures shall meet the minimum separation from the property line as required by the adopted Building Code. Any portion of an accessory use or structure encroaching into the separation requirement shall be required to meet the fire rating requirements of the adopted Building Code.

e. Urban design compliance: Yes.

Urban design: Accessory uses and structures in all residential zoning districts, except the EE and REM zoning districts when complying with chapter 7, animals, of the Municipal Code and for agricultural, farm, or equestrian uses, shall comply with the following:

1. Architectural style: Accessory structures shall be of the same or compatible architectural style as the principal dwelling.

2. Construction materials: Accessory structures shall be finished on the exterior with similar construction materials as the principal dwelling. Metal building material may be used, provided the accessory structure is of a same or compatible architectural style and colors as the principal dwelling.

3. Color: Accessory structures shall be of similar or the same color as the principal dwelling.

The community development director or designee shall determine compliance. Appeal of a staff decision may be made to the planning and zoning commission.

E. *Drainage.* Water run-off contributed by an accessory use or accessory structure shall be contained on site and be consistent with the city's design standards unless approved by the community development department director or designee. Furthermore, no accessory use or accessory structure shall be located in the required on-site ponding area. Calculations shall be provided to indicate that all water runoff will be accommodated on site consistent with the city's design standards.

F. *Other exceptions.*

1. See section 38-59, antennas, towers, communication structures, and other vertical structures.

2. See section 38-60, walls and fences.

3. See guest dwelling, section 38-33A and section 38-53, conditional uses.

(Ord. No. 2824, § I(Exh. A), 9-18-17)

Editor's note(s)—Ord. No. 2824, § I(Exh. A), adopted Sept. 18, 2017, repealed the former § 38-51 and enacted a new § 38-51 as set out herein. The former § 38-51 pertained to similar subject matter and derived from Ord. No. 2354, § I, adopted Jan. 22, 2007.

Sec. 38-52. Home occupation business registration.

A. *Purpose and intent.* The purpose of a home occupation business registration is to allow a home occupation that is compatible with the neighborhood. The specific intent of a home occupation business registration is to:

1. Protect residential areas from any negative impacts associated with home occupations.

2. Allow residents a broad choice in the use of their homes as a place for income and livelihood.

3. Establish criteria and standards for conducting home occupations within zoning districts in which a residence is permitted.

A home occupation business registration is required for a proposed business in any residential structure regardless of the zoning district. However, the property owner may receive a business registration in compliance with article IV of chapter 16 of the Las Cruces Municipal Code for a proposed business in a residential structure in a nonresidential zoning district if the property complies with all other codes and ordinances, e.g., parking, landscaping, drainage, building code requirements.

B. *General conditions.* A home occupation is permitted in any residential structure or accessory building(s) subject to the following conditions:

1. No more than one person, in addition to the permanent occupants residing on the premises, shall be engaged in a home occupation at the residence.

2. The home occupation use of a dwelling shall be clearly incidental and subordinate to its residential use. Not more than 25 percent of the dwelling's gross floor area, not to exceed 500 square feet, shall be used in conducting the home occupation; this square footage limitation shall not apply to a babysitting service or child care.

3. Any home occupation or storage in connection with any home occupation shall be totally enclosed within the dwelling or accessory building(s) and limited to services and items which are necessary to conduct the home occupation or have been ordered by a customer, but have not been delivered to the customer. However, no alcoholic beverages for sale shall be stored on the premises.

4. There shall be no direct sale of products off display shelves or racks. Retail sales shall only be conducted if product orders are placed earlier by telephone/fax, mail, computer or at a sales party. Sales or service to customers shall be arranged by appointment and scheduled so that not more than one customer vehicle is at the dwelling. This requirement shall include the sale of firearms, but does not apply to a sales party or babysitting service.

5. There shall be no change in the outside appearance of the building or premises, except as described in paragraph 6 below, or other visible evidence of the conduct of a home occupation. There shall be no outside storage of business- related equipment or supplies except one company owned vehicle only, which is one ton or smaller and also used for personal transportation purposes, shall be exempt from

this condition. Only this vehicle shall be permitted to have signs and advertising in accordance with the vehicle sign provisions within the sign code.

6. Signs shall not be permitted to advertise a home occupation business or its products, except a sign one square foot in size, non-illuminated, mounted flush against the home. This provision shall supersede any sign code requirements.

7. No equipment or process shall be used in a home occupation which creates noise, vibration, glare, fumes, odor or electrical interference detectable at the property line, and no equipment or process shall be used which creates visual or audible interference for any radio or television receivers on and near the premises, which exceeds that normally found in a residential area.

8. There shall be no toxic (pesticides, herbicides, rodenticides), explosive, highly flammable, combustible, corrosive, radioactive or other restricted materials used or stored on the premises of a home occupation beyond the amount kept at a normal residential dwelling or on hand to operate or maintain equipment and permitted by the Uniform Fire Code as adopted by the city.

9. No home occupation shall cause an increase in the use of any one or more public utility (water, sewer, electricity or garbage collection) to double. The combined utility usage of the dwelling and home occupation shall not exceed two times the average usage for the 12 months prior to the home occupation beginning.

10. All home occupations shall be required to obtain a home occupation business registration from the community development department.

C. *Permitted home occupations and conditions.* Permitted home occupations shall be classified into categories of similar uses. For the purpose of this section, the use categories shall be professional office, professional service, instructional service, home artisan business, small item repair service and babysitting/child care home occupations. Nonspecified home occupations which are similar to those home occupations listed below may be permitted by the Community Development Director or designee.

1. *Professional office:* A professional office shall be considered an office for accountants, appraisers, architects, attorneys, contractors, engineers, financial planners, insurance agents, consulting services, real estate and similar office uses. Dentist or medical doctor offices for consulting services only, no testing that would produce medical waste, shall be permitted home occupations as a professional office. No hazardous waste, including medical waste, except ordinary household hazardous and medical waste, shall be generated.

2. *Professional service:* A professional service shall be considered computer programming, beautician, barber shop, direct distribution (Amway, Avon, Tupperware, etc.), maid service, mail order, massage therapy, ironing, pet grooming, telephone/fax answering, word processing and similar service use. Beauticians, barber shops, and massage therapists licensed by the state shall be limited to one customer station per property.

   A person with a home occupation business registration may travel to another person's property to, for example, change oil, fix flat tires, replace belts and hoses, do vehicle detailing on the other person's private vehicles. However, under no circumstances is the person registered under the home occupation business registration authorized to perform these services for other people at his/her residence.

   The following professional service business shall be prohibited as home occupations. These uses include, but are not limited to, adult bookstores/video stores/adult amusement establishments, fortune telling, health and exercise facilities, massage parlors, palm reading, tattoo and body piercing parlors.

3. *Instructional service:* An instructional service use shall be considered educational tutoring, music lessons and similar instructional services. A maximum of five students may be at the dwelling at any one time. No music instruments may be amplified. The city's noise ordinance shall be complied with regardless of the number of students at the dwelling.

4. *Home artisan business:* A home artisan business shall be considered artist studios, cabinet making, dress making, engraving, furniture making, hobby crafts, jewelry making, sewing, tailor, writing studio and similar uses.

5. *Small item repair service:* A small item repair service shall be considered bicycle, computer, television, vacuum cleaner, locksmith, watch, tool, shoe and similar repair services. Auto repair, motorcycle repair, lawn mower repair, large appliance repair, small engine repair and similar large item repair shall not be considered a small item repair service home occupation.

6. *Babysitting service/child care:* A maximum of six children at one time may be at a dwelling for babysitting service. More than four children, but no more than 12 at one time at a dwelling shall be considered child care which requires compliance with state licensing regulations and this Code for a family child care home (five to six children) or a group child care home (seven to 12 children). In all cases, a home occupation business registration shall be required.

D. *Home occupation parking requirements.* The parking requirements for home occupations shall conform to the following conditions:

1. On-street parking near a home occupation for customers or clients shall be permitted only if the residential appearance of a neighborhood is maintained.

2. No more than two client or customer vehicles per hour shall frequent a home occupation, except for instructional service, babysitting service or child care.

3. Deliveries in connection with and to home occupations shall be limited to:

a. No more than two deliveries per week from a two axle, six tire vehicle;

b. No more than one delivery per month from a three-axle vehicle;

c. No delivery vehicles with four or more axles;

d. On-street parking near a home occupation by delivery vehicles for delivery purposes, only.

4. Vehicles larger than one ton shall not be used, stored or parked by the business operating as a home occupation at the residence or on the street.

5. A home occupation shall not cause the elimination of any required off-street parking for the main dwelling.

E. *Home occupation business registration approval.* Home occupations shall be approved through the city business registration and licensing process as administered by the community development department.

1. *Application.* Application for a home occupation business registration permit shall be submitted to the community development department. The deputy city clerk for business registrations and licensing or designee shall provide the appropriate forms. The complete application shall be reviewed by the community development department for compliance with applicable city codes and regulations.

2. Review and scope. If compliance can be determined through the completed application, the home occupation business registration will be issued automatically by the community development department. If compliance cannot be determined through the completed application or if questions arise as part of the review of the application, a more thorough review and/or inspection will be conducted by the community development department and/or fire department.

Applications for home occupation business registrations which do not meet the constraints of this section shall be denied. The denial determination may be com pleted at either the time of application, as part of the application review process, or the inspection process.

3. *Renewal.* A home occupation business registration shall be renewed each year, provided no provisions of this section have been violated. Information or confirmation of adherence to the home occupation requirements may be required as part of the renewal process.

F. *Home occupation business registration revocation.* A home occupation business registration may be revoked by the city for nonconformance with this section or any city codes. The following process shall be followed for the revocation of a home occupation business registration.

1. *Scope.* The city may revoke any home occupation business registration for noncompliance with the requirements of this section or any city code. Any home occupation business registration which is revoked or not renewed shall become null and void and such use shall cease. Noncompliance of a home occupation shall be determined by paragraph F.3. below.

2. *Home occupation inspections.* Home occupation business registration recipients shall allow reasonable inspection of their premises at any time by officials of the city to determine compliance with the requirements of this section, any other section of this code or other city ordinance.

3. *Revocation process.* The procedure to be followed by the city to revoke a home occupation business registration includes:

a. A home occupation business registration shall be revoked for the following reasons:

1) A change in home occupation use.

2) A failure to renew the business registration and/or license for the home occupation.

3) A failure to permit the city to inspect the premises of a home occupation.

4) The providing of false or incomplete information on the home occupation business registration application.

5) A failure of the home occupation to meet any of the requirements of this section or any other section of this code or other city ordinance.

b. The steps followed by the city to revoke a home occupation business registration shall include:

1) After inspection or failure to allow inspection, the city determines a violation of this section has occurred.

2) The City notifies the proprietor of the home occupation of this Code violation by certified mail. This notification shall include:

a) A specific description of the violation of this section.

b) The alternatives available to make the home occupation conform to this section.

c) A maximum 30 calendar day time period to abate the violation to this section. Violations impacting health, safety and welfare may be given a time period less than 30 calendar days for abatement.

d) A description of further action the city will take if the violation is not abated.

3) The proprietor of a home occupation shall be notified of the revocation of a home occupation business registration by certified mail if the violation is not abated within the time period stated within the initial letter explaining the violations.

4) The city shall take all necessary actions to enforce this section.

G. *Appeal.* An appeal concerning any action by the city in regards to this section may be submitted per article II of this Code.

H. *Violations.* Home occupations are subject to section 38-16, enforcement provisions, of this Code and section 1-10 of the Municipal Code.

(Ord. No. 2354, § I, 1-22-07)

Sec. 38-53. Conditional uses.

The following land uses are permitted in the zoning districts listed by complying with the specific conditions described. Other conditions and requirements, e.g., parking, walls and fences, that apply to all land uses are found in other sections of this Code. There also may be requirements in the Municipal Code with which specific land uses must comply.

Section 38-33H. Above Ground Storage Tanks for Flammable and Combustible Liquids and Liquid Petroleum (LP) Gas (All zoning districts). Tanks shall be permitted only when meeting Uniform Fire Code requirements as adopted by the City of Las Cruces, when receiving approval from the Las Cruces Fire Department, or when receiving approval from the State of New Mexico LP Gas Bureau. This provision also applies to Contractor's Yard installations.

Section 38-33A. Accessory Dwelling Unit (EE, RE, REM, R-1c, R-1a, R-1b, R-1cM, R-1aM, and R-1bM). (See Guest Dwelling in this section.) This use is intended to allow flexibility in existing and proposed housing designs in order to better accommodate family living arrangements which often result due to growing economic and social demands and/or impacts. Accessory dwelling unit means a self-contained living quarter containing independent kitchen (cooking/culinary) facilities attached to and under the same roof as the main dwelling, created by:

1. The conversion of an existing single-family dwelling; or

2. The addition to an existing single-family dwelling; or

3. The incorporation of applicable areas into a new single-family dwelling design which is subsequently constructed.

This use shall be permitted provided:

a) Owner of record shall reside in either the main or accessory dwelling unit for a minimum of six months of each calendar year. Instances where non-residency occurs in excess of six months due to a legitimate illness or accident requiring hospitalization or special care shall be exempt from this provision; and

b) No more than one accessory dwelling unit shall exist per single-family dwelling/lot; and

c) Accessory dwelling units shall be created solely to accommodate those related to the family. Actual occupancy is subject to Item a) above; and

d) A maximum permitted increase to the size of an existing dwelling for purposes of an accessory unit shall be 30 percent of the heated/cooled floor area. No more than 30 percent of the heated/cooled floor area for new construction may be allocated for the accessory dwelling unit; and

e) Exclusive of the applicant's proposal, no more than ten percent of single-family dwellings, in zoning districts that permit single-family dwellings, within a 500-foot radius of the applicant's property (measurement shall be from property line to property line exclusive of rights-of-way) shall have

accessory dwelling units. If there are no appropriately zoned properties within the radius measured, the proposal shall be considered as meeting the ten percent requirement; and

f) The lot/parcel proposed for such use shall meet the minimum area requirements of the zoning district; and

g) Every effort shall be made to avoid additional entrances or other visible changes on the facade of the house facing the street. Modifications or initial designs shall to the extent possible, conform to the overall design of the house. Exterior materials used for the accessory unit shall, to the extent possible, be of a compatible color, texture, and type; and

h) Accessory dwelling units shall retain direct internal access to the main dwelling in a manner that will allow easy reconversion back as part of the single-family unit (single kitchen). Accessory dwelling units created through an addition or designated as such in new construction, shall be connected to the main dwelling by a common wall(s). A minimum of four feet, including a doorway at least three feet wide, of the accessory unit's common wall(s) length shall be used in the connection. Direct internal access to the accessory living areas shall exist through functional/integral living areas such as a living room, family room, main hallway, etc. Ancillary hallways, garages, laundry rooms, or similar areas shall not serve as the sole connecting facility; and

i) Landscaping shall be used, to the extent possible, to minimize the impact to adjacent properties; and

j) Accessory dwelling unit shall conform to Section 38-53, Off-Street Parking requirements; and

k) The accessory dwelling unit use shall be discontinued on the grounds of non-compliance with any applicable conditions, codes, or ordinances and thereby, require reconversion back as a single-family dwelling. A change in ownership of property where an accessory dwelling unit exists for a person(s) who is/are no longer a family member of the accessory dwelling unit occupant or a change in the intended accessory dwelling unit occupancy status shall cause said use to immediately become void. In such instances, it shall be the responsibility of the new/present owner to either apply for continued accessory unit use or reconvert the structure back to a single-family unit as required pursuant to all applicable regulations.

Section 38-33A. Apartment (R-4). The residential uses identified may be used; however, in their use the minimum density threshold shall be met.

Section 38-33F. Bank, Bonding & Financial Institution/Facility (Drive Thru including ATM and other electronic banking drive thru) (O-2, C-2, and C-3). Stacking lanes shall be provided and designed to insure that no bank or ATM traffic backs into the street giving access to the bank. Banks or ATMs shall have access to a major local or higher designated roadway. For stacking lane requirements, see Section 38-58.

Section 38-33A. Bed and Breakfast (EE, RE, REM, R-1c, R-1a, R-1b, R-1cM, R-1aM, R-1bM, R-2, R-3, R-4, O-1, O-2, C-1 and C-2). This land use shall have direct access to at least a major local designated roadway. In the EE, RE, REM, R-1c, R-1a, R-1b, R-1cM, R-1aM, R-1bM, R-2, R-3, O-1 and C-1 zoning districts, the number of rooms is limited to eight. In the R-4, O-2 and C-2 zoning districts, the number of rooms is limited to 15. In application of Matrix 1, overall design of buildings and/or site design shall be consistent with the residential neighborhood, architecturally compatible with existing buildings or be architecturally compatible with building types normally found in the zoning district in which it is located. All parking shall be screened from view along any street.

Section 38-33G. Cannabis Retailer (C-1, C-2, C-3). Cannabis establishments shall comply with all State of New Mexico regulatory and licensing requirements. Cannabis retailers shall be located 300 feet from a school or daycare, excepting commercial schools and schools of higher learning serving those 18 years and older. Further, no cannabis retailer in C-1, C-2 or C-3 zoning districts shall be located closer than 300 feet to a single-family residential zone and shall not be closer than 300 feet to another cannabis retailer unless a

special use permit is obtained per Section 33-54. On-site consumption of cannabis is limited to indoors and is entirely prohibited in the C-1 zoning district.

Section 38-33G. Cannabis Retailer (M-1/M-2). Cannabis establishments shall comply with all State of New Mexico regulatory and licensing requirements. A cannabis retailer in the M-1/M-2 zoning district is only permissible as accessory to a cannabis industry and is limited to 5,000 square feet of retail sales space or retail sales space limited to 49 percent of the total building square footage, whichever is less. On-site consumption of cannabis is limited to indoors.

Section 38-33D. Cemetery/Columbarium (R-2, R-3, R-4). Any cemetery site shall contain at least five acres and shall be located on a major local or higher designated roadway. A Columbarium shall be located on a major local or higher designated roadway with the lot size meeting the zoning district minimum lot size.

Section 38-33D. Child Care or Preschool (EE, RE, REM, R-1c, R-1a, R-1b, R-1cM, R-1aM, R-1bM, R-2, MT, M1/M2 and M-3). Child Care Center, Group Child Care Home, Family Child Care Home, preschool, nursery school, day nursery, kindergarten and similar uses shall be in accord with State licensing requirements. Care of 13 or more children at one time is prohibited in the residential zoning districts listed. When provided in industrial zoning districts, Child Care Center shall be accessory to industrial uses and shall be within buildings of one of the industrial uses served. See Section 38-52, Home Occupation Business Registration, for babysitting service/child care when 12 or fewer children are cared for.

Section 38-33D. Community Buildings—Uses: Public or Private (EE, RE, REM, R-1c, R-1a, R-1b, R-1cM, R-1aM, R-1bM, R-2, R-3, and OS-R). These uses shall be located on a collector or higher designated roadway. Structures or parking located within 25 feet of a residential zoning district shall provide an opaque buffer consisting of landscape and walls or fences. Dumpsters or other garbage collection facilities shall not be located within 25 feet of property used for residential purposes.

Section 38-33I. Construction Yard or Building(s) (Temporary) (All zoning districts). Such yard or building(s), including a mobile home or recreational vehicle for a temporary residence or construction office, or any other facilities or arrangement approved by the Community Development Director or designee shall be removed upon completion of construction and in compliance with the Chapter 30 of the Municipal Code. Construction yards and buildings or any other facilities shall be maintained in a neat and orderly fashion. Open yards shall be enclosed by a fence at least five feet in height.

Section 38-33A. Guest Dwelling (EE, RE, REM, R-1c, R-1a, R-1b, R-1cM, R-1aM, and R-1bM). (See Accessory Dwelling Unit in this section.) No more than one guest dwelling shall be permitted per lot with a single-family dwelling. A guest dwelling may be attached to or detached from a single-family unit. The guest dwelling shall be no more than 50 percent of the main dwelling's heated/cooled square footage and shall not contain a kitchen. A guest dwelling that is not part of the main dwelling is considered an accessory building and shall meet the requirements for accessory buildings, including setback and size restrictions. A guest dwelling is to be used for temporary occupancy only and is not to be rented or leased. Properties using a septic tank may not have a separate septic tank for a guest dwelling.

Section 38-33H. Parking Facilities, Commercial (Garages & Parking Lots) (R-4). Parking lots must be within 500 feet of any office, commercial, or industrial use or zoning district. The parking area shall be suitably landscaped, paved and drained, lighted, and maintained free of debris. (See Section 38-58)

Section 38-33E. Park, Public and Private (All zoning districts).

- Neighborhood Parks: Generally, these parks will be up to ten acres in size. Commercial amusements, circuses, carnivals, craft fairs, etc., shall be prohibited. Only recreational activities and neighborhood affairs, such as, concerts, may be permitted.
- Community Parks: Generally, these parks will be up to 100 acres, but not less than ten acres in size, and should be located on a minor arterial or higher designated roadway. Recreational activities, concerts, craft fairs may be permitted.

- Regional Parks: Generally, these parks will be more than 100 acres in size and should be located on a major arterial. All types of recreational activities and high intensity uses (carnivals and circuses) amusements, concerts, and craft fairs may be permitted.

All uses proposed to be located in City parks shall comply with Chapter 20 of the Municipal Code.

Section 38-33G. Private Club or Lodge (EE, RE, REM, R-1c, R-1a, R-1b, R-1cM, R-1aM, R-1bM, R-2, R-3, R-4, and OS-R). A private club or lodge shall be located on a major local or higher designated street. Structures or parking located within 25 feet of a residential zoning district shall provide an opaque buffer consisting of landscaping and walls or fences. Dumpsters or other garbage collection facilities shall not be located within 25 feet of property used for residential purposes.

Section 38-33I. Public/Private Utility Installations, e.g., substations, waterwells, transformers, regulators, lift stations, telecommunication site (All zoning districts). The site shall be developed and maintained in conformance with the general character and appearance of the district, and such development shall include landscaping and suitable opaque screening in the form of a solid wall, fence or compact shrubbery around the entire perimeter of the lot or tract, or around the installation itself in cases such as transformers. A wall or fence may be up to ten feet high.

Section 38-33D. Religious Institutions (Over Ten Persons)/Columbarium (All zoning districts except Industrial). Religious institutions, with or without a columbarium, shall be located on a major local or higher designated roadway. Structures or parking located within 25 feet of a residential zoning district shall provide an opaque buffer consisting of landscape and walls or fences. Dumpsters or other garbage collection facilities shall not be located within 25 feet of property used for residential purposes.

Section 38-33D. Schools (K-12) Public, Private, Parochial/College or University/Commercial, Trade or Technical (For zoning districts, see page Section 38-33D). Elementary, Middle or High Schools shall be located on a collector or higher designated roadway. Commercial, Trade or Technical Schools, College or University shall be located on a minor arterial or higher designated roadway. All sites shall have a minimum of one acre. Structures or parking located within 25 feet of a residential zoning district shall provide an opaque buffer consisting of landscape and walls or fences. Dumpsters or other garbage collection facilities shall not be located within 25 feet of property used for residential purposes.

Section 38-33E. Swimming Pool, Commercial or Public (All zoning districts except O-1, C-1 and M-3). A protective fence or wall no less than six feet in height, measured from the highest abutting property, shall be provided which completely encloses the pool area, and the pool shall be no closer than 25 feet from any property line. Approval from the electric utility is required to ensure safety. (See Section 38-60)

(Ord. No. 2354, § I, 1-22-07; Ord. No. 2986, § (I)(Exh. A), 9-7-21)

Sec. 38-54. Special Use Permits.

A. *General provisions and procedures.* A Special Use is a use that is not permitted by right in a zoning district. A Special Use requires review and approval by the Planning and Zoning Commission to determine impacts on the surrounding area. The procedures for such approval are as follows:

1. *Pre-application procedures.* Any proposed Special Use Permit shall first be reviewed at a pre-application meeting scheduled and held by the Community Development staff. The pre-application process shall be subject to the provisions provided for in Section 38-10.C. This meeting does not require a written application or fee. The results of this meeting shall not obligate the Planning and Zoning Commission or City Council.

2. *Application procedures.* An official application, including the Development Statement, for a Special Use Permit shall be obtained from the Community Development Department. Application requirements shall include, but not be limited to:

a. A letter of intent stating the following:

1) A statement of the purpose and use of the property;

2) All property improvements to be made; and

3) A development schedule indicating the approximate dates at which construction or phases of construction will begin and end.

b. An accurate and complete boundary survey shall be made of the land to be developed. Property lines shall be shown giving the bearings in degrees, minutes and seconds. Distances shall be shown in feet and hundredths. Curved boundaries or lines on the survey shall provide sufficient data to enable the re-establishment of curves on the property. The location and description of all monuments set or found shall be included where applicable. If only part of the property is to be used for the Special Use, the limits or boundary of the Special Use shall be described in addition to the entire property.

c. Site plans. The site plans shall be at a scale that adequately represents the information as determined by the Community Development Director or designee. The plans shall be prepared on sheets of paper that are at least eight and one-half inches by 11 inches in size. Copies provided shall be legible and of a good quality, with no limit to the number of sheets used. The plans shall indicate the following:

1) Title of site plan.

2) Total acreage of site.

3) Date of preparation, north arrow, written and graphic scale.

4) Identification of site by lot, block, subdivision, if applicable.

5) A statement of ownership, signed by the property owner, that complies with Section 38-10.C.8.

6) Name and address of property owner.

7) Name and address of applicant, if applicable.

8) Name and address of consulting firm or representative, if applicable.

9) Location and type of all land uses.

10) All site improvements with all setbacks indicated.

11) Dimensions of all buildings.

12) 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.

13) A landscaping plan, to include the location, size, common name, and biological name of all landscaping materials.

14) Where applicable, pedestrian and bicycle circulation system, and its relation to surrounding circulation.

15) Where applicable, location and arrangement of all open space, common recreational space, and private open space.

d. Architectural renderings or artistic drawings. The drawings shall be prepared on sheets of paper that are at least eight and one-half inches by 11 inches in size. Copies provided shall be legible and of a good quality, with no limit to the number of sheets used. The drawings shall illustrate the following:

1) All new development illustrating all exterior building materials and colors.

2) All new development illustrating relationships to neighboring uses, including site lighting.

3) Sign location, materials, color, size, shape, and lighting.

A drainage facilities plan, environmental impact statement and/or other items not listed above may be required by the Community Development Director or designee, or the Planning and Zoning Commission.

Application materials which are illegible and/or otherwise of a low quality will not be accepted.

A portion of the submittal requirements may not be required in all cases. Upon receipt of a written request justifying the deletion of required information, the Community Development Director or designee may waive any submittal requirement. The Planning and Zoning Commission may require additional items and resulting information in addition to the submittal requirements as per this section. Additional items and/or information requested by staff may include, but not be limited to, the need for early notification to a neighborhood group(s) and/or defined noticed area. Additional requests shall be justified in writing. The City Council may require additional information before acting on an appeal.

Special Use Permit applications processed via the IDP for residential uses may exclude the landscaping plan and schedule as part of the submittal. All landscaping requirements of the City Design Standards shall be complied with at time of construction.

e. Copy of early notification letter to neighborhood group(s) and/or defined noticed area and copy of minutes (summary or verbatim) from any required meeting pursuant to Section 38-10.C.1.(d)(v).

3. *Public hearing and notice procedure.* A public hearing shall be held by the Planning and Zoning Commission for all Special Use Permits in accordance with the provisions of Section 38-10 of this Code.

4. *Review and approval procedures.* The Planning and Zoning Commission may deny a Special Use Permit request or may grant final approval including the minimum conditions listed in Paragraph 38-54.B. Also, approval may be granted with additional conditions imposed which are deemed necessary to implement the Comprehensive Plan and Plan elements and to insure that the purpose and intent of this Code are met to protect and provide safeguards for persons and property in the vicinity. Appeal of a Planning and Zoning Commission decision may be made to the City Council in accord with the provision of Section 38-13.

5. *Time limitations, revocations, and development standards.* In addition to the imposition of conditions, the Planning and Zoning Commission may impose a time limitation on the Special Use Permit. If a Special Use is discontinued for a period of one year, said permit shall automatically be revoked. If a certificate of occupancy and/or a business registration is not issued for the property with the Special Use Permit within two years from the date of Planning and Zoning Commission approval, or if appealed, City Council approval, the Special Use Permit shall be revoked automatically. All improvements shall be in accord with the development standards within the district, except as otherwise authorized by the Special Use Permit. There shall be no major revisions in the approved

Special Use site plan, except as approved by the Planning and Zoning Commission, or if appealed, approved by City Council.

Any major revision proposed to the Special Use Permit and site plan shall require resubmittal of the Special Use Permit and site plan in their entirety. Minor revisions are those changes that are not major and may be approved by the Community Development Director or designee. Major revisions to the Special Use Permit and site plan shall include, but are not limited to:

a. Any change in land use;

b. Fifteen percent cumulative increase in land use or building square footage;

c. Fifteen percent cumulative increase in vehicular traffic on any roadway segment or intersection;

d. Any increase or decrease in size of the Special Use area;

e. Any reduction in screening, bufferyards and setbacks at the Special Use boundary line;

f. Fifteen percent cumulative increase in the buildable area for structures including signs;

g. Reduction or elimination of time limitations; and

h. Renewal of the Special Use Permit.

6. *Recording of the special use permit.* After approval, the Special Use Permit shall be issued by the Community Development Director or designee and shall include all information, conditions, reference to site plans, and other provisions of the Special Use. The Special Use Permit shall be filed in the Doña Ana County property records. The Special Use Permit shall not become effective until adequate evidence of filing in County records has been provided to the Community Development Director or designee. Approval of a Special Use Permit is not a zoning district change.

B. *Special uses enumerated.* The following are special uses that may be approved by the Planning and Zoning Commission in accord with the provisions and conditions of this Section. The Planning and Zoning Commission may, at its discretion, impose additional conditions when deemed necessary. Such uses may be approved only within the districts stipulated.

Section 38-33G. Adult Bookstore/Video Store or Adult Amusement Establishment (M1/M2, and M-3). These uses shall be permitted provided:

1. Such uses are located at a minimum of 1,000 feet from a property line of a:

a. School;

b. Church;

c. Nursery/day care;

d. Public park or recreational facility; and

e. Residential zoning district.

2. These uses shall be permitted provided such uses are located at a minimum of 500 feet from the property line of a liquor establishment. The distance shall be measured from the Adult Bookstore/Video Store or the Adult Amusement Establishment to the property line of the liquor establishment; and

3. The operator of an Adult Bookstore/Video Store or Adult Amusement Establishment shall affix a sign to the exterior wall nearest the primary entrance to the structure in which such enterprise is located. Such signs shall be 36 inches by 18 inches, shall have red lettering (letters shall be two inches in width and three inches in height) on a white background and it shall state as follows:

WARNING:
ADULT BOOKSTORE/VIDEO STORE.
THE BUSINESS WITHIN IS SEXUALLY ORIENTED.

or

WARNING:
ADULT AMUSEMENT ESTABLISHMENT.
THE BUSINESS WITHIN IS SEXUALLY ORIENTED.

4. Distance measurements shall include streets, alleys, channels, canals, other public rights-of-way and railroad right-of-way.

Section 38-33H. Airport, Privately and Publicly Owned (C-2, C-3, M1/M2 and M-3). The Las Cruces International Airport (LCIA) property is zoned M-3 (Conditional). The condition is that land uses will be in accordance with current City-Federal (Federal Aviation Administration) agreements and the adopted LCIA Master Plan. Parking, drainage, landscaping and other development standards are determined by the City Council through Chapter 7.5 of the Municipal Code, as amended, and Resolution 98-371, as amended. The LCIA Master Plan substitutes for a Special Use Permit. No special use permit is required.

Properties within 20,000 feet of an active runway at any airport will not be allowed to conduct land uses that would violate Federal Airspace Protection Regulations, including 14 CFR (Code of Federal Regulations), Part 77.

All other airports shall comply with 14 CFR, Part 77. Development standards, e.g., parking requirements, required runway paving standards, land uses will be determined as part of the Special Use Permit (SUP) review process. A Noise Exposure Study shall be submitted with the SUP application.

Section 38-33J. Antennas, Towers, Communication Structures and Other Vertical Structures (All zoning districts). See Section 38-59.

Section 38-33E. Amusement Park (Permanent) (EE, RE, REM, C-3, MT, M1/M2 and M-3). See Section 38-33E.

Section 38-33E. Archery and Firing Range, Outdoor (OS-R, C-3, M1/M2, and M-3). See Section 38-33E.

Section 38-33G. Auto/Truck Full or Self-Service/Automated Wash/Wax/Detailing (CBD). See Section 38-43.

Section 38-33G. Auto/Truck Repair and Service (CBD). See Section 38-43.

Section 38-33A. Boarding House (CBD). See Section 38-43.

Section 38-33C. Brewery and Winery (EE and REM).

Section 38-43. Building Height over 50 feet (CBD).

Section 38-33A. Campground (C-3, and M1/M2). See Section 38-57.

Section 38-33C. Cannabis Microbusiness (EE and REM). Such uses shall be accessory to a primary residence and shall be located in a fully enclosed accessory structure located no less than 100 feet from adjacent residences excluding any residence on the same property on which the cannabis microbusiness is proposed. Cannabis products for retail sale shall be derived from those cultivated on-site. Parking minimums shall be based on the specific use(s) as outlined in Sec. 38-33.

Section 38-33G. Cannabis Retailer (C-1, C-2 and C-3). Allows decreased minimum distance requirement from a residential zone and/or from another cannabis retailer.

Section 38-33D. Cemetery/Columbarium (EE, RE, REM, R-1c, R-1a, R-1b, R-1cM, R-1aM and R-1bM). Any cemetery site shall contain at least five acres and shall be located on a major local or higher designated roadway. A Columbarium shall be located on a major local or higher designated roadway with the lot size meeting the zoning district minimum lot size.

Section 38-33D. Group Child Care Home (EE, RE, REM, R-1c, R-1a, R-1b, R-1cM, R-1aM, R-1bM and R-2).

Section 38-33E. Country Club, Golf Course and/or Driving Range (EE, RE, REM, R-1c, R-1a, R-1b, R-1cM, R-1aM, R-1bM, R-2, R-3, R-4, and OS-R). There shall be screening and buffering on property lines abutting residential areas and no structures shall be within 50 feet of a residential property line. The parking areas for these uses shall have access to a collector or higher designated roadway. Country clubs within the OS-R zone shall be designed in concert with a golf course or similar large open area.

Section 38-33I. Extraction of Raw Materials (Not to include Manufacture, Processing or Treatment) (EE, RE, and REM). Such uses shall be a minimum of 400 feet from a residential district boundary or from an existing residential property. Uses shall not create a significant nuisance due to noise, odor, pollution, traffic or other similar problems. See Section 38-33I.

Section 38-33G. Gas Station (CBD). See Section 38-43.

Section 38-33A. Halfway House (EE, RE, REM, R-1c, R-1a, R-1b, R-1cM, R-1aM, R-1bM, R-2, R-3 and R-4).

Section 38-33H. Heliport/Helistop (EE, REM, R-4, O-2, C-2, C-3, M1/M2 and M-3). Use shall be in accordance with federal Airspace Protection Regulations, including 14 CFR, Part 77.

Section 38-33C. Racetrack, Animal/Rodeo Arena (EE, RE-Mobile, C-3, M1/M2 and M-3).

Section 38-33E. Racetrack, Auto/Truck (M-3).

Section 38-32D. Single Business/Use (Non-Center)—Increased Square Footage Above Maximum (C-1 and C-2). Additional square footage not to exceed 2,000 may be granted in the C-1 district. Additional square footage not to exceed 6,000 may be granted in the C-2 district.

Section 38-33E. Sports Complex/Stadium: Baseball, Football, Soccer, Softball, Track, etc. (EE, REM, C-3, M1/M2, and M-3). Parking and structures shall be located a minimum of 300 feet from any residential zoning district boundary.

Section 38-33J. Waste Transfer Stations/Sewage Treatment Plants (M1/M2 and M-3). Use shall be located at least 300 feet from any residential zoning district boundary.

(Ord. No. 2354, § I, 1-22-07; Ord. No. 2687, § I(Exh. A), 8-5-13; Ord. No. 2986, § (I)(Exh. A), 9-7-21)

Sec. 38-55. Reserved.

Sec. 38-56. Flexible development standards.

A. *Purpose.* The purpose of this section is to establish a three-tier system to allow flexibility in certain planning-related development standards, e.g., setbacks, that are part of a building permit or business registration request. The City Council grants to the Community Development Director or designee administrative discretion to allow limited departures that are generally considered insignificant from certain planning-related development standards. Applicants desiring departures from planning-related development standards associated with signs and lighting shall not use the procedures described in this section (see section 38-10, Planning and Zoning Commission).

B. *Application procedures.* An applicant requesting a departure from a planning-related development standard shall file a complete application, including the development statement that includes the following:

1. Official building permit or business registration application,

2. Submittal fee,

3. Notarized affidavit,

4. Copy of property's survey and legal description,

5. Copy of site plan, if applicable, (requirements to be detailed),

6. Description and justification of requested departures from standards,

7. Request and justification to waive submittal requirements, and

8. An application that meets the following conditions:

a) The application shall be signed by all property owners of record (including all trustees of an estate or all persons that have a specific "power of attorney" for the subject property as recorded in the county clerk's office). Persons who have an equitable interest in the subject property, but no legal title, shall not be deemed the "owners of record" of said property for purposes of this Code.

b) Any pending litigation or any final order entered by any court of law regarding the ownership of the subject property shall be disclosed by the applicant at the time the application is submitted.

c) The Community Development Director or designee may reject any application if the ownership of the subject property is not clearly established.

C. *Tier system.*

1. *Tier 1.* A request of up to a 25 percent departure from a planning-related development standard may be granted by the Community Development Director or designee. Minimum lot area/width/depth departures may be granted as necessary to prevent a taking of property as well as requests that are a result of governmental action, e.g., right-of-way acquisition.

2. *Tier 2.* A request for more than 25 percent and up to the following maximum departures from planning-related development standards may be granted by the Community Development Director or designee. However, the Community Development Director or designee is required to negotiate with the applicant to receive on behalf of the public one or more benefits, e.g., additional landscaping for reduced setbacks, deemed equivalent to the requested departure from standard.

Types of departure requests:

a. Setbacks/bufferyards/screens: 100 percent.

b. Landscaping: 33 percent (from 15 percent to ten percent area coverage).

c. Parking and all other requests not excluded in paragraph A.: 50 percent.

(See other parking flexibility options in section 38-58, off-street parking.)

3. *Tier 3.* All requests not covered by tier 1 or tier 2 and those requests excluded in paragraph A. shall be submitted to the Planning and Zoning Commission as described in section 38-10.

4. *Tier 4.* All requests associated with the installation of a tower, antenna, communication structure, and all other vertical structures. The Community Development Director or designee may grant up to a 100 percent departure from the required standards involving chapter 32, article IV (design standards, development standards for landscaping), section 38-58 (off-street parking), including construction materials, and any other site design requirements. This flexibility shall not involve issues related to height, spacing, and setbacks. However, the Community Development Director or designee is required to negotiate with the applicant to receive on behalf of the public one or more benefits, deemed equivalent to the requested departure from standard.

D. *Notice of request.* The Community Development Director or designee shall decide the appropriate surrounding property owners to be contacted by regular mail before acting on a request. Written comments about the request shall be delivered to the community development department to be considered by the

Community Development Director or designee within ten working days of the date the notice of the request was mailed.

E. *Action on the request.* Within ten working days after mailing the notice of the request to surrounding property owners, the Community Development Director or designee shall act on the request.

F. *Notice of decision.* The surrounding property owners that were contacted about the request and the applicant will be notified in writing about the decision on the request. The Community Development Director or designee, for any reason, may require an applicant to follow the procedures required in Section 38-10.

G. *Appeal.* Any person aggrieved by a determination of the Community Development Director or designee may appeal to the City Council within 15 days of the date of the decision.

(Ord. No. 2354, § I, 1-22-07)

Sec. 38-57. Mobile home parks/recreational vehicle parks.

A. *Mobile home parks (MHP).* A MHP is allowed in the following zoning districts: R-2, R-3 and R-4, by complying with the conditions in this section. A MHP may be developed as a planned unit development (see section 38-55). Mobile homes, as defined herein, when used for living purposes shall be located solely within a MHP or on property zoned for mobile homes except in the case of a caretaker's residence or when used in a temporary construction yard. Refer to section 38-57.C. for definitions.

1. *Application.* An application, the development statement, and site plan to build, enlarge or alter a MHP shall be submitted to the community development department for consideration. If phasing of the MHP is proposed, the site plan shall clearly describe the order of phasing and how all requirements will be met. Approval of the MHP shall be required prior to the installation of any mobile home, manufactured home or site-built structure.

2. *Permitted uses in a MHP.*

a. Residential mobile homes with complete hookup to utilities. Manufactured homes or site built homes are permitted.

b. Accessory buildings, swimming pools, home occupations, and recreation areas and buildings.

c. Convenience establishments of a commercial nature, including laundries, stores, beauty shops and barbershops, may be permitted in mobile home parks subject to the following restrictions:

1) Such establishments and their parking area shall not occupy more than seven percent of the area of the park;

2) Shall be subordinate to the residential use and character of the park;

3) Shall be considered accessory uses to the principal use of mobile homes or other dwelling types and shall be discontinued if the mobile home park is discontinued.

4) Shall be located, designed and intended to serve frequent trade or service needs of persons residing in the park only; and

5) Shall present no visible evidence of their commercial character outside the park.

d. Home for the disabled.

3. *Mobile home park standards.*

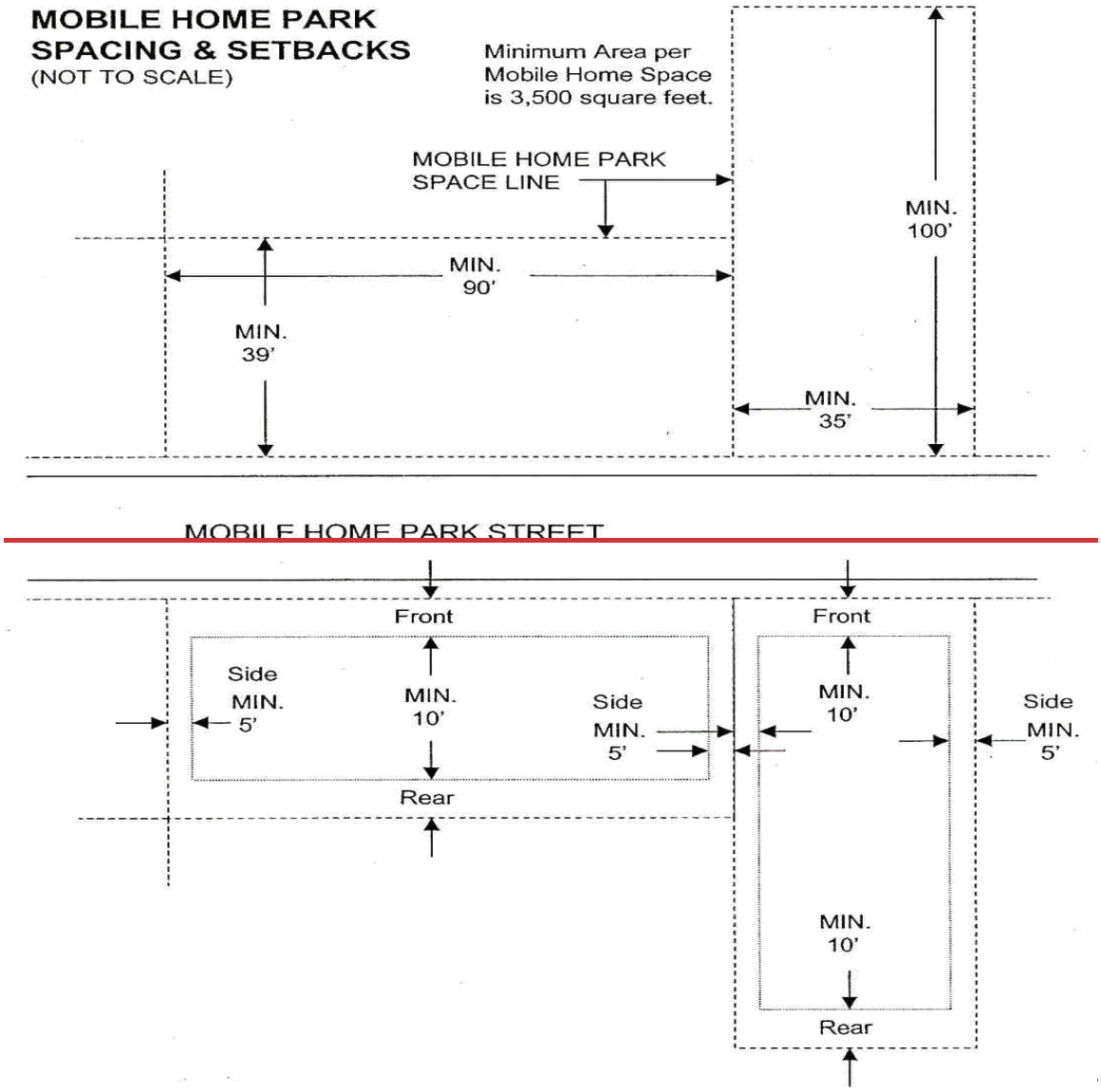
Mobile home space (MHS) within an MHP:

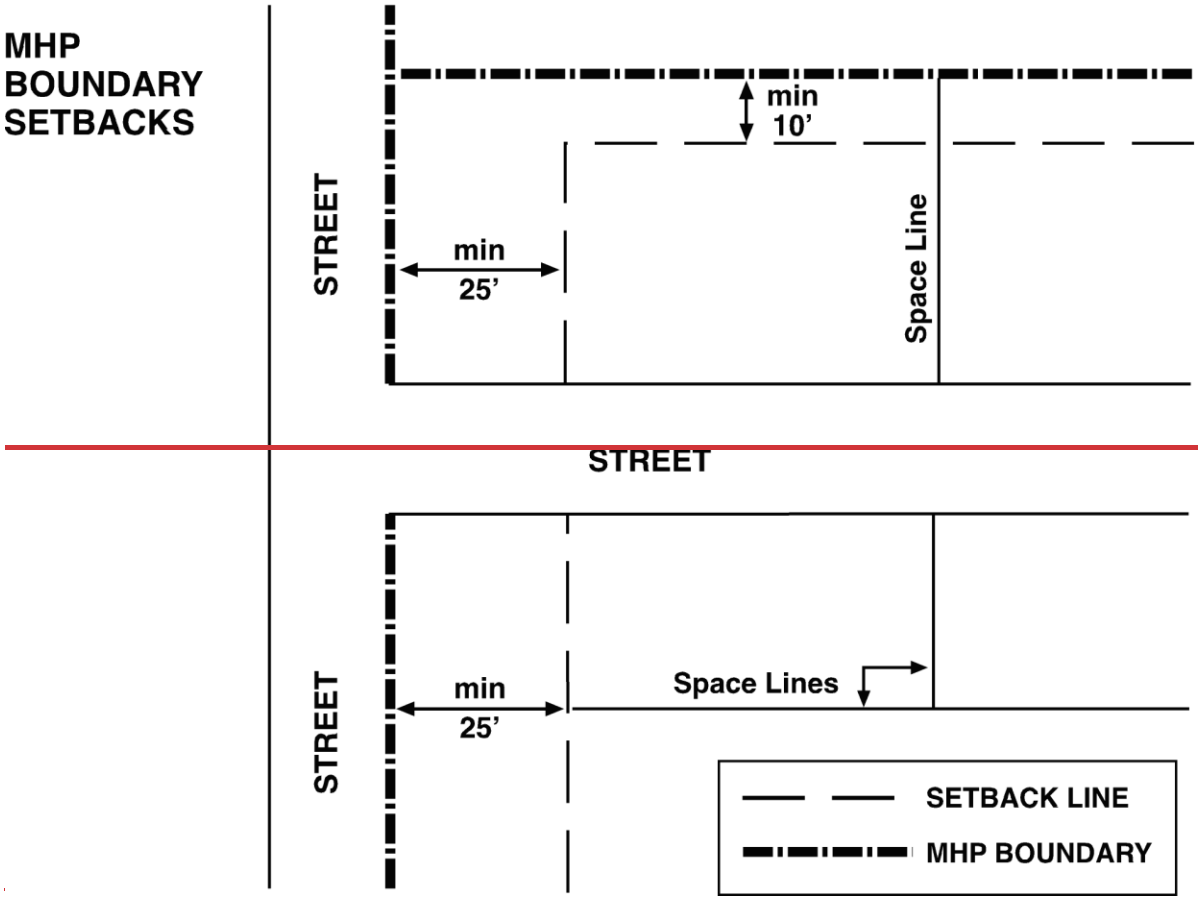
Area: Zoning districts: R-2, R-3, and R-4, minimum MHS square footage 3,500 sq. ft.

~~Width: 35′ (if depth is 100′) or 90′ (if depth is 39′) (minimum).~~

~~Depth: 90′ (if width is 39′) or 35′ (if width is 100′) (minimum).~~

~~Height: 35′ (maximum) See section 38-59.~~





~~*Setbacks and spacing (minimum including awnings, canopies, decks and any other structures attached to, adjacent to or touching a mobile home) (see the exceptions and modification, section 38-62).*~~

~~*Density.*~~

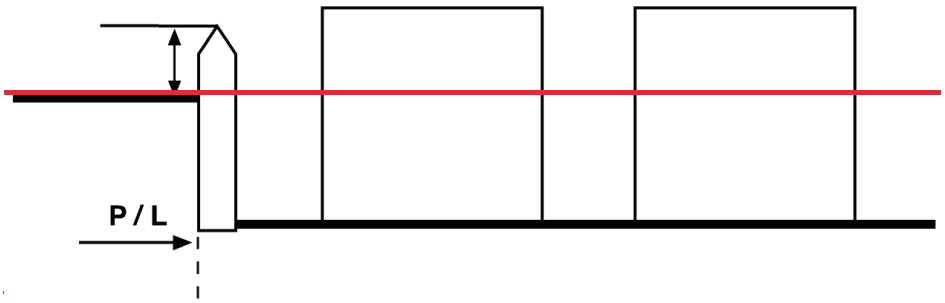
~~4. *Design standards.*~~

~~a. Swimming pools are permitted in accordance with other sections of the Municipal Code for private swimming pools and state environmental regulations.~~

~~b. All mobile home parks shall have a landscape plan approved for all areas not devoted to structures, streets, alleys, drives, walks and paths. At least 15 percent of the total land area shall be set aside in landscaping consistent with the city's design standards.~~

~~c. All MHP shall have opaque perimeter walls and/or fences at least five feet in height (measured at ground level on the exterior of the MHP) completely installed prior to the issuance of a certificate of occupancy for the MHP or each phase of the MHP. Each MHS shall have a wall and/or fence defining the MHS. Walls, fences, and hedges shall conform to section 38-60, with the following exception: A clear-sight triangle of 20 feet in both directions on the mobile home space from the corner of the internal streets is required. A clear-sight triangle at all MHP entrances and exits shall be provided consistent with section 32-405 of the Municipal Code.~~

MHP or RVP
WALL / MEASURED FROM OUTSIDE FENCE



d. Utility placement shall be approved by the utilities department director or designee.

e. Federal, state and local accessibility requirements shall be met.

5. *Streets and access standards.*

a. All MHP shall have direct motor vehicle access from a collector or higher designated roadway.

b. Each mobile home space shall have direct access to an internal street. Direct access to exterior public streets shall be prohibited.

c. 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 mobile homes in such a manner as to permit the use of solar energy systems.

d. All streets, excluding sidewalks, within a MHP shall be surfaced with two-inch HMAC over an acceptable six-inch base course or five-inch concrete meeting the city's standard specifications for road construction and shall meet the following minimum widths:

MHP Street Class	Parking Permitted*	Paving Width (Feet)
Minor, one way	No	14
(Serving fewer than 20 MHS)	One side	18
	Both sides	27
Minor, two way	No	18
(Serving 20 to 50 MHS)	One side	27
	Both sides	36
Collector	No	20
(Serving more than 50 MHS)	One side	29
	Both sides	38

* Parallel parking lanes are to be striped at nine feet in width.

6. *Signs.* Signs shall conform to the city's sign code (see chapter 36).

7. *Refuse.* The management of a MHP 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.

8. *RV storage.* MHP may have a storage yard for recreational and other vehicles (RVSA). Such storage yards shall have a minimum of 60 square feet of storage area per mobile home space in the development and shall be located so as not to detract from surrounding properties. All recreational and other vehicles shall be parked in the storage yard while not in use.

9. *Personal storage options.* Each mobile home space may have a personal storage unit provided by the MHP owner or tenant. If provided by the MHP owner, such storage shall be at least six feet in height with a storage capacity of at least 300 cubic feet. Each storage unit shall be anchored permanently to the ground. The storage unit may be located on the mobile home space lot line if the storage unit meets the requirements of chapter 30. As an option to storage units being located on individual mobile home spaces by the MHP owner, storage units may be grouped into a mini-storage building arrangement. At least 300 cubic feet of storage space per mobile home space shall be provided.

10. *Expansion or alteration.* Any existing MHP desiring to expand its area or alter its approved site plan shall do so in accordance with the provisions of this Code.

11. *Mobile home installation permit or building permit.* Each mobile home to be located in a MHP shall require a mobile home installation permit (MHIP) meeting the requirements of chapter 30. The owner of a manufactured housing (MH) unit shall receive a MHIP or building permit prior to locating the MH unit in the MHP. All site-built structures, e.g., carport, are required to have a building permit.

B. *Recreational vehicle parks (RVP).* An RVP is allowed in the following zoning districts: C-3, and M-1/M-2, by complying with the conditions in this section. Recreational vehicles, as defined herein, when used for temporary or permanent living purposes, shall be located solely in an RVP except as approved by the Community Development Director or designee as follows:

- Arrangements for temporary construction yards,
- One RV temporarily located on a single-family lot, or
- Other temporary arrangement.

Refer to section 38-57.C. for definitions.

1. *Application.* An application, the development statement, and site plan to build, enlarge or alter an RVP shall be made to the community development department for consideration. If phasing of the RVP is proposed, the site plan shall clearly describe the order of phasing and how all requirements will be met.

2. *General requirements.*

   a. RVP shall have direct motor vehicle access to or be located on a collector or higher designated roadway. No entrance to or exit from a RVP shall be permitted through a residential zoning district.

   b. Water, sewer, electricity, telephone, and other necessary utilities shall be available at the RVP.

   c. Driveways shall be designed to increase ease of access, increase privacy, and provide safety.

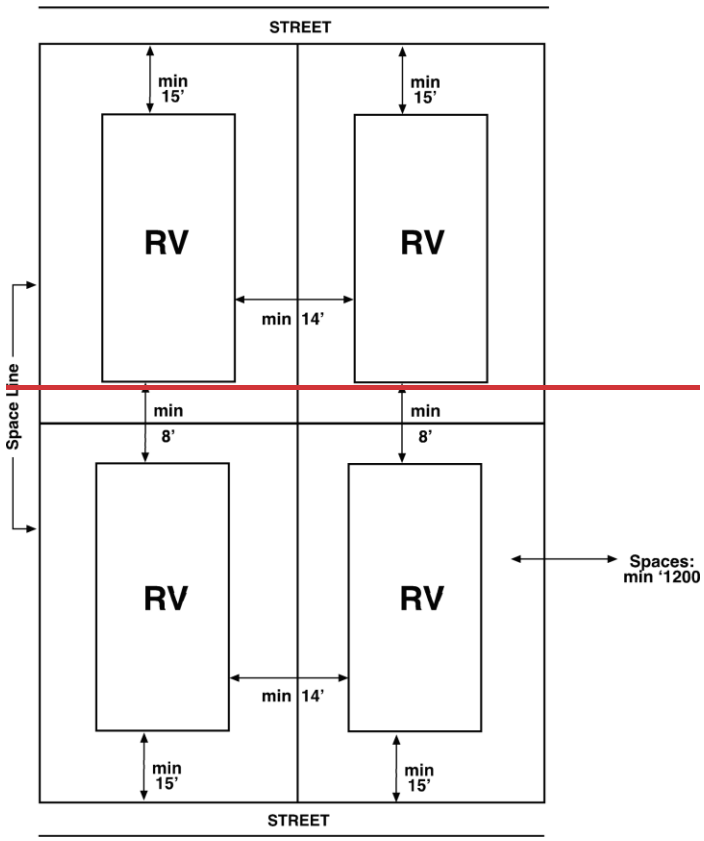
   d. The minimum RVP size is two acres. The density of spaces in any recreational vehicle park shall not exceed 20 spaces per acre.

3. *Development standards.*

   a. There shall be at least 14 feet between the sides of all recreational vehicles and eight feet between the backs of all recreational vehicles. Any structure, including awnings, attached to or touching a RV shall, for purposes of this separation requirement, be considered part of the RV.

b. No recreational vehicles shall be closer than 15 feet to any private access way or to the property line of the RVP.

RV PARKS/ SETBACKS, SPACES and SPACING



c. Spaces for recreational vehicles shall be a minimum of 1,200 square feet not including sidewalks or streets.

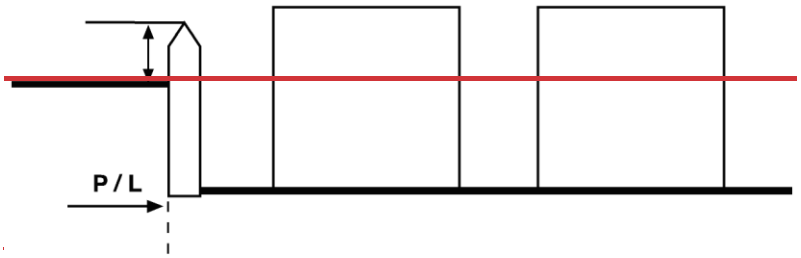
d. No recreational vehicles shall be closer than 20 feet to any building.

e. No structure within an RVP shall exceed 35 feet in height. See section 38-59.

f. A landscaping plan, consistent with the city's design standards, shall be submitted.

g. All RVP shall have opaque perimeter walls and/or fences at least five feet in height (measured at ground level on the exterior of the RVP) completely installed prior to the issuance of a certificate of occupancy for the RVP or each phase of the RVP. Each RV space shall have a wall and/or fence defining the RV space. Walls, fences, and hedges shall conform to section 38-60, with the following exception: A clear-sight triangle of 20 feet in both directions on the mobile home space from the corner of the internal streets is required. A clear-sight triangle at all RVP entrances and exits shall be provided consistent with section 32-405 of the Municipal Code.

MHP or RVP
WALL / MEASURED FROM OUTSIDE FENCE



h. Private access ways and individual space arrangements shall be designed to accommodate the frequent movement of recreational vehicles.

i. All streets, excluding sidewalks, within a RVP shall be surfaced with two-inch HMAC over an acceptable six-inch base course or five-inch concrete meeting the city's standard specifications for road construction and shall meet the following minimum widths:

RVP Street Class	Parking Permitted*	Paving Width (Feet)
Minor, one way	No	14
(Serving fewer than 20 RV spaces)	One side	18
	Both sides	27
Minor, two-way	No	18
(Serving 20 to 50 RV spaces)	One side	27
	Both sides	36
Collector	No	20
(Serving more than 50 RV spaces)	One side	29
	Both sides	38

* Parallel parking lanes are to be striped at nine feet in width.

j. There shall be at least three parking spaces designated in the RVP for each two RV spaces. Parking may be provided in common parking areas, on individual RV spaces or on RVP streets.

k. Street layout shall be designed for preservation of natural features and to follow topography to the greatest extent possible.

l. There shall be an active, usable recreational area(s) for tenants, comprising at least five percent of the gross site area, which shall not include required setback areas or similar areas not usable for recreational activities.

m. There shall be a community building or buildings which shall provide for the recreational and service needs of occupants of the RVP. It may include management offices, dumping stations, restrooms, showers, laundry/dry cleaning facilities and other uses and structures customarily incidental to operation of an RVP. The area of the community building or buildings may not be calculated as part of the required recreational area.

n. Convenience establishments of a commercial nature, including laundries, stores, beauty shops and barber shops, may be permitted in RVP subject to the following restrictions:

1) Such establishments and their parking area shall not occupy more than seven percent of the area of the park;

2) Shall be subordinate to the residential use and character of the park;

3) Shall be considered accessory uses to the principal use of an RV and shall be discontinued if the RVP is discontinued.

4) Shall be located, designed and intended to serve frequent trade or service needs of persons residing in the park only; and

5) Shall present no visible evidence of their commercial character outside the park.

o. Adequate refuse collection facilities shall be provided, constructed, and maintained in accordance with all municipal health regulations, and shall be screened from view and designed to bar animals from access to refuse. Refuse shall be removed from collection sites at least once a week.

p. Lighting shall be provided to illuminate access ways and walkways for the safe movement of vehicles and pedestrians at night. All outdoor lighting shall comply with chapter 39 of the Municipal Code.

q. A means for emptying sewage holding tanks shall be provided and approved by city and the state environment department.

r. One mobile home may be placed in the RVP for use by a caretaker. A site built dwelling or manufactured dwelling may substitute for the mobile home.

4. *Expansion or alteration.* Any existing RVP desiring to expand its area or alter its approved site plan shall do so in accordance with the provisions of this Code.

C. Definitions for mobile home parks and recreational vehicle parks.

Manufactured housing. "Manufactured housing" means a manufactured home or modular home that is a single-family dwelling with a heated area of at least 36 feet by 24 feet and at least 864 square feet and constructed in a factory to the standards of the United States Department of Housing and Urban Development, the National Manufactured Housing Construction and Safety Standards Act of 1974 and the Housing and Urban Development Zone Code 2 or the Uniform Building Code, as amended to the date of the unit's construction, and installed consistent with the Manufactured Housing Act and with the regulations made pursuant to that act.

Mobile home (MH). "Mobile home" means a moveable or portable housing structure larger than 40 feet in body length, eight feet in width or eleven (11) feet in overall height, designed for and occupied by no more than one family for living and sleeping purposes, but does not include structures built to the standards of any municipal building code and other technical codes.

Mobile home park (MHP). A privately owned tract of land, at least five acres in size, used for the continuous accommodation of 12 or more occupied mobile homes and operated for the pecuniary benefit of the owner of the parcel of land, his agents, lessees, or assigns. It also may be known as a mobile home court, trailer court or trailer park. Manufactured homes or site built homes are permitted.

Mobile home space (MHS). A parcel of land within a mobile home park rented or intended to be rented to prospective renters. MHS includes required yards, parking spaces, attached and/or detached accessory buildings, open spaces and utilities. MHS does not include sidewalks or streets.

Recreational vehicle (RV). The following shall be known as recreational vehicles:

1. Travel trailers, camping trailers, fifth-wheel trailers, and all other vehicles that are constructed to include a chassis, integral wheels and a towing hitch, and are primarily designed or constructed to provide temporary, readily moveable living quarters for recreation, camping, or travel uses.

2. 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.

3. 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.

4. 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.

5. Trailers, boats, etc.

Recreational vehicle park (RVP). A tract of land at least two acres in size, on which two or more RV sites are located, established or maintained for occupancy by recreational vehicles that are parked temporarily in rental spaces for periods not exceeding 120 days during any 12 month period. Recreational vehicles may not be stored in RVPs except in RVSAs. Any action toward removal of wheels of a RV except for temporary purposes of repair or to attach the RV to the ground for stabilizing purposes is prohibited.

Recreational vehicle space (RVS). A plot of ground within a RVP intended for the accommodation of a RV, tent, or other individual camping unit on a temporary basis.

Recreational vehicle storage area (RVSA). A parcel of land in a MHP or RVP on which recreational and other vehicles are stored while not in use. RVSA is not the same as storage of RV in commercial or industrial zoning districts for sale, lease, rent or storage.

(Ord. No. 2354, § I, 1-22-07)

Sec. 38-58. Off-street parking.

A. *Purpose.* The purpose of this section is to:

1. Allow flexibility in addressing vehicle parking, loading, and access issues by presenting a menu of strategies to address parking issues rather than only parking space requirements;

2. Ensure that off-street parking, loading, and access demands associated with new development are met without adversely impacting surrounding land uses and neighborhoods;

3. Accommodate safe and convenient movement of vehicles, bicycles, pedestrians and transit.

B. *Application.* These parking regulations apply to all properties within the corporate limits of the city. However, special overlay zoning district's parking regulations may override the regulations found in this section. For those regulations, the specific section of the special overlay zoning district should be consulted.

C. *Definitions.* Pertinent definitions are found later in this section or in article III of this Code.

D. *Size of parking stalls and driving aisles.* The minimum dimensional requirements for parking stalls and driving aisles are shown in the following table. Twenty-four feet is the minimum two-way driving aisle width, including non-dedicated streets or private drives, when there is no parking on both sides of the driving aisle. Twelve feet is the minimum width for a one-way driving aisle. The city fire department may require wider driving aisles whenever necessary to address fire and safety concerns as addressed in the International Fire Code, as amended.

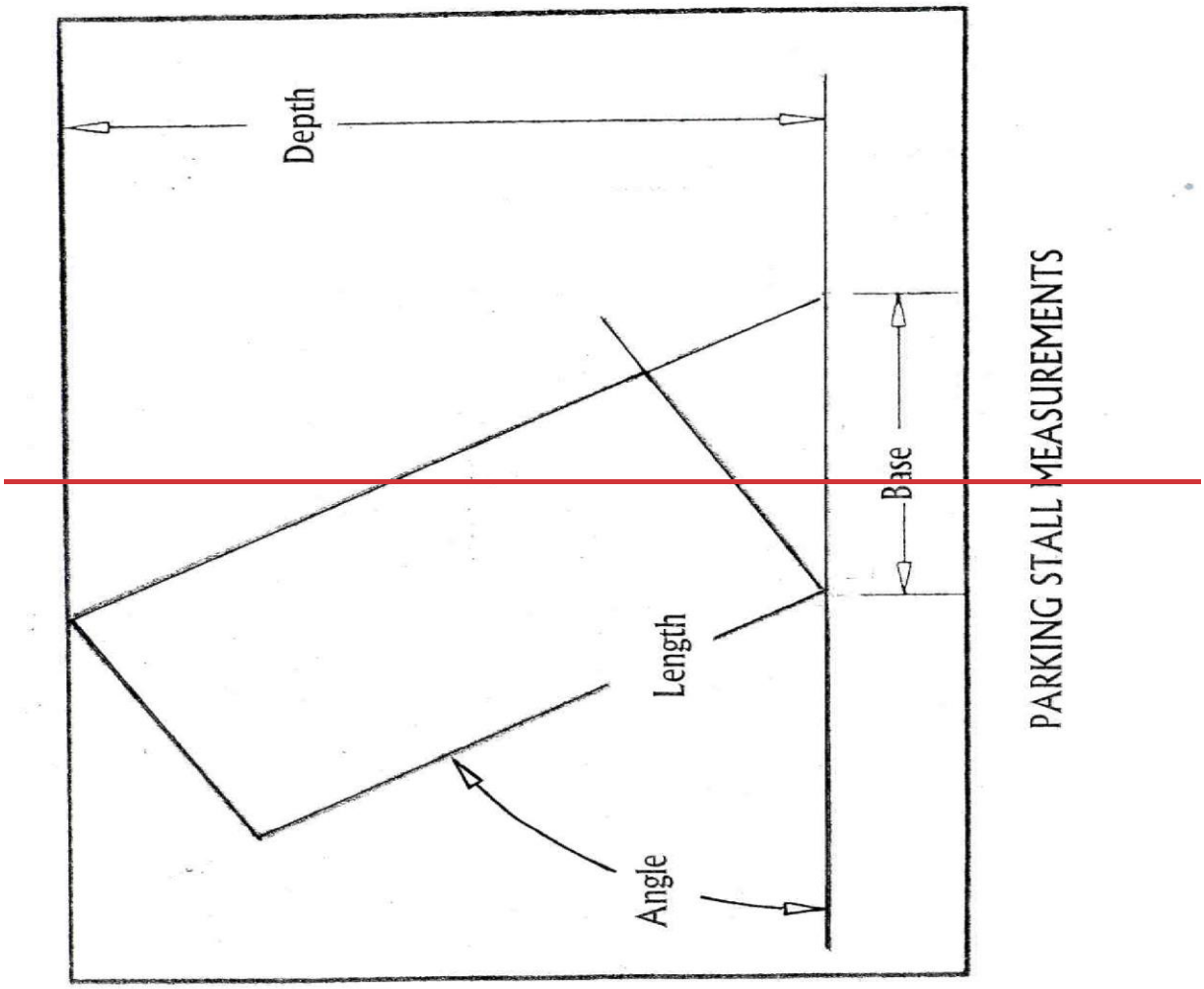
Parking Angle	Stall Width	Stall Length	Stall Base	Stall Depth	Width of One-Way Aisle	Width of Two-Way Aisle
30 degrees	9'	19'	18'	17.3'	12'	24'
45 degrees	9'	19'	12.7'	19.8'	13'	24'
60 degrees	9'	19'	10.4'	21'	18'	24'
90 degrees	9'	19'	9'	19'	27'	27'

0 degrees (parallel)	9'	22'	22'	9'	12'	22'

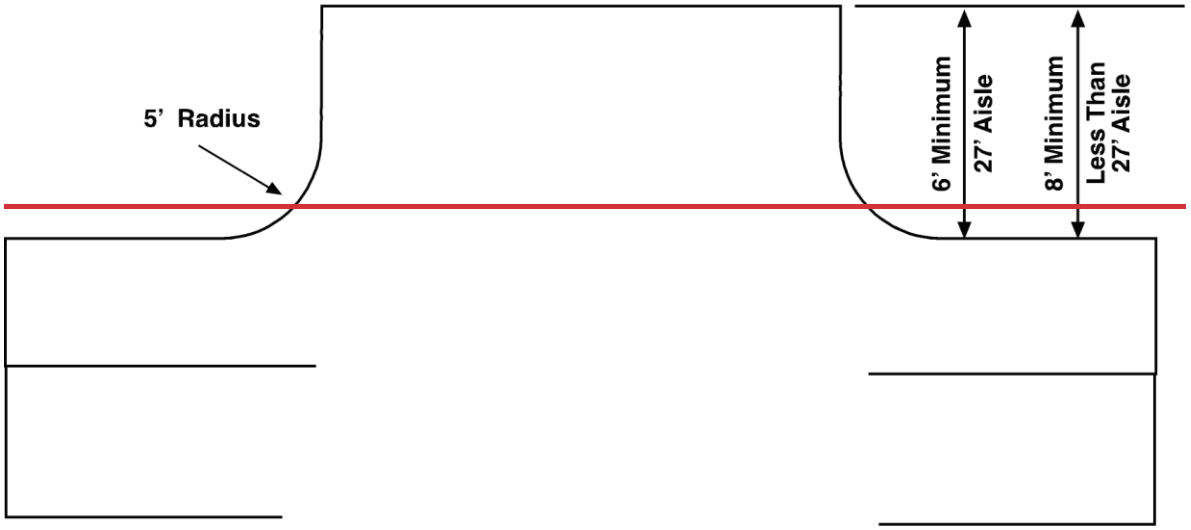
Notes:

1. Driving/back-up aisles are not required for one single-family dwelling per lot or one duplex per lot. All other land uses shall provide driving aisles when parking stalls are required.
2. All angle parking, except 90 degree and parallel parking shall have aisles designed for one-way traffic flow only, except that two-way traffic is permitted in designs approved by the community development department director or designee.
3. All parking lot designs shall have primary ingress and egress to a public street or access easement. Secondary access only may be to an alley. However, access to or from an alley and parking lot is permitted if single-family or duplex dwelling units are located on property that abuts the alley. Primary ingress/egress to an alley is permitted for single-family and duplex dwelling units.
4. Except for single-family or two-family dwelling units, parking and loading areas shall be arranged so that vehicles will not be required to back out of parking or loading spaces directly into a public way. Circulation within a parking lot shall be designed to minimize aisles with one inlet/outlet. Aisles with only one inlet/outlet shall provide "back outs" for end spaces.
5. Land uses that involve the servicing of motor vehicles shall not service vehicles in the required parking stalls.
6. Driving aisle widths for gas stations:
    a. Gas pump islands designed to accommodate two or more vehicles on each side: A minimum of 24 feet (perpendicular) shall be provided between gas pump islands, islands and buildings, curbs, other types of driving aisle obstructions, and between the back of parking stalls and the end of the gas pump vehicle stall. (Distance may be reduced to 18 feet between parking stalls and pump vehicle stall if one-way and angle parking.)
    b. Gas pump islands designed for one vehicle on each side: A minimum of 18 feet (perpendicular) shall be provided. (24 feet required between parking stalls and pump vehicle stall unless one-way and angle parking.)
    c. Diesel pump islands for tractor-trailer trucks only; no automobiles or recreational vehicles will use these pumps. A site plan shall show diesel pumps spaced at least seventeen (17) feet, center-to-center distance, with a minimum of fourteen (14) feet of one-way driving clearance between pump islands.
7. Recreational vehicles and motor vehicle appurtenances, e.g., RVs, camper shells, boats, trailers, boat on trailer, camper shell on truck, shall be limited to a maximum of one per main dwelling unit within any open area between the front and side of the main dwelling and the front and side property lines with no limit in the rear open areas. The land area in front of or to the side of the main dwelling on which the recreational vehicle or motor vehicle appurtenance is parked or stored shall be graveled or paved. However, no parking or storage of recreational vehicles and motor vehicle appurtenances shall be permitted on graveled areas considered to be part of the property's landscaping. Furthermore, no parking or storage of recreational vehicles and motor vehicle appurtenances shall be located within a ten foot (side property line) by 20 foot (front property line) clear sight triangle at the front property line on interior lots and within the clear sight triangle on corner lots that shall be provided consistent with section 32-405 of the Municipal Code. This paragraph does not apply to the EE and REM rural residential zoning districts and the Holding zoning district.

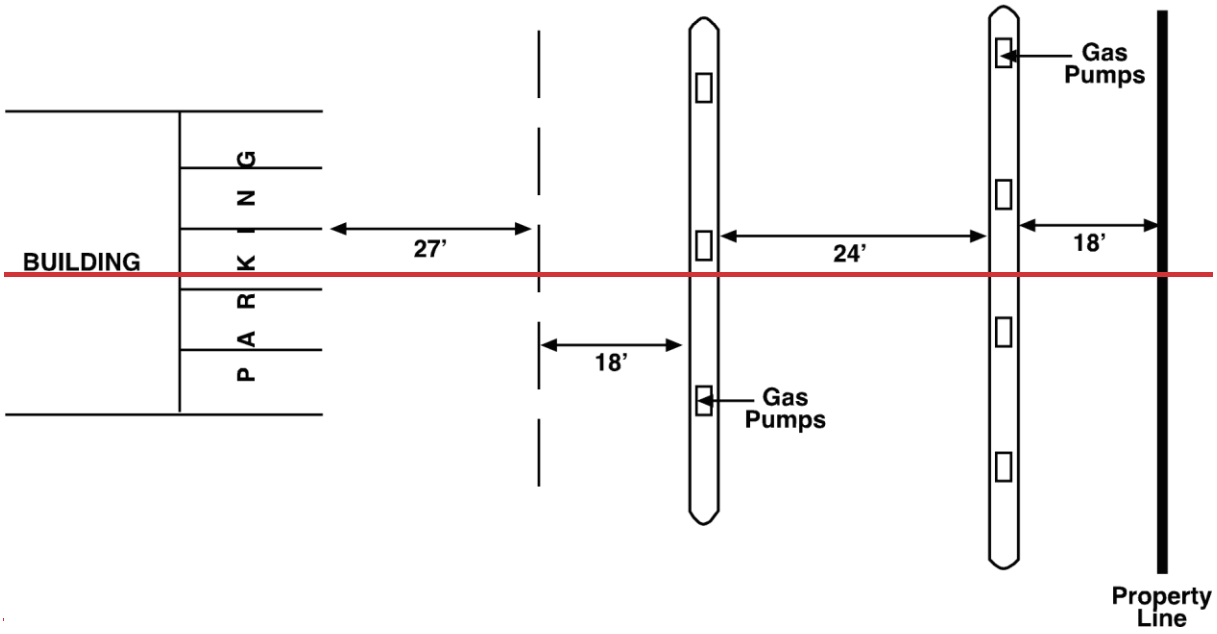
8. Parking and storage areas for any motor vehicle or its appurtenances, including the necessary driveways to get to and from the parking and storage areas, shall not cover more than one-half of any open area between the front, including the secondary front, of the main dwelling and the front property line in a one-family/two-family property, except in the case of a lot on a cul-de-sac, up to two-thirds of any open area between the front of the main dwelling and the front property line may be used. Townhouse lots may use up to three-fourths of any open area between the front, including the secondary front, of a building or structure and the front property line. Regardless of the zoning district, no motor vehicle or its appurtenances shall be parked or stored on any sidewalk within any public right-of-way or protrude onto any public right-of-way.



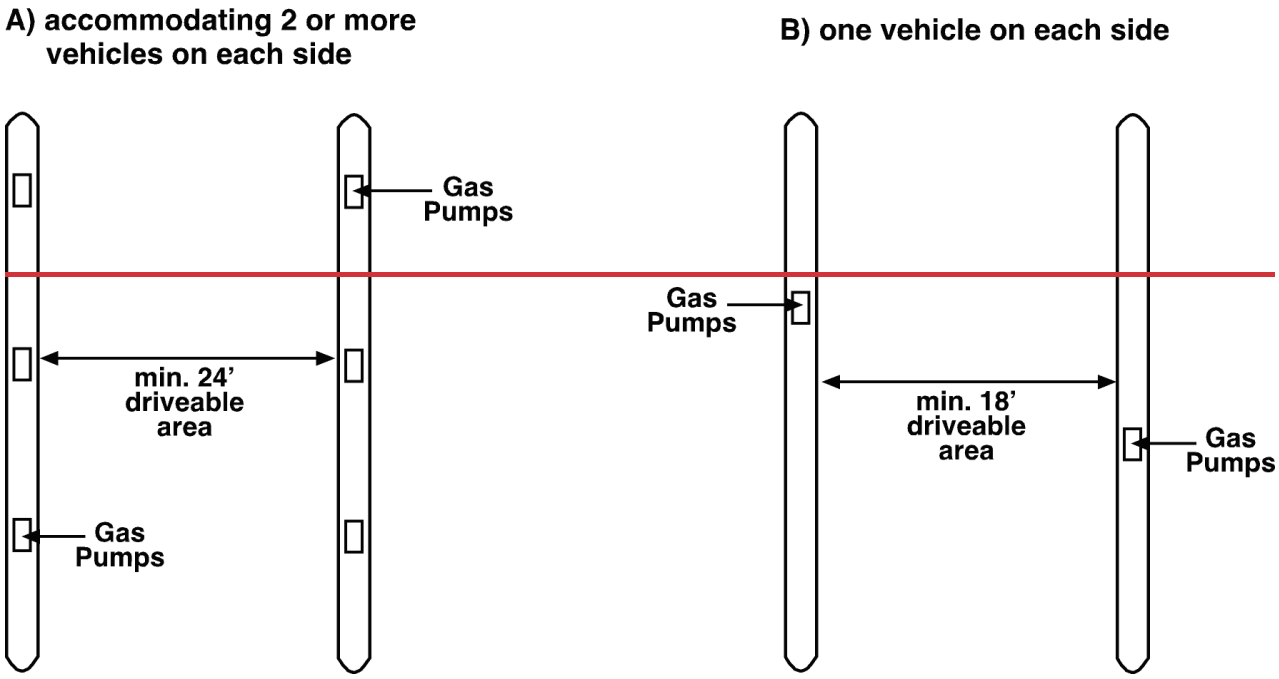
PARKING CIRCULATION / OUTLET



DRIVING AISLE WIDTHS FOR GAS PUMPS



DRIVING AISLE WIDTHS FOR GAS STATIONS (A & B)



~~E. *Minimum number of on-site automobile and bicycle parking stalls allowed.*~~

~~1. The formula for calculating the number of parking stalls allowed for a specific land use is found in section 38-33, land uses in general zoning districts and number of parking stalls allowed. The minimum number of parking stalls shall be two: one van accessible stall and one stall for the non-disabled, except in the case of a utility substation. The number of stalls allowed shall be rounded up to the nearest whole number, e.g., if the calculation results in 25.1 allowed parking stalls, this number (25.1) is rounded up to 26 parking stalls. Gross floor area is calculated by using the exterior dimensions of all buildings, including multiple stories, on a site. Enclosed garages are included in gross floor area. However, for example, carports are not included in the calculation.~~

~~2. Proposed land uses not specified shall follow the parking requirements for a specified use within the category most appropriate to the proposed use as determined by the Community Development Director or designee.~~

~~3. The number of spaces provided shall not be reduced below the minimums allowed in section 38-33. Any request for a deviation to the allowed parking spaces shall follow the city's variance and/or flexible standards process.~~

~~4. Loading space shall be provided for each nonresidential use as approved by the Community Development Director or designee.~~

~~5. Up to 40 percent of the allowed parking stalls may be provided on property separate from the property served provided parking is a permitted use and all of the separate parking is within 500 feet from the property served. A parking agreement assuring that the allowed off-street parking is required for the life of the land use shall be properly executed by all the separate property owners, approved as to content and form by the city attorney and the Community Development Director, and recorded with the County Clerk's Office.~~

6. Shopping center/business service center: When two or more separate land uses/businesses, as defined in article III, are to be located on the same property, the following formulas shall be used to calculate the total number of parking stalls allowed:

   A. Less than 15,000 square feet of gross floor area (GFA): One parking stall per 300 square feet of GFA is allowed.

   B. 15,000 square feet or more of gross floor area (GFA): One parking stall per 350 square feet of GFA is allowed.

   This provision shall be used in calculating the total number of parking stalls required rather than the formula for each separate land use found in section 38-33. However, sections 38-48, 38-54, and 38-58.G. offer options for the reduction in the total number of parking stalls allowed.

7. Covered parking, e.g., carport, or enclosed parking, e.g., garage, meeting the minimum parking stall and driving aisle dimensions will be counted toward the number of parking stalls allowed.

8. Site plans shall specify the proposed land uses before a building permit will be issued. In any space on a property that does not have the land use specified, the number of parking stalls allowed will be based on the allowed land use requiring the most number of parking stalls.

9. Shopping cart parking or storage areas located within parking lots for motor vehicles shall not reduce the number of parking stalls below the minimum allowed. Shopping cart or storage areas to be located within parking lots shall be shown on the site plan.

10. Bicycle parking, in accordance with the bicycle parking design standards, shall be required in accordance with section 38-33.

11. Bicycle parking design standards: The bicycle parking design standards, as illustrated in figures 1, 2, and 3, define what type of bicycle lockers and racks shall be used for bicycle parking in commercial, office, and multi-family apartment land uses. Any bicycle rack design that incorporates two-point, flat panel support and does not present sharp edges may be acceptable. The Community Development Director or designee shall have final approval on all provided bicycle parking facilities.

    The design standards, as illustrated in figure 4, guide how bicycle parking facilities can be constructed. The dimensions indicated shall guide the placement of bicycle parking facilities next to any wall or immovable object. This illustration may be adapted to bicycle parking facilities that are clustered in a standard automobile parking stall.

    Bicycle parking facilities shall not impede the route of travel for pedestrians, bicyclists, motorists, or any who have ADA-related issues. The parking facilities shall be located on the property in a way that provides the optimum security for the bicycles. The parking facilities shall be located as near as practicable to the main entrance of the building they are intended to serve. If the parking facilities are to be clustered for a shopping center or mall, they shall be placed in a centralized location near an entrance to a business they are intended to serve. The parking facilities shall be located as near as practicable to a lighted area on the property to provide safety for pedestrians, bicyclists, motorists, or any who have ADA-related issues. Adequate signs and striping shall be used to identify the bicycle parking facilities.

    The design standards, as illustrated in figures 5, 6, 7, and 8, identify examples of types of bicycle parking facilities that are prohibited when providing bicycle parking.

FIGURE 1. ACCEPTABLE BIKE LOCKER DESIGNS

Acceptable lockers are those that properly secure bicycles.

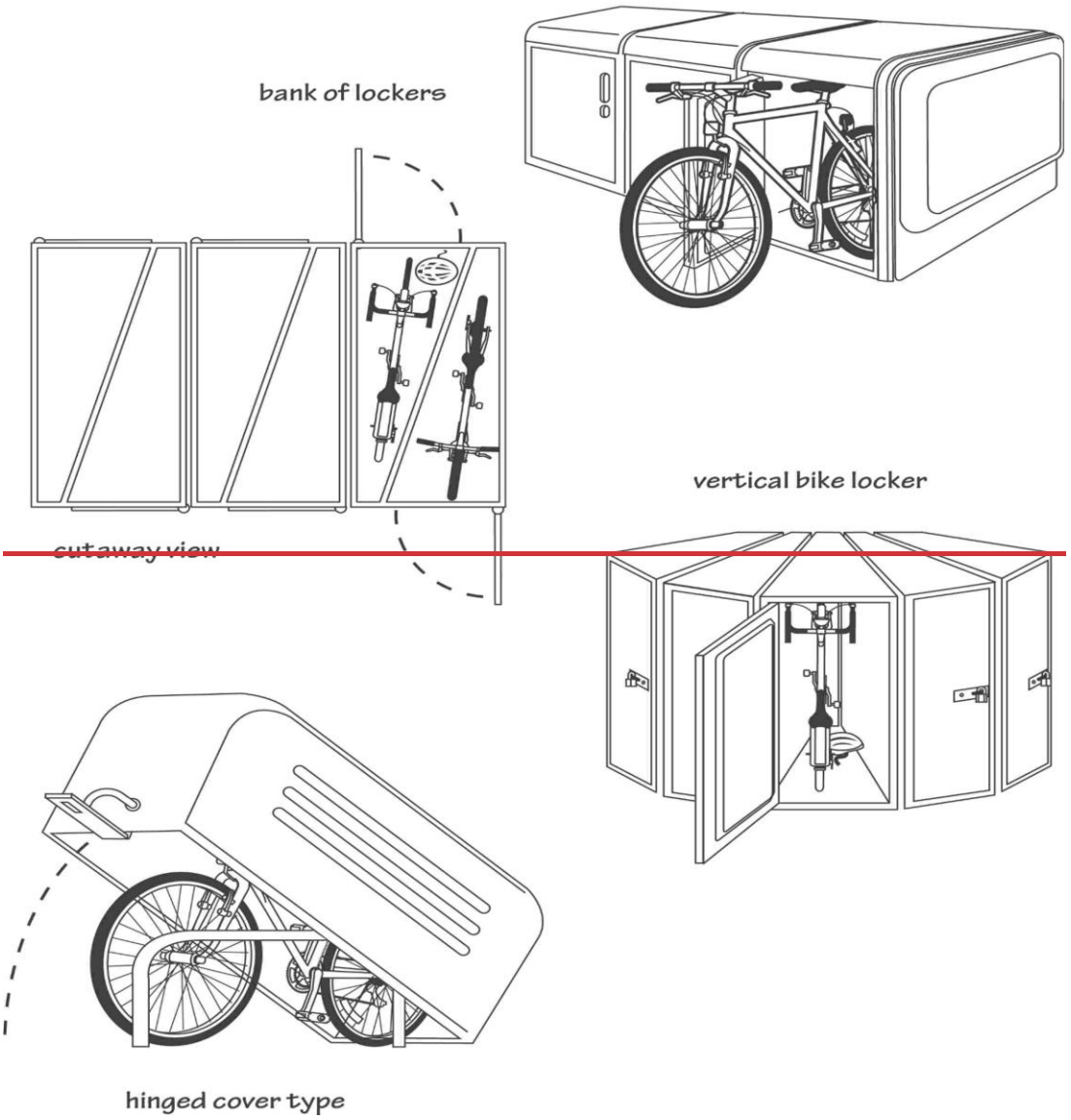
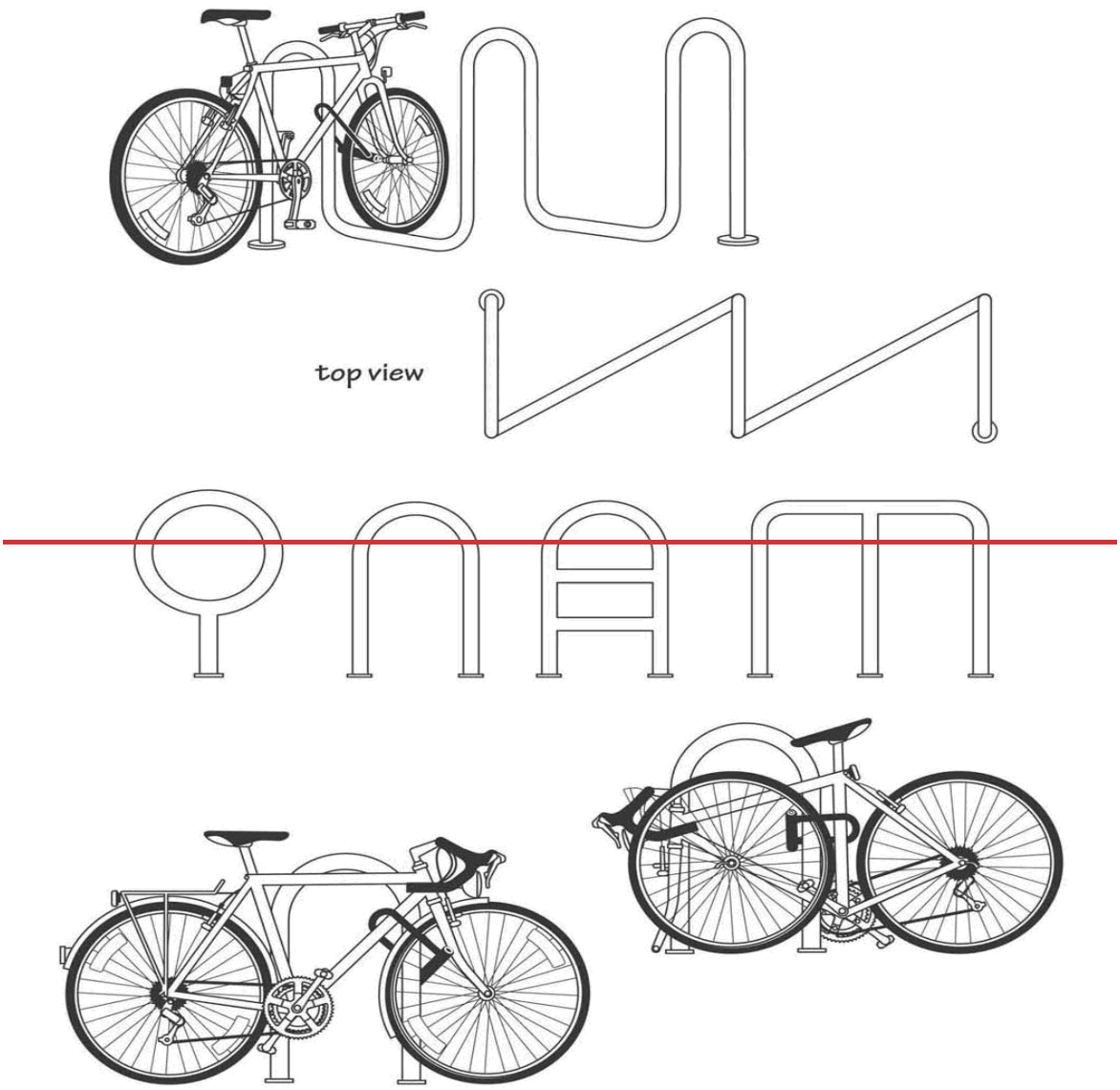


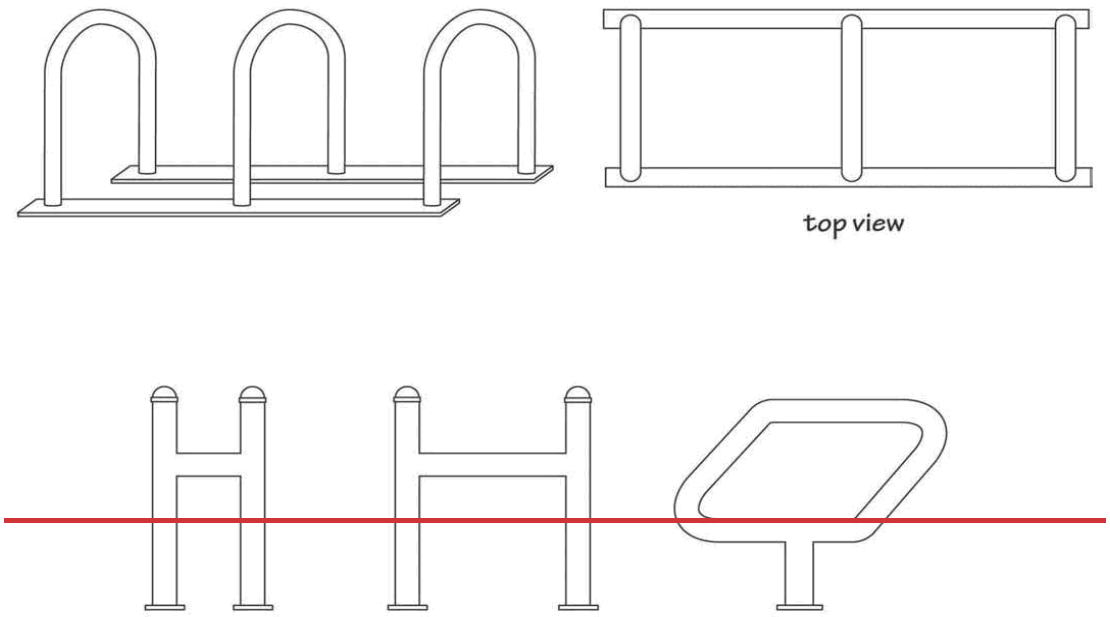
FIGURE 2. ACCEPTABLE BIKE RACK DESIGNS WITH TWO POINT SUPPORT

Good designs with two-point, 'flat panel' support. These allow for easy access and locking of frame and two wheels. The designs present no sharp edges to pedestrians.



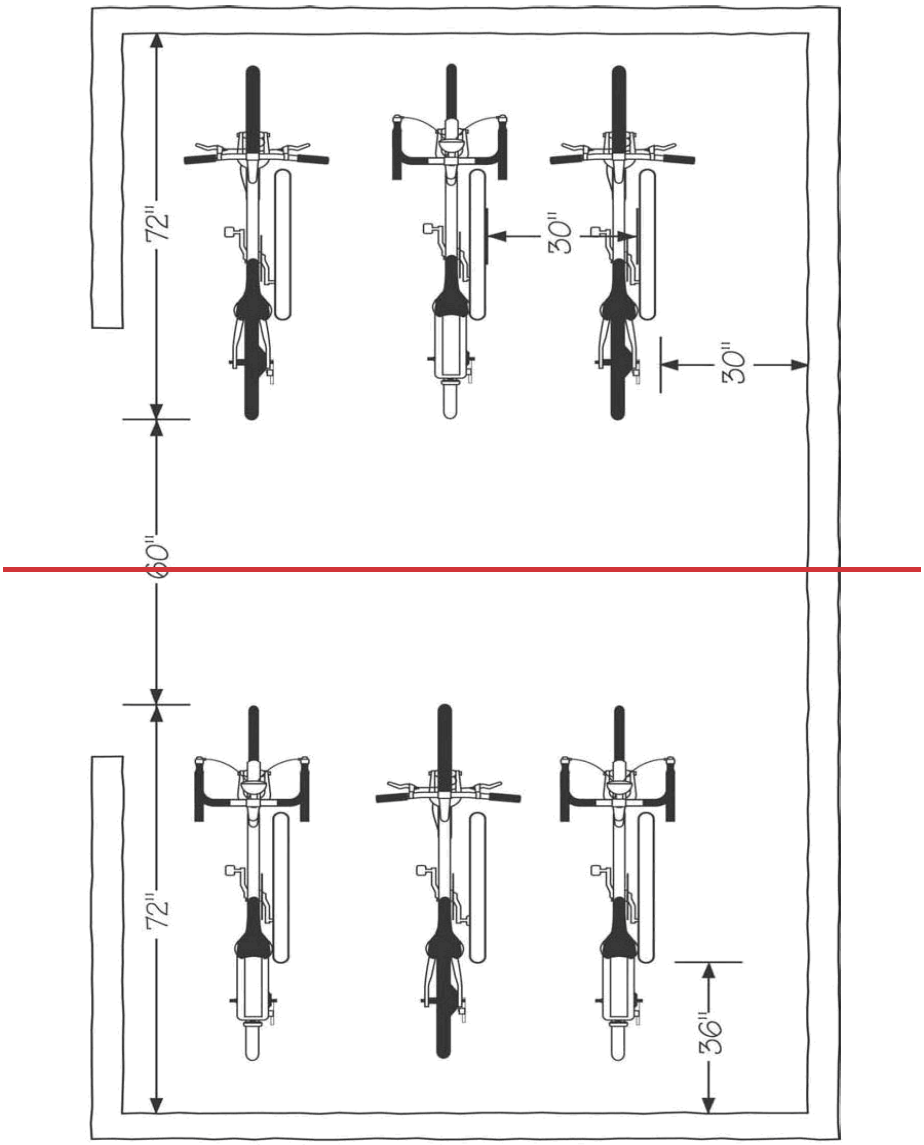
~~FIGURE 3. ACCEPTABLE BIKE RACK DESIGNS WITH TWO POINT SUPPORT AND ARTISTIC RACK DESIGNS~~

~~Good designs with two-point, 'flat panel' support. These allow for easy access and locking of frame and two wheels. The designs present no sharp edges to pedestrians.~~



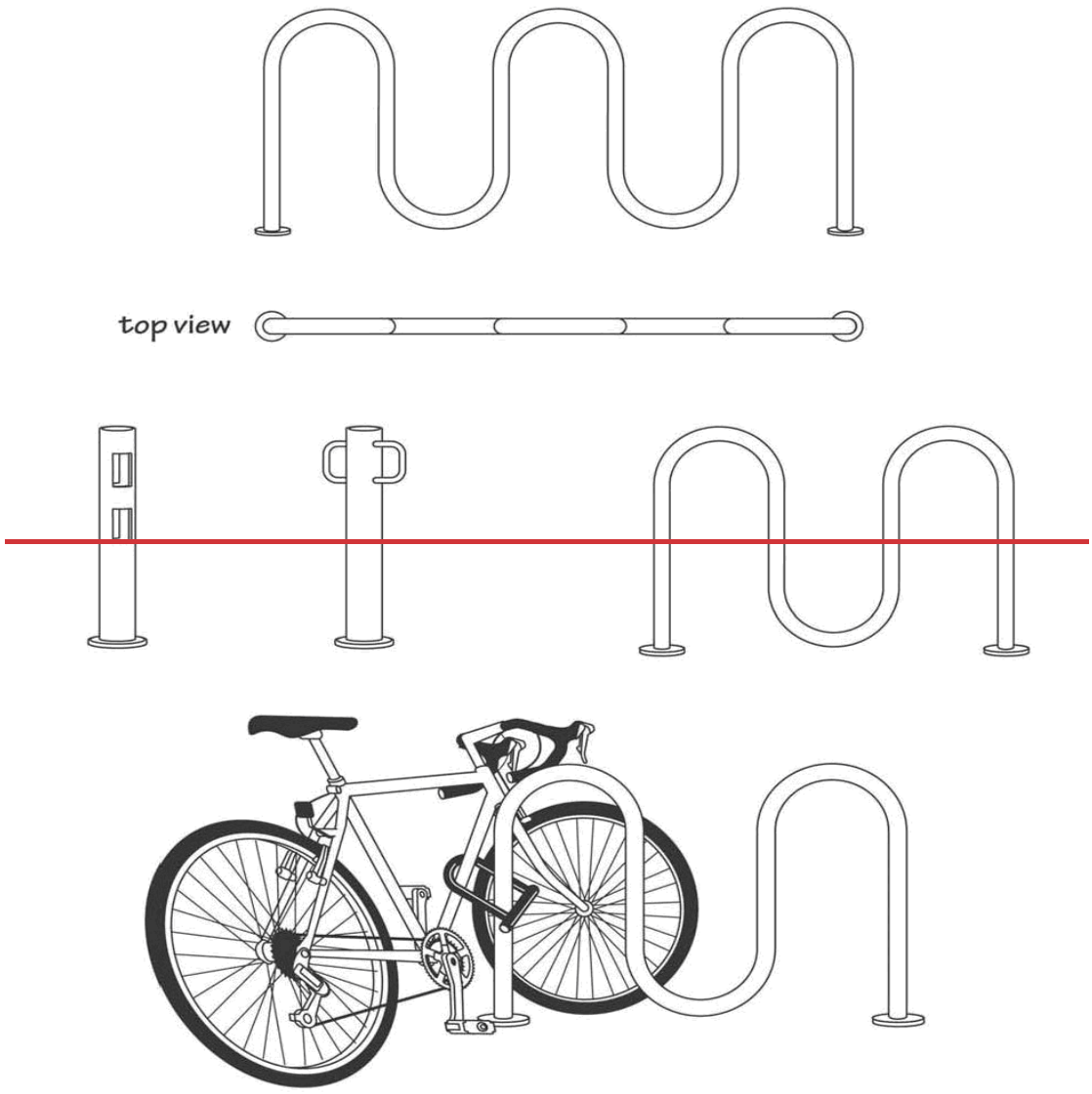
~~FIGURE 4. REQUIRED BIKE PARKING SPACE DIMENSIONS~~

~~Minimum clearances for bicycle racks. This configuration may also be adapted for use in a standard size automobile parking stall.~~



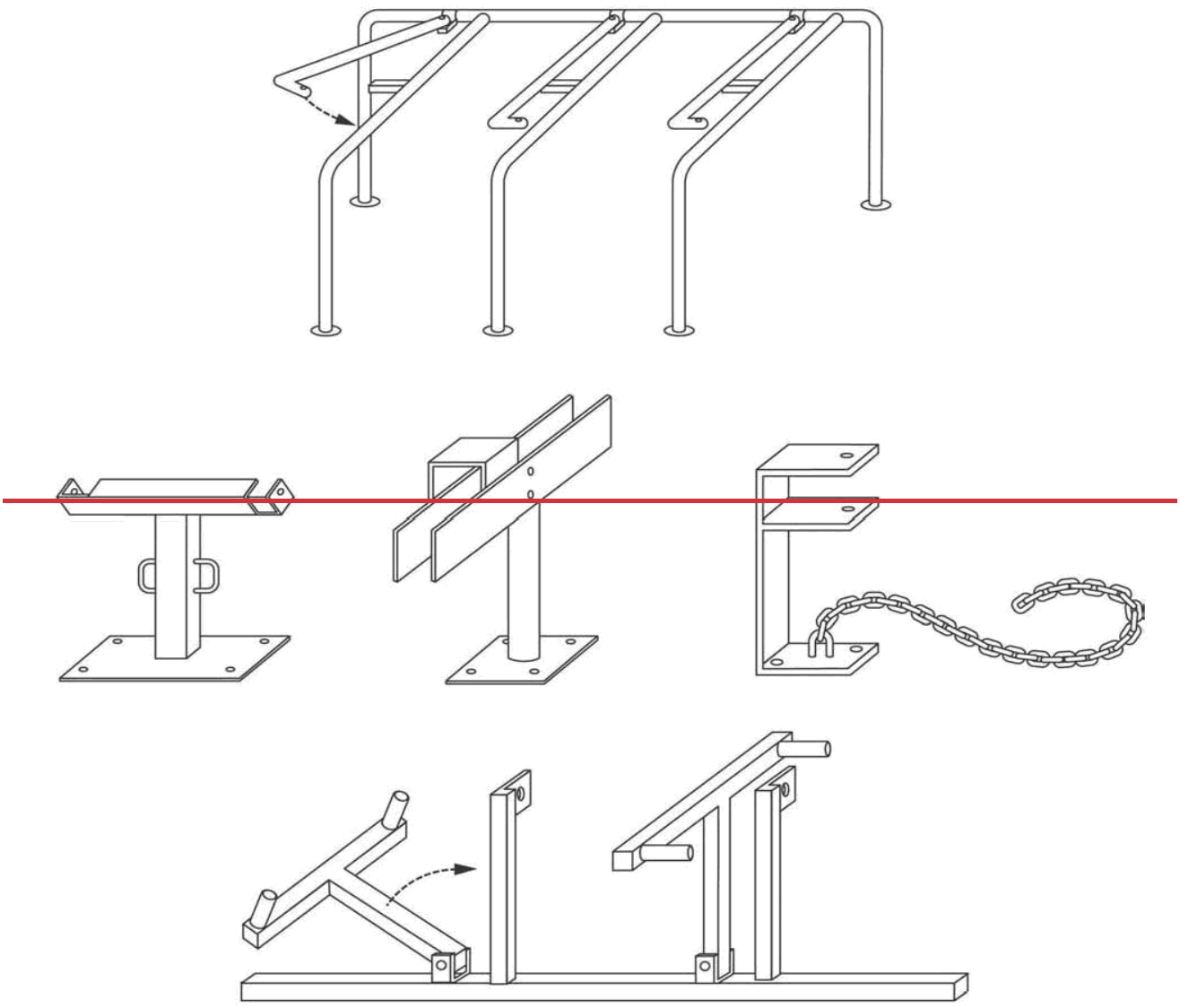
~~FIGURE 5. PROHIBITED BIKE RACK DESIGNS WITH SINGLE POINT SUPPORT~~

~~These designs do not provide two-point support for bicycles. Bicycles can fall over easily and become damaged. Bicycle could also fall into pedestrian right-of-way. Single post designs with sharp edges can be hazardous to pedestrians with visual disabilities.~~



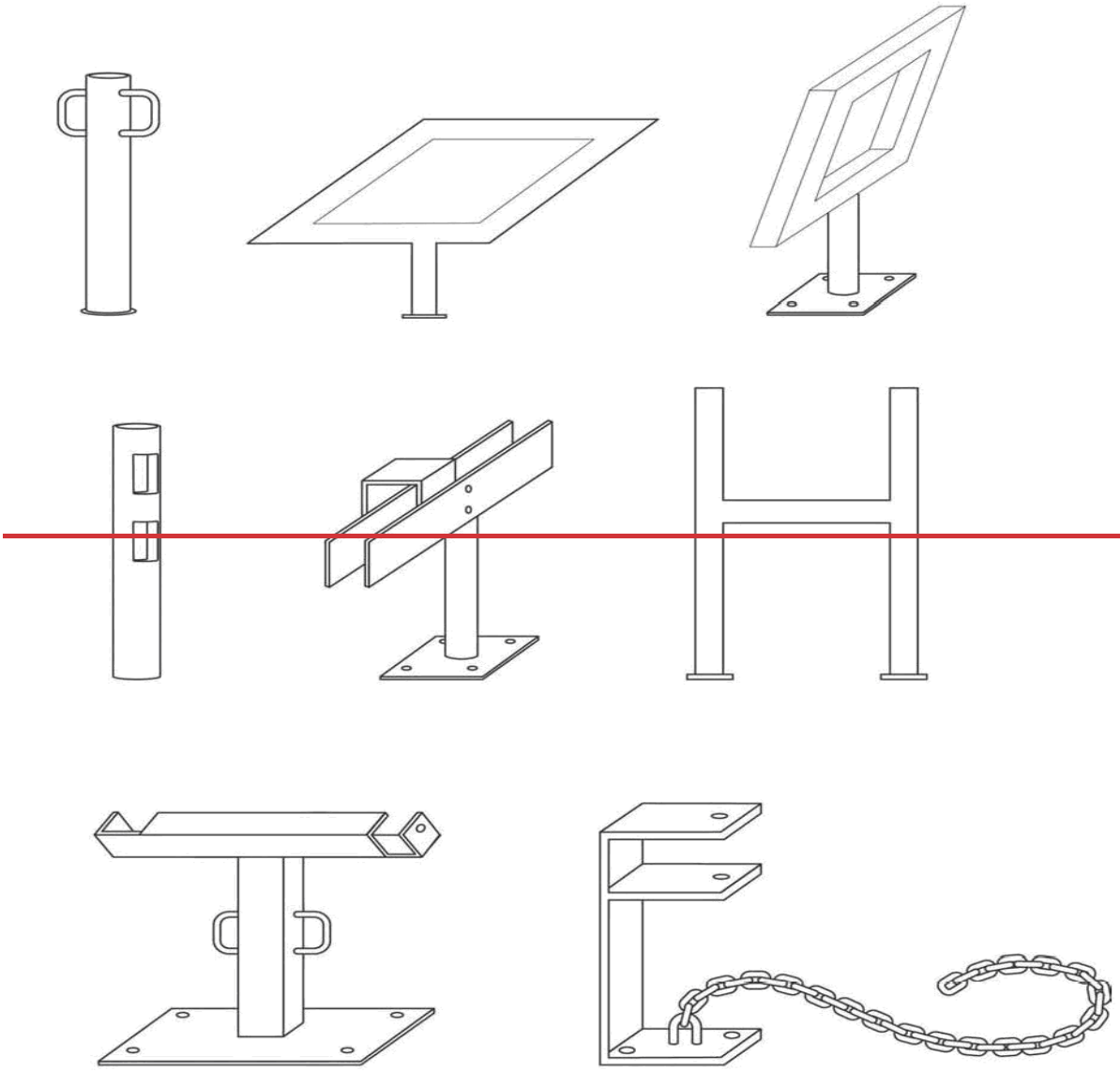
~~FIGURE 6. PROHIBITED BIKE RACK DESIGNS THAT POORLY ACCOMMODATE BICYCLES~~

~~These designs are made to accommodate traditional 'double diamond' frames with small diameter steel frames. They do not often fit modern bicycle designs, large diameter aluminum frame tubes or full suspension bicycles. These types of racks can cause paint and frame damage to bicycles and can be a hazard to persons with visual disabilities.~~



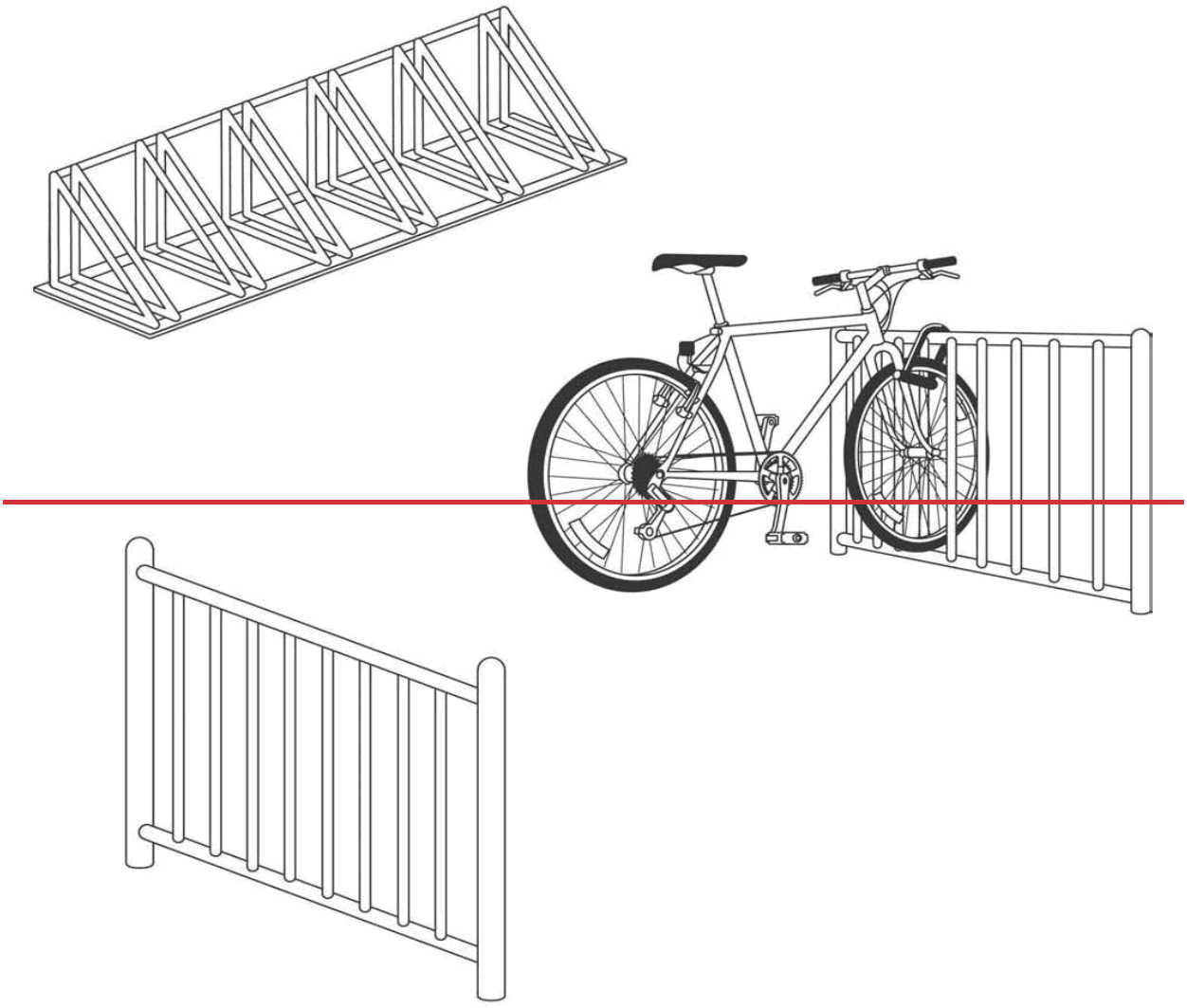
~~FIGURE 7. PROHIBITED BIKE RACK DESIGNS THAT ARE HAZARDOUS TO PEDESTRIANS~~

~~These designs present sharp edges and can be hazardous to pedestrians, especially persons with visual disabilities.~~



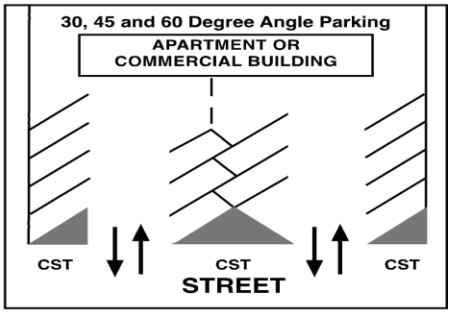
~~FIGURE 8. PROHIBITED BIKE RACK DESIGNS THAT OFFER INSUFFICIENT SECURITY FOR BICYCLES~~

~~Obsolete designs that only allow for locking of one wheel when used as designed. These types of racks contribute to the problem of bicycle theft. Also, because the rack only supports one wheel, rims can be easily bent.~~

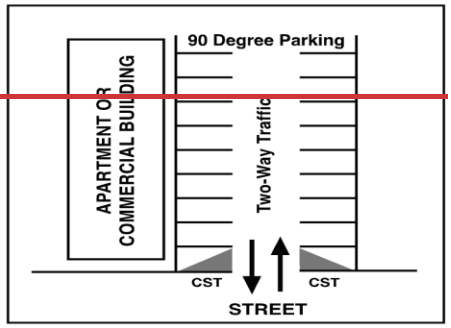


Traffic Flow / Permissible Designs

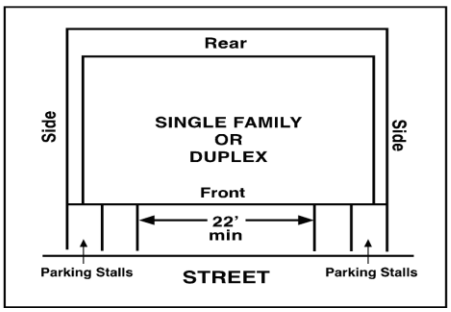
Two-way traffic and angle parking permissible as shown above where there is entry and exit from stalls in one forward direction.



Two-way traffic permissible where there is forward entry and exits to a public street.



Backout parking is permitted for a single-family or duplex unit provided the required distance between curb cuts is maintained.



DESIGNS NOT PERMISSIBLE
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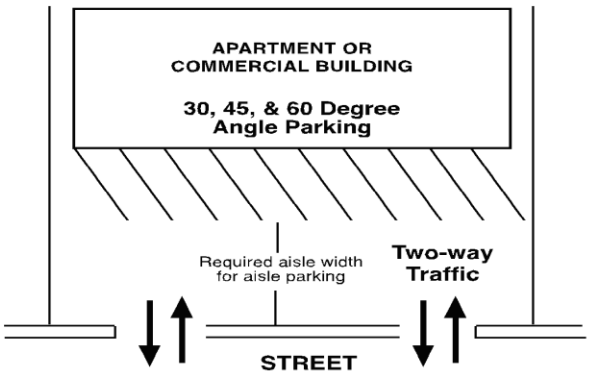
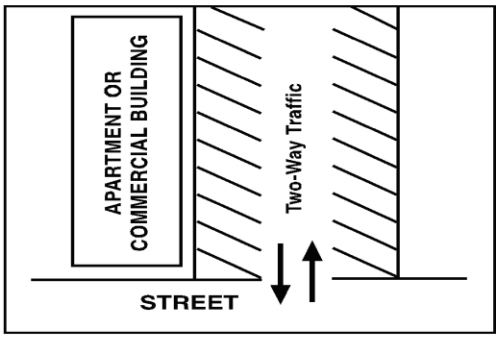
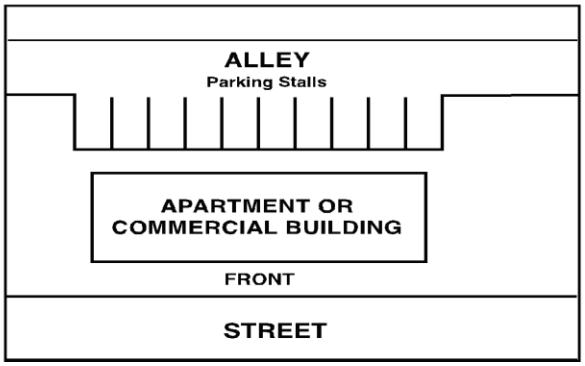




A two-way traffic aisle is NOT designed for entry into angle parking stalls in both directions. This design requires one-way traffic and one-way aisles only.

Two-way or one-way traffic is NOT permissible with access to an alley or when there is not both entry and exit in one forward direction to a public street.

Parking is not permitted with exit or entry to an alley.



DESIGNS NOT PERMISSIBLE
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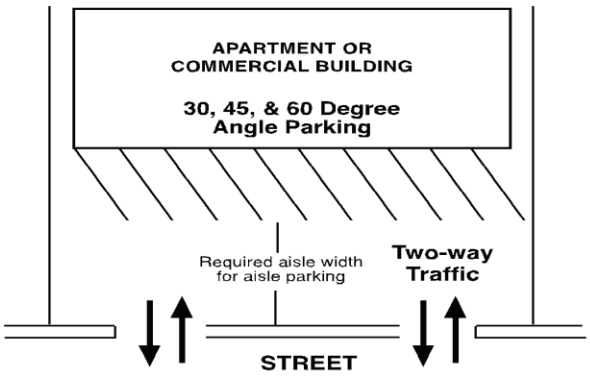

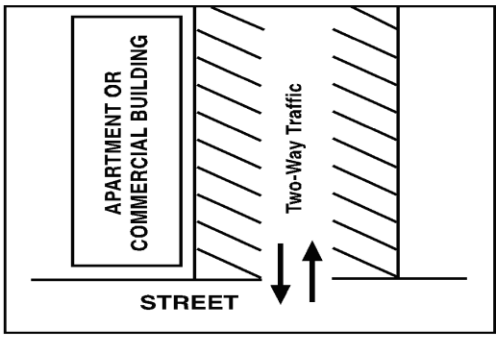

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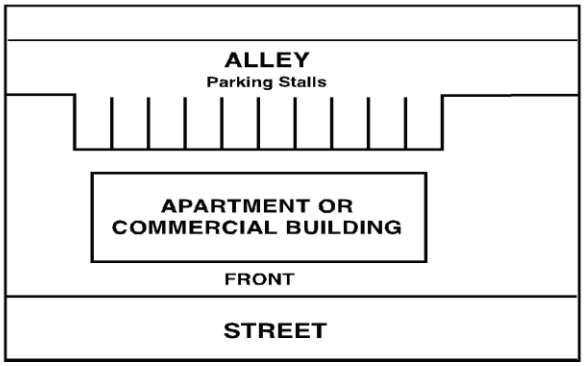
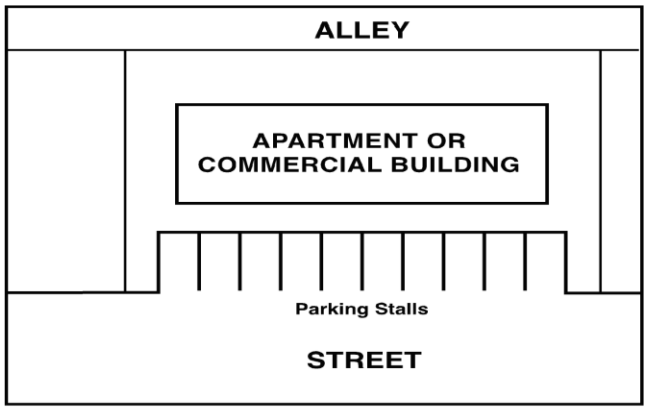
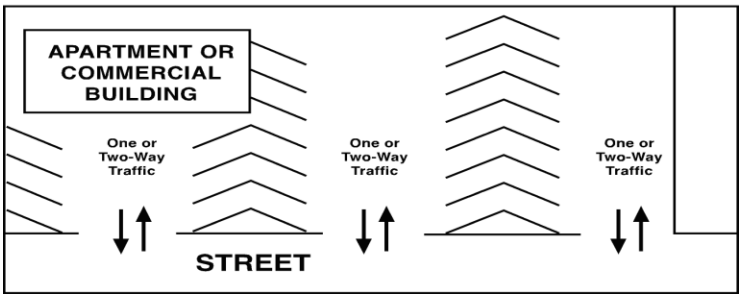


DESIGNS NOT PERMISSIBLE
(no scale)



Parking is NOT permitted without a required aisle and curb-cuts to prevent parking except for single-family or duplexs.



Designs shown above are not permissible because there is not an adequate aisle or access.

~~F. *Parking stalls for the disabled.*~~

~~1. *Definitions as used in this section.*~~

~~a. Curb cut: A short ramp through a curb or built up to the curb.~~

~~b. Designated, disabled parking stall: Any parking stall constructed, marked and reserved for the parking of a passenger vehicle which carries registration plates or a placard indicating disability in accordance with federal law, Americans with Disabilities Act, and NMSA 1978, Section 66-3-16. Such a place shall be designated by a conspicuously posted sign bearing the international sign of accessibility.~~

~~c. Accessible route: A continuous unobstructed path connecting all accessible elements and parking stalls of a facility that is usable by persons with physical disabilities. Exterior accessible routes may include parking access aisles, curb ramps, crosswalks at vehicular ways, walks, ramps and lifts.~~

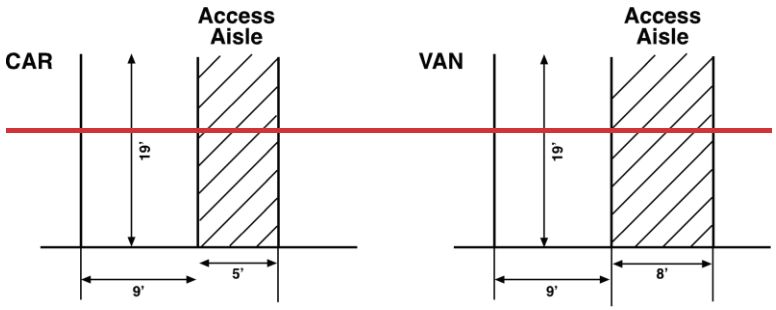
d. Parking lot: An area provided for self-parking by employees, visitors, and/or patrons of any office of state or local government, any public accommodations, commercial or industrial establishments or any other business open to the general public. This shall also include the area provided for self-parking by residents, visitors or employees of a residential building, larger than a duplex, available to the general public.

2. *Parking lot standards.* Every parking lot shall have designated disabled parking stalls provided as follows:

a. Accessible parking stalls shall be nine feet wide minimum and shall have an adjacent access aisle of five feet wide minimum with a slope no greater than 1:48 (2.08%) in all directions. Parking access aisles shall be part of the accessible route to the building or facility entrance. Two accessible parking stalls shall be permitted to share a common access aisle. Accessible parking stalls shall be identified by a sign showing the international symbol of access mounted in accordance with the city sign code. Signs shall not be obscured by a vehicle parking in the stall. Accessible parking stalls shall be marked using federal blue paint.

b. Van parking stalls shall be nine feet wide minimum, shall have an adjacent access aisle of eight feet wide minimum, shall have an eight feet and two inches vertical clearance and shall have a sign showing the international symbol of access and sign indicating "van accessible" mounted in accordance with the city sign code. Van accessible parking stalls shall be marked using federal blue paint.

PARKING STALLS FOR THE DISABLED



c. Curb cuts shall be provided wherever an accessible route crosses a curb and shall comply with the city's design standards.

d. Built-up curb ramps shall be located so that they do not protrude into vehicular traffic lanes or into parking stall access aisles and shall not be steeper than 1:12 (8.34%) with side flares not steeper than 1:10 (10%).

e. An accessible route shall consist of one or more of the following components:

1) Walking surfaces with a slope not steeper than 1:20 (5%) and a minimum width of four feet, marked crossings at vehicular ways, access aisles, ramps and curb cuts.

2) At least one accessible route shall be provided from public transportation stops, accessible parking and accessible passenger loading zones and public streets or sidewalks to the accessible building entrance. The accessible route shall be the shortest possible route from adjacent parking to the accessible entrance and shall, to the maximum extent feasible, coincide with the route for the general public.

3. Minimum number of accessible parking stalls: The minimum number of designated accessible parking stalls shall be determined by provisions of the adopted building code in effect at the time of permitting.

4. It is the property owner's and/or business owner's responsibility to ensure that all accessible parking (including stalls, access aisles, loading areas, etc.) are designed according to federal law, i.e., Americans with Disabilities Act, and state law.

G. *Parking stall and driving aisle reduction options.* The following provisions are methods to reduce the number, size, and/or square footage of area required for on-site parking. Any combination of the following options may be used, but in no event shall the reduction be more than 35 percent. The minimum number of parking stalls required is two. These methods cannot be applied to any provision regarding disabled parking.

1. *Shared and joint use of parking areas.*

a. *Shared parking areas.*

1) Multi-dwelling and nonresidential uses are encouraged to seek shared parking agreements with multi-dwelling and nonresidential uses on adjoining properties.

(a) These agreements shall be approved as to form and content by the city attorney and Community Development Director and once completed, filed with the county clerk's office.

(b) Agreements may be made with adjoining property owners regardless of the hours of operation of the adjoining uses.

(c) In combining parking requirements, a minimum of ninety percent (90%) of the required off-street parking for all uses shall be met.

(d) For uses requiring a shared parking arrangement in order to meet parking provisions, the agreement shall pertain to no more than 40 percent of the number of parking stalls they are responsible to provide. The remaining 60 percent must be provided on-site on each property.

(e) An agreement for shared and joint use of parking areas shall become null and void if there is a change in the specific land uses that are covered by the agreement, platting or re-platting of the land. In these instances, a new agreement shall be required.

b. *Shared driving aisles and curb-cuts.* Abutting properties may share driving aisles provided there is a written agreement establishing the conditions of joint use, of maintenance requirements and of ingress/egress requirements. The joint use of a driving aisle does not exclude the minimum parking requirements for the abutting lots. The agreement shall be properly executed by the owners of all affected properties and approved as to content and form by the city attorney and Community Development Director. A copy of the executed agreement shall be submitted with an application for a building permit after recording in the county clerk's office.

2. *Off-street parking in the historic districts.* In particular circumstances, it is possible to allow exceptions to certain parking requirements for small businesses within R-4, O-1, O-2, C-1 and C-2 zones and are located within the Alameda-Depot or the Original Townsite/Mesquite Street Historic Districts in exchange for the improvement or maintenance of the subject property in terms of building improvements and/or landscaping (historic district designation shall be determined by Federal Register or state historic preservation division data). Allowances for exceptions are intended to assist in maintaining a residential atmosphere in these areas, where possible. Furthermore, it is intended to be used as a tool to help facilitate the use of older buildings in these districts in addition to maintaining/improving their overall appearance.

a. *Qualified businesses.*

1) An attempt must first be made to meet parking, landscaping, and drainage requirements (refer to section 38-58, off-street parking; section 38-56, flexible development standards; section 32-101 to 32-135, urban drainage criteria and section 32-266 to 32-280, development standards for landscaping). If the subject property cannot physically meet the requirements in either of these sections or can demonstrate aesthetic concerns due to parking lot requirements, the subject property is in one of the city's historic districts, the subject property is located in an appropriate zoning district, and meet the established criteria listed in this section (section 38-58.G.2.a.), a property/business owner may apply for a parking exception in a historic district (note: flexible standard provisions may not be used in conjunction with this historic district parking exception provision).

2) A small business shall be considered as such when said business requires no more than eight parking stalls. All uses, whether residential, office or retail, situated on a particular parcel, are considered when calculating parking requirements. In the instance where nine or more parking stalls are required, a parking exception is not an option. Property/business owners in this instance must follow standard procedure of either providing an off-street parking area or apply to the Planning and Zoning Commission for a variance (exception: when there is available off-street parking that complies with current zoning code requirements for any residential units located on a property, those parking stalls will not be counted as a part of that business' requirement).

3) Suitable businesses must have R-4, O-1, O-2, C-1 and C-2 zoning designations.

4) For safety purposes, only those businesses that are located adjacent to streets that have a minimum paving width of 30 feet will be considered for these exceptions.

Note: Those applying only for an exception(s) to the required back-up and/or driving aisle must, at minimum, meet the first, second, and third criteria established in this section.

b. *Permitted exceptions.*

1) Applicants may request one or more exceptions to the typical parking requirements, found elsewhere in this section (section 38-58), for the business. Under these parking exceptions, a business will be able to utilize on-street parking for a maximum of eight parking stalls in lieu of the off-street parking area requirement (the number of allowed parking stalls for varying types of businesses may be found in section 38-33). If a business is able to provide off-street parking, but cannot meet back-up and/or driving aisle requirements, exceptions to the length of required back-up and/or driving aisles may also be requested.

2) Every effort to provide as many off-street parking stalls as possible for the business should be attempted and may become a condition of any exception granted at the discretion of the Community Development Director. Additionally, all ADA provisions must be met and any off-street parking areas must be paved in accordance with section 38-58.J. of this article.

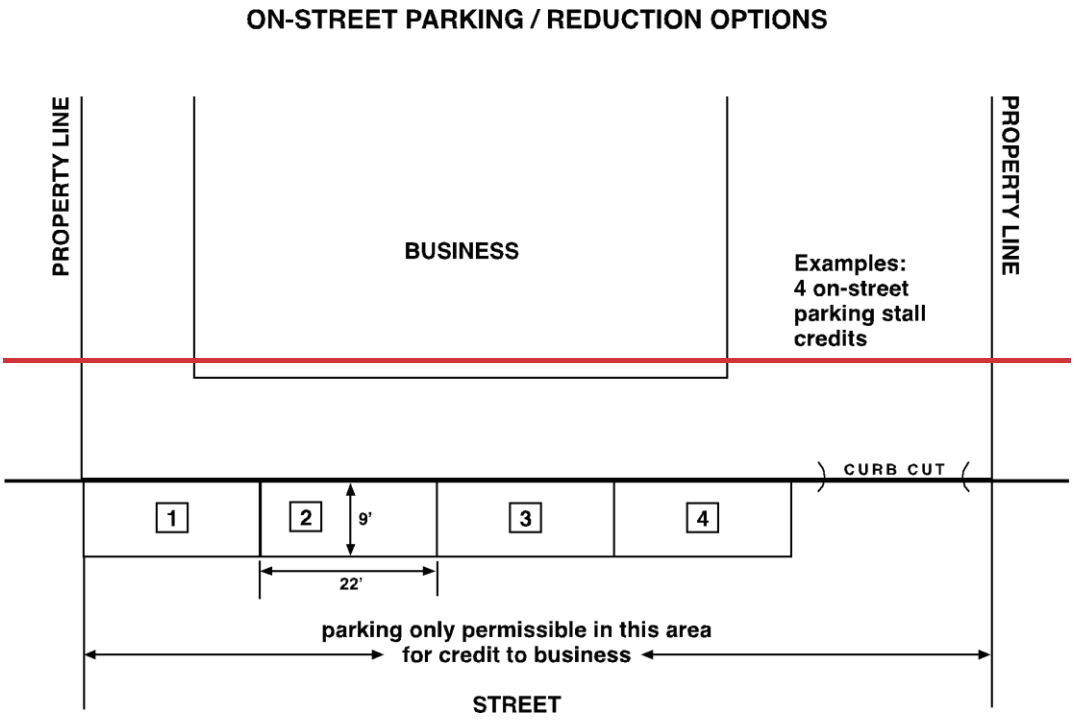
3) Businesses that are granted an exception(s) are expected to provide a landscaped area of 15 percent as well as any needed building improvements, e.g., new roofing, repairing cracks in walls, chimney repair, repairing fencing, patching and painting walls, as a benefit to the neighborhood and general community. All landscaping and building improvement information will be provided as a part of the application/letter of intent as per Section 38-58.G.2.c.1. Exterior remodeling of historic structures shall not result in the removal of a historic designation (note: the Community Development Director may forego the entire or a portion of the landscaped area if an applicant can demonstrate that the subject property cannot physically support this requirement).

c. *Application procedure.*

1) Applicants shall submit, to the community development department, a letter of intent that describes the nature of the business, location, the number of employees working at the business at any one time, expected number of customers on a typical weekday and weekend, what exceptions are being requested, why allowing these exceptions will not create a negative impact to the surrounding area, what benefit the city/neighborhood will result from this request in terms of building and landscaping improvements as per 38-58.G.2.b.3, and any other information deemed necessary by the Community Development Director. Those applying for back up and/or driving aisle exceptions only must also demonstrate that exceptions to these requirements will not create a hazard to the surrounding area.

2) With the information included in the letter of intent, the Community Development Director will determine whether or not the proposal will create a negligible impact to the surrounding area and if property improvements can be considered as a benefit to the neighborhood/community. Should the Community Development Director determine that the proposal is unacceptable, applicants may apply for the appropriate variances with the Planning and Zoning Commission. If an exception is issued, the Community Development Director will issue a certificate of parking exception. These provisions shall only pertain to the specific type and size of business that applies for and is granted an exception(s) and not for any future business that differs in any way from the original application request. The certificate of parking exception must be filed with the county clerk's office and kept as a record of the property.

3. *On-street parking.* In areas where on-street parking is permissible and verified by the public works department director or designee, this parking can be used for up to 25 percent of the required parking of a use as long as the on-street parking is adjacent to the property on which the use is located. To receive credit for on-street parking, stalls shall meet the stall dimensional requirements and the street shall meet the city's design standards. In the event that the street is later widened, or the status changed to prohibit on-street parking, the use on the property will become legal nonconforming.



4. *Landscaping.* Up to a ten percent reduction in the required number of parking stalls will be allowed if shade trees are provided. Each stall eliminated through this option shall be replaced with a minimum of two trees. This provision is in addition to the minimum landscaping requirements.

   a. Trees, two inch caliper minimum, located within the parking area shall maintain a minimum of six feet before the first lateral branch and shall reach a canopy diameter at maturity of 20 feet.

   b. Trees shall be located in an island or planter in which the tree trunks shall be protected from motor vehicles.

      (1) A barrier such as a curb, wheel stop, or bollard shall be used as protection.

      (2) Islands shall be a minimum of three feet wide, have a minimum area of 34 square feet and a raised border of at least four inches in height.

5. *Studies.* If information or research can be presented to the city for a specific type of use or method of parking, the Community Development Director or designee may grant a reduction in the number of required parking stalls and driving aisle width.

6. *Bicycle stalls.* One motor vehicle parking stall can be replaced with 4 bicycle spaces. This option can be used for not more than five vehicle stalls or not more than ten percent of the allowed parking stalls, whichever is less. Bicycle parking facilities shall meet the design standards found in section 38-58.E.9.

7. *Parking structure.* A ten percent reduction in the total number of required parking stalls will be granted if the required parking is provided in a parking structure that is two stories or more.

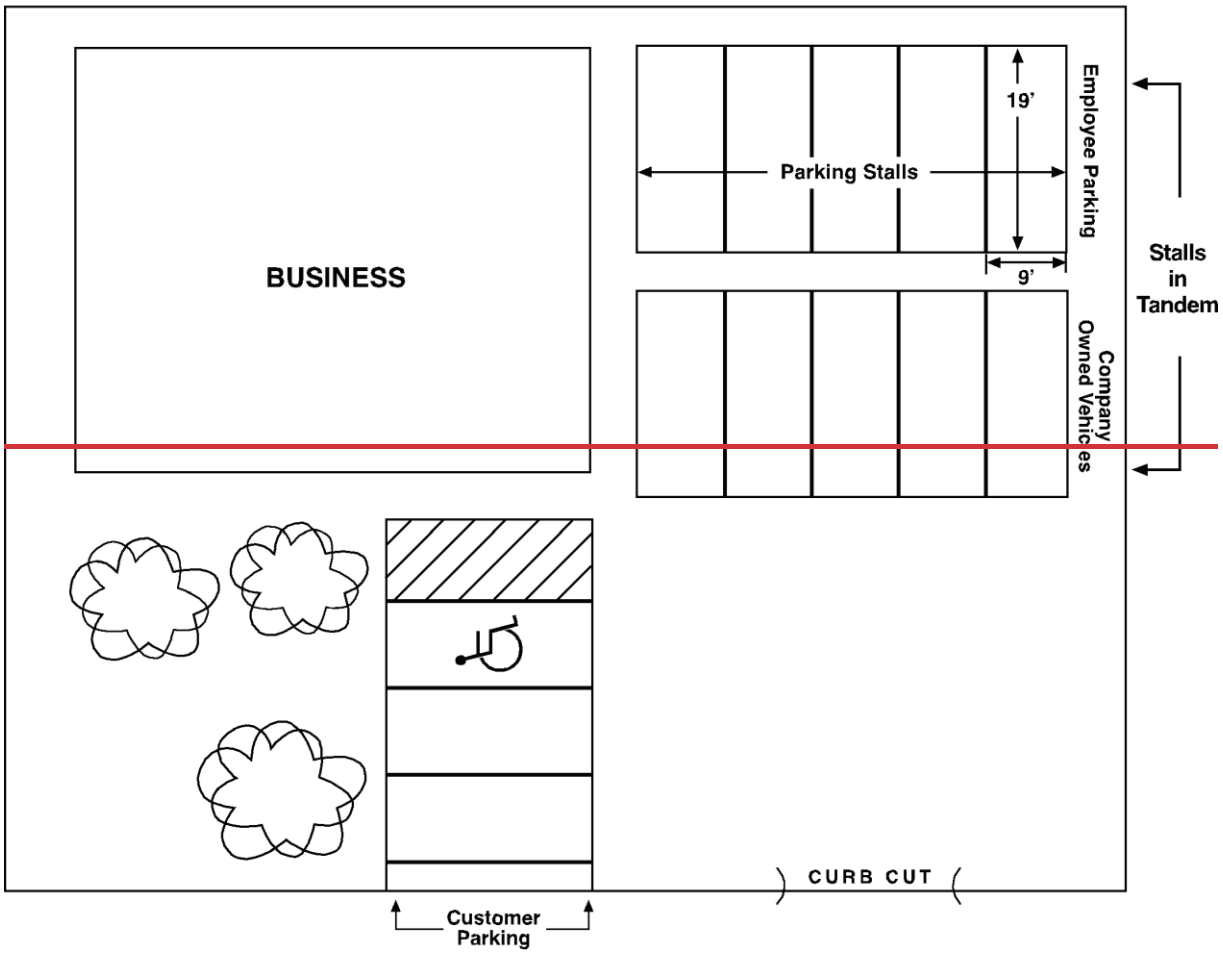
8. *Tandem parking stalls.* Tandem parking provides for two or more parking stalls, one behind the other, where access to one parked vehicle can only be gained through the abutting space (see drawing). Tandem parking can be utilized for no more than 50% of all required parking stalls to reduce the amount of driving aisle required. Tandem parking shall only be utilized for specific, property owner/manager controlled cases such as:

   a. Employee parking.

b. Company owned vehicles.

c. Controlled parking situations (funeral homes, sporting events).

TANDEM PARKING



H. *Stacking lane requirements.* The minimum stacking lane requirements are as follows:

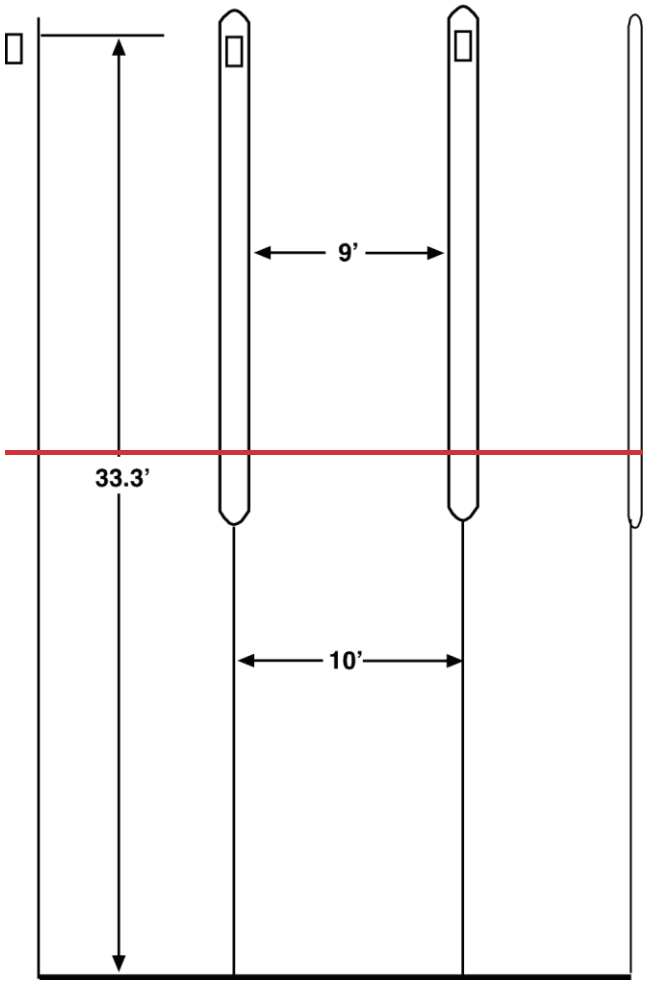
Length required: 100 feet.

Width required: Ten feet, except nine feet of drivable area at the point of service.

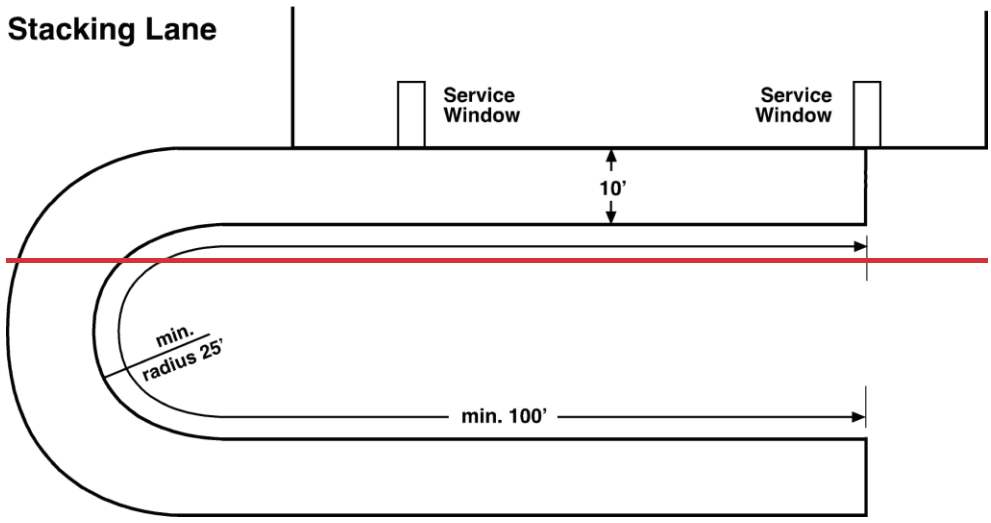
The measurement of the length of the stacking lane begins at the middle of the last point of service and ends at the point of entry of the lane.

When two or more stacking lanes are provided, a reduction of stacking lane length is permitted. The total length normally required shall be divided by the number of lanes. This product shall be the required length for each of the lanes.

Stacking Lanes: 3 Lanes provided



~~A stacking lane shall be designed in a manner that permits appropriate traffic circulation and avoids congestion in the parking area.~~



~~The minimum radius of a stacking lane shall be 25 feet.~~

~~I. *Wheelstop provisions.*~~

~~1. *Size requirements:* Six feet in length, six inches in height.~~

~~2. *Horizontal in placement:* Two feet from base of parking stall, securely anchored to parking surface.~~

~~3. *Materials:* Wheel stop material shall be compatible and appropriate to the site. Materials such as concrete, railroad ties, landscape timbers, or molded steel may be used.~~

~~4. *Alternative wheel stop methods:*~~

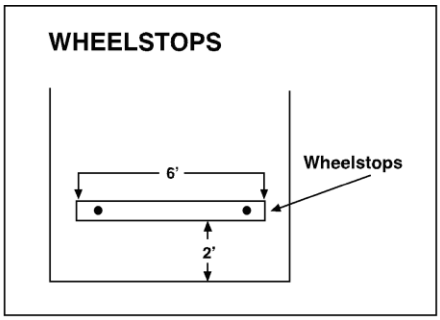
~~a. *Adjacent to sidewalk:* When the parking stall base is adjacent to a four foot required sidewalk, the sidewalk may be widened to six feet, essentially making two feet of the sidewalk the wheel stop.~~

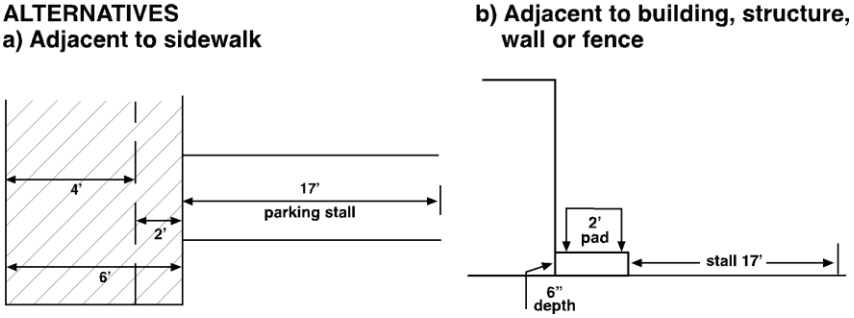
~~b. *Adjacent to building, structure, wall or fence:* When a parking stall base is adjacent to a building structure or wall, a two foot pad or landing may be constructed adjacent to the structure or wall. The pad or landing's construction must be of a minimum asphalt standard. The pad or landing cannot take the place of a required sidewalk.~~

~~c. *Adjacent to landscaping/aggregate:* Low lying (no taller than three inches and below the top of the curbing) landscape may be placed within the two foot area where the pad or landing would be present. The landscaping shall be enclosed by a six-inch curb and be properly irrigated.~~

~~5. *Parking stall measurement:* When utilizing one of the alternative wheel stop methods, the parking stall length will be measured two feet less or 17 feet.~~

~~6. *Exceptions:* One and two-family dwellings are not required to provide wheel stops.~~





~~J. *Construction and maintenance of parking areas.*~~

~~1. *Individual single-family or two-family dwelling developments.* Crushed stone or crusher fines is the minimum surface that may be used for driveways or parking areas for a single-family or two-family dwelling on one property. However, compliance with sections 38-58.D.6. and 7. is required.~~

~~2. *All other developments.*~~

~~a. *Construction materials.* All parking stalls, loading areas, back-up aisles and access aisles to the nearest public street shall be paved with a permanent surface, consisting of a minimum of five inches of concrete, or a minimum of 1½ inches of asphaltic concrete on a prime coat over a four-inch compacted subgrade, or a surface of equal or superior performance characteristics as determined by the community development department director or designee.~~

~~All parking and loading areas shall be maintained in a safe, usable, dust-proof condition, graded and drained to dispose of all surface water.~~

~~b. *Striping.* Parking spaces, back-up aisle, loading areas, entrances, exits and clear sight triangles shall be appropriately marked to indicate their location. Striping shall not be required for single-family or two-family properties.~~

~~c. *Landscaping and irrigation.* Landscaping and an irrigation system in compliance with the city's design standards will be required with the installation of a parking area.~~

~~d. *Drainage.* The installation of a drainage facility in compliance with the city's design standards will be required with the installation of a parking area.~~

~~e. *Temporary parking area installation delay.* Shall only be utilized by nonresidential uses and shall not apply to new construction on vacant land.~~

~~1) Candidates for a time delay: A time delay may only be utilized if and/or when:~~

a) The applicant is a new business or business that has recently relocated, and is a nonresidential use.

b) The required parking area contains one to ten parking spaces.

c) The business is not a business center, shopping center, mall or planned commercial center.

d) A time delay has not been previously granted for the property.

e) The new or recently relocated business is not occupying a newly constructed structure.

2) Application submittal.

a) A delay in the installation of parking areas shall not be granted without a written agreement establishing the conditions for the delay and length of time for the delay.

b) The time delay application packet can be obtained in the community development department. The packet must be completed and returned to the community development department, in order for approval consideration. In order to complete the time delay application packet, an applicant will be required to:

(1) Complete the application. Information such as name, address, number of stalls required, and signature shall be provided.

(2) Complete the agreement. Information such as project address, date and a notarized signature will be required.

(3) Submit a site plan of the project property and parking area. The site plan must be a drawing to scale and clearly indicate relevant information, as discussed in the packet. Can be combined with landscape and irrigation plan item (4).

(4) Submit and receive approval of a landscape and irrigation plan. Can be combined with site plan item (3).

(5) Submit an estimated cost of parking area improvements from a licensed contractor.

(6) Pay processing fee.

3) Approval of time delay.

a) The following criteria shall be used by the Community Development Director or designee to consider a time delay for construction of parking areas.

(1) Application of the terms of the zoning code shall be in harmony with the general purpose and intent as stated in Section 38-2.

(2) Granting any time delay to parking area construction shall not merely serve as a convenience to the applicant, but the delay shall be the minimum necessary for relief due to some demonstrable hardship, and shall be granted only in such instances where reasonable alternative means are not available to resolve the problems.

(3) Time delays to parking area construction shall not be granted in such cases where it would adversely affect adjoining properties.

(4) Time delays to parking area construction shall not be granted in such cases that will impair an adequate supply of light and air to adjacent property, unreasonably increase the congestion in public streets, increase the danger of fire, endanger public safety or diminish or impair established property values.

b) Upon obtaining approval signatures, the written agreement shall be filed/recorded at the county clerk's office, at the applicant's expense, and a filed copy returned to the community development department. If a filed/recorded copy is not returned to the community development department, a business license will not be issued.

c) A temporary business license shall be issued to a business that has received a time delay for the construction of a parking area. The temporary business permit shall only be valid for the length of the time delay for construction of parking areas.

4) Conditions of a time delay.

a) No delay shall exceed 24 months from approval of the agreement.

b) The agreement shall be executed by the Community Development Director or designee and the owner of the property containing the parking area.

c) The content and form of the agreement shall be approved by the city attorney and Community Development Director.

d) The agreement may not be extended for an additional time period.

e) Approval of a time delay for the construction of parking areas shall be applicable to all successors and heirs.

f) The property owner must be the business owner requesting the variance. If the business owner is not the property owner, a joint application may be submitted by both parties.

g) The delay for the specific parcel of property shall be for one time only; it may not be extended, renewed, or subsequently reapplied for by a new property owner or new business owner, regardless of the length of time any previous delay was utilized.

h) The parking lot must be substantially completed no later than thirty (30) days prior to the expiration of the waiver.

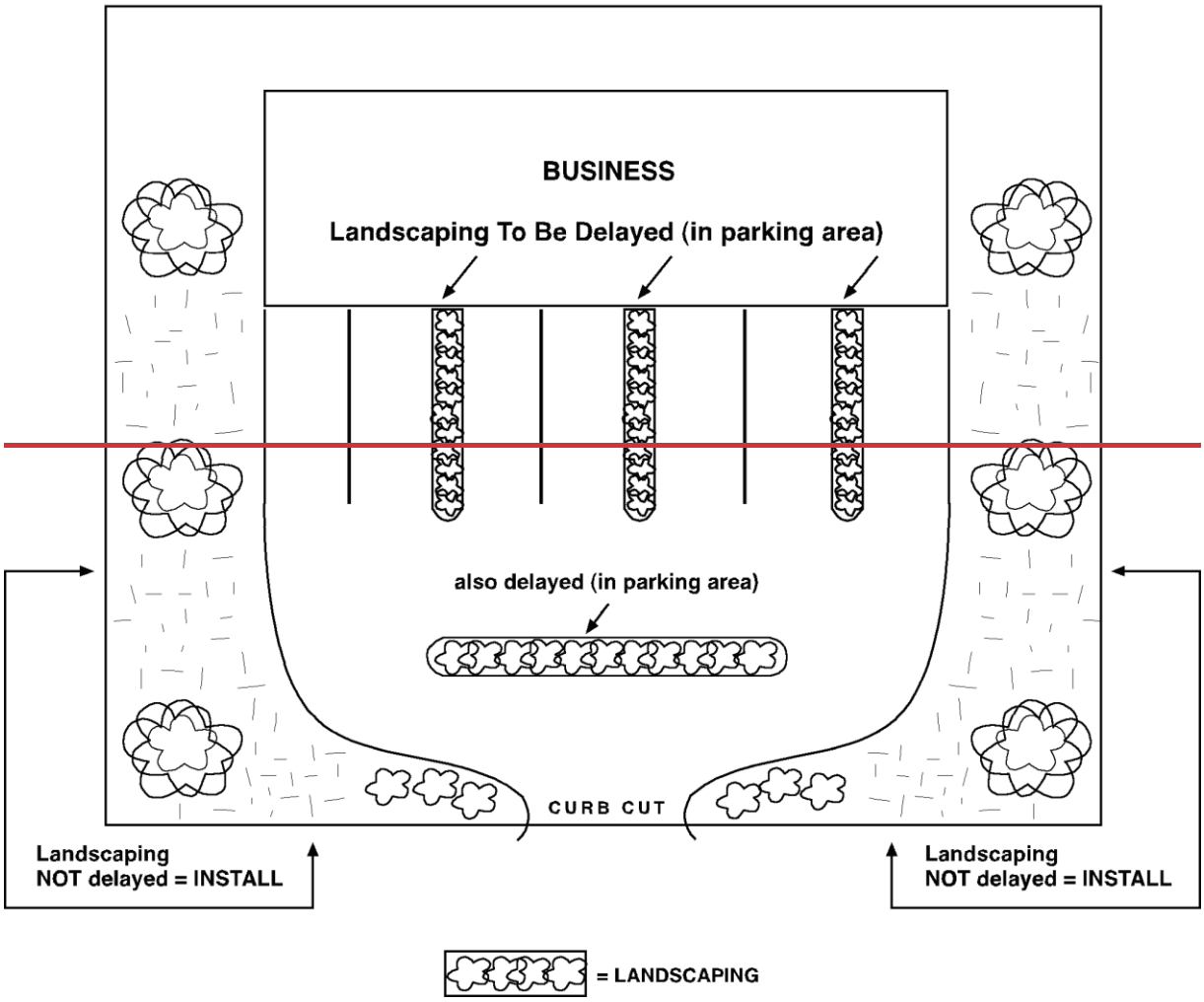
i) All parking and loading areas shall be maintained in a usable, dust-proof condition, graded and drained to dispose of all surface water.

j) Landscaping requirements are not included with the time delay for required parking area improvements. However, if it can be demonstrated that landscaping is proposed to be present in the required parking area, installation for that landscaping only may be delayed until such time as the paving is completed. All other landscaping shall be installed prior to business license issuance.

k) Drainage requirements for existing structures with unimproved parking areas shall be constructed at the time of parking area improvement (paving). The drainage facility shall be engineered for that parking area's impervious area at a minimum.

l) The minimum standard for the surface of parking stalls and driving aisles during the time delay is gravel, crusher fines, compacted subgrade or base course.

TIME DELAY LANDSCAPING



(Ord. No. 2354, § I, 1-22-07; Ord. No. 2775, § I(Exh. A), 2-16-16; Ord. No. 2882, § I(Exh. A), 12-17-18)

Sec. 38-59. Antenna, towers, communication structures, and other vertical structures.

A. *Purpose*. The purpose of this section of the zoning code is to address the placement, height, and other restrictions related to all types of communication structures, including antennas, towers, and other vertical structures not related to communications. This section also addresses the urban design criteria, special use permit and variance processes, and nonconforming issues for the same structures. This article is intended to address the public health, safety, and general welfare associated with such structures, in accordance with the comprehensive plan and other sections of this Code.

B. *Definitions.*

Antennas: Any structure that radiates or receives radio or other communication signals.

Collocation: The physical attachment and/or placement of one communication structure upon another communication structure, and may include placing different or similar communication structures on the receiving structure. For example, a cellular transmitter being placed on a television receiver tower or a cellular transmitter on another cellular transmitter tower.

Communication structures: Any structure, including antennas and satellite service devices, or any other device which is normally used for radio, television, microwave, or wireless communications. This shall include any device that is attached to a new or an existing tower, or attached to a building facade or roof or other noncommunication structure, and such attachment is made to the facade or roof vertically, horizontally and/or diagonally.

Facial mount: The physical attachment of a communication structure to a building or other noncommunication structure, which does not substantially increase the height of the building or structure. Examples of other structures include, but are not limited to: freestanding signs and billboards, stadium lights, gas station canopies, electric poles, area and street lights, and church spires. This can include attaching the structure either vertically, horizontally, or diagonally along the structure's building facade, facades, walls, roofs, or other surfaces.

Satellite service device (SSD): Any structure used to receive satellite programming services specifically associated with television reception from the transmission of signals from a satellite to a receiver, usually a round "dish" that can vary in size. This does not include those dishes or devices used for two-way communications.

Tower: Any structure, vertical in inclination, which is normally used to support antenna or other communication structures. This may include television and radio towers, guy towers, and all other free standing towers, either for private or commercial purposes.

Vertical structure: Any built object that is either independent of or attached to any building that is perpendicular in its direction to the nearest adjacent ground. May include such structures as spires, belfries, flag poles, steeples, and other similar structures, but does not include antennas, towers, communication structures, and satellite service devices.

Commercial purposes: Structure used by any individual, firm, organization, or company, through leases for profit or any privilege granted to any other individual(s), firm, organization, or company for any type of communication service. This includes those nonprofit agencies that provide such communication service to other users and not for the nonprofit agencies' sole use. Home occupations whose primary function is the leasing of communication service space on communication or other structures, permanent or portable, are considered commercial purposes.

Private purposes: Structure owned by any individual, firm, organization, company, or an amateur radio operator as licensed by the FCC, not using the structure for profit as part of its communication needs. This includes any structure used by any local, state, or federal entity for the communication needs and functions of that entity, as authorized.

C. *General standards and construction provisions.*

1. All structure heights shall be measured from the lowest adjacent ground level vertically to the highest point of all structures, whether attached to the ground, the building, or other structure(s).

2. All structures shall be constructed and installed to manufacturer's specification, and constructed to withstand a minimum 75 mile per hour (mph) wind, or the minimum wind speed as required by the city's adopted Uniform Building Code, as amended, and required setback provisions as prescribed for the zoning districts below.

3. Structures shall be permitted and constructed to meet current, adopted city Building Code requirements.

4. All structures shall conform to Federal Communication Commission and/or Federal Aviation Administration regulations, if applicable.

5. Any setback or bufferyard as prescribed within Matrix 1 of this Code that requires a greater distance than required of this Section, the greater setback shall apply.

6. Any increase to the height of or a reduction to the setbacks for private purposes in any residential zoning district require the approval of a variance by the Planning and Zoning Commission, and not a special use permit.

7. Business registrations are required for each communication structure for commercial purposes located inside the city limits, regardless whether said structure is freestanding, collocated, facial or roof mounted, or part of an integrated structure or improvement.

8. Abandonment or cessation of use of the communication structure shall require the removal of all facilities associated with the communication structure from the subject property within six months after the abandonment or cessation of use. Foundations for such structures should be altered or removed in order to be visually appealing and safe.

D. *Collocation, facial and roof mount, and integrated communication structures provisions.* Co-locating, facial and roof mounting, or constructing integrated improvements in which communication structures are disguised or made part of a new building or structure, is required for all commercial use communication structures in all zoning districts, historic districts, historic properties, and within 200 feet of historic districts or properties unless evidence is provided that clearly indicates that co-locating, facial or roof mounting, or improvement integration cannot and should not occur. Evidence, may include, but is not limited to, that no other structure suitable for collocation, mounting, or improvement integration exists:

1) Within a one-mile radius to meet the applicant's engineering requirements or structural strength or space availability needs for all improvements;

2) In which unavoidable electromagnetic interference would occur between the new and any existing communication structures;

3) In which other factors render the use of existing structures unsuitable;

4) In which urban design features and aesthetic views would be hampered, beyond the objectives desired with the creation of this requirement, of existing natural and man-made structures;

5) Whose owners of existing structures would not allow the placement of the applicant's structure or such owners are requiring payments thereof that substantially exceed commercially reasonable rates; and

6) Cases in which violations of this Code would be created.

Such evidence shall be presented to the community development department for review and approval by the Community Development Director or designee. Such proof may be required as part of the special use permit and/or building permit approval processes, and only then shall an independent, freestanding communication structure be allowed in accordance with other requirements of this Code.

1. Collocation of structures shall be in accordance with the following provisions:

a. Height limit exceptions for collocation only:

1) If the height of the receiving structure exceeds the maximum height permitted for that type of structure in the parcel's zoning district, then the receiving structure shall be granted a legal-nonconforming use certificate and the collocation of the new communication structure shall be allowed by right provided that the addition of the new structure does not increase the height of the receiving structure.

2) If the height of the receiving structure meets or is below the maximum height permitted for that type of structure in the parcel's zoning district, collocation of the new communication structure shall be allowed by right provided that the addition of the new structure does not increase the height by more than 20 feet above the maximum height allowed for that zoning. If the collocation of the new structure will exceed the 20 feet height limit above the maximum allowed height, then applying for, complying with, and receiving approval of a special use permit shall be required.

b. If the receiving structure has previously received a special use permit for its use and placement, including necessary variances for height and setbacks, the original special use permit does not need to be amended provided all requirements of the original special use permit have been met, including landscaping and screening, and that all height and setback increases are in accordance with limits prescribed within items "a" and "b" above.

1) Technical engineering information will need to be submitted with the building permit application indicating compliance with the building codes and structural provisions to ensure that the receiving structure can support the new communication structure.

2) Additional buildings and/or additions to existing equipment and accessory buildings for towers will require compliance to architectural and urban design criteria and must be reflected on necessary special use permits, if applicable. If not reflected on special use permits, amendment provisions must be followed in accordance with the special use permit section of this Code.

c. An unlimited number of communication structures may be placed on an existing tower and/or other communication structure, provided all other requirements are met, including building codes and urban design criteria.

2. Facial and roof mount placement of structures can be utilized on existing building and structures, not including other communication structures, provided that the addition of the communication structure does not: (1) exceed the maximum height allowed for the receiving structure and/or building, (2) violate setbacks required for that type of structure in that parcel's specific zoning district, and (3) encroach on required setbacks and/or bufferyards from adjacent land uses and zoning districts. Additionally, the proposed communication structure shall be compatible with the integrity and style of architecture of the receiving building and/or structure.

Facial and roof mounting of structures shall be in accordance with the following provisions:

a. Facial and roof mounts must be securely mounted to the structure with approved fasteners in accordance with the current building code, as amended, or other accepted engineering practices for such attachments.

b. If not governed specifically by this section, the building or structure receiving the facial mount communication structure must comply with all applicable zoning and building code provisions, if applicable, or other city ordinances and/or state laws related to their placement, use, and construction.

c. All facial mounts must be an integrated architectural design feature and painted or textured such a color as to blend in with their visual background.

d. When roof mounts are used, at a minimum, the first five feet of the communication structure shall be screened from view on all sides through the use of building design elements, such as varied roof heights and/or parapets.

e. Facial mounts cannot project more than three feet from the surface of the facade of the building and the projection cannot violate any of the normally required building setbacks and/or

bufferyards. Structures that are attached parallel to a pitch roof surface cannot project more than three feet above the surface of such roof.

Exception: This does not apply to roof top mounted structures that vertically ascend upward from a flat roof or structures placed at the apex of pitched roofs.

f. All facial mount communication structures must maintain a minimum clearance of eight feet above the nearest adjacent ground and/or walking surface.

g. There shall be no limit on number of facial and roof mount structures, except in items h. and i. below, in any zoning district provided the structure is compatible with and integrated to the architecture of the receiving structure and can be demonstrated in plans to be submitted to the community development department for review and approval.

h. In the UAC and ADM overlay zones, the number of structures is limited to one facial mounted structure only, and such structure shall be in accordance with design criteria and approval processes for the specific overlay zone and no other communication structure, either for private or commercial purposes, is located on the same parcel. In all R-1, R-2, R-3 and rural residential zoning districts, the number of commercial communication structures is limited to either one facial mounted structure or one roof mounted structure.

i. In the West Mesa Industrial Park overlay zone, the number of structures is limited to one facial mount and one roof mounted structure, in addition to one structure for use by the property owners, and in accordance with design criteria and approval processes for this zone.

3. The placement of communication structures, for commercial purposes, as an integral part of a building, new, existing, or with improvements, is intended to provide more options for the placement and use of communication structures while integrating or concealing the communication structure into an improvement. This option may be used on privately or city-owned property that furthers the needs of both the community and the communication company.

a. Communication structures integrated into public facilities shall be in accordance with the following provisions:

Approval for such facilities shall occur as an agreement between the communication provider and the city council. Such agreement shall serve as a lease to the specific property with clarification as to the type of facility, its use, access to the site, and maintenance provisions. The city shall expect clear indication to the placement of the communication structure(s) within the public facility or improvement, terms for abandonment of the facility, and other minimum guarantees to protect the public health, safety, and welfare. Nothing within the agreement shall mandate the city's acceptance of the proposal and to allow the use of the public facility or to make improvement to allow the accommodation of a private or commercial communication structure(s).

All such proposals shall be submitted to the city's property manager or designee for review and recommendation to the city council for review and approval. The property manager shall submit the request for review and comments to the community development department, at a minimum, and other city departments, staff, and boards, as the manager determines to be appropriate for review. Such reviews shall be to determine the impacts, if any, on the proposal as it relates to city use and functions of the existing public facility and the facility after the integration of a communication structure, with or without improvement to the public facility. The use of this section shall allow for the violation of standards and requirements for communication structures as allowed within the zoning district in which the public property is located.

b. Communication structures integrated into private facilities shall be in accordance with the following provisions:

Approval for such facilities shall occur as part of a master plan or site plan approval process. The master plan or site plan approval process shall outline a clear indication to the placement of the communication structure(s) within a facility or improvement, terms for abandonment of the facility, and other minimum guarantees to protect the public health, safety, and welfare.

All such master plans and site plans shall be submitted to the community development department for review and recommendation to the Planning and Zoning Commission for review and approval. Through the master plan or site plan approval process, this section shall allow for the violation of standards and requirements for communication structures as required within the zoning district in which the private property is located, provided that the integrated facility provides an aesthetic benefit to the community versus that of nonintegrated or freestanding communication structures.

c. Examples of communication structures integrated and/or concealed into public or private facilities include but are not limited to:

1) Flagpoles,

2) Spires, bell towers, and other architectural features added to buildings,

3) Integrated communication structures on utility substations, buildings and water tanks,

4) Extensions of communication antennas to existing lighting poles at sports facilities, and

5) Any other proposed communication structure that is integrated and/or concealed within a building or structure and is approved in accordance with the provisions of this section.

E. *Urban design criteria—All communication structures.*

1. *General provisions.*

a. Building architecture, not including the tower, shall be consistent with surrounding structures in both style and construction material.

b. Access to all communication structures and associated buildings on the property shall be shown on the site plan as part of special use or building permit approval processes.

c. No chain link fencing around any communication structures is allowed along arterial or collector streets.

2. *Commercial provisions.*

a. If a tower site or any other communication structure for commercial purposes is being built, it must conform to all city design standards, including landscaping as required within this Code and other city codes.

b. Opaque buffers are required for any freestanding tower, antenna, and other communication structure, and associated equipment buildings adjacent to single family residential zones unless there is no reasonable expectation that the adjacent property will be used for single-family residential purposes.

c. Semi-opaque buffers are required for any freestanding tower, antenna, and other communication structure, and associated equipment buildings adjacent to all other residential zoning districts and the office zones unless there is no reasonable expectation that the adjacent property will be used for residential zoning district or office zoning district purposes.

d. Equipment buildings associated with communication structures shall follow an architectural style, construction materials, and colors similar to existing buildings within the neighborhood; i.e. building facades for tower accessory buildings and the first 20 feet of towers shall be painted earth-tones or similar colors to existing structures within the neighborhood and constructed of similar building materials.

e. On-site driving aisle and parking stalls shall be required for all commercial communication structures. Driving aisles shall be at least 12 feet in width and such length to provide access to the nearest public street or paved right-of-way. At least one parking stall shall be provided on the site and shall be 12 feet in width and 19 feet in length. Paved connection between the driving aisle and parking stall shall be provided.

f. Antennas or other radiating/receiving devices are not required to have architectural treatments or other design features, such as painting and texturing, applied as required within this Code, as such treatments would interfere with the operation of the device. Such treatments are required of the supporting structure, including towers, and not the radiating/receiving device.

3. *Residential provisions.*

a. All private communication structures on residentially zoned property are encouraged to either be painted or treated the same color as the primary structure or the surface in which the structure is attached. This includes painting or screening roof-mounted communication structures.

b. Screening and/or painting of roof-mounted structures is encouraged on all sides the residential property in which a communication structure is to be or is placed.

F. *Placement provisions—Freestanding communication structures and other vertical structures.*

Table 38-59-1: Maximum Permitted Heights

Zoning District	Towers	Other Communication Structures
FC	Prohibited	Prohibited
H, EE, RE, REM, R-1c, R-1a, R-1b, R-1cM, R-1aM, R-1bM, R-2, R-3, R-4, O-1, O-2, CBD	65' For noncommercial use only**	65' For noncommercial use only**
C-1, C-2, C-3	65'	65'
M-T, M1/M2, M-3	200'	200'
UAC, ADM*	Maximum building height and noncommercial use only	Maximum building height and noncommercial use only
WMIP	Limited placement @ 65'	Maximum building height

*Towers and communication structures are permitted for private purposes provided the structure is placed to the rear of the primary structure and is approved in accordance with the overlay zone for the University Avenue Corridor or the Avenida de Mesilla Corridor. Structures for commercial uses are prohibited within these overlay zones.

** Structures for commercial purposes will be permitted only in accordance with facial and roof mount, improvement integration, and urban design provisions of this section.

1. *Towers and other communication structures, and satellite service devices in residential zoning districts (H, EE, RE, REM, R-1c, R-1a, R-1b, R-1cM, R-1aM, R-1bM, R-2, R-3, R-4, O-1, O-2, CBD, UAC, ADM, WMIP).*

   a. Setbacks: Structure shall be placed within the primary buildable area for the parcel's specific zoning district and must be to the side and/or rear of any and all residential dwelling structures (e.g., house, apartment, duplex, triplex, quadplex, townhouse, etc). Private communication structures in these zones may pursue a variance from the Planning and Zoning Commission for increases in height and reductions in required setbacks.

   b. Structures for commercial purposes shall be permitted only in accordance with facial and roof mount, improvement integration, and urban design provisions of this Section.

2. *Towers and other communication structures in the commercial zoning districts (C-1/C-2/C-3).*

   a. Setbacks for antennas, communication structures, and satellite service devices:

      1) Structure shall be placed within the primary buildable area for the parcel's specific zoning district and must be to the side and/or rear of the primary building structure. If the antenna, communication structure, or satellite service device is the primary structure or use of the property, then such structure shall be within the primary buildable area, including all equipment buildings.

      2) Structures shall be set back at least one foot for each one foot in height from any residential dwelling structure on any adjacent parcel.

      3) Equipment and accessory buildings shall conform to building and accessory building maximum heights and minimum setbacks for the parcel's specific zoning district.

   b. Setbacks and placement restriction for towers:

      1) Structure shall be placed within the primary buildable area for the parcel's specific zoning district and must be to the rear of the primary building structure. If there is no primary building, then the tower must be within the primary buildable area.

      2) Towers shall also be set back one foot for each one foot in height plus 10% of the total height from any residential use on any adjacent or the same parcel.

      3) Towers shall not be constructed on lots adjacent to property zoned R-1c, R-1a, R-1b, R-1cM, R-1aM, R-1bM, unless approved through the special use permit process. A special use permit may be granted to permit such towers adjacent to R-1c, R-1a, R-1b, R-1cM, R-1aM, R-1bM zoned property.

      4) A special use permit may be granted to permit tower height greater than what is allowed. The special use permit process shall be used to determine tower height greater than what is allowed. The special use permit process shall also be used for any variances related to setbacks and/or bufferyards.

4. *Towers and other communication structures in industrial zoning districts (M1/M2,or M-3).*

   a. Setbacks for antennas, communication structures, and satellite service devices:

      1) Structure shall be placed within the primary buildable area for the parcel's specific zoning district and must be to the side and/or rear of the primary building structure. If the antenna, communication structure, and satellite service device is the primary structure or use of the property, then such structure shall be within the primary buildable area, including all equipment buildings.

2) Structures shall be set back at least one foot for each one foot in height from any residential dwelling structure on any adjacent parcel.

3) Equipment and accessory buildings shall conform to building and accessory building maximum heights and minimum setbacks for the parcel's specific zoning district.

b. Setbacks and placement restrictions for towers:

1) Structure shall be placed within the primary buildable area for the parcel's specific zoning district and must be to the rear of the primary building structure. If the tower shall be the only or primary structure on the parcel, the tower must be within the primary buildable area or setbacks.

2) Towers shall be set back one foot for each one foot in height plus 10% of the total height from any residential zone and/or use.

3) Towers shall not be constructed on lots adjacent to property zoned R-1c, R-1a, R-1b, R-1cM, R-1aM, R-1bM, unless approved through the special use permit process. A special use permit may be granted to permit such towers for commercial purposes adjacent to R-1c, R-1a, R-1b, R-1cM, R-1aM, R-1bM zoned property.

4) A special use permit may be granted to permit tower height greater than what is allowed. The special use permit process shall be used to determine tower height greater than what is allowed. The special use permit process shall also be used for any variances related to setbacks and/or bufferyards.

5. Towers and other communication structures located in historic districts or on historic properties and all properties within 200 feet of a historic district or property. The 200-foot distance is based on minimal property notification requirements for this Code and the maximum height allowed for any tower without a special use permit. Historic district or properties include any district or property listed or identified on any of the national, state, or local register of historic places, if any.

a. All communication structures, not including towers:

1) All structures, not including towers, shall not exceed 65 feet if located in a historic district or on a historic property. Any request for these structures to exceed the maximum building height shall require a special use permit.

2) These structures shall follow placement and setback provisions for the zoning district for the specific type of structure.

b. Placement restriction for towers:

1) Towers shall not be permitted unless located within the C-3, M1/M2, or M-3 zoning district.

2) Within historic districts or on historic properties:

a) Towers shall not exceed 65 feet in height.

b) Any tower height greater than 65 feet shall require a special use permit and the maximum tower height shall be determined as part of the special use permit process.

c) No tower shall exceed 200 feet if located in a historic district or on historic property. Moreover, the special use permit process cannot be used to obtain a tower height variance greater than 200 feet.

3) Within 200 feet of a historic district or property:

a) Towers shall not exceed 65 feet in height.

b) Any tower height greater than 65 feet shall require a special use permit and the maximum tower height shall be determined as part of the special use permit process.

4) These structures shall follow placement and setback provisions for the zoning district for the specific type of structure.

6. Special use provisions for all commercial communication structures. All special use permit requests for any type of commercial communication structure shall follow submittal requirements as required within the special use section of this Code, including the established fee and within the established submittal deadlines. Additional provisions for all commercial communication structures:

a. A complete description of the commercial communication service to be provided or received and the proposed service area for commercial purposes.

b. A technical analysis prepared by a professional engineer for the proposed site. The analysis shall include:

1) A comprehensive statement and justification for the proposed structure location and site.

2) A communication coverage pattern calculation for the proposed structure location at:

a) The maximum height allowed for the respective zoning district for the site.

b) The proposed height.

c) At a mid-point height between the proposed height and the maximum height allowed for the zoning district of the site.

3) Analytical evidence demonstrating that no other location or height exists to provide the commercial communication service including cellular or similar communication service.

c. As part of the review of the special use permit application for commercial communication structures, the applicant is required to pay the established special use permit fee and all expenses associated with the city hiring a qualified expert to review and provide written recommendation to the Planning and Zoning Commission of the technical information submitted as part of the application.

7. Vertical structures in all zoning districts, not including communication structures.

a. Height: The height of such structures shall be limited to ten feet above the maximum building height.

b. All such structures shall be placed within the primary buildable area and all such freestanding structures shall be set back one foot for each one foot in height from any residential use or building on any adjacent property. All structures attached to or mounted on building or other structure shall meet the setback and placement provisions for the building or other structure.

c. Increases in heights and/or reductions to minimum setbacks for noncommunication, vertical structures shall require the approval of a variance by the Planning and Zoning Commission.

G. *Flexible development standards.* See section 38-56. Deviating from specific development requirements may not be permitted in the event that a special use permit is required or approval of a variance by the Planning and Zoning Commission as referenced in this section.

(Ord. No. 2354, § I, 1-22-07)

Sec. 38-59.1. Wireless communication facilities.

1. *Amendment.* That existing section 38-59 of the Las Cruces Zoning Code is hereby amended by adding a new section 38-59.1).

2. *Purpose.*

(a) To establish policies and procedures for the placement of small wireless facilities in rights-of-way within the City, which will provide public benefit consistent with the preservation of the integrity, safe usage, and visual qualities of the City rights-of-way and the City as a whole;

(b) To prevent interference with the use of streets, sidewalks, alleys, parkways and other public ways and places;

(c) To prevent the creation of visual and physical obstructions and other conditions that are hazardous to vehicular and pedestrian traffic;

(d) To prevent interference with the facilities and operations of facilities lawfully located in rights-of-way;

(e) To preserve the character of the neighborhoods in which facilities are installed;

(f) To facilitate rapid deployment of small wireless facilities to provide the benefits of advanced wireless services;

(g) To ensure City zoning regulations are applied consistently with federal and state telecommunications laws, rules and regulations of the Federal Communications Commission ("FCC") and controlling court decisions; and

(h) To provide regulations which are specifically not intended to, and shall not be interpreted or applied to, (1) prohibit or effectively prohibit the provision of personal wireless services, (2) unreasonably discriminate among functionally equivalent service providers, or (3) regulate wireless communication facilities and wireless transmission equipment on the basis of the environmental effects of radio frequency emissions to the extent that such emissions comply with the standards established by the FCC.

3. *Definitions.* As used in this Ordinance, the following terms shall have the meanings set forth below:

(a) "Antenna" means communications equipment that transmits or receives electromagnetic radio frequency signals and that is used to provide wireless services.

(b) "Antenna array" means a single or group of antenna elements, not including small wireless facilities, and associated mounting hardware, transmission lines, remote radio units, or other appurtenances which share a common attachment device such as a mounting frame or mounting support structure for the sole purpose of transmitting or receiving wireless communication signals.

(c) "Applicable codes" means uniform building, fire, electrical, plumbing or mechanical codes adopted by a recognized national code organization and enacted by the City, including the local amendments to those codes enacted by the City solely to address imminent threats of destruction of property or injury to persons, to the extent that those amendments are consistent with the Wireless Consumer Advanced Infrastructure Investment Act ("Act").

(d) "Applicant" means a wireless provider that submits an application.

(e) "Application" means a request submitted by an applicant to the City for a permit to collocate one or more small wireless facilities or to approve the installation, modification or replacement of a utility pole or wireless support structure.

(f) "City" means the City of Las Cruces.

~~(g) "City utility pole" means a utility pole, owned or operated by the City, in a right-of-way.~~

~~(h) "Collocate" or "Collocation" means to install, mount, maintain, modify, operate or replace one or more wireless facilities on, in, or adjacent to a wireless support structure or utility pole.~~

~~(i) "Design district" means an area zoned or otherwise designated by municipal ordinance and for which a municipality maintains and uniformly enforces unique design and aesthetic standards.~~

~~(j) "FAA" means the Federal Aviation Administration.~~

~~(k) "Fee" means a one-time charge.~~

~~(l) "Historic district" means a group of buildings, properties or sites that fall within the category defined in 47 C.F.R. 1.1307(a)(4) and are: (a) listed in the national register of historic places or formally determined eligible for listing in that register by the keeper of the register in accordance with the nationwide programmatic agreement found in 47 C.F.R. Part 1, Appendix C; or (b) designated as a historic district in accordance with the Historic District and Landmark Act.~~

~~(m) "Law" means federal, state or local law.~~

~~(n) "Permit" means the written permission of the City for a wireless provider to install, mount, maintain, modify, operate or replace a utility pole or to collocate a small wireless facility on a utility pole or wireless support structure.~~

~~(o) "Person" means an individual, corporation, limited liability company, partnership, association, trust or other entity or organization and includes the City.~~

~~(p) "Rate" means a recurring charge.~~

~~(q) "Right-of-way" means the area on, below or above a public roadway, highway, street, sidewalk, alley or utility easement. Right-of-way does not include the area on, below or above a federal interstate highway, a state highway or route under the jurisdiction of the department of transportation, a private easement or a utility easement that does not authorize the deployment sought by a wireless provider.~~

~~(r) "Small wireless facility" means a wireless facility whose:~~

~~(1) Antennas are, or could fit, inside an enclosure with a volume of six or fewer cubic feet; and~~

~~(2) Other ground- or pole-mounted wireless equipment, not including the following, is 28 or fewer cubic feet in volume:~~

~~(i) Electric meter;~~

~~(ii) Concealment elements;~~

~~(iii) Telecommunications demarcation box;~~

~~(iv) Grounding equipment;~~

~~(v) Power transfer switch;~~

~~(vi) Cutoff switch;~~

~~(vii) Vertical cable runs for the connection of power and other services; and~~

~~(viii) Design elements required by the City.~~

~~(s) "Stealth design" means technology that minimizes the visual impact of wireless communication facilities by camouflaging, disguising, screening or blending into the surrounding environment. Examples of stealth design include, but are not limited to, facilities disguised as trees (mono-pines), flagpoles, utility and light poles, bell towers, clock towers, ball field lights and architecturally screened~~

roof-mounted antennas or flush-mounted antennas that are either painted to match or enclosed in an architecturally-applicable box.

(t) "Tower" means any structure built for the sole or primary purpose of supporting any FCC-licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site.

(u) "Utility pole" means a pole or similar structure used in whole or in part for communications services, electricity distribution, lighting or traffic signals. Utility pole does not include a wireless support structure or electric transmission structure.

(v) "Wireless facility" means equipment at a fixed location that enables wireless communications between user equipment and a communications network, including equipment associated with wireless communications; radio transceivers, antennas, coaxial or fiber-optic cables, regular and backup power supplies and comparable equipment, regardless of technological configuration; and includes a small wireless facility. Wireless facility does not include:

(1) The structure or improvements on, under or within which the equipment is collocated;

(2) A wireline backhaul facility, coaxial cable or fiber-optic cable between wireless support structures or utility poles; or

(3) Coaxial or fiber-optic cable otherwise not immediately adjacent to, or directly associated with, an antenna.

(w) "Wireless infrastructure provider" means a person, other than a wireless services provider, that may provide telecommunications service in New Mexico and that builds or installs wireless communications transmission equipment, wireless facilities' utility poles or wireless support structures.

(x) "Wireless provider" means a wireless infrastructure provider or wireless services provider.

(y) "Wireless services" means services provided to the public that use licensed or unlicensed spectrum, either mobile or at a fixed location, through wireless facilities.

(z) "Wireless services provider" means a person that provides wireless services.

(aa) "Wireless support structure" means a freestanding structure, including a monopole or guyed or self-supporting tower, but not including a utility pole.

(bb) "Wireline backhaul facility" means a facility used to transport services by wire from a wireless facility to a network.

4. *Exempt facilities.* The following are exempt from this section:

(a) FCC licensed amateur (ham) radio facilities;

(b) Satellite earth stations, dishes or antennas used for private television reception not exceeding one meter in diameter; and

(c) A temporary, commercial wireless communication facility installed for providing coverage of a special event such as news coverage or sporting event, subject to approval by the City. The facility shall be exempt from the provisions of this section for up to one week before and after the duration of the special event.

5. *Permitted use; application and fees.*

(a) *Permitted use.* Collocation of a small wireless facility or a new or modified utility pole for the collocation of a small wireless facility shall be a permitted use subject to the other requirements of this chapter.

(b) *Permit required.* No person shall place a small wireless facility in the rights-of-way, without first filing a small wireless facility application and obtaining a permit therefore.

(c) *Permit application.* All small wireless facility applications for permits filed pursuant to this section shall be on a form, paper or electronic, provided by the City.

(d) *Application requirements.* The small wireless facility permit application shall be made by the wireless provider or its duly authorized representative and shall contain the following:

(1) The applicant's name, address, telephone number, and email address;

(2) The names, addresses, telephone numbers, and email addresses of all consultants, if any, acting on behalf of the applicant with respect to the filing of the application;

(3) A general description of the proposed work and the purposes and intent of the small wireless facility. The scope and detail of such description shall be appropriate to the nature and character of the work to be performed, with special emphasis on those matters likely to be affected or impacted by the work proposed;

(4) A small wireless facility shall comply with all applicable codes.

(e) *Routine maintenance and replacement.* The City may not require an application, approval or permit or impose a fee, rate or other charge for the routine maintenance of a small wireless facility or the replacement of a small wireless facility with one that is similar in size to, the same size as or smaller than it as long as the wireless provider notifies the City of the replacement at least ten days before the replacement. The City may require a permit for routine maintenance or replacement of a small wireless facility in the rights-of-way that affect traffic patterns or require lane closures.

(f) *Application fees.* The City may charge an applicant an application fee in the amount of $100.00 for each of up to five small wireless facilities and $50.00 for each additional small wireless facility whose collocation is requested in a single application.

6. *Permit applications.*

(a) *Review of small wireless facility applications.*

(1) The City shall review the application for a small wireless facility permit in light of its conformity with applicable regulations of this section, and other applicable local ordinances, and shall issue a permit on nondiscriminatory terms and conditions subject to the following requirements:

(i) Within 30 days of receiving an Application, the City must determine and notify the applicant whether the application is complete. If an application is incomplete, the City must specifically identify the missing information in writing. The processing deadline is tolled from the date the City sends the notice of incompleteness to the date the applicant provides the missing information. The processing deadline may also be tolled by agreement of the applicant and the City. The application is deemed complete if the applicant is not notified within the 30-day period subject to tolling.

(ii) Make its final decision to approve or deny the application within 90 days of receipt of a completed application, subject to the tolling provisions herein; and

(iii) Advise the applicant in writing of its final decision, and in the final decision document the basis for a denial, if any, including specific code provisions on which the denial was based, and send the documentation to the applicant. In the 90 days after the City receives an

application to collocate a small wireless facility, the City may provide public notice of the application and an opportunity for written public comment on the application, submit the written public comment to the applicant and request that the applicant respond to it. If the City determines that applicable codes or laws require that a utility pole or wireless support structure be replaced before an application for collocation is approved, the City may condition approval of the application on that replacement. The applicant may cure the deficiencies identified by the City and resubmit the application within 30 days of the denial without paying an additional application fee. The City shall approve or deny the revised application within 30 days of receipt of the amended application. The subsequent review by the City shall be limited to the deficiencies cited in the original denial. The City may require the applicant to certify that the small wireless facilities to be collocated conform with the FCC's regulations concerning radio frequency emissions.

(2) If the City fails to act on an application within the 90 day review period, subject to tolling, the application is deemed approved. The City may also request an extension of the 90 day period, and the City and the applicant may agree to extend that period. An applicant shall not unreasonably deny a City's request to extend the period.

(3) The City may only deny a completed application to collocate small wireless facilities if the application does not conform with applicable codes or local laws concerning:

(i) Public safety;

(ii) Design for utility poles to the extent that the standards are objective;

(iii) Stealth and concealment but only to the extent that the restrictions are reasonable; and

(iv) The spacing of ground-mounted equipment in a right-of-way; or

(v) If there is non-conformance with design district or historic district requirements.

(4) An applicant seeking to collocate small wireless facilities may, at the applicant's discretion, file a consolidated application and receive a single permit for multiple small wireless facilities. Provided, that the City's denial of one or more small wireless facilities in a consolidated application shall not delay the processing of any other small wireless facilities submitted in the same application.

(5) The City may require an applicant to obtain one or more permits to collocate a small wireless facility in a right-of-way if the requirement is of general applicability to users of the right-of-way. An applicant seeking to collocate within the City up to 25 small wireless facilities, all of which are substantially the same type, on substantially the same types of structures, may file a consolidated application for the collocation of the facilities. An applicant shall not file with the City more than one consolidated application in any five-business-day period. The applicant shall include in a consolidated application an attestation that, unless a delay in collocation is caused by the lack of commercial power or fiber at the site, the collocation will begin within 180 days after the permit issuance date. The City and provider may subsequently agree to extend that period.

7. *Small wireless facilities in the row; maximum height; other requirements.*

(a) *Maximum size of permitted use.* Small wireless facilities, and new or modified utility poles for the collocation of small wireless facilities, may be placed in the rights-of-way as a permitted use contingent upon the approval of an application by the City and subject to the following requirements:

(1) A new replacement or modified utility pole associated with the collocation of a small wireless facility in the right-of-way is not subject to zoning review and approval, except for that which pertains to under-grounding prohibitions, unless the utility pole is higher than whichever of the following is greater: ten feet plus the height in feet of the tallest existing utility pole excluding a

utility pole supporting wireless facilities that is in place on the effective date of the Act, located within 500 feet of the new, replacement or modified utility pole, in the same right-of-way, and 50 or fewer feet above ground level or 50 feet.

(2) New small wireless facilities in the rights-of-way may not extend:

(i) More than ten feet above an existing utility pole in the rights-of-way in place as of the effective date of this section; or

(ii) More than ten feet above the height for a new utility pole.

(3) A small wireless facility collocated on a utility pole or wireless support structure that extends ten or fewer feet above the pole or structure in a right-of-way in any zone is classified as a permitted use and is not subject to zoning review or approval.

(b) *Application required for a utility pole.* An application for the installation of a new, replacement or modified utility pole for the collocation of a small wireless facility in the right-of-way is required. The application shall be approved unless the installation does not conform with:

(1) Applicable codes or laws regarding public safety, design, or under-grounding prohibitions if those regulations require under-grounding by a date certain within one year after the application, include a waiver of zoning or other processes and allow the replacement of utility poles;

(2) Federal or state standards for pedestrian access or movement;

(3) Design or historic district requirements;

(4) Contractual requirements between the City and a private property owner concerning the design of utility poles in the right-of-way; or

(5) The City's laws concerning public safety and reasonable minimum spacing requirements for new utility poles in the rights-of-way.

(c) *Application processing.* An application for a permit to install a new, replacement or modified utility pole for the collocation of a small wireless facility shall be processed within 150 days after receipt of the application. If the City fails to act on the application within that time period, the application is deemed approved. The application fee shall be $750.00.

Installation, modification or replacement shall begin within 180 days after the permit issuance unless the City and wireless provider agree to extend that time or a delay is caused by a lack of commercial power or fiber at the site. The new, modified or replacement utility pole may be maintained for ten years and the permit will be renewed for one ten-year period unless the utility pole does not conform with applicable codes or local laws. At the expiration of the permit renewal/extension, the permit shall lapse and a new application will be required.

(d) *Zoning.* Any wireless provider that seeks to install, modify, operate or replace a utility pole in the rights-of-way that exceeds the height or size limits contained in this Chapter shall be subject to applicable zoning requirements.

(e) *Decorative poles.* A wireless provider shall be permitted to replace a decorative pole when necessary to collocate a small wireless facility, but any replacement pole shall reasonably conform to the design aesthetics of the decorative pole being replaced and shall be subject to local approval, which shall not be unreasonably denied.

(f) *Underground district.* In areas designated solely for underground or buried cable and utility facilities, the City shall allow replacement of City poles in the designated area. The wireless provider is permitted to seek a waiver of the undergrounding requirements for the placement of a new utility pole to support small wireless facilities.

(g) *Historic and design districts.* The City may require as they pertain to small wireless facilities located in design districts or historic districts reasonable, technically feasible, non-discriminatory and technologically neutral design or concealment measures and reasonable measures for conforming to the design aesthetics of design districts or historic districts. Any such measures may not have the effect of prohibiting a wireless provider's technology.

8. *Effect of permit.*

(a) *Authority granted.* A permit from the City authorizes an applicant to undertake only certain activities in accordance with this chapter, and does not create a property right or grant authority to the applicant to impinge upon the rights of others who may already have an interest in the rights-of-way.

(b) *Permit duration.* Work described in a permit granted pursuant to this section shall be completed within 180 days of the permit issuance date unless the City and applicant agree to extend this period due to delay caused by the lack of commercial power or communications facilities. Subject to applicable relocation requirements and the applicant's right to terminate collocation at any time, the permit is valid for a period of ten years, and will be renewed for one ten-year term unless the City finds that the small wireless facility does not conform with applicable codes and local laws. At the expiration of the permit renewal/extension, the permit shall lapse and a new application will be required.

9. *Removal, relocation or modification of small wireless facilities in the ROW.*

(a) *Notice.* Within 90 days following written notice from the City, a wireless provider shall, at its own expense, protect, support, temporarily or permanently disconnect, remove, relocate, change or alter the position of any small wireless facilities within the rights-of-way whenever the City has determined that such removal, relocation, change or alteration, is reasonably necessary for the construction, repair, maintenance, or installation of any City improvement in or upon, or the operations of the City in or upon, the rights-of-way.

(b) *Emergency removal.* The City retains the right and privilege to cut or move any small wireless facility located within the rights-of-way of the City, as the City may determine to be necessary, appropriate or useful in response to any public health or safety emergency. If circumstances permit, the City shall notify the wireless provider and provide the wireless provider an opportunity to move its own facilities prior to cutting or removing a facility and shall notify the wireless provider after cutting or removing a small wireless facility.

(c) *Abandonment of facilities.* Upon abandonment of a small wireless facility or utility pole within the rights-of-way of the City, the wireless provider shall notify the City in writing of its intention to discontinue use of a small wireless facility or utility pole. The notice shall inform the City of the time and the way in which the small wireless facility or utility pole will be removed. The wireless provider is responsible for the costs of the removal. The City may require the wireless provider to return the property to its pre-installation condition according to the City's reasonable and nondiscriminatory requirements and specifications. If the wireless provider does not complete the removal within 45 days after notice, the City may complete the removal and assess the costs of removal against the wireless provider. The permit for the small wireless facility or utility pole expires upon removal.

(d) *Damage and repair.* The City may require a wireless provider or the provider's contractor to repair all damage to the City's property or rights-of-way caused by the activities of the wireless provider or contractor and return the property and rights-of-way to their pre-damage condition according to the City's requirements and specifications upon written notice of the requirements to the provider. If the wireless provider fails to make the repairs within a reasonable period after receiving the notice, the City may effectuate those repairs and charge the provider the reasonable, documented cost of such repairs.

10. *Rates.*

(a) *Annual rate for use of right-of-way.* The City may charge a wireless provider for the provider's use of the right-of-way in constructing, installing, maintaining, modifying, operating or replacing a utility pole or in collocating a small wireless facility in the right-of-way an annual rate of $250.00 multiplied by the number of small wireless facilities placed by the wireless provider in the City's right-of-way.

(b) *Annual rate increase for use of right-of-way.* The City may adjust the annual rate, but no more often than once a year and by no more than an amount equal to one-half the annual change, if any, in the most recent Consumer Price Index for all urban consumers for New Mexico, as published by the United States Department of Labor. The City shall notify all wireless providers charged the pre-adjusted rate of the prospective adjustment and shall make the adjustment effective 60 days or more following that notice.

(c) *Annual rate for use of city utility poles.* The rate for collocation of a small wireless facility on a City utility pole in the right-of-way shall be $20.00 per year.

11. *Attachment to or utility poles in the right-of-way.*

(a) *Placement of small wireless facilities and poles.* Subject to the approval of an application by the City, a wireless provider may collocate small wireless facilities and construct, install, modify, mount, maintain, operate and replace utility poles associated with the collocation of a small wireless facility along, across, on or under City right-of-way. The City shall not enter into an exclusive agreement with a wireless provider for the use of a right-of-way in constructing, installing, maintaining, modifying, operating or replacing a utility pole or collocating a small wireless facility on a utility pole or wireless support structure.

(b) *Review of applications.* The City shall process an application for approval to collocate a small wireless facility on a City utility pole in accordance with this section. The City may condition the issuance of a permit on the wireless provider's replacement of the City utility pole if applicable codes or local laws concerning public safety require that replacement. The City shall process an application for a permit to install a replacement City pole in accordance with this section. The City shall retain ownership of the replacement utility pole.

12. *Proper placement.*

(a) A wireless provider that deploys a utility pole or small wireless facility in a right-of-way shall construct, maintain and locate it so as not to obstruct travel, endanger the public or interfere with another utility facility in the right-of-way. The wireless provider's operation of a small wireless facility in the right-of-way shall not interfere with the City's public safety communications. The wireless provider shall comply with the National Electric Safety Code and all applicable laws. The City may, through its Public Works Department, adopt reasonable regulations concerning the separation of the wireless provider's utility poles and small wireless facilities from other utility facilities in the right-of-way.

(b) If the City determines that a utility pole or the wireless support structure of a wireless provider must be relocated to accommodate a public project, the provider shall assume the cost of relocating the wireless facility deployed on the pole or structure.

(c) Without the City's written consent, a wireless provider shall not install a new utility pole in a right-of-way adjacent to a street or thoroughfare that is 50 feet wide or less and adjacent to single family residential lots or other multifamily residences or to undeveloped land designated for residential use by zoning or deed restrictions.

(d) *Exempt from zoning review.*

(1) Small wireless facilities, Distributed Antennae Systems (DAS) and other similar networks on poles in public rights-of-way, on City-owned property, on private property, or on other structures, including stealth facilities, monopoles or replacement poles under 50 feet that are located in the

public rights-of-way for placement of small wireless facilities, DAS and other similar networks, are exempt from zoning review and shall be subject only to encroachment or building permits by administrative review.

(2) Notwithstanding any other provision of this section, the City may not require an applicant or provider to submit an application or pay a rate for:

(i) Routine maintenance that does not require excavation or closing of sidewalks or vehicular lanes in a public right-of-way;

(ii) Replacing or upgrading a small wireless facility, DAS, other similar network with a facility that is substantially similar in size or smaller and that does not require excavation or closing of sidewalks or vehicular lanes in a public right-of-way;

(iii) Temporary small wireless facilities, DAS or communications facilities placed for a period of not more than:

(a) Twenty-one days for temporary uses related to special events;

(b) Ninety days for temporary uses related to repair facilities; or

(c) Not more than 90 days at any location within the City after declaration of an emergency or a disaster by the Governor of New Mexico.

(3) For purposes of the foregoing exemptions, a small wireless facility, DAS, other similar network, or pole is considered to be "substantially similar" if:

(i) The new or upgraded facility, including the antenna or other equipment element, will not be more than ten percent larger on a one-time basis than the existing facility, provided that the increase may not result in the facilities exceeding the size limitations provided elsewhere in this chapter;

(ii) The new or upgraded pole will not be higher than the existing pole;

(iii) The replacement or upgrade does not include replacement of an existing service pole;

(iv) The replacement or upgrade does not defeat existing concealment elements of the existing pole; and

(v) The determination of whether a replacement or upgrade is substantially similar is made by measuring from the dimensions of the small wireless facility or pole as approved by the City.

(e) *Collocation.* Support structures for small wireless facilities or similar networks shall be capable of accommodating the collocation of other service providers.

(f) *Signage.* Signs located at the small wireless facilities, DAS, and similar networks shall be limited to ownership and contact information, FCC Antenna registration number (if required) and any other information as required by an applicable governmental authority. Commercial advertising is strictly prohibited.

(g) *Accessory equipment.* Accessory equipment, including any buildings, cabinets or shelters, shall be used only to house equipment in support of the operation of the small wireless facility or its support structure. Any equipment not used in direct support of such operation shall not be stored on the site.

13. *General requirements for towers and poles.*

(a) *Inventory of existing sites.* Each applicant for a pole or tower exceeding the height limitation of the affected zoning district shall provide to the City Planner an inventory of its existing poles or towers that are either within the jurisdiction of the City or within one mile of the border thereof, including specific

information about the location, height, and design of each pole or tower. The applicant shall only be required to provide this information in its first application following implementation of this section, and not thereafter. The City Planner may share such information with other applicants applying for permits under this section or other organizations seeking to locate poles or towers within the jurisdiction of the City, provided, however, that the City Planner is not, by sharing such information, in any way representing or warranting that such sites are available or suitable.

(1) Towers shall either maintain a galvanized steel finish or, subject to any applicable standards of the FAA, be painted a neutral color so as to reduce visual obtrusiveness.

(2) At a tower site, the design of the buildings and related structures shall, to the extent possible, use materials, colors, textures, screening, and landscaping that will blend them into the natural setting and surrounding buildings.

(3) If an antenna is installed on a structure other than a tower, the antenna and supporting electrical and mechanical equipment must be of a neutral color that is identical to, or closely compatible with, the color of the supporting structure so as to make the antenna and related equipment as visually unobtrusive as possible.

(b) *Lighting.* Towers shall not be artificially lighted, unless required by the FAA or other applicable authority. If lighting is required, the lighting alternatives and design chosen must cause the least disturbance to the surrounding views.

(c) *State or federal requirements.* All towers and antennas must meet or exceed current standards and regulations of the FAA, the FCC, and any other agency of the state or federal government with the authority to regulate towers and antennas. If such standards and regulations are changed, then the owners of the towers and antennas governed by this chapter shall bring such towers and antennas into compliance with such revised standards and regulations within six months of the effective date of such standards and regulations, unless a different compliance schedule is mandated by the controlling state or federal agency.

(d) *Building codes; standards.* To ensure the structural integrity of towers, the owner of a tower shall ensure that it is maintained in compliance with standards contained in applicable state or local building codes and the applicable industry standards for towers, as amended from time to time. If, upon inspection, the City concludes that a tower fails to comply with such codes and standards and constitutes a danger to persons or property, then upon notice being provided to the owner of the tower, the owner shall have 30 days to bring such tower into compliance with such standards. Failure to bring such tower into compliance within said 30 days shall constitute grounds for the removal of the tower at the owner's expense.

(e) *Visual impact.* All towers and antennas, including equipment enclosures, shall be sited and designed to minimize adverse visual impacts on surrounding properties and the traveling public to the greatest extent reasonably possible, consistent with the proper functioning of the structure or equipment. Such equipment enclosures shall be integrated through location and design to blend in with the existing characteristics of the site. Such enclosures shall also be designed to either resemble the surrounding landscape and other natural features where located in proximity to natural surroundings, or be compatible with the built environment, through matching and complimentary existing structures and specific design considerations such as architectural designs, height, scale, color and texture or be consistent with other uses and improvements permitted in the relevant zone.

(f) *Use of stealth design.* Concealment techniques in design districts and historic districts must be appropriate given the proposed location, design, visual environment, and nearby uses, structures, and natural features. Stealth design shall be designed and constructed to substantially conform to surrounding building designs or natural settings, so as to be visually unobtrusive.

(g) *Building-mounted equipment.*

(1) All transmission equipment shall be concealed within existing architectural features to the maximum extent feasible. Any new architectural features proposed to conceal the transmission equipment shall be designed to mimic the existing underlying structure, shall be proportional to the existing underlying structure or conform to the underlying use and shall use materials in similar quality, finish, color and texture as the existing underlying structure.

(2) All roof-mounted transmission equipment shall be set back from all roof edges to the maximum extent feasible consistent with the need for "line-of-sight" transmission and reception of signals.

(3) Antenna arrays and supporting transmission equipment shall be installed so as to camouflage, disguise or conceal them to make them closely compatible with and blend into the setting or host structure.

(h) *Pole-mounted or tower-mounted transmission equipment.* All pole-mounted or tower-mounted transmission equipment shall be mounted as close as possible to the pole or tower so as to reduce the overall visual profile to the maximum extent feasible consistent with safety standards.

(i) *Concealment of pole-mounted small wireless facilities equipment.* All pole-mounted equipment must be reasonably concealed to the extent technically feasible in a manner that minimizes the visual impact of the pole-mounted equipment. The concealment method and materials must receive prior written approval by the City, not to be unreasonably withheld. Antenna size limitations are exclusive of any concealment materials or fabrication. Concealment materials shall have a color and finish consistent and appropriate with the pole on which they are mounted.

(j) *Accessory equipment.* All accessory equipment located at the base of a small wireless facility shall be located or placed (at the applicant's choice) in an existing building, underground, or in an equipment shelter that is (a) designed to blend in with existing surroundings, using architecturally compatible construction and colors; and (b) be located so as to be unobtrusive as possible consistent with the proper functioning of the small wireless facility.

(k) *Site design flexibility.* Individual small wireless facility sites vary in the location of adjacent buildings, existing trees, topography and other local variables. By mandating certain design standards, there may result a project that could have been less intrusive if the location of the various elements of the project could have been placed in more appropriate locations within a given site. Therefore, the small wireless facility and supporting equipment may be installed so as to best camouflage, disguise them, or conceal them, to make them more closely compatible with and blend into the setting or host structure.

(l) *Structural assessment.* The owner of a proposed tower shall have a structural assessment of the tower conducted by a professional engineer, licensed in the State of New Mexico, which shall be submitted with the application for a permit.

(m) *Radio frequency emissions compliance report.* A written report will be prepared, signed and sealed by a New Mexico-licensed professional engineer or a competent employee of the applicant, which assesses whether the proposed small wireless facility demonstrates compliance with the exposure limits established by the FCC. The employee of the applicant must be qualified in the field of RF emissions and provide satisfactory evidence of his/her qualifications to the City.

(n) *Residential provisions.*

(1) All small wireless facilities on residentially zoned property are encouraged to either be painted or treated the same color as the primary structure or the surface to which the facilities are attached. This includes painting or screening roof-mounted communication structures.

(2) Screening or painting of roof-mounted structures is required on all sides of the residential property in which a small wireless facility is to be or is placed.

(o) *Screening of ground-mounted equipment.* Ground equipment and equipment enclosures shall be screened by a screen wall, painted, and/or landscaped.

(1) Screening and equipment enclosures shall blend with or enhance the surrounding area in terms of scale, form, texture, materials, and color. Equipment shall be concealed as much as possible by blending into the natural and/or physical environment. All screening shall be at the reasonable discretion of the City.

(2) When trees, bushes, rocks, and other forms of landscaping are used for screening, such landscaping must match the predominant landscaping form and species within one block of the facilities.

(p) *Additional screening requirements.* Any new, modified, or replacement poles installed in the right-of-way in conjunction with the installation of a small wireless facility, including any ground mounted equipment, electrical service meter, and screening shall:

(1) Be designed to blend in with the surrounding streetscape with minimal visual impact;

(2) Satisfy all required Americans with Disabilities Act requirements;

(3) Not impair or interfere with line of sight visibility; and

(4) Not block or obstruct existing roadway, or commercial signage.

14. *Preferred tower locations.*

(a) New small wireless facilities must, to the maximum extent feasible, collocate on existing towers or other structures of a similar height to avoid construction of new towers.

(b) The City encourages all new towers to follow siting priorities, from most-preferred (1) to least-preferred (8):

(1) City-owned or operated property or facilities, not including rights-of-way;

(2) Commercial and industrial zones;

(3) Office zones;

(4) Other non-residential zones;

(5) City rights-of-way in non-residential zones;

(6) City rights-of-way in residential zones;

(7) Parcels of land in residential zones;

(8) Designated design or historic districts.

(c) *Collocation consent.* A written statement will be signed by a person with the legal authority to bind the applicant and the project owner, which indicates whether the applicant is willing to allow other transmission equipment owned by others to collocate with the proposed small wireless facility whenever technically and economically feasible and aesthetically desirable.

(d) *Documentation.* Applications submitted under this section for small wireless facilities shall include the following materials:

(1) A color visual analysis that includes to-scale visual simulations that show unobstructed before- and-after construction daytime and clear-weather views from at least four angles, together with a map that shows the location of each view.

(2) A written analysis that explains how the proposed design complies with the applicable design standards under this section to the maximum extent feasible. A design justification must identify

all applicable design standards under this section and provide a factually detailed reason why the proposed design either complies or cannot feasibly comply.

(3) A noise study, if requested by the City.

(4) A scaled site plan clearly indicating the location, type, height and width of the proposed small wireless facilities, on-site land uses and zoning, adjacent land uses and zoning, separation distances, adjacent roadways, a depiction of all proposed transmission equipment, proposed means of access, setbacks from property lines, elevation drawings of the proposed small wireless facilities and any other structures, topography and utility runs.

(5) The setback distance between the proposed small wireless facility and the nearest residential unit, platted residentially zoned properties, and un-platted residentially zoned properties.

(6) The separation distance from other poles and towers within one mile of the subject pole or tower, shall be shown on an updated site plan or map.

(7) If applicable, the method of camouflage and illumination.

(8) A written statement of purpose which shall minimally include: (1) a description of the technical objective to be achieved; (2) a to-scale map that identifies the proposed site location and the targeted service area to be benefited by the proposed project; and (3) full-color signal propagation maps with objective units of signal strength measurement that show the applicant's current service coverage levels from all adjacent sites without the proposed site, predicted service coverage levels from all adjacent sites with the proposed site, and predicted service coverage levels from the proposed site without all adjacent sites. These materials shall be reviewed and signed by a New Mexico-licensed professional engineer or a qualified employee of the applicant. The qualified employee of the applicant shall submit his or her qualifications with the application.

15. *Independent technical and legal review.* Although the City intends for City staff to review administrative matters to the extent feasible, the City may retain the services of independent experts of its choice to provide technical and legal evaluations of permit applications for small wireless facilities and poles. The expert's review may include, but is not limited to (a) the accuracy and completeness of the items submitted with the application; (b) the applicability of analysis and techniques and methodologies proposed by the applicant; (c) the validity of conclusions reached by the applicant; and (d) whether the proposed small wireless facilities comply with the applicable approval criteria set forth in this section. The applicant shall pay the actual, direct and reasonable cost for any independent consultant fees through a deposit, paid within ten days of the City's request. When the City requests such payment, the application shall be deemed incomplete for purposes of application processing timelines until the deposit is received. In the event that such costs and fees do not exceed the deposit amount, the City shall refund any unused portion within 30 days after the final permit is released or, if no final permit is released, within 30 days after the City receives a written request from the applicant. If the costs and fees exceed the deposit amount, then the applicant shall pay the difference to the City.

16. *Installation safety review.*

(a) For the period beginning on the date a permit is issued and ending on the date the permitted work is accepted, the City may perform a safety review of construction, reconstruction or installation of all small wireless facilities and poles as it deems necessary to ensure compliance with this section and the Municipal Codes. All City plans, reviews, inspections, standards, and other rights and actions related to the wireless provider's improvements are for the City's sole and exclusive benefit and neither the wireless provider nor any other person may rely on the City's safety reviews or have any rights related to the reviews. The preceding sentence does not prevent the wireless provider from relying on consents, permits, or approvals the City may grant based on the City's plans, reviews, and inspections.

As a condition of obtaining the permits authorized by this section, the wireless provider grants the City the right to access the wireless provider's small wireless facilities and poles. Except for emergencies, this right of access is limited to dates and times agreed to by the parties.

(b) The City may recover the City's costs incurred to perform such safety reviews.

17. *Final inspection.*

(a) A certificate of completion will only be granted upon satisfactory evidence that the small wireless facilities were installed in substantial compliance with the approved plans.

(b) If it is found that the small wireless facilities installation does not substantially comply with the approved plans, the applicant shall make any and all such changes required to bring the facilities into compliance promptly and in any event prior to putting the facilities in operation.

18. *Compliance.*

(a) All small wireless facilities must comply with all standards and regulations of the FCC and any state or other federal government agency with the authority to regulate those facilities.

(b) The site and small wireless facilities, including all landscaping, fencing and related transmission equipment must be maintained at all times in a neat and clean manner and in accordance with all approved plans.

(c) If any FCC, state or other governmental license or any other governmental approval to provide communication services is ever revoked as to any site permitted or authorized by the City, the permittee must inform the City of the revocation within 30 days of receiving notice of such revocation.

19. *Indemnification.* Each permit issued for small wireless facilities located in City right-of-way or other City property shall be deemed to have as a condition of the permit a requirement that the wireless provider defend, indemnify and hold harmless the City and its officers, agents, employees, volunteers, and contractors from any and all liability, damages, or charges (including attorneys' fees and expenses) arising out of claims, suits, demands, or causes of action as a result of the construction, performance, operation, maintenance, repair, replacement, removal, or restoration of the small wireless facilities.

20. *Laws, rules and regulations.* This Ordinance shall be subject to all applicable laws, rules and regulations now or hereafter enacted.

21. *Severability.* The various parts, sentences, paragraphs, sections and clauses of this Ordinance are hereby declared to be severable. If any part, sentence, paragraph, section or clause is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of the Ordinance shall not be affected thereby.

22. *Conflicts.* In the event of a conflict between the provisions of this Section and the Wireless Consumer Advanced Infrastructure Investment Act ("Act"), the Act shall control. Any ordinance or parts thereof or other provisions of the Las Cruces Zoning Code in conflict with the provisions of this Ordinance are hereby repealed to the extent of such conflict.

(Ord. No. 2872, 9-4-18)

Sec. 38-60. Walls and fences.

A. *Purpose.* A wall or fence is not required by this Code except in mobile home parks/recreational vehicle parks. When provided, this section defines the regulations regarding walls and/or fences. The wall/fence height regulations are defined for residential land uses and nonresidential land uses regardless of the zoning district in which the land use is located. However, see section 38-57, mobile home parks/recreational vehicle parks, for when walls or fences are required to be provided and additional regulations.

B. *Definitions.*

Common wall or *common fence*. An artificially constructed barrier or structure along a property line between two or more properties owned by two or more separate property owners.

Fence. An artificially constructed barrier of posts, wire, wood, steel, cable or similar material erected to enclose or screen areas of land (design standards, chapter 32).

Retaining wall. Is a designed wall constructed of brick, block, rock, concrete, MSE, or reinforced concrete, to retain a specific depth of soil or surcharge. This wall type is designed to resist the sum of all specific soil pressures with a predetermined safety factor.

Wall. An artificially constructed barrier of solid material such as brick, block, rock, or concrete, erected to enclose or screen areas of land (design standards, chapter 32).

C. *Height.*

1. Residential land uses (regardless of the zoning district in which the land use is located):

   a. Required front yard: Four-foot maximum.

   b. Required rear and side yard: Eight-foot maximum.

   c. Corner lots: A maximum height of eight feet shall be permitted on the secondary front yard, behind the primary required front yard setback. However, clear sight triangle requirements shall be met.

   d. Arches or entryways in required front yards (see drawings at the end of this section):

      1) Maximum height of eight feet permitted.

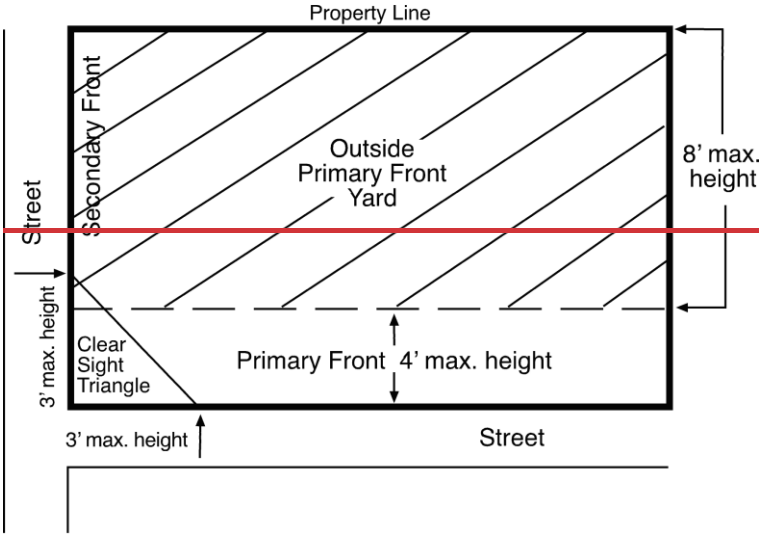
      2) Arch width shall not exceed eight feet.

      3) A "step-down" design is permitted in conjunction with the arch. A two-foot length on both sides of the arch is permitted at a height not to exceed six feet.

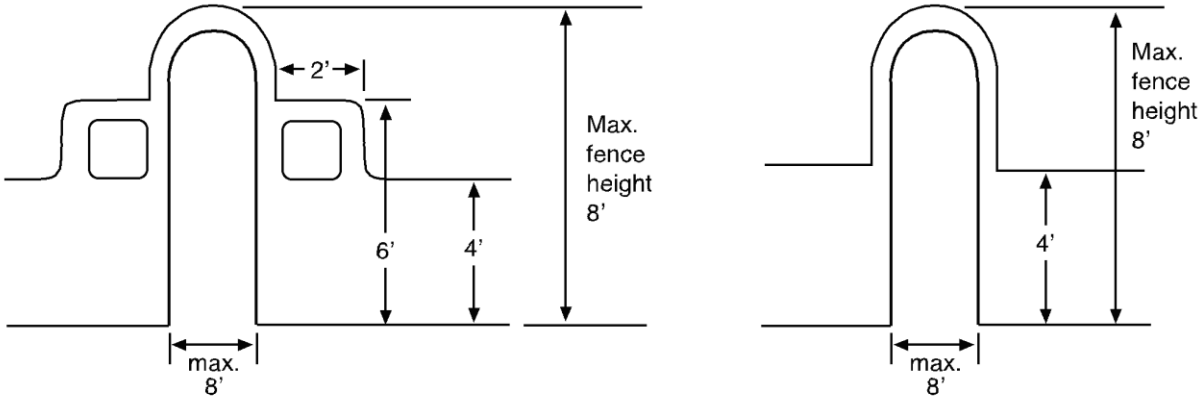
      4) Maximum of one arch or entryway is permitted in the required front yard.

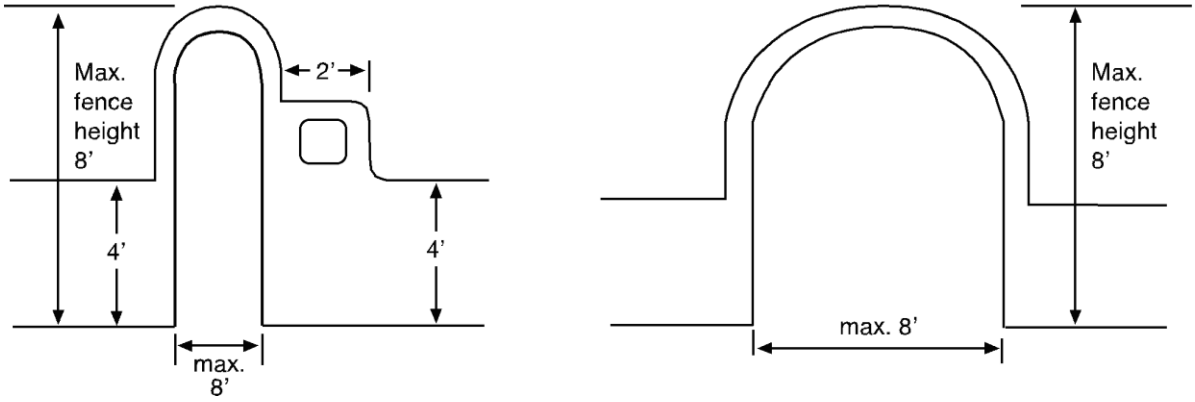
      5) Arches or entryways are permitted behind the required front yard setback at any width, with a maximum height of eight feet.

WALLS / FENCES
Corner Lot (residential)



ARCHES





~~2. Nonresidential land uses (regardless of the zoning district in which the land use is located):~~

a. Required front yard: Six-foot maximum.

b. Rear and side yard: Eight-foot maximum.

c. Corner lots: A maximum height of eight feet shall be permitted on the secondary front yard, behind the primary required front yard setback. However, clear sight triangle requirements shall be met.

3. The height measurement of a wall or fence, including a retaining wall, shall be made on the side of the wall or fence at the lowest non-artificially raised grade level. In cases of topographic variations, the grade average shall be used for wall/fence height measurement. The Community Development Director or designee may grant height adjustments in unusual physical property situations, e.g., substantial topographic variations.

D. *Retaining wall requirements.* Retaining wall requirements are found in the city design standards, chapter 32. The proposed retaining wall design shall be submitted by the property owner/applicant to the community development department for approval consideration.

E. *Clear sight triangle limitations.* All clear sight triangle requirements can be found in chapter 32, article VI of the Municipal Code.

F. *Specific wall/fence types requirements.*

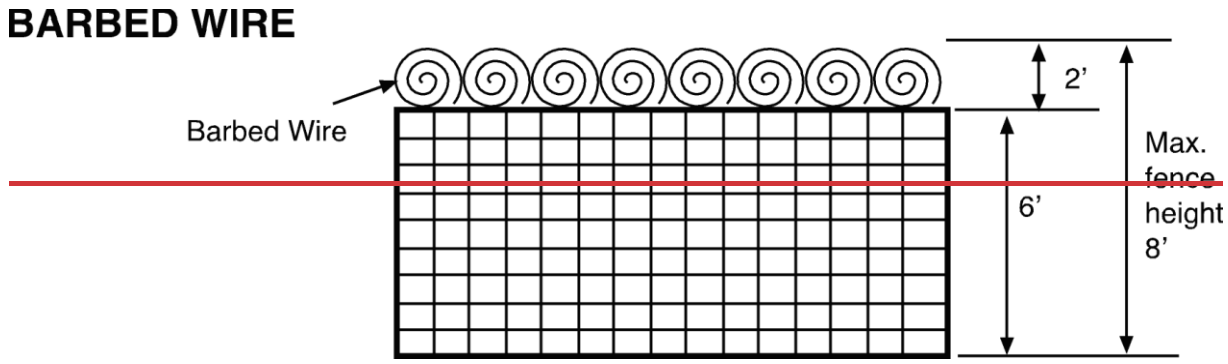
1. *Barbed wire and other similar types of containment wire:*

a. Permitted only when located at least six feet above the highest adjacent ground surface and will be included in the overall measurement of the fence or wall (See drawing below).

b. Permitted only in holding, flood control, EE, RE, REM, O-2, C-2, C-3, M1/M2, and M-3 zoning districts.

c. Barbed wire and other similar types of containment wire, e.g., horse wire, "no climb" wire, and access-prohibiting wire in EE and REM zoning districts, on airport property or along interstate highways is permitted at any height, up to eight feet.

d. Barbed wire and other similar types of containment wire shall not be permitted in the required front yard of any property. The exceptions shall be fencing for utility substations, agricultural-related uses and equestrian-related uses.

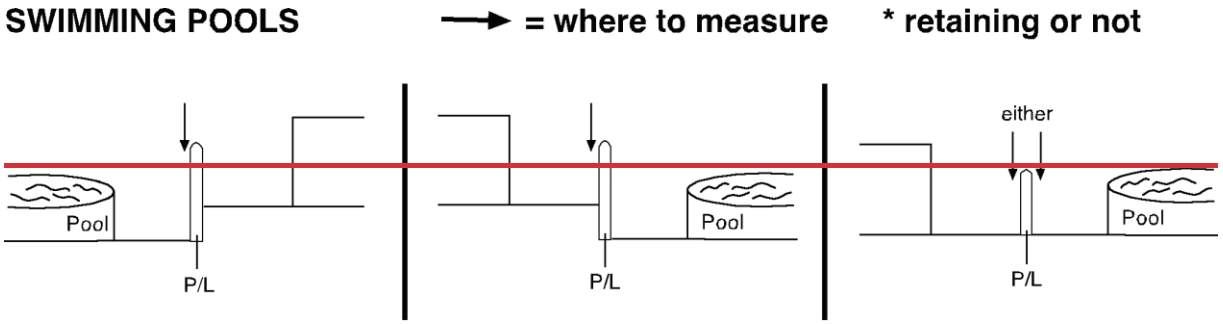


2. *Swimming pools, whirlpools, hot tubs, and other similar structures:*

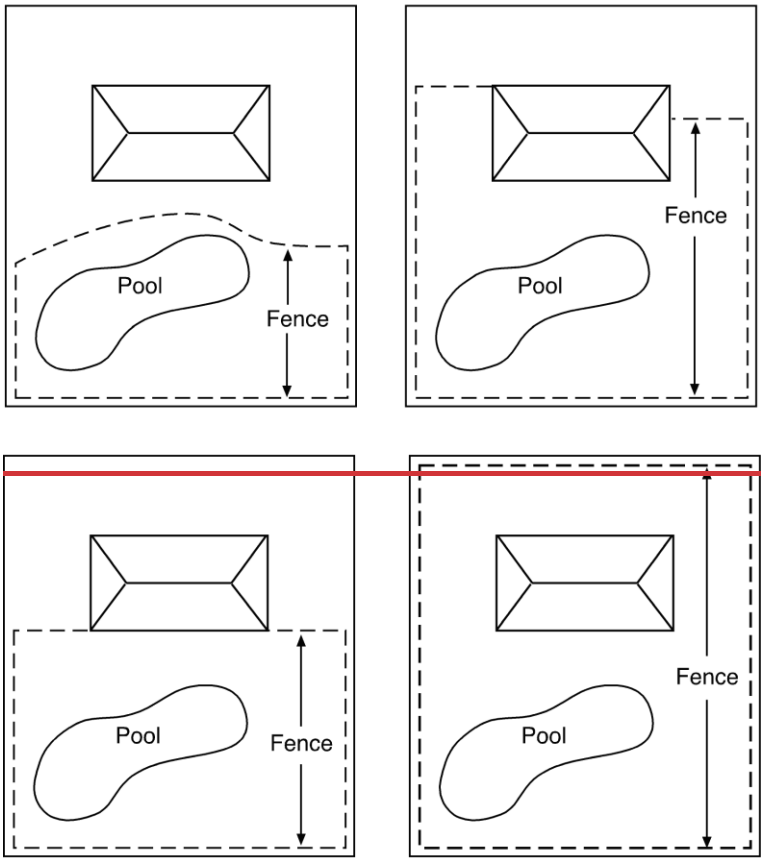
a. All water recreational structures, except commercial or public swimming pools, shall be completely enclosed by a wall or fence at least four feet in height. A minimum four-foot fence or wall completely enclosing the entire yard or portion thereof where the structure is located will satisfy this requirement. All gates in fences shall be self-closing and equipped with self-latching devices.

~~b. For commercial or public swimming pools, a protective fence or wall no less than six feet in height shall be provided which completely encloses the pool area, and the pool shall be no closer than 25 feet from any property line. All gates in fences shall be self-closing and equipped with self-latching devices.~~

~~c. All other building permit code requirements for the construction of swimming pools and other similar structures shall be met.~~



SWIMMING POOLS
Completely Enclosed by Fence



Pool Fence	Residential	Commercial
Min. fence height:	4’	6’
Max. fence height:	8’	8’
Min from P/L:	5’	25’

~~3. *Right-of-way/easements:*~~

~~a. No wall or fence shall be permitted in a public right-of-way or easement, unless an encroachment agreement is obtained and approved by the city's right-of-way coordinator.~~

~~b. If written approval of the governing agency, affected utility or individuals is obtained, a wall or fence may be placed on an easement.~~

~~4. *Common wall or fence:*~~

~~a. A common wall or fence shall not be structurally altered in any manner without the written consent of adjacent property owners who share ownership of the wall or fence.~~

~~b. Written consent must be submitted at the time of request for a building permit.~~

~~5. *Tennis courts, batting cages, golf driving ranges, golf course or other similar uses:*~~

~~a. Maximum height of 16 feet.~~

b. The fence or wall shall not be permitted between the front property line and the required front yard setback of the property.

c. Golf driving ranges and golf courses may be granted a height above 16 feet by the Community Development Director or designee to protect the public and property. Subparagraph 5.b does not apply to golf driving ranges or golf courses.

(Ord. No. 2354, § I, 1-22-07; Ord. No. 2699, § III(Exh. B), 11-18-13)

Sec. 38-61. Urban design requirements for residential and other development.

A. *Residential development—Purpose and intent.* The purpose of this section is to provide urban design standards for residential development within the city. These urban design standards may include, but are not limited to, site design and building styles. The standards are intended to ensure functional, appealing and attractive neighborhoods throughout our community.

1. *Applicability.* All new single-family residences, whether site-built, modular or manufactured housing, are required to meet the residential urban design standards found within this section.

2. *Process and appeal.* The applicant will submit detailed elevations and floor plans at the time of building permit submittal. Applicants will be required to sign a disclosure statement to ensure that the proposed project is compatible with adjacent properties according to selected design strategies chosen and noted on the disclosure statement by the applicant. Those wishing to utilize the city's over-the-counter permitting process will be required to sign an additional disclosure stating that the applicant shall bear the sole responsibility for compliance of all applicable rules, regulations, and codes, including this section, involved in the proposed building project. Community development department staff will review plans to ensure that the application, at minimum, meets the intent of this Code. Should an applicant disagree with the determination of the plan reviewer, an appeal may be filed in writing within 15 calendar days of the determination to the Community Development Director or designee. If an agreement between the community development department and the applicant cannot be reached, an appeal may then be filed within 15 calendar days of that determination to the Planning and Zoning Commission. The Community Development Director or designee has the authority to allow flexibility in design when dealing with unusual situations provided that a project meets the spirit and intent of the goals, objectives, and policies found in the 1999 City Comprehensive Plan and Urban Design Element.

3. *General design requirements.* Community development department staff shall use the standards found in this section for the purposes of design review to ensure compliance with the intent of this Code.

a. Site design/architectural design: In order to promote a variety of housing design styles in the city and as a means of providing visual interest and avoiding monotony, the city prohibits repetitive housing facade designs that are located adjacent to one another. As such, adjacent housing facade designs must, at minimum, differ from one another by at least four of the following nine design options (exception: residential units which are attached by at least one common wall will not be considered adjacent units for purposes herein stated). Following the required site design/architectural design standards for residential developments that are completely gated/walled (with the result of being screened from general view) and contain private roadways for interior circulation will be determined on a case-by-case basis by the Community Development Director or designee.

1) Surface material;

2) Color of house;

3) Reversed floor plans;

4) Roofing styles;

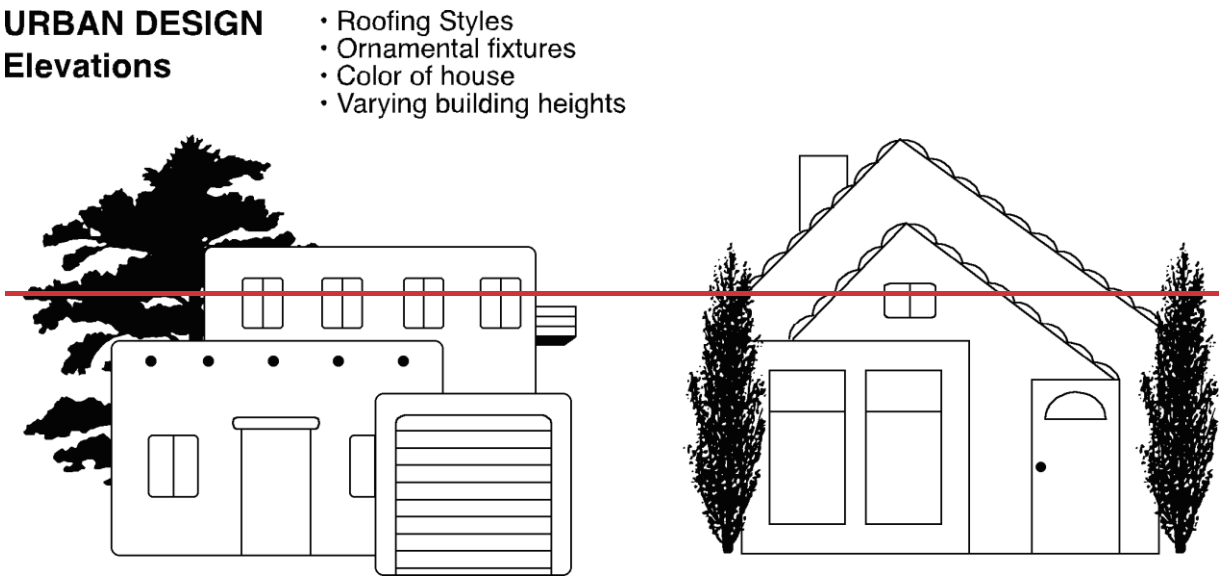
5) Variation in building heights;

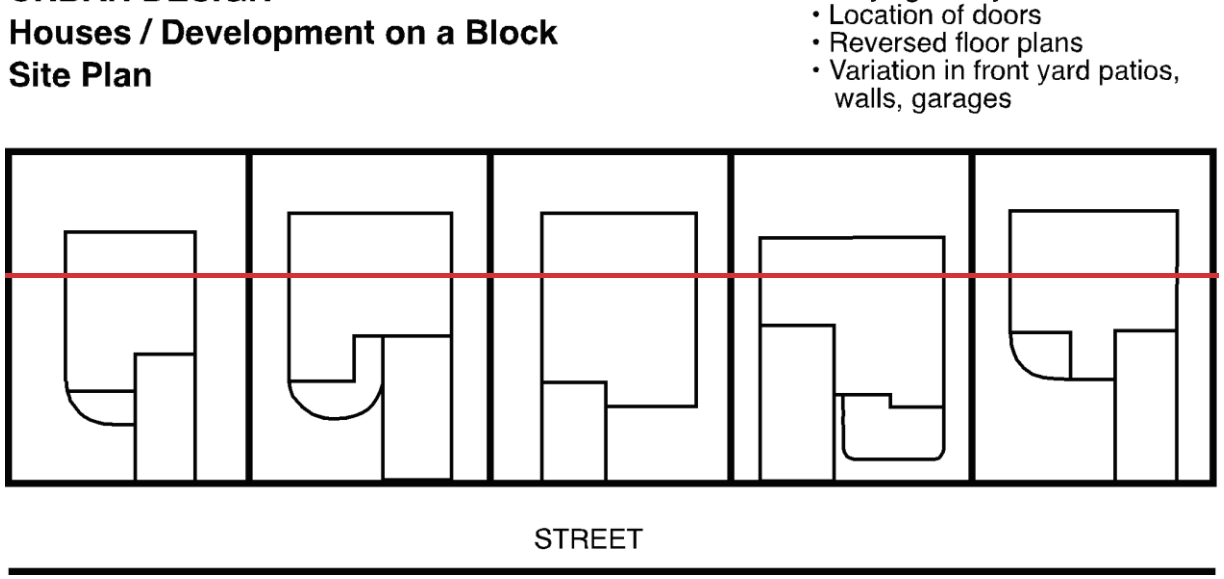
6) Ornamental fixtures (e.g., Vigas, portales, latias);

7) Location and shape of windows and doors;

8) Variation in front yard patios, walls, garages, etc.;

9) Variation in front yard setbacks. A minimum five-foot variation must be used to qualify for this item. All setback requirements as determined by zoning district still apply in this instance.





B. *Other development—Purpose and intent.* The purpose of the latter part of this section is to provide urban design standards for all types of development located within R-2, R-3, R-4, O-1, O-2, C-1, C-2, C-3, and M1/M2 and M-T zones in the city. Urban design standards may include, but not be limited to, site design,

landscaping, buffering, screening, building color, building style, construction materials, lighting, and signage. These standards are intended to assist in creating an all-over aesthetically pleasing and attractive environment throughout our community. Additionally, as the city's mixed use policy establishes and integrates a mix and variety of land uses within the city, these standards will play a continued role as they aid in mitigating potential negative impacts generated by higher land use intensities adjacent to lower land use intensities. These standards are also intended to provide for originality, flexibility, and innovation in site planning and development.

These requirements apply to all new construction and exterior remodeling throughout the city in the appropriately designated zones. In instances of mixed-land uses and/or in the case of rezoning property, it may be necessary to meet additional requirements as found in matrix 1.

1. *Applicability.*

a. Properties that are required to meet all of the urban design standards found within this section are as follows:

- All new building construction located in R-2, R-3, R-4, O-1, O-2, C-1, C-2, C-3, M-T, and M1/M2 zones.

b. Properties that are required to meet the urban design standards regarding screening, buffering, and landscaping standards found within this section/chapter are as follows:

- All new parking lots (aside from resurfacing).
- All outdoor storage and display areas.

c. Properties with M-T, M1/M2 and M-3 designations are required to follow front facade treatments, streetscape, buffering, and parking lot standards.

2. *Process and appeal.* The applicant will submit detailed elevations and a color scheme at the time of building permit submittal. Community development department staff will review plans to ensure that the application, at minimum, meets the intent of this Code. Should an applicant disagree with the determination of the plan reviewer, an appeal may first be filed with the Community Development Director or designee. If an agreement between the community development department and the applicant cannot be reached, an appeal may then be filed to the Planning and Zoning Commission within 15 calendar days of receiving said judgment.

The community development department realizes that some applicants may not be able to meet one or more provisions due to a physical hardship of the subject property. Examples may include constraints due to topography or the size of the subject property. In such cases, the applicant may prove this supposition to the Community Development Director or designee in order to have particular requirements waived. Once again, should the applicant disagree with the judgment of the Community Development Director or designee, the applicant may file an appeal to the Planning and Zoning Commission within 15 calendar days of receiving said judgment.

3. *General design requirements.* Community development department staff shall use the standards found in this section for the purposes of design review to ensure compliance with the intent of this document.

a. *Site design:* In order to promote an attractive streetscape in and around the city, a building's site design shall be governed closely. As such, regulations governing the views from public right-of-way, backs and sides of buildings, parking areas, and the placement of mechanical equipment, dumpsters, and loading docks/bays have been established.

1) *Building orientation.* One means of providing an attractive streetscape for both vehicular and pedestrian traffic is to direct the placement of a building on a parcel of land and to

prohibit a large expanse of blank walls on the buildings/structures where viewed from public right-of-way.

a) The position and location of the building itself on a particular parcel of land plays a large role in the look and feel of an area. In order to assist in supporting an interesting and pleasant environment, developments that are not oriented towards the primary frontage property line shall be required to be designed to invoke the impression/image of a front entrance. Architectural features used to comply with this requirement may include, but are not limited to: recesses, projections, wall insets, arcades, window display areas, awnings, balconies, window projections, landscape structures and other features that complement the structure's design and are acceptable to the reviewing authority.

b) Architectural features must be included on all building walls that are immediately adjacent to city streets and/or residential areas. Architectural features used to comply with this requirement are noted in part 3.a.1)a) of this section (if a project is developing adjacent to vacant property, the vacant property's existing zoning will be used to determine wall detail requirements).

2) *Parking layout.* Landscaping can contribute to the attractiveness and appeal of our community by de-emphasizing and softening the harsh look of large expanses of parking areas via visual screens and buffers. Visual screens and buffers may be achieved through the use of required landscaping, landscaping elements, garden walls, berms, hedges, and/or other landscaping features as directed in this section.

The city especially encourages those businesses that limit or avoid streetfront parking lots. As a means of supporting these businesses, it is possible to reduce building setbacks or other similar development standards. Please refer to section 38-56 for information regarding flexible zoning options, section 38-55 for information regarding planned unit development, or section 38-48 for further information regarding infill development.

At minimum, at least one of the following buffering techniques must be followed:

(1) Landscaped buffer with berm.

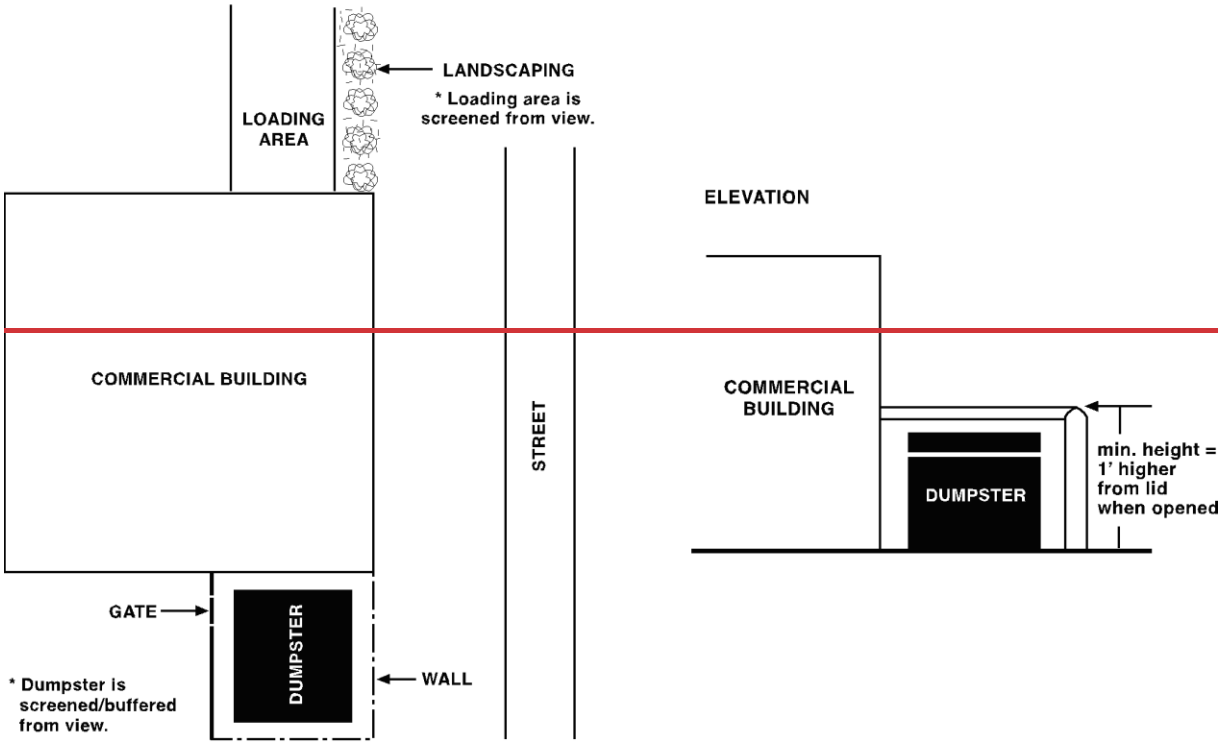
(2) Landscaped buffer with wall/fence.

(3) Landscaped drainage pond.

3) *Other types of buffers.* Service areas (loading docks/bays, dumpsters, etc.) and building and utility equipment are required to be screened and/or buffered to soften their overall impact and create a more aesthetically appealing environment.

a) Dumpsters: Dumpsters shall be constructed of materials in terms of color, texture, physical style, and scale that are used in the main building with which the dumpster is associated. Dumpsters shall be screened by a wall on three sides and an opaque gate (for easy access) on the fourth side. The wall and gate must be a minimum of twelve inches higher than the lid of the open container/dumpster.

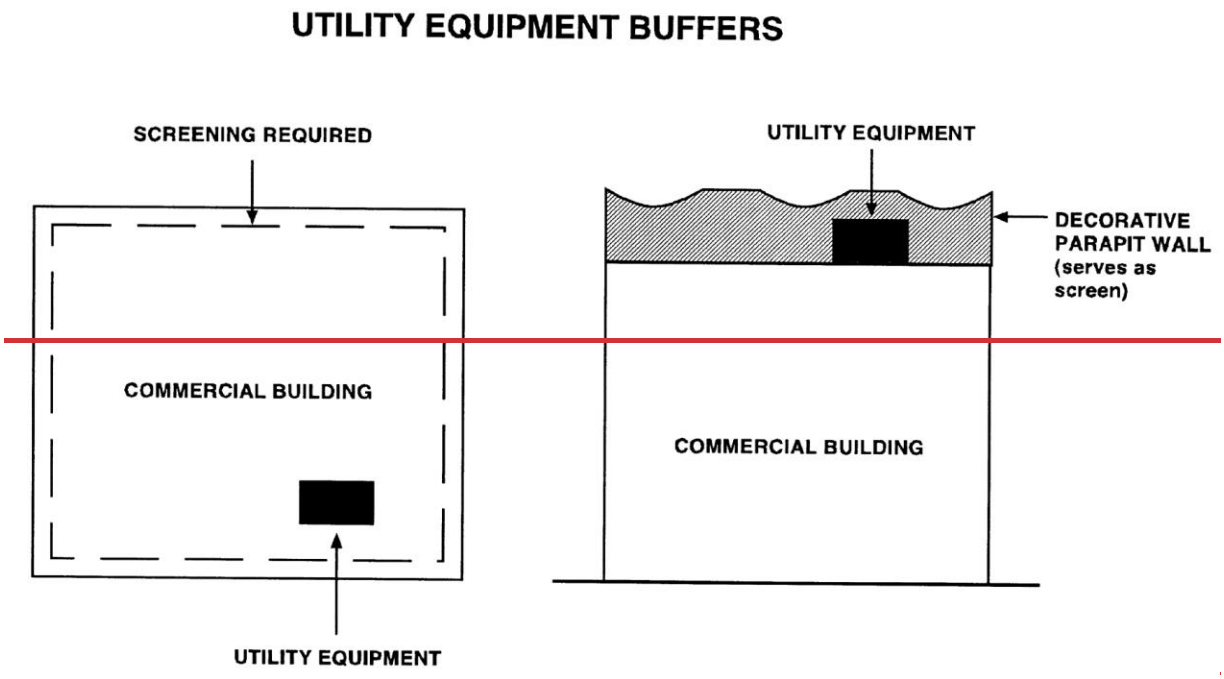
DUMPSTER BUFFERS



~~b) Mechanical/utility equipment: Mechanical/utility equipment must be screened from view from all angles using landscaping or walls in a manner that conceals the equipment. Such screening must remain consistent with the landscaping and architectural character (especially in terms of color, physical style and scale).~~

~~When located on a rooftop or otherwise attached to the building, mechanical/utility equipment shall be screened from view through the use of building design elements such as varied roof height, parapets, etc. In instances where adjacent rights-of-way are significantly higher in elevation to adjacent properties, rooftop equipment should be screened to the best extent possible. When the chosen architectural style selected does not lend itself to using these techniques, such equipment must be shielded from view by an opaque screen that is treated in a manner that most accurately matches the look, design, and texture of the building to which it is attached.~~

~~Exterior mechanical/utility equipment mounted on building facades shall be prohibited unless used as an integrated architectural design feature and painted such a color as to blend in with their visual background and/or building to which they are attached.~~

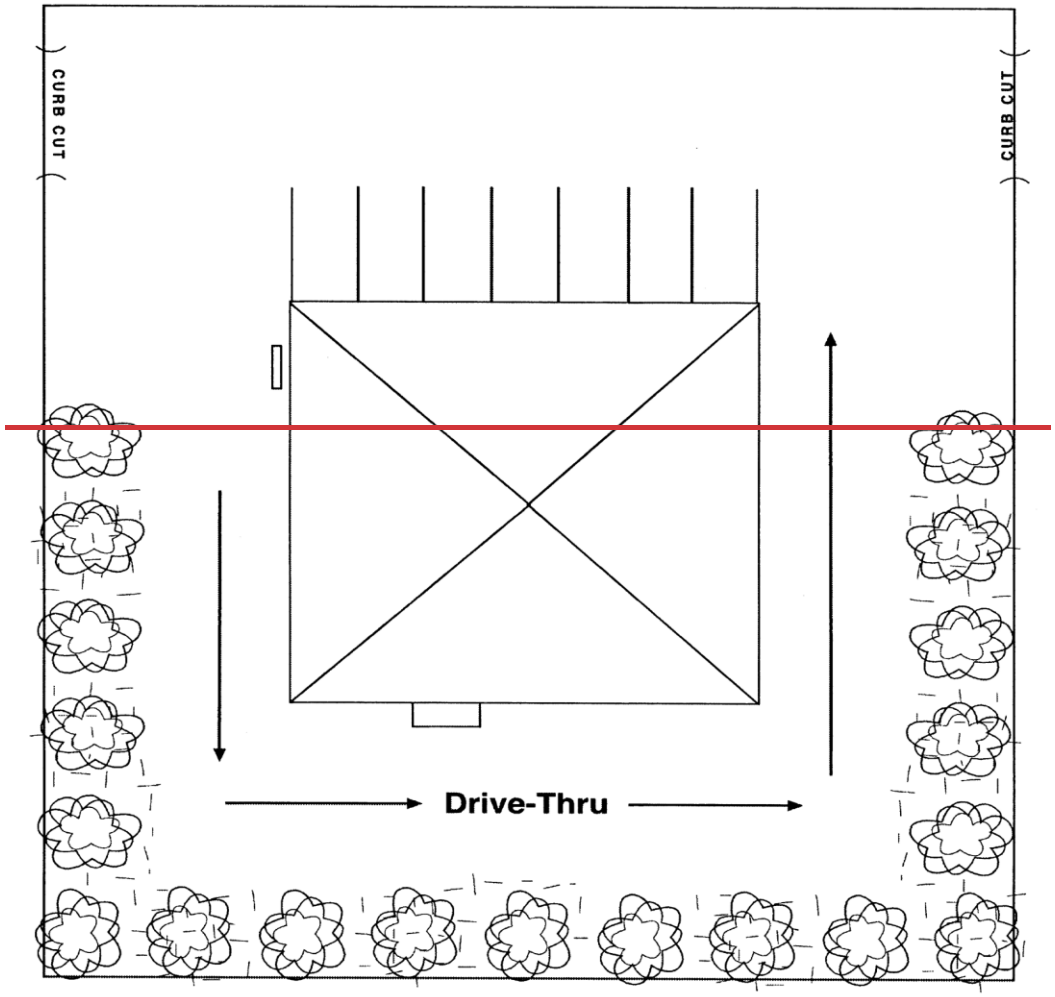


~~c) Storage areas/bins: Any outside areas containing storage materials directly for sale or otherwise shall, at minimum, be fully enclosed on four sides and fully sight-obscuring. Outside storage areas/bins must be compatible with the architectural character of the development, especially in terms of color, texture, physical style, and scale.~~

~~d) Loading and unloading docks/bays: Loading and unloading zones must be screened from the street via landscaping, walls, fencing, etc. Screening should be sight obscuring (semi-opaque at minimum) and a minimum of six feet in height.~~

~~e) All stacking lanes/drive-up aisles (associated with a drive-up service) must be de-emphasized. Techniques to de-emphasize stacking lanes/drive-up include, but are not limited to, utilizing landscaping as a screen or placing lanes/aisles where they are not readily seen from streets and sidewalks.~~

URBAN DESIGN
Buffered Drive-Up / Thru



4) Architecture/structural design. To promote an attractive image throughout the city, regulations regarding a building's over-all design must be followed.

a. All structures must be both in scale and architecturally compatible with one another throughout a project. For instance, a gas station's canopies must be in scale with its associated service and/or retail area in addition to being in a compatible architectural style. Individual businesses within shopping centers must also create a common architectural style and scale.

b. Reflective materials are prohibited (i.e., corrugated metal siding/roofs) unless an applicant can demonstrate architectural significance with respect to traditional southwestern styles of architecture, such as the Folk Territorial style utilizing metal roofing materials. Other exceptions may include metal roofing materials that are treated to prevent glare. The Community Development Director or building official may approve further exceptions.

c. Rooflines shall be designed to reduce the apparent exterior mass of a building, add visual interest and be appropriate to the architectural style. Variations within one architectural style are required. Architectural methods, such as parapets, shall be used to conceal flat roofs.

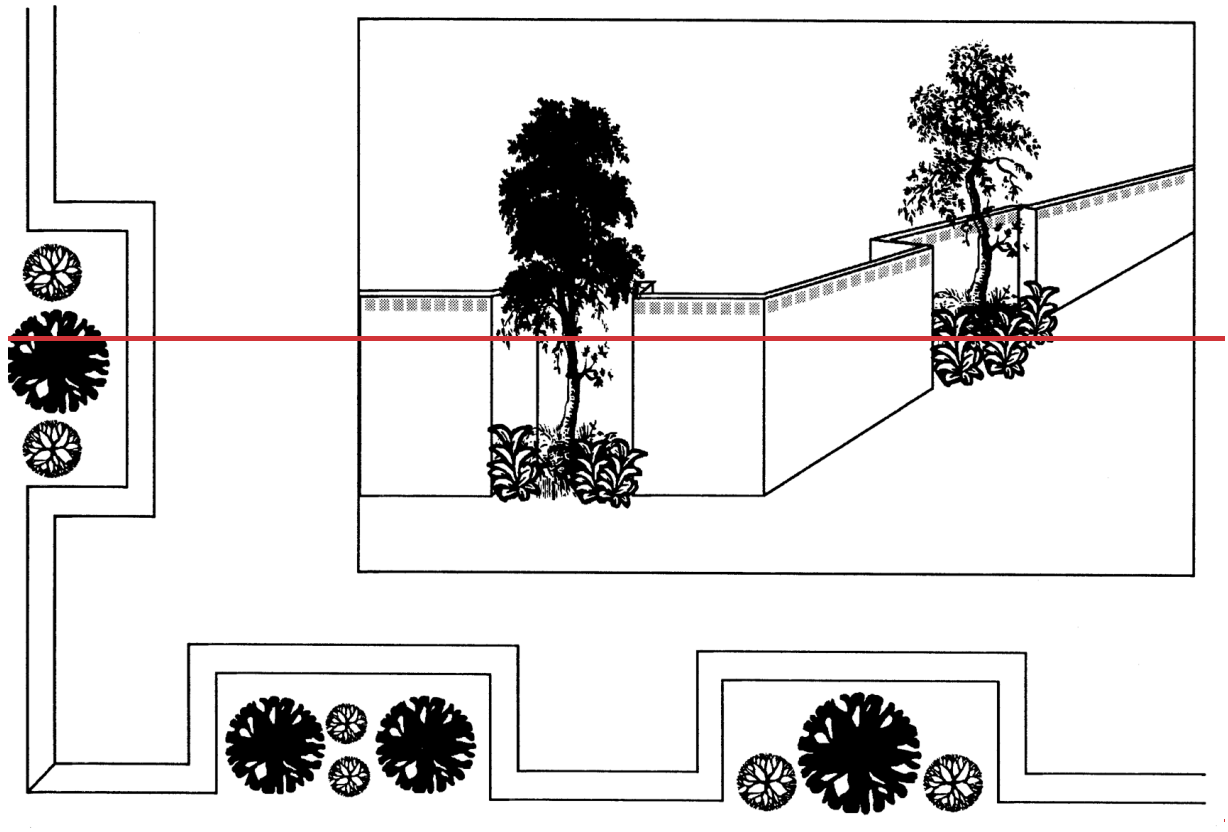
d. Accessory structures, playgrounds, etc. shall be secondary in emphasis to the main structure. The use of architectural characteristics in accessory structures shall mimic that of the primary structure. Playgrounds shall be contained within the primary structure.

e. Chain-link fencing shall be prohibited on property lines adjacent to roadways with collector or higher designations.

f. Walls that are constructed in individual projects that front along a particular street segment must provide continuity in design and compatibility in texture and color with adjacent projects along that particular street segment.

g. A combination of trees, shrubs, climbing vines, and/or architectural features shall be employed along the periphery of all fences or walls to avoid the monotony of a large, blank surface.

No Blank Walls / Provide An Interest
(cross section attached)



All developments are required to provide parking lot trees and landscaping. Please refer to chapter 32 (design standards) for further information.

4. *Nonconforming design.* An existing structure that is altered/remodeled and results in a cumulative square footage increase greater than ten percent of the total gross floor area is required to adhere to the design requirements of this section. Said structures are also required to follow all other applicable nonconfoming provisions noted in article VII (nonconforming uses, structures, and properties).

(Ord. No. 2354, § I, 1-22-07)

Sec. 38-62. Exceptions and modifications.

A. *Yard requirements and exceptions: Residential zoning districts.* (Note: Also see staff interpretation No. 02-002 (Z) at the end of this section.) The following provisions shall apply to all development in a residential zoning district:

1. *Setback exceptions.*

a. A minimum side yard setback of zero feet shall be permitted for patio homes, provided all of the following requirements are met:

1) The setbacks are on an entire side of a block as part of an approved subdivision;

2) There shall be no less than ten feet between structures, as described below;

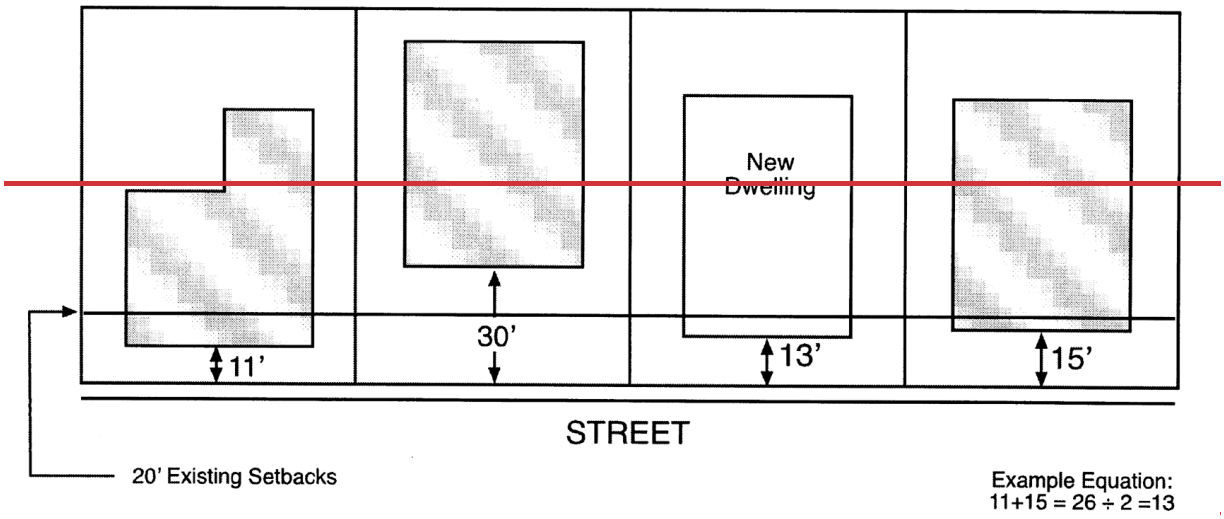
3) All zero lot lines shall be on the same side of all lots except lots for townhouses.

4) No building projection of any kind is permitted on the zero setback side of a lot; and

5) No storm water shall drain onto the property adjacent to the zero lot line development and all storm water shall be retained in accordance with the city's design standards.

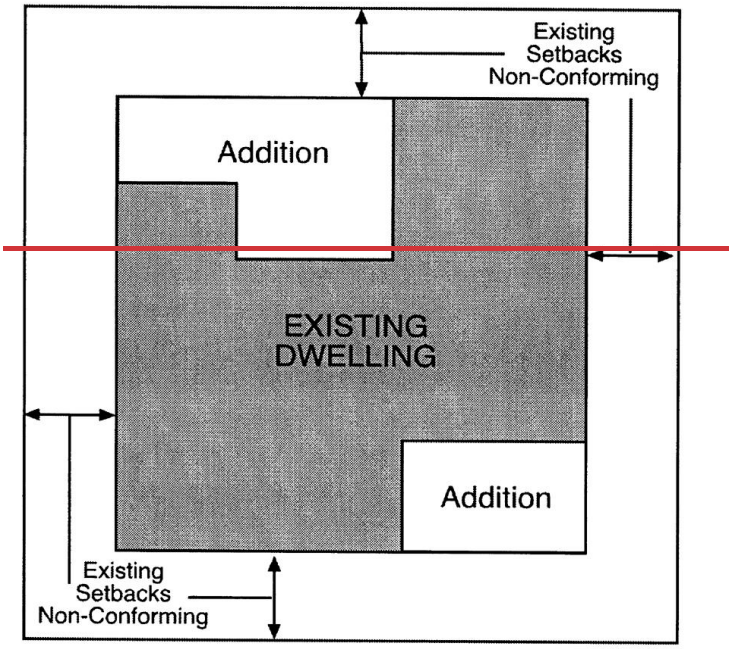
b. New dwellings or additions to existing dwellings may be erected as close to a front property line as the average distance established by the existing dwellings that are within the required setback, provided that at least 40 percent of the lots on the same block face are developed.

AVERAGE SETBACKS
Yard Modifications



~~c. A main dwelling, which has nonconforming setbacks and any other nonconforming property features, shall be permitted additions within the extension of existing building lines. Additions may not be larger than 50 percent of the main dwelling (see section 38-73.B.).~~

NON-CONFORMING
Setbacks and Dwelling Additions



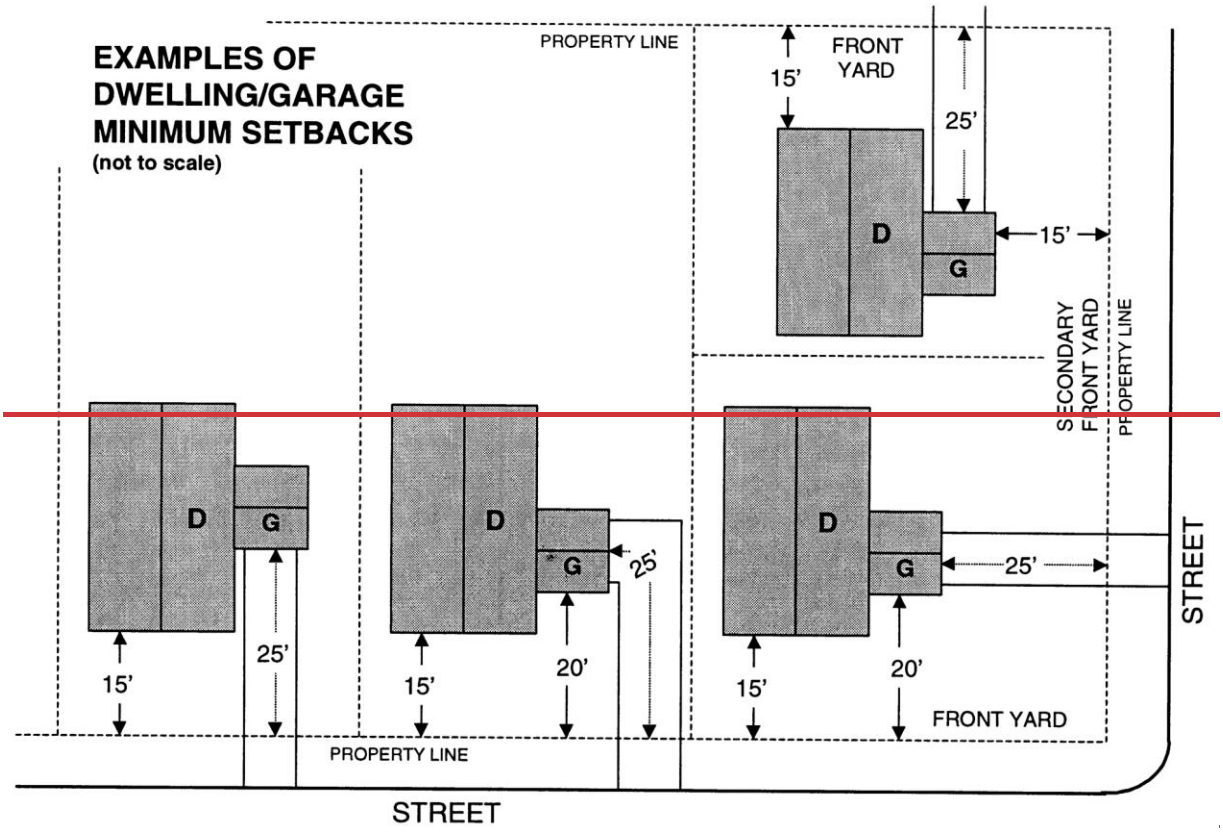
2. *Townhouse lots and area.* The minimum front and rear yard lot lines for townhouses may be reduced to 24 feet, provided that no lot shall be less than 2,880 square feet in area. In addition, end units must meet side yard requirements of the zoning district in which they are located.

3. *Townhouse attachment requirements.* A townhouse shall have at least one room of the house attached to the adjoining townhouse. One hundred percent of the wall length of that one room of the townhouse must attach to the adjoining townhouse. Any remaining room(s) that will not be placed on or attached along the shared property line shall maintain a minimum of ten feet of building separation between the adjoining townhouse. Room is defined as either habitable space in a structure used for living, sleeping, eating, or cooking (i.e., living rooms, bedrooms, dining rooms, and kitchens) or space not used for living, sleeping, eating, or cooking purposes (i.e., bathrooms, utility and storage space, and garages). Attached walls shall be appropriately fire-walled and constructed in accordance with the adopted building code (see illustrations at the end of this section).

4. *Subdivisions permitting mobile homes.* As an option to the development standards listed in section 38-31.D., the development standards for mobile homes found in section 38-57.A.3., mobile home parks/recreational vehicle parks, may be used to design a subdivision that permits mobile homes.

5. *Minimum dwelling/garage setbacks in R-1a, R-1aM, R-1b, and R-1bM residential zoning districts.* When a garage door is located facing a side yard or secondary front yard and a garage wall is facing the front yard instead, it may be possible that the wall of the garage may follow a reduced front yard setback of 20 feet and not the 25 foot required front yard setback for garages if certain architectural criteria and driveway dimensions are met.

   To utilize the reduced front yard setback of 20 feet, the side of the garage facing the front yard must look like an integral part of the primary dwelling unit. This may be accomplished by utilizing architectural features that are identical and/or complementary to the primary dwelling unit. Architectural details may include, but are not limited to, windows, window projections, awnings, recesses, and projections. Additionally, the centerline dimension of the driveway itself must be a minimum of 25 feet from the garage door to the property line regardless of whether the driveway is located within the primary or secondary front yard or both. The Community Development Director or designee shall determine if the garage's architectural design and length of driveway meet the intent of this provision.



~~B. *Yard requirements and exceptions: office, commercial and industrial zoning districts.* The following provisions shall apply to all developments, including residential and the associated accessory uses and accessory structures, in an office, commercial, or industrial zoning district.~~

~~1. *Setback exceptions.*~~

~~a. A zero foot side yard and/or rear yard shall be permitted only when:~~

~~1) A building on the abutting side is at least five feet from the property line; or~~

~~2) Both buildings share a common wall on the property line; or~~

~~3) When the abutting property is undeveloped; and~~

~~4) No building projection of any kind is permitted; and~~

~~5) No storm water is permitted to drain onto the adjacent property and shall be retained in accordance with the city's design standards.~~

~~Otherwise, the setback distance listed in the development standards table 38-32.D. shall apply.~~

~~b. Industrial, commercial or office developments that abut railroad tracks shall not be required to set back from such tracks if designed to have docking facilities for railroad cargo or passengers.~~

~~C. *Modifications and exceptions: all zoning districts.* (Note: Also see Staff Interpretation No. 02-002 (Z))~~

~~1. *Setback exceptions.*~~

~~a. A 15-foot setback shall be permitted on one front yard of corner lots and double frontage lots and on two front yards of triple frontage lots.~~

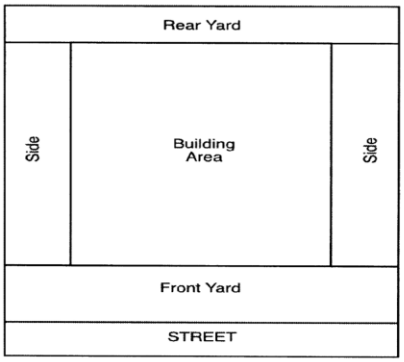
~~b. Setbacks for odd-shaped lots shall be determined by the Community Development Director or designee.~~

~~c. Setback requirements as shown on plats filed after the effective date of this Code, which are more restrictive than the zoning code setback requirements, shall be applied.~~

YARD REQUIREMENTS

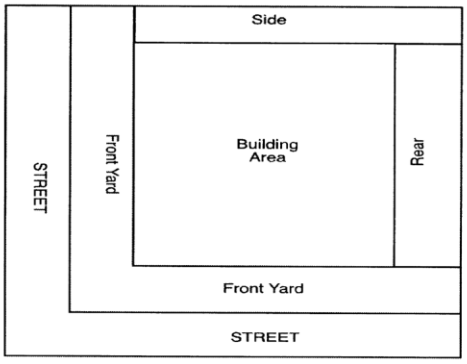
Building area is that area of a lot which is or may be occupied by buildings or structures pursuant to the requirements of this code.

A) INTERIOR LOT



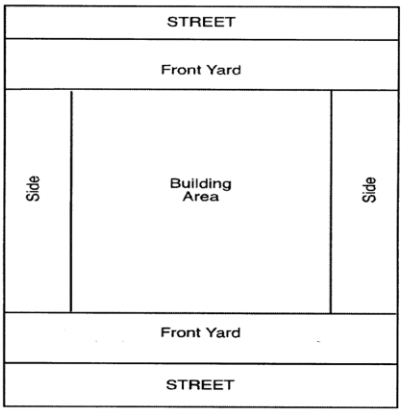
A) INTERIOR LOT
Interior lots require one (1) front yard, one (1) rear yard, and two (2) side yards.

B) CORNER LOT



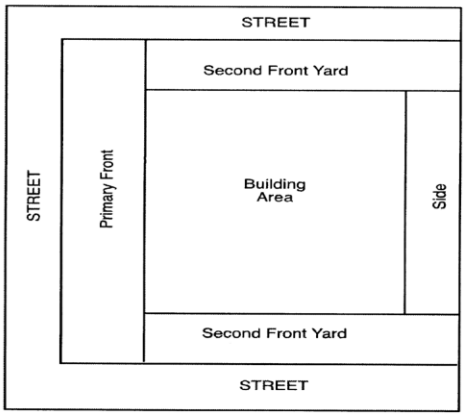
B) CORNER LOT
Corner lots require one (2) front yards, one (1) rear yard, and one (1) side yard.
***Homeowner has option of location of rear and side yard.**

C) DOUBLE FRONTAGE LOT

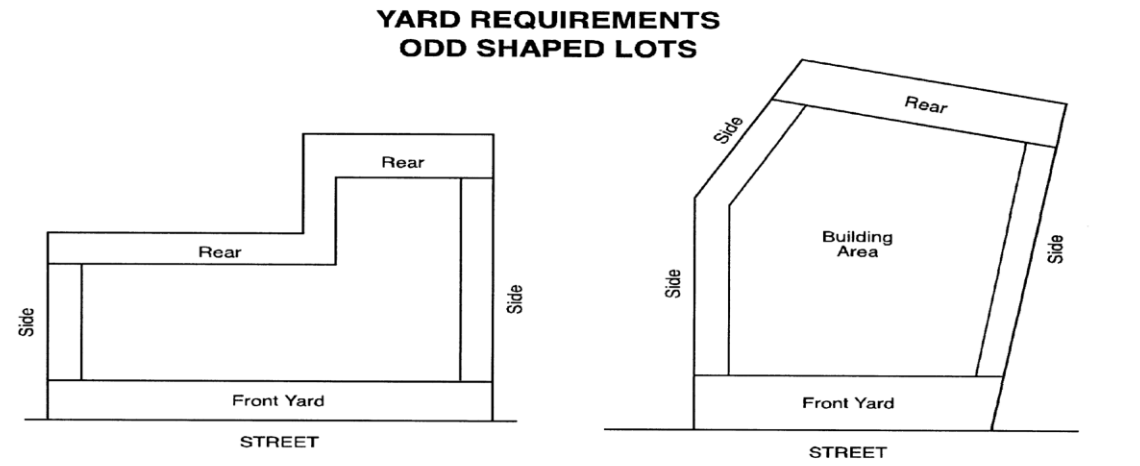


C) DOUBLE FRONTAGE LOT
Double frontage lots require two (2) front yards, and two (2) side yards.

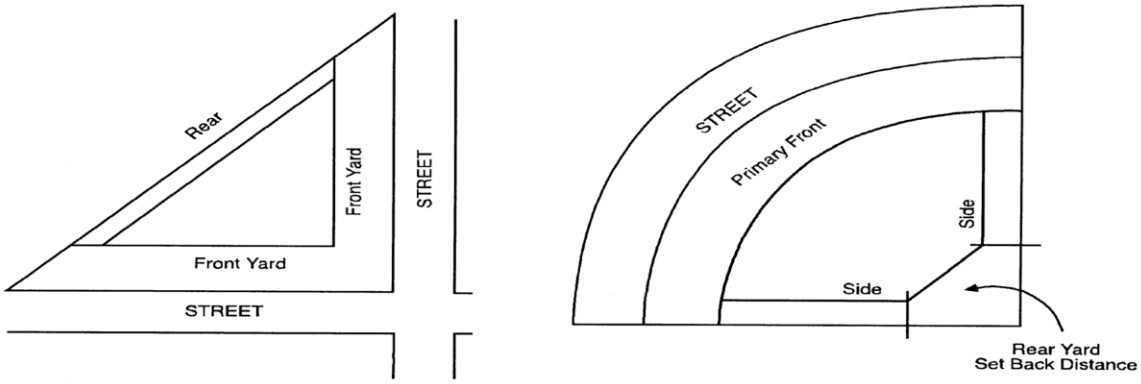
D) TRIPLE FRONTAGE LOT



D) TRIPLE FRONTAGE LOT
Triple lots require three (3) front yards, and one (1) side yard.



A) ODD SHAPED LOTS
On odd shapes lots, the rear yard is determined by the rear line that is most parallel to the front. This pentagonal-shaped lot would require one (1) front yard, one (1) rear yard, and three (3) side yards.



B) TRIANGULAR LOT
Third trianglar lot would require two (2) front yards, one (1) rear yard.

C) PIE SHAPED LOT
This pie shaped lot requires calculation of the rear yard at a line measured from the corner, a distance of the required rear yard, mid-point betwen the two side property lines.

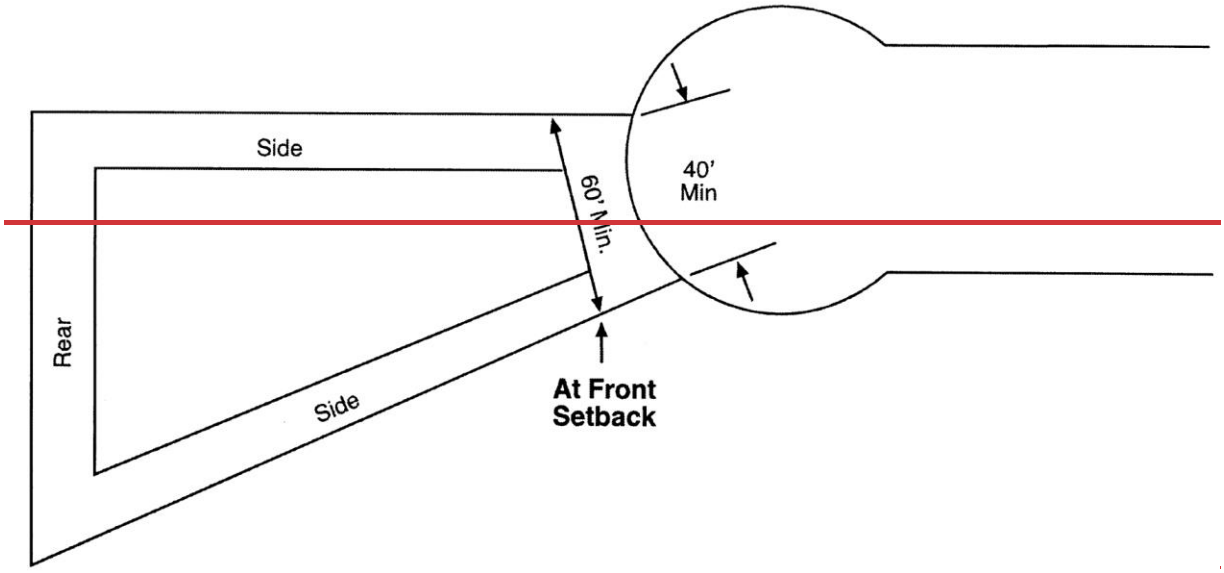
~~2. *Building projections.* There shall be no structure in a required setback, except as permitted elsewhere in this Code (see section 38-51, accessory uses and structures, section 38-59, antennas, towers, communication structures and other vertical structures, and section 38-60, walls and fences). The ordinary projection of, for example, sills, scuppers, cornices, ornamental features, roof overhangs, fireplace chimneys, buttresses and wing walls shall not extend into the required setback area.~~

~~3. *Minimum distance between structures.* There shall be no less than ten feet between buildings or structures as measured from the wall of one structure to the wall of the other structure, including accessory buildings and structures, located on the same lot, tract, or parcel. However, the ordinary projection of sills, cornices, ornamental features, roof overhangs, fireplace chimneys, buttresses and wing walls may be within the ten feet, but shall not exceed a total of four feet for both structures.~~

~~4. *Right-of-way/easement encroachments.* There shall be no permanent structures located on right-of-way or easements without written approval of the governing agency.~~

5. *Cul-de-sac.* The minimum width of a front yard lot line on a cul-de-sac shall be 40 feet, provided there shall be a minimum width of 60 feet at the front of the building nearest to the front property line. The exception for townhouse lots on a cul-de-sac permits the front yard lot line and front yard setback line to be a minimum of 24 feet.

CUL-DE-SACS



6. *Flag lot regulations.* A flag lot may be permitted for the following reasons:

   a. Encouraging infill development,

   b. Preserving natural site features,

   c. Developing otherwise land-locked areas,

   d. Prohibiting single-family/duplex driveway access to a collector or higher designated roadway, or

   e. Improving development design.

   A flag lot shall meet the minimum lot size requirements of the zoning district exclusive of the size of the private access way. Flag lot width-depth and front-rear-side yard setbacks of the flag portion of the flag lot shall be established by the development review committee (DRC) at the preliminary plat stage consistent with the intent of the development standards for the zoning district within which the property is located.

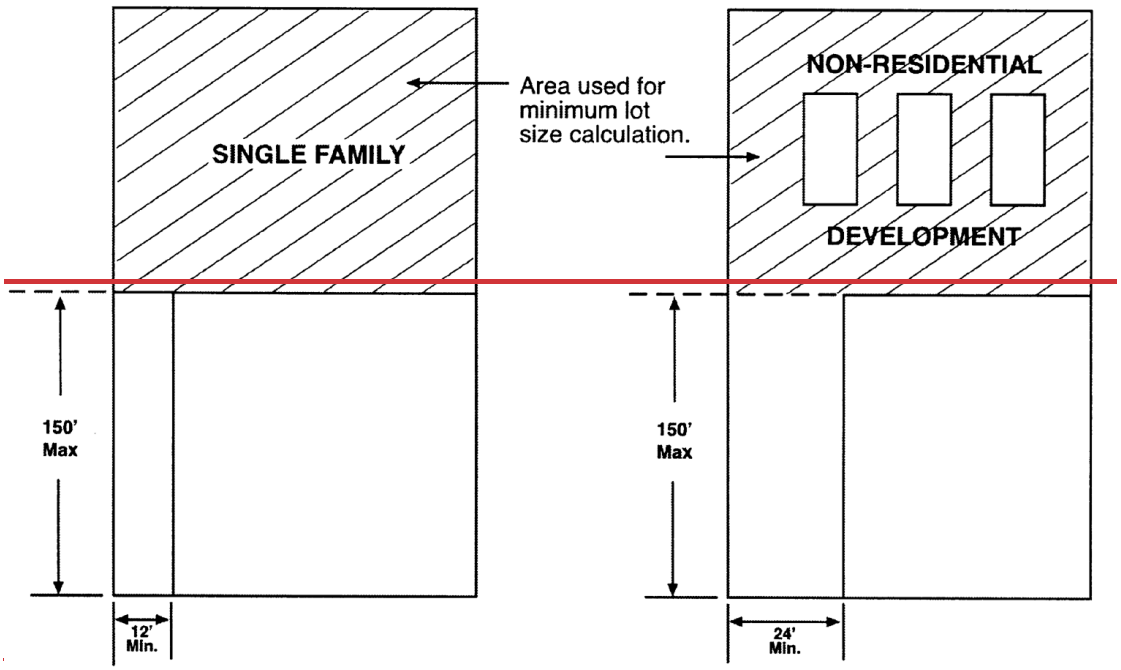
   Private access way requirements:

   1) When serving a single-family dwelling or a duplex, the private access way shall have a minimum width of 12 feet and a maximum length of 150 feet.

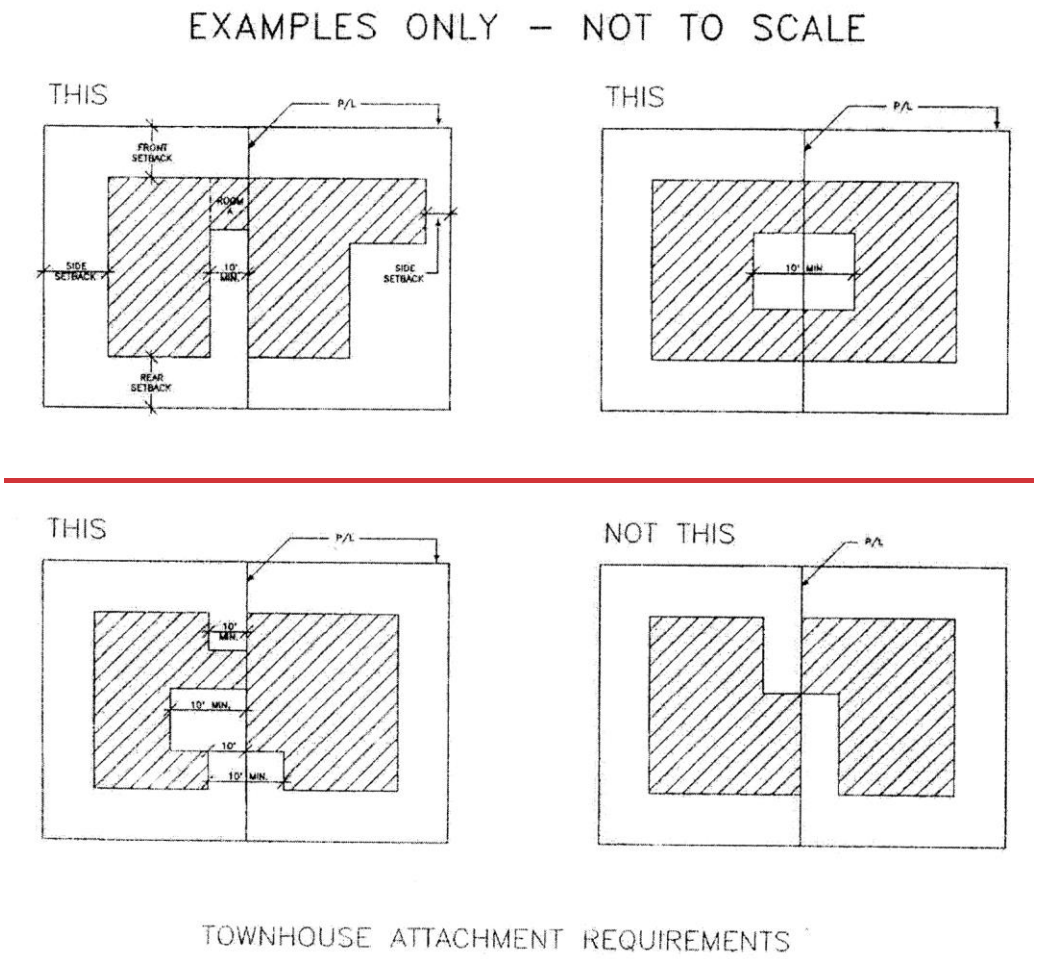
   2) When more than two dwelling units, multi-family development, and/or any nonresidential development are proposed on a private access way, the private access way shall have a minimum width of 24 feet and a maximum length of 150 feet and shall be paved meeting the city's design standards.

~~The DRC may grant a waiver to these standards. Appeal of a DRC decision may be made to the Planning and Zoning Commission as part of the consideration of the preliminary plat.~~

FLAG LOT



~~7. *Status of the provisions of this section.* Any two or more exceptions or modifications in this section may be applied to a property. Any provision in this section shall supersede any more restrictive provision in any other section of this Code. Where any two or more provisions in this section conflict, the Community Development Director or designee shall determine the appropriate provision to apply.~~



~~(Ord. No. 2354, § I, 1-22-07)~~

~~Secs. 38-63—38-69. Reserved.~~

~~*ARTICLE VII. NONCONFORMING USES, STRUCTURES AND PROPERTY*~~

~~Sec. 38-70. Introduction.~~

~~Within the zoning districts established by this Code, there are existing land uses, structures, sizes of lots, setback dimensions of structures or site design features which were lawful before this Code was adopted, but which are prohibited, regulated or restricted under the terms of this Code or future amendments. These are considered nonconformities and this Article explains and establishes the regulation of nonconformities.~~

~~Many people refer to this article as the "Grandfather Clause." If a use, structure, etc. was established legally under the previous code, it is "grandfathered in" (legal nonconforming). This article defines what can be done with a property that has a "grandfathered" feature and when the "grandfather" status is forfeited. These regulations are intended to curtail substantial investment in nonconformities and to bring about the eventual improvement or elimination of nonconformities in order to implement the goals, objectives and policies of the city's comprehensive plan. Ultimately, these regulations are intended to protect the health, safety and welfare of the general public.~~

(Ord. No. 2354, § I, 1-22-07)

Sec. 38-71. Purpose.

A. Limit the number and extent of nonconformities which conflict with the intent of this Code by restricting enlargement, re-establishment after abandonment, alteration or restoration after destruction.

B. Eliminate nonconforming uses eventually or provide for their alteration to conform to the provisions of this Code.

C. Permit improvements and minor additions to nonconforming structures or structures containing nonconforming uses to be considered in order to prevent these structures from becoming blighted and having detrimental impacts on the surrounding neighborhood, provided that such improvements or additions:

1. Do not adversely impact surrounding property,

2. Do not increase in the degree of nonconformity with respect to the development standards for the zone in which the property is located, and

3. Do not substantially increase the life of the nonconforming structure above the normal anticipated life span for the structure.

D. Allow for the reconstruction of existing residential structures that are involuntarily destroyed, e.g., fire.

E. Secure the public health, safety and welfare by eliminating nonconformities that do not substantially promote these concerns.

(Ord. No. 2354, § I, 1-22-07)

Sec. 38-72. Definitions.

A. *Nonconforming—Generally:* The adoption of this Code and subsequent rezoning of all property within the city to conform to this Code may create nonconforming land uses, structures, lots, parcels or tracts of land and site design features. If at the time of rezoning of any lot, parcel, or tract or a subsequent amendment to this Code, any land use, structure, lot, parcel or tract of land or site design feature which was lawful when initially established or constructed and continued to be lawful, but does not comply with the provisions of this or any other applicable code, shall be considered nonconforming and may continue in the manner and to the extent that it existed or was being used at the time rezoning or amendment of this Code. This article describes when nonconformities must come into compliance with this Code.

B. *Nonconforming—Specifically:*

1. A nonconforming use occurs when a use is not allowed, not allowed with conditions, or not allowed with a special use permit in the zoning district in which the property is located.

2. A nonconforming structure is a structure that does not meet setback, height, or other development standards of the zoning district in which the structure is located. Nonconforming structures include, but are not limited to, walls, fences and mobile homes.

3. A nonconforming lot, parcel or tract of land is a piece of property that does not meet the minimum area, width or depth requirement of the zoning district in which it is located.

4. A nonconforming site design feature, e.g., parking lots, landscaping, drainage, curb cuts, lighting and similar features, is a feature that does not meet the requirements of this and any other applicable code.

C. *Other definitions for the purpose of this article:*

1. *Vacant land* is defined as property that has not been occupied by a use, by structures or persons or for which no business registration, license, etc. has been obtained for the property. A property is also considered vacant if it previously had been occupied, but has not been occupied by a use, structures, persons or a business registration, license, etc., has not been issued for 12 months or more. This does not include buildings used for residential purposes vacated because of involuntary damage, e.g., fire.

2. *Change in land use* is defined as an increase or decrease in the intensity of the land use. Intensity is determined by the number of car parking stalls required for a particular use as found in section 38-33. A nonconforming use may be changed to a less restrictive conforming use, i.e., a use that is allowed in the zoning district and that requires fewer parking stalls. A nonconforming use may be changed to a more restrictive conforming use, i.e., a use that is allowed in the zoning district and that requires more parking stalls, only if the additional parking stalls are provided along with the necessary drainage and landscaping.

3. *Expansions* are defined as additions to a use or additions of buildings to a property whether attached to an existing building or a new separate structure.

4. *Alteration/remodel* is defined as a change in a structure that requires a building permit.

(Ord. No. 2354, § I, 1-22-07)

Sec. 38-73. Nonconforming provisions.

A. *Nonconforming zoning districts:* Upon the effective date of this Code, 2001 Zoning Code, the 1981 Zoning Code, as amended, will be repealed.

B. *Continuation of legal nonconformities:*

Nonconforming land uses (includes all uses, see sections 38-31, 38-32, and 38-33.),

Nonconforming structures (includes: primary buildings, accessory structures, walls, fences). Signs are addressed in the chapter 36 of the Municipal Code and antennas, towers, communication structures, and other vertical structures are addressed in section 38-59,

Nonconforming lots/parcels/tracts of land, and/or

Nonconforming site design features (includes: e.g., curb cuts, landscaping, drainage, lighting, parking lots, architecture).

Any of these nonconformities listed above may be continued subject to the following conditions:

1. One single-family dwelling unit on one property or one duplex/two single-family dwelling units on one property, excluding mobile homes:

   a. Existing building(s) on a property, which has any nonconformities may be remodeled *anytime, but only: expanded; or altered* one time up to 50 percent of the total gross floor area of all buildings on the property within the expansion of existing building lines (see section 38-62A.1.c.). However, expansion, alteration, or remodeling within the zoning district's building setback lines is permitted more than one time and with no gross floor area percentage increase limitation. The setbacks for the single-family dwelling unit located in an R-2, R-3, R-4, office, commercial, or industrial zoning district shall be the same as in the R-1a zoning district. All new construction must conform to the requirements of chapter 30 of the Municipal Code.

   b. Any building involuntarily damaged or destroyed may be rebuilt to what it was before it was damaged or destroyed. The building may not be rebuilt to create a nonconformity that did not

previously exist. Reconstruction must begin within six months of the damage and the reconstruction must be diligently completed but in no case shall the reconstruction exceed two years. All new construction must conform to the requirements of chapter 30 of the Municipal Code.

c. Walls and/or fences may be reconstructed or added to a property with any nonconformities. All new construction must conform to the requirements of chapters 30 and 32 of the Municipal Code.

d. If the conditions listed in paragraphs 1a through 1c above cannot be complied with, all nonconformities, i.e. land uses, structures, lots/parcels/tracts of land, or site design features, shall be brought into compliance with all provisions of the Municipal Code to the extent possible through, e.g., rezoning, a variance and/or an administrative adjustment. The nature of nonconforming situations is unique to a specific property; therefore, each nonconforming situation will be reviewed on a case-by-case basis utilizing every option, e.g., section 38-56, flexible development standards, available within the Municipal Code to achieve compliance.

2. One or more mobile homes or recreational vehicles on one property, excluding mobile home parks and recreational vehicle parks:

a. A mobile home used as a residence may be expanded, altered, or remodeled one time up to 50 percent of the total gross floor area of all buildings on the property within the expansion of existing building lines (see section 38-62A.1.c.). However, expansion, alteration, or remodeling within the zoning district's building setback lines is permitted more than one time and with no gross floor area percentage increase limitation. The setbacks for the mobile home used as a residence located in an R-2, R-3, R-4, office, commercial, or industrial zoning district shall be the same as in the R-1aM zoning district. All new construction must conform to the requirements of chapter 30 of the Municipal Code.

b. A mobile home or recreational vehicle (RV) used as a residence on one property may be replaced if the mobile home or RV is being replaced by a manufactured house, site-built house, or safer mobile home. If the replacement residence is a mobile home, for safety reasons, the replacement mobile home shall have accessible bedroom windows, the appropriate number of properly located and working smoke detectors, and an effective residential fire extinguisher. Furthermore, the replacement dwelling unit shall not be located on the property to create a nonconformity that did not previously exist.

c. Walls and/or fences may be reconstructed or added to a property with any nonconformities. All new construction must conform to the requirements of chapters 30 and 32 of the Municipal Code.

d. If the conditions listed in paragraphs 2.a. through 2.c. cannot be complied with, all nonconformities, i.e. land uses, structures, lots/parcels/tracts of land, or site design features, shall be brought into compliance with all provisions of the Municipal Code to the extent possible through, e.g., rezoning, a variance and/or an administrative adjustment. The nature of nonconforming situations is unique to a specific property; therefore, each nonconforming situation will be reviewed on a case-by-case basis utilizing every option, e.g., section 38-56, flexible development standards, available within the Municipal Code to achieve compliance.

3. *Nonconforming mobile home park:*

a. A mobile home used as a residence within a nonconforming mobile home park may be expanded, altered, or remodeled one time up to 50 percent of the total gross floor area of all buildings on the mobile home space within the expansion of existing building lines (see section 38-62A.1.c.). However, expansion, alteration, or remodeling within the mobile home space building setback

lines is permitted more than one time and with no gross floor area percentage increase limitation. All new construction must conform to the requirements of chapter 30 of the Municipal Code. This paragraph applies to a mobile home park with an approved compliance plan, with an approved special use permit, or that is an approved planned unit development.

b. A mobile home or recreational vehicle (RV) used as a residence in a nonconforming mobile home park may be replaced if the mobile home or RV is being replaced by a manufactured house, site-built house, or safer mobile home. If the replacement residence is a mobile home, for safety reasons, the replacement mobile home shall have accessible bedroom windows, the appropriate number of properly located and working smoke detectors, and an effective residential fire extinguisher. Furthermore, the replacement dwelling unit shall not be located on the property to create a nonconformity that did not previously exist. This paragraph applies to a mobile home park with an approved compliance plan, with an approved special use permit, or that is an approved planned unit development.

c. 1) On the effective date of this Code all nonconforming mobile home parks shall be brought into compliance with all Municipal Code requirements to the extent possible. Compliance shall be based on an approved compliance plan, which addresses all applicable public health, fire, and life safety issues. An existing or new special use permit (SUP) or an existing or new planned unit development (PUD) for each mobile home park may satisfy the compliance plan requirement. A mobile home park with an accepted compliance plan, a SUP or an approved PUD designation shall be deemed legal, non-conforming.

2) The compliance plan shall be prepared by the mobile home park owner in consultation with the community development department staff. If the compliance plan or PUD is denied, or if the compliance plan or PUD is not prepared, the nonconforming mobile home park shall cease operation on December 31, 2009. Within the one year compliance plan preparation period, up to ten percent of the mobile homes may be replaced if in compliance with paragraph 3.b.

3) During compliance plan preparation and prior to the decision on the compliance plan, the public and potentially affected parties shall be given an opportunity to provide input. Public notice and participation shall follow a process approved by the community development department director or designee. Acknowledging that the nonconforming mobile home park will have unique improvement requirements, e.g., street paving, landscaping, to meet in order to comply with the Municipal Code, nevertheless, the compliance plan shall not permit the completion of the required improvements to extend past December 31, 2011. However, at the request of the mobile home park owner, a one-time, not to exceed one year, extension to complete improvements may be approved by the community development department director or designee. Prior to the decision on the time extension request, the public and potentially affected parties shall be given an opportunity to provide input. Public notice and participation shall follow a process approved by the community development department director or designee.

4) Any affected party may appeal the compliance plan approval/denial decision or time extension decision of the community development department director or designee to the Planning and Zoning Commission.

d. Walls and/or fences may be reconstructed or added to a property with any nonconformities. All new construction must conform to the requirements of chapters 30 and 32 of the Municipal Code.

e. If the conditions listed in paragraphs 3.a. through 3.d. cannot be complied with, all nonconformities, i.e. land uses, structures, lots/parcels/tracts of land, or site design features,

shall be brought into compliance with all provisions of the Municipal Code to the extent possible through, e.g., rezoning, a variance and/or an administrative adjustment. The nature of nonconforming situations is unique to a specific property; therefore, each nonconforming situation will be reviewed on a case-by-case basis utilizing every option, e.g., section 38-56, flexible development standards, available within the Municipal Code to achieve compliance.

4. *Three or more dwelling units on one property (not including mobile homes or mobile home parks) or nonresidential development:*

a. The property has not been vacant for 12 consecutive months.

b. There is no change in land use (see section 38-72C.2.).

c. Existing building(s) on the property may be remodeled anytime, but expanded, or altered, one time up to ten percent of the gross floor area of all buildings on the property. All new construction must conform to the requirements of chapter 30 of the Municipal Code.

d. Land uses may be expanded one time up to ten percent of the area in use.

e. The density of residential uses may change if the change in density will bring the density in compliance with this Code.

f. The property may be re-platted if the re-platting will not result in an increase in the number of lots.

g. When a nonconforming lot is used together with one or more contiguous lots for a single use or unified development, all of the lots so used, including any lots used for off-street parking, shall be considered a single lot for the purposes of this section, and the properties shall be re-platted before permits are issued.

h. Any building partially destroyed involuntarily may be rebuilt to what it was before it was partially destroyed. A building permit shall be issued for the reconstruction of the damaged building based on plans approved by the community development department director or designee without having to correct any nonconforming matter, e.g., rezoning to comply with this Code. The building may not be rebuilt to create a nonconformity that did not previously exist. Reconstruction must begin within six months of the damage, unless extenuating circumstances prevail, e.g., legal issues, and the reconstruction must be diligently completed but in no case shall the reconstruction exceed two years. Buildings unoccupied during this time will not be used in the calculation to determine if land is vacant. All new construction must conform to the requirements of chapter 30 of the Municipal Code.

i. Walls and/or fences may be reconstructed or added to a property with nonconformities. All new construction must conform to the requirements of chapters 30 and 32 of the Municipal Code.

j. If the conditions listed in paragraphs 4.a. through 4.i. cannot be complied with, all nonconforming characteristics, i.e. land uses, structures, lots/parcels/tracts of land, or site design features, shall be brought into compliance with all provisions of the Municipal Code to the extent possible through, e.g., rezoning, a variance and/or an administrative adjustment. The nature of nonconforming situations is unique to a specific property; therefore, each nonconforming situation will be reviewed on a case-by-case basis utilizing every option, e.g., section 38-56, flexible development standards, available within the Municipal Code to achieve compliance.

(Ord. No. 2354, § I, 1-22-07)

Sec. 38-74. Nonconforming use, lot, parcel or structure certificates.

A. Purpose: The purpose of these certificates is to establish the legality of a nonconformity. All nonconformities shall have such a certificate before business registrations, building permits, subdivisions, mobile home installation permits, etc. are issued or permitted.

B. To obtain a Certificate, the following information must be provided:

1. Address, legal description and/or tax identification number

2. Site plan, to scale, showing all structures on the property

3. Proof that the nonconformity was legal when initially established and that the nonconformity was not discontinued or abandoned for more than 12 consecutive months. Examples of proof may include:

a. Copies of building permits

b. Copies of utility bills

c. Dated photographs

d. Tax assessor's information

4. Although the city will assist in determining nonconforming status, the burden of proof is on the property/business owner to establish that a nonconformity was legal when established and continued legally, with no disruption of the nonconformity for more than 12 months, until the current date.

C. Nonconforming land uses, structures, lots, parcels or tracts of land are not affected by changes in ownership, tenancy or management.

(Ord. No. 2354, § I, 1-22-07)

Sec. 38-75. Nonconforming uses to be abated.

A. *Nonconforming open storage*. Where undeveloped land within any zoning district has been used for open storage affecting public health, safety, welfare or nuisance in nonconformance with this Code, such use shall be discontinued, abated, or made to conform to the provisions of this Code within one year after its effective date.

B. *Nonconforming junk yards.* Where land in any zoning district has been used for a junk yard, such use shall be abated or made to conform to the provisions of this Code within two years after the effective date of this Code.

C. *Nonconforming adult bookstores/video stores and adult amusement establishments.* Where land in any zoning district has been in use as an adult bookstore/video store or adult amusement establishment prior to the effective date of this amendment, such use shall be abated or made to conform to the provision of this Code within one year after the effective date of this Code.

D. *Obstructions of the clear site triangle*. Obstructions of a clear sight triangle shall be removed in compliance with the Municipal Code.

(Ord. No. 2354, § I, 1-22-07)

~~Sec. 38-76. Special zoning district nonconforming regulations.~~

~~Special zoning districts (see article V) have different or additional nonconforming regulations. Refer to the section dealing with a specific zoning district to determine if other regulations apply.~~

~~(Ord. No. 2354, § I, 1-22-07)~~

Chapter 39 OUTDOOR LIGHTING[1]

ARTICLE I. GENERAL

Sec. 39-1. Title.

This chapter shall be entitled the "Outdoor Lighting Ordinance" of the City of Las Cruces, New Mexico.

(Ord. No. 2781, § I(Exh. A), 5-2-16)

Sec. 39-2. Purpose.

The purpose of this chapter is to provide regulations for outdoor lighting that will:

(1) Permit reasonable uses of outdoor lighting for nighttime safety, utility, security, productivity, enjoyment and commerce.

(2) Minimize adverse offsite impacts including light trespass, and obtrusive light.

(3) Curtail light pollution and improve the nighttime environment.

(4) Help protect the natural environment from the adverse effects of night lighting.

(5) Conserve energy and resources to the greatest extent possible.

(Ord. No. 2781, § I(Exh. A), 5-2-16)

Sec. 39-3. Applicability.

(a) Except as described below, all outdoor lighting installed after the date of effect of this chapter shall comply with these requirements. This applies to any lighting device located exterior to a structure or that illuminates areas exterior to a structure, whether permanently or temporarily installed, or any other lighting whether attached to structures, poles, the earth, or any other location, including lighting installed by any third party. This includes, but is not limited to:

- New lighting
- Replacement lighting
- Search light(s)
- Spotlight(s)
- Flood light(s)
- Security lighting

[1]Editor's note(s)—Ord. No. 2781, § I(Exh. A), adopted May 2, 2016, repealed and reenacted chapter 39 in its entirety to read as herein set out. Formerly, chapter 39 pertained to similar subject matter, and derived from Ord. No. 2662, § I(Exh. A), adopted September 4, 2012.

- Sign and architectural lighting
- Lighting for parks, parking lots, roadways
- Athletic facility lighting
- Building overhang and open canopy lighting
- Product display area lighting
- Landscape lighting
- Signs or billboards whether on-premises or off-premises, including LED, plasma and similar light sources

(b) The following are not regulated by this chapter:

(1) Lighting within public right-of-way or easement for the principal purpose of illuminating streets or roads. No exemption shall apply to any lighting within the public right-of-way or easement when the purpose of the luminaire is to illuminate areas outside the public right-of-way or easement.

(2) Repairs to existing luminaires.

(3) Temporary lighting for theatrical, television, performance areas and construction sites.

(4) Underwater lighting in swimming pools and water features.

(5) Temporary lighting and seasonal lighting provided that individual lamps are less than ten watts and 70 lumens.

(6) Open gas flames.

(7) Emergency outdoor lighting.

(8) Residential low voltage landscape lighting.

(9) Commercial low-voltage landscape lighting that is controlled by an automatic device that set to turn the lights off at 11:00 p.m. or 30 minutes after the close of business, whichever is later.

(Ord. No. 2781, § I(Exh. A), 5-2-16)

Sec. 39-4. Severability.

If any article, section, paragraph, sentence, phrase or part of this chapter is declared unconstitutional or otherwise invalid, the remaining portions shall not be affected.

(Ord. No. 2781, § I(Exh. A), 5-2-16)

Sec. 39-5. Minimum requirements.

The provisions of this chapter shall be considered to be the minimum requirements to meet the purpose expressed in section 39-2 of this chapter; however, nothing herein shall prohibit the building official or his designee from imposing greater requirements to ensure the promotion of health, safety and welfare of the citizens of the city.

All outdoor lighting shall be installed in conformance with the provisions of this chapter, applicable electrical, building, and energy codes, applicable sections of the Las Cruces Municipal Code and manufacturer's instructions.

(Ord. No. 2781, § I(Exh. A), 5-2-16)

Sec. 39-6. Conflict.

(a) Local conflict. Where the provisions of any local ordinance or regulation impose a greater duty, standard or requirement than those contained herein, the provisions of such ordinance or regulation shall supersede the provisions of this chapter.

(b) Federal and state conflict. Where the provisions of any federal law or state statute impose a greater duty, standard or requirement than those contained herein, the provisions of such federal law or state statute shall supersede the provisions of this chapter.

(c) Conflict within this chapter. When two or more provisions of this chapter are in conflict, the most restrictive provision shall apply.

(d) When the requirements herein conflict with specific lighting provisions of any of the following, only those specific provisions shall take precedence and all other requirements herein shall remain in force:

(1) Lighting specified or identified in a special lighting permit.

(2) Lighting required by federal or state laws or regulations.

(Ord. No. 2781, § I(Exh. A), 5-2-16)

Sec. 39-7. Interpretation of meaning.

The building official or designee shall interpret the meaning of the provisions of this chapter. Disagreement with an interpretation of the building official may be appealed to the community development director. Disagreement with an interpretation by the community development director may be appealed to the planning and zoning commission. The appeal to the planning and zoning commission must be made in writing within 30 calendar days of the aggrieved action. The decision of the planning and zoning commission may be appealed to the city council.

(Ord. No. 2781, § I(Exh. A), 5-2-16)

Sec. 39-8. Definitions.

This chapter contains only those definitions essential to the proper application of this chapter. It is not intended to include commonly defined general terms or commonly defined technical terms from related codes and standards.

[Commonly defined general terms include those terms defined in general English language dictionaries and terms that are not used in a unique or restricted manner in this chapter.]

As used in this chapter, the following words and phrases shall have the meanings ascribed to them in this section:

Absolute photometry means a photometric measurement (usually of a solid-state luminaire) that directly measures the output of the luminaire. Reference Standard IES LM-79.

Addition means an extension or increase in floor area, number of stories, height of a building or structure, or parking spaces.

Alteration—Level 1 means an alteration which includes the removal and replacement or the covering of existing materials, elements, equipment, or fixtures using new materials, elements, equipment, or fixtures that serve the same purpose.

Alteration—Level 2 means an alteration which includes the reconfiguration of space, the addition or elimination of any door or window, the reconfiguration or extension of any system, or the installation of any additional equipment.

Alteration—Level 3 means an alteration in which the work area exceeds 50 percent of the aggregate area of the building.

Approved means acceptable to the building official or designee.

Architectural lighting means lighting designed to reveal architectural beauty, shape and/or form and for which lighting for any other purpose is incidental.

Astronomic time switch means an automatic lighting control device that switches outdoor lighting relative to time of solar day with time of year correction.

Backlight means, for an exterior luminaire, flux radiated in the quarter sphere below horizontal and in the opposite direction of the intended orientation of the luminaire. For luminaires with symmetric distribution, backlight will be the same as front light.

BUG means a luminaire classification system that evaluates backlight (B), uplight (U) and glare (G).

Candela means the basic SI (Systeme International d'Unities) unit of luminous intensity. One candela is one lumen per steradian.

Canopy means a covered, unconditioned structure with at least one side open for pedestrian and/or vehicular access. (An unconditioned structure is one that may be open to the elements and has no heat or air conditioning.)

Change of occupancy means where the use in a space changes from one group of occupancies to another group of occupancies or changes from one division to another division in the same occupancy group (as defined in the International Building Code).

Commercial property means all properties not defined in residential.

Curfew means a time defined by this chapter, when outdoor lighting is reduced or extinguished.

Electronic variable message display means any sign capable of displaying words, symbols, figures, or images that can be electronically changed by remote or automatic means. Such signs may include the following modes of operations:

(1) *Static.* Signs which include no animation or effects simulating animation.

(2) *Travel.* Signs where the message is changed by the apparent horizontal movement of the letters or graphic elements of the message.

(3) *Scrolling.* Signs where the message is changed by the apparent vertical movement of the letters or graphic elements of the message.

Emergency outdoor lighting means generally, lighting that is only energized by an emergency power source; or to illuminate the path of egress solely during a fire or other emergency situation; or, lighting for security purposes used solely during an alarm.

Flood lamp means a specific form of lamp designed to direct its output in a specific direction (a beam) with a reflector formed from the glass envelope of the lamp itself, and with a diffusing glass envelope. Such lamps are so designated by the manufacturers and are typically used in residential outdoor area lighting.

Fluorescent lamp means a lamp which use fluorescence of a phosphor to produce visible light.

Footcandle means a unit of measure expressing the quantity of light received on a surface. One footcandle is the illuminance produced by a candle on a surface one foot square from a distance of one foot. The footcandle is equal to one lumen per square foot.

Forward light means, for an exterior luminaire, flux radiated in the quarter sphere below horizontal and in the direction of the intended orientation of the luminaire.

Full cutoff luminaire (FCO) means a luminaire where zero candela occur at or above an angle of 90 degrees and a maximum of ten percent candelas at 80 degrees above the nadir of the installed luminaire. This applies to all lateral angles around the luminaire. Such candela information shall be determined by a photometric test report from a nationally recognized independent testing agency and as certified by the manufacturer.

Fully shielded means:

(1) A luminaire that is certified by the manufacturer as "full cut off" [as defined by IESNA (Illuminating Engineering Society of North America)] and supported by a photometric test report from a third party testing agency and installed according to the manufacturer's instructions.

(2) A luminaire approved by the International Dark-Sky Association (IDA) as dark sky friendly and bearing the IDA fixture seal of approval and installed according to the manufacturer's instructions.

(3) A luminaire constructed and installed in such a manner that all light emitted by the luminaire, either directly from the lamp or a diffusing element, or indirectly by reflection or refraction from any part of the luminaire, is projected below the horizontal plane through the luminaire's lowest light-emitting part. This can be determined by a photometric test by a design professional. Any structural part of the luminaire providing this shielding must be permanently affixed.

(4) A luminaire that is shielded by building canopies, overhangs, roof eaves, and similar types of construction which prevents direct or reflected emission of light above the horizontal. This can be determined by a photometric test by a design professional.

Fully shielded residential means a luminaire with opaque top and sides, capable of only emitting light only in the lower photometric hemisphere as installed.

Glare means lighting entering the eye directly from luminaires or indirectly from reflective surfaces that causes visual discomfort or reduced visibility.

Hardscape means permanent hardscape improvements to the site including parking lots, drives, entrances, curbs, ramps, stairs, steps, medians, walkways and non-vegetated landscaping that is ten feet or less in width.

Hardscape area means hardscape area measured in square feet that is used to calculate the total site lumen limit. Refer to hardscape definition.

High intensity discharge (HID) lamp means a lamp that produces visible light directly by the electrical heating or excitation of a gas. Examples of such lighting include, but are not limited to: Metal halide, high pressure sodium, and low pressure sodium. For purposes of this chapter, fluorescent lights are not considered HID lighting.

Historic building means any building or structure that is listed in the State or National Register of Historic Places; designated as a historic property under local or state designation law or survey; certified as a contributing resource within a National Register listed or locally designated historic district; or with an opinion or certification that the property is eligible to be listed on the National or State Register of Historic Places either individually or as a contributing building to a historic district by the State Historic Preservation Officer or the Keeper of the National Register of Historic Places.

Illuminance means the density of luminous flux incident upon a surface. Illuminance is measured in footcandles (lumens/square foot) or lux (lumens/square meter).

Incandescent lamp means a lamp which produces light via an electrically heated metallic filament.

Initial lumens means a lamps light output, in lumens, at initial installation. The manufacturer usually lists initial lumens. For example, a 100-watt incandescent lamp emits approximately 1,800 lumens.

Lamp means a generic term for a source of optical radiation (i.e., "light"), often called a "bulb" or "tube". Examples include incandescent, fluorescent, high-intensity discharge (HID) lamps, and low-pressure sodium (LPS) lamps, as well as light-emitting diode (LED) modules and arrays.

Landscape lighting means lighting designed specifically for illuminating exterior natural features.

Light emitting diode (LED) means a semi-conductor device that emits light when an electrical current is passed through it.

Light pollution means any adverse effect of artificial light including, but not limited to, glare, light trespass, skyglow, energy waste, compromised safety or security, and impacts on the nocturnal environment.

Light trespass means light that falls beyond the property it is intended to illuminate.

Lighting means "electric" or "manmade" or "artificial" lighting. See "Lighting equipment".

Lighting equipment means equipment specifically intended to provide gas or electric illumination, including but not limited to, lamp(s), luminaire(s), ballast(s), poles, posts, lens(s), and related structures, electrical wiring, and other necessary or auxiliary components.

Lighting system means, on a site, all exterior electric lighting and controls.

Lighting zone means an overlay zoning system establishing legal limits for lighting for particular parcels, areas, or districts in a community.

Lot means a portion of a subdivision or other parcel of land intended for the purpose, whether immediate or future, for development. It also is a tract of land described by metes and bounds and as shown on the records in the county assessor's office. Used interchangeably with "property".

Low voltage landscape lighting means landscape lighting powered at less than 15 volts and limited to luminaires having a rated initial luminaire lumen output of 750 lumens or less.

Lumen means the unit of measure used to quantify the amount of light produces by a lamp or emitted from a luminaire (as distinct from "watt", a measure of power consumption).

Luminaire means the complete lighting unit (fixture), consisting of a lamp, or lamps and ballast(s) (when applicable), together with the parts designed to distribute the light (reflector, lens, diffuser), to position and protect the lamps, and to connect the lamps to the power supply.

Luminaire lumens means the cumulative total of initial lumens emitted by all lamps contained within a single luminaire. For luminaires with relative photometry per Illuminating Engineering Society (IES), it is calculated as the sum of the initial lamp lumens for all lamps within an individual luminaire, multiplied by the luminaire efficiency. If the efficiency is not known for a residential luminaire, assume 70 percent. For luminaires with absolute photometry per Illuminating Engineering Society (IES) LM-79, it is the total luminaire lumens. The lumen rating of a luminaire assumes the lamp or luminaire is new and has not depreciated in light output.

Luminance means a measure of the brightness of a surface which is emitting light. The unit of measurement most commonly used is candelas per square meter, often referred to as nits in the U.S. (one nit = one cd/m^2).

Mounting height means the height of the photometric center of a luminaire above grade level.

New lighting means lighting for areas not previously illuminated or newly installed lighting of any type except for replacement lighting or lighting repairs.

Outdoor lighting means lighting located exterior to a structure or that illuminates areas exterior to a structure.

Outdoor luminaire means any lighting device located exterior to a structure or that illuminates areas exterior to a structure, whether permanently or temporarily installed. This includes, but is not limited to:

- Search light
- Spotlight
- Flood light
- Security lighting
- Sign and architectural lighting
- Lighting for parks, parking lots, roadways
- Athletic facility lighting
- Building overhang and open canopy lighting
- Product display area lighting
- Landscape lighting
- Signs or billboards whether on-premises or off-premises, including LED, plasma and similar light sources

Partially shielded luminaire means a luminaire with opaque top and translucent or perforated sides, designed to emit most light downward.

Photoelectric switch means a control device employing a photocell or photodiode to detect daylight and automatically switch lights off when sufficient daylight is available.

Property line means the edge of the legally-defined property or lot.

Relative photometry means photometric measurements made of the lamp plus luminaire, and adjusted to allow for light loss due to reflection or absorption within the luminaire.

Repair(s) means the reconstruction or renewal of any part of an existing luminaire for the purpose of its ongoing operation, other than relamping or replacement of components including capacitor, ballast or photocell. Note that retrofitting a luminaire with new lamp technology or ballast technology is not considered a repair and for the purposes of this chapter the luminaire shall be treated as if new.

Replacement lighting means lighting installed specifically to replace existing lighting that is sufficiently broken to be beyond repair.

Residential means detached one- and two-family dwellings and townhouses not more than three stories above grade plane with a separate means of egress as defined in the International Residential Code as adopted by the City of Las Cruces.

Seasonal lighting means temporary lighting installed and operated in connection with holidays or traditions.

Shielded directional luminaire means a luminaire that includes an adjustable mounting device allowing aiming in any direction and contains a shield, louver, or baffle to reduce direct view of the lamp.

Sign means advertising, directional or other outdoor promotional display of art, words and/or pictures.

Spot lamp means a specific form of lamp designed to direct its output in a specific direction (a beam) with a reflector formed from the glass envelope of the lamp itself, and with a clear or nearly clear glass envelope. Such lamps are so designated by the manufacturers, and typically used in residential outdoor area lighting.

Temporary lighting means lighting installed and operated for periods not to exceed 60 days, completely removed and not operated again for at least 30 days.

Third party means a party contracted to provide lighting, such as a utility company.

Total initial lumens means the sum of the individual initial lumens output for all the luminaires of an installation. For example, six luminaires with 10,000 initial lumens output per luminaire would equal 60,000 total initial lumens.

Translucent means a material allowing light to pass through, but obscures or diffuses the image (not transparent or clear).

Unshielded luminaire means a luminaire that does not meet the definition of "fully shielded" or "partially shielded".

Uplight means, for or an exterior luminaire, flux radiated in the hemisphere at or above the horizontal plane.

(Ord. No. 2781, § I(Exh. A), 5-2-16)

Sec. 39-9. Residential lighting.

(a) *General requirements.* For residential properties, all outdoor luminaires shall meet the requirements of fully shielded or fully shielded residential.

(b) *Exceptions.*

(1) One partially shielded or unshielded luminaire at the main entry, not exceeding 1,800 luminaire lumens.

(2) Any other partially shielded luminaire not exceeding 900 luminaire lumens.

(3) Any other unshielded luminaire not exceeding 450 luminaire lumens.

(4) Shielded directional luminaires not exceeding 1,800 luminaire lumens; provided such luminaires shall be shielded to prevent glare and light trespass beyond the property boundary, aimed away from adjacent properties, and the center beam of each lamp shall be aimed at least 65 degrees below horizontal.

(5) Security lights shall not be required to be fully shielded if they comply with all of the following:

a. One or two flood lamps or spot lamps of less than 1,800 lumens each per luminaire.

b. The center of the beam of each lamp aimed at least 65 degrees below horizontal and away from adjacent properties when the source is visible from any adjacent property.

c. Are controlled by a motion-sensor switch.

d. Do not remain on longer than 15 minutes after activation.

(Ord. No. 2781, § I(Exh. A), 5-2-16)

Sec. 39-10. Lighting zones.

The building official shall establish lighting zones within the boundaries of the jurisdiction of the City of Las Cruces. The lighting zone shall determine the limitations for commercial lighting as specified in this chapter. The lighting zones shall be as follows:

(1) *Lighting zone 0.* Areas where the natural environment will be seriously and adversely affected by lighting. Impacts include disturbing the biological cycles of flora and fauna and/or detracting from human enjoyment and appreciation of the natural environment. Human activity is subordinate in importance to nature. The vision of human residents and users is adapted to the total darkness, and they expect to see little or no lighting. When not needed, lighting should be extinguished.

(2) *Lighting zone 1.* Developed areas of national parks, state parks and city parks.

(3) *Lighting zone 2.* Areas predominately consisting of residential zoning, neighborhood business districts, light industrial with limited nighttime use and residential mixed-use areas.

(4) *Lighting zone 3.* All areas not included in zones 0, 1, 2, or 4.

(5) *Lighting zone 4.* High-activity commercial districts in major metropolitan areas as designated by the building official.

(Ord. No. 2781, § I(Exh. A), 5-2-16)

Sec. 39-11. Commercial lighting.

(a) *Total initial lumens per property.*

(1) The total installed initial lamp lumens of all outdoor lighting systems on the property shall not exceed the total site lumen limit. The total property lumen limit shall be determined using either the parking space method (Table A) or the hardscape area method (Table B). Only one method shall be used per permit application, and for properties with existing lighting, existing lighting shall be included in the calculation of total installed lumens.

(2) The total installed initial lamp lumens is calculated as the sum of the initial lamp lumens for all luminaires tested with relative photometry and 140 percent of initial lamp lumens for all luminaires tested with absolute photometry.

Table A - Allowed Total Initial Lumens Per Property for Commercial Outdoor Lighting, Per Parking Space Method

May only be applied to properties up to ten parking spaces (including handicapped accessible spaces).

LZ 0	LZ 1	LZ 2	LZ 3	LZ 4
500 lms/space	700 lms/space	900 lms/space	1,200 lms/space	1,500 lms/space

Table B - Allowed Total Initial Lumens Per Property for Commercial Outdoor Lighting, Hardscape Area Method

May be used for any project. When lighting intersections of property drives and public streets or road, a total of 600 square feet for each intersection may be added to the actual property hardscape area to provide for intersection lighting.

LZ 0	LZ 1	LZ 2	LZ 3	LZ 4
1.5 lumens per s.f. of hardscape	2.5 lumens per s.f. of hardscape	4.0 lumens per s.f. of hardscape	8.0 lumens per s.f. of hardscape	12.0 lumens per s.f. of hardscape

(b) *Limits to off-site impacts.* All luminaires, unless noted otherwise, shall be rated and installed according to Table C.

Table C - Maximum Allowable Backlight, Uplight and Glare (BUG) Ratings

A luminaire may be used if it is rated for the lighting zone of the property or lower in number for all ratings B, U and G. Luminaires equipped with adjustable mounting devices permitting alteration of luminaire aiming in the field shall not be permitted. A luminaire certified as a full cutoff luminaire shall be deemed as meeting the uplight requirement.

Allowed Backlight Rating	Zones				
	LZ-0	LZ-1	LZ-2	LZ-3	LZ-4
Greater than 2 mounting heights from property line	B1	B3	B4	B5	B5
1 to 2 mounting heights from property line and properly oriented*	B1	B2	B3	B4	B4
0.5 to 1 mounting heights from property line and properly oriented*	B0	B1	B2	B3	B3
Less than 0.5 mounting height to property line adjacent to a street and properly oriented*,**	B0	B0	B1	B2	B3
Less than 0.5 mounting height to property line and properly oriented*	B0	B0	B0	B1	B2
Allowed Uplight Rating	U0	U0	U1	U2	U3
Allowed Glare Rating**	G0	G1	G2	G3	G4
Building Mounted Luminaires only*** Greater than 2 mounting heights to any property line	G0	G1	G2	G3	G4
Building Mounted Luminaires only*** 1 to 2 mounting heights to any property line	G0	G0	G1	G1	G2
Building Mounted Luminaires only*** 0.5 to 1 mounting heights of any property line	G0	G0	G0	G1	G1
Building Mounted Luminaires only*** Less than 0.5 mounting heights of any property line	G0	G0	G0	G0	G1

* The luminaire must be mounted with backlight towards the property line.

** For property lines that abut public walkways, bikeways, plazas, and parking lots, the property line may be considered to be five feet beyond the actual property line for purpose of determining compliance with this section. For property lines that abut public roadways and public transit corridors, the property line may be considered to be the centerline of the public roadway or public transit corridor for the purpose of determining compliance with this section. NOTE: This adjustment is relative to Table C only and shall not be used to increase the lighting area of the site.

*** Building-mounted luminaires that cannot be mounted with their backlight to the property line shall meet the allowed glare rating for all luminaires. Light from a building-mounted luminaire must not exceed the B rating in the direction to the property line.

(c) *Automatic daylight switching requirements.*

(1) Controls shall be provided that automatically extinguish all outdoor lighting when sufficient daylight is available using a control device or system such as a photoelectric switch, astronomic time switch or equivalent functions from a programmable lighting controller, building automation system or lighting energy management system. All time switches, programmable lighting controller, building automation system or lighting energy management system shall be capable of retaining programming and the time setting during loss of power for a period of at least ten hours.

(2) Automatic lighting controls are not required for the following:

a. Lighting under canopies.

b. Lighting for tunnels, parking garages, garage entrances, and similar conditions.

c. Approved emergency outdoor lighting.

(d) *Automatic lighting reduction requirements.*

(1) Total outdoor lighting lumens shall be reduced (by at least 30 percent) or extinguished at 11:00 p.m. or 30 minutes after the close of business, whichever is later.

(2) Lighting reductions are not required for any of the following:

- Approved emergency outdoor lighting
- When there is only one luminaire on the property
- Code required lighting for steps, stairs, walkways, and building entrances
- When in the opinion of the building official, lighting levels must be maintained
- Motion activated lighting
- Lighting governed by special use permit in which times of operation are specifically identified
- Businesses that operate on a 24-hour basis
- Approved architectural illumination
- Approved flag lighting
- Approved signs and billboards
- Lighting for single-family dwelling units on commercial properties

(e) *Emergency outdoor lighting.*

(1) The lumens allowed for approved emergency outdoor lighting shall be allowed in addition to the total property lumen limit for that property.

(2) Approved emergency outdoor lighting shall not be subject to the limits to off-site impacts for that property.

(3) Approved emergency outdoor lighting shall not be subject to the automatic lighting reduction requirements. Approved emergency outdoor lighting shall not be subject to the automatic switching requirements.

(f) *Architectural illumination.*

(1) A separate allowance of lumens for architectural lighting will be allowed in the amount of ten percent of the calculated total property lumens.

(2) This allowance is in addition to the total property lumen limit.

(3) The luminaires used for architectural lighting shall be designed, fitted and aimed to shield the lamp and its reflective surfaces from off-site view and to place the light output onto and not beyond the building and shall not be subject to the limits to off-site impacts for that property.

(g) *Single-family dwelling units on commercial properties.* Lighting for a single-family dwelling unit(s) on a commercial property, as allowed by the Las Cruces Zoning Code, shall conform to the requirements for residential lighting and shall be in addition to the total property lumen limit.

(Ord. No. 2781, § I(Exh. A), 5-2-16)

Sec. 39-12. Flag lighting.

(a) Only the United States and the New Mexico State flag shall be permitted to be illuminated.

(1) Flag lighting sources shall not exceed 7,000 lumens per flagpole.

(2) The light source shall have a beam spread no greater than necessary to illuminate the flag and shall be shielded so the light source (lamp and reflector) is not visible at normal viewing angles.

(b) For a commercial property.

(1) The lumens allowed for approved flag lighting shall be allowed in addition to the total property lumen limit for that property.

(2) Approved flag lighting shall not be subject to the limits to off-site impacts for that property.

(3) Approved flag lighting shall not be subject to the automatic lighting reduction requirements.

(Ord. No. 2781, § I(Exh. A), 5-2-16)

Sec. 39-13. Signs and billboards.

(a) *Signs and billboards.*

(1) Internally illuminated signs and billboards must be constructed so that the top of the sign is constructed of metal or of suitable material that does not allow light penetration vertically, so as to ensure that light is not emitted directly towards the sky. The light output from the face of the sign shall not exceed 150 nits.

(2) Externally illuminated billboards and signs shall have luminaires mounted at the top of the billboard or sign and aimed downward unless the off-premise sign utilizes LED lighting technology, then those signs may be top or bottom mounted. The luminaires shall be designed, fitted and aimed to shield the lamp and its reflective surfaces from off-site view and to place the light output onto and not beyond the sign or billboard. The luminance on the face of the sign or billboard shall not exceed 150 nits. Photometric evidence of the installed luminaires showing compliance with this section shall be provided to the city within ten business days of installation.

(3) Electronic variable message display signs and billboards shall be equipped with automatic dimming capability, and light produced by such signs shall not exceed 350 nits during nighttime hours and shall not exceed 7,500 nits during daylight hours.

(b) *For a commercial property.*

(1) The lumens allowed for approved signs and billboards shall be allowed in addition to the total property lumen limit for that property.

(2) Approved signs and billboards shall not be subject to the limits to off-site impacts for that property.

(3) Approved signs and billboards shall not be subject to the automatic lighting reduction requirements.

(Ord. No. 2781, § I(Exh. A), 5-2-16)

Sec. 39-14. Alternate materials and methods of construction, installation and operation.

The provisions of this code are not intended to prevent the use of any design, materials or method of installation or operation not specifically prescribed by this chapter, provided any such alternate has been approved. The building official may approve any such proposed alternate provided he finds that it:

(1) Provides at least approximate equivalence to the applicable specific requirements of this code; and

(2) Is otherwise satisfactory or complies with the intent of this code; and

(3) Has been designed or approved by a registered design professional and is supported by calculations showing that the design submitted meets the intent of the code. This section shall not have the effect of waiving any requirements of this code.

(Ord. No. 2781, § I(Exh. A), 5-2-16)

Sec. 39-15. Special lighting permit.

(a) High intensity and special purpose lighting. The following lighting systems are prohibited from being installed or used except by special lighting permit:

(1) Temporary lighting in which any single luminaire exceeds 20,000 lumens or the total lighting load exceeds 160,000 lumens.

(2) Aerial lasers.

(3) Searchlights.

(4) Other very intense lighting defined as having a light source exceeding 200,000 lumens or an intensity in any direction of more than 2,000,000 candelas.

(b) Complex and nonconforming uses. Upon special lighting permit issued by the building official, lighting not complying with the technical requirements of this chapter but consistent with its intent may be installed for complex sites or uses or special uses including, but not limited to the following applications:

(1) Sports facilities, including but not limited to, unconditioned rinks, open courts, fields and stadiums;

(2) Construction lighting;

(3) Lighting for industrial sites having special requirements, such as petrochemical manufacturing or storage, shipping piers, etc.;

(4) Parking structures;

(5) Urban parks;

(6) Decorative and architectural lighting of bridges, public monuments, and public buildings;

(7) Theme and amusement parks;

(8) Historic buildings;

(9) Projected images and movies, including drive-in theaters.

(c) To obtain such a permit, applicants shall demonstrate that the proposed lighting installation:

(1) Has sustained every reasonable effort to mitigate the effects of light on the environment and surrounding properties, supported by a signed statement describing the mitigation measures. Such statement shall be accompanied by the information required for a commercial plan submittal.

(2) Employs lighting controls to reduce lighting at a project specific curfew ("curfew") time to be established in the permit.

The building official shall review each such application. A special lighting permit may be granted if, upon review, the building official believes that the proposed lighting will not create unwarranted glare, sky glow, or light trespass.

(Ord. No. 2781, § I(Exh. A), 5-2-16)

Sec. 39-16. Plan submittals.

(a) Plan submittals for projects involving outdoor lighting shall contain all the information required by the City of Las Cruces Building Code (chapter 30, Las Cruces Municipal Code).

(b) In addition, evidence of compliance with the requirements of this chapter shall be provided by including an outdoor lighting site plan consisting of the following:

(1) A note indicating which method for determining total site lumens is being used and show the calculations.

(2) Locations of all proposed outdoor luminaires (including site, parking lot, parking canopies, walkways/sidewalks, building-mounted, under-canopies, architectural, landscape, flagpole, external signage lighting, etc.). This includes all normal and emergency outdoor lighting.

(3) A fixture schedule that includes all luminaires shown on the plan(s). The schedule shall include, at a minimum: Fixture type/mark; manufacturer; catalog/part number; lamp quantity per luminaire; lamp type; lamp initial lumens and BUG rating; mounting height of the luminaire above finished grade, description/comments.

(4) City ordinance requires most sites to reduce the outdoor illumination by a minimum of at least 30 percent or extinguished at 11:00 p.m. or 30 minutes after the close of business. The lighting plans shall therefore be prepared in a fashion that clearly identifies which fixtures are to remain on all night for security lighting purposes. This identification can be accomplished via fixture shading, keynotes, or the creation of a separate after-hours lighting/photometric plan. This separate plan shall be titled accordingly.

(5) A note shall be placed on the lighting plan which identifies the time(s) at which the site will enter security-lighting-only mode, and a general description of the device(s) that will automatically be controlling the lighting.

(6) A pole detail for each type of pole light shall be included in the submittal. This detail shall include, at a minimum: Mounting height of the luminaire(s) as measured from the fixture lens to the finished grade of the parking lot, the fixture type of the luminaires mounted on the pole.

(7) A complete date for the current plan, and complete dates for all prior versions of the plans that were submitted to the city.

(8) A contact name and phone number for the preparer of the lighting submittal.

(9) NOTE: These submittal requirements are intended to serve as the minimum information necessary to begin the plan review process. City staff may request additional information to be provided and/or be placed on the plans before the city will be able to approve the site plan.

(c) Additional information may be required by the community development department in order to determine compliance with this chapter.

(d) A description of luminaires, sufficient to demonstrate compliance with this chapter, including lamps, poles or other supports and shielding devices, provided as catalogue illustrations from the manufacturer, and photometric data, such as that furnished by the manufacturer, showing the downward angle of light emission shall be available on the jobsite with the approved set of plans.

(Ord. No. 2781, § I(Exh. A), 5-2-16)

Sec. 39-17. Grandfathering.

(a) Lighting installed prior to the effective date of this chapter shall comply with the following:

(1) Any new luminaire or new outdoor lighting shall meet the requirements of this chapter for new outdoor lighting.

(2) A legally installed luminaire existing as of the date of this chapter is exempt from the provisions of this chapter except that any replacement lighting must comply with the provisions of this chapter for new outdoor lighting. For the purposes of this section, a legally installed luminaire means a fixture that was permitted and installed in accordance with the adopted codes and regulations applicable at the time of installation.

(b) Resumption of use after abandonment. If a property with nonconforming lighting is abandoned or remains vacant for a period of 12 months or more, then all outdoor lighting on the property shall be brought into compliance with the provisions of this chapter for new outdoor lighting before any further use of the property occurs or before a certificate of completion, certificate of occupancy, or business registration is issued.

(c) Residential properties and single-tenant commercial properties—Repairs, alterations, change of occupancy, additions, historic buildings, and relocated buildings:

(1) *Repairs.* Relamping or replacement of components of a legally installed luminaire existing as of the date of this chapter (including capacitor, ballast or photocell) shall be exempt from the provisions of this chapter. Any other reconstruction or renewal of any part of a legally installed luminaire existing as of the date of this chapter for the purpose of its ongoing operation is not considered a repair and for the purposes of this chapter the luminaire shall be treated as if new outdoor lighting. Note that retrofitting a luminaire with new lamp technology or ballast technology is not considered a repair and for the purposes of this chapter the luminaire shall be treated as if new outdoor lighting.

(2) *Alterations.*

a. Legally installed luminaires existing as of the date of this chapter affected by Level 1 or Level 2 alterations are exempt from the provisions of this chapter except that replacement luminaires must comply with the provisions of this chapter for new outdoor lighting.

b. Where Level 3 alterations take place all outdoor lighting on the property shall be brought into compliance with the provisions of this chapter for new outdoor lighting before a certificate of completion, certificate of occupancy, or business registration is issued.

(3) *Change of occupancy.* Where the use in a space changes from one group of occupancies to another group of occupancies or changes from one division to another division in the same occupancy group (as defined in the International Building Code as adopted by the City of Las Cruces), all outdoor lighting on the property shall be brought into compliance with the provisions of this chapter for new outdoor lighting before the change in use commences or before a certificate of completion, certificate of occupancy, or business registration is issued.

(4) *Additions.* Where there is an extension or increase in floor area, number of stories, height of a building or structure, or parking spaces all outdoor lighting on the property shall be brought into compliance with the provisions of this chapter for new outdoor lighting before a certificate of completion, certificate of occupancy, or business registration is issued.

(5) *Historic buildings.* Where a historic building (as defined in this chapter) is unable to comply with the provisions of this chapter a special permit shall be obtained before a certificate of completion, certificate of occupancy, or business registration is issued.

(6) *Relocated buildings.* Where a building is relocated all outdoor lighting on the property where the building is relocated to shall be brought into compliance with the provisions of this chapter for new outdoor lighting before a certificate of completion, certificate of occupancy, or business registration is issued.

(d) Multiple-tenant commercial properties.

(1) Outdoor lighting associated directly with a specific tenant shall be treated as single-tenant commercial property.

(2) All outdoor lighting not specifically and directly associated with a single-tenant shall be brought into compliance with the provisions of this chapter for new outdoor lighting within seven years of the effective date of this chapter.

(Ord. No. 2781, § I(Exh. A), 5-2-16)

Sec. 39-18. Variance procedure.

Variances defined as other exemptions from the requirement of this chapter, shall not be permitted unless specifically authorized by the planning and zoning commission, subject to appeal to the city council in accordance with section 38-10 of the Las Cruces Municipal Code.

Procedural requirements for variance requests shall be in compliance with subsection 38-10 I., variances of the Las Cruces Municipal Code.

(Ord. No. 2781, § I(Exh. A), 5-2-16)

Sec. 39-19. Enforcement.

(a) Any person who violates any section of this chapter shall be guilty of a petty misdemeanor and, upon conviction, be punished by a fine of not less than $50.00 and not more than $300.00 for each violation. Each 24-hour period during any portion of which any violation of this chapter is committed or continued to exist shall constitute a separate offense.

(b) Violations of this chapter are considered to be nuisances subject to the enforcement provision of LCMC 1997 § 18-1 through § 18-9.

(Ord. No. 2781, § I(Exh. A), 5-2-16)

Chapter 40 HISTORIC PRESERVATION DISTRICTS

ARTICLE I. GENERAL INFORMATION AND DEFINITIONS

Sec. 40-1. Short title.

This article shall be known and may be cited as "The City of Las Cruces Historic Preservation District and Landmark Ordinance" and may be referred to as "the historic preservation ordinance."

(Ord. No. 2902, § I(Exh. A), 12-2-19)

Sec. 40-2. Declaration of policy and intent.

The City of Las Cruces ("City") declares as a matter of public policy that the protection, preservation, maintenance, care, and use of historic buildings and cultural properties is a public necessity conducive to the general welfare of the people and beneficial to the furtherance of the community's economic prosperity and quality of life. The purposes of this article include, but are not limited to:

The promotion, protection, and use of the City's historic building inventory for the education, pleasure, and welfare of residents and visitors;

The protection, enhancement, and perpetuation of historic architectural and cultural resources which represent or reflect distinctive and important aspects and eras of human habitation and activity in Las Cruces;

The evaluation, recognition, preservation, protection, enhancement, restoration, and promotion of architectural landmarks, cultural resources, and cultural landscapes significant to the City's, region's, state's, and nation's architectural, archaeological, cultural, social, economic, ethnic, and political history, and to develop, enhance, and protect appropriate settings for such places;

The enhancement and fostering of civic pride in the aesthetics and history of the built environment and in the accomplishments of earlier inhabitants in the area that became Las Cruces;

The integration of historic preservation planning into the City's comprehensive plan to include the joining of state property within the Historic District as indicated herein;

The stabilization and improvement of property values as a positive economic development objective that recognizes and protects the rights of owners of historic properties and owners of properties adjacent to landmarks and historic districts;

The strengthening of the City's economy through heritage tourism and real estate for the benefit of residents and tourists through promotion and use of historic buildings and cultural sites; and

The avoidance of the irreversible and irreplaceable loss through demolition or neglect of buildings and sites that convey a sense of the City's heritage, cultural diversity, and history by encouraging the conservation, through sympathetic rehabilitation and reuse, of historically or architecturally significant properties.

(Ord. No. 2902, § I(Exh. A), 12-2-19)

Sec. 40-3. Authority and jurisdiction.

This chapter is created pursuant to the authority set forth in NMSA 1978, Sections 3-22-1 et seq. (as amended), the Historic District and Landmark Act, and NMSA 1978, Sections 18-6A-1 et seq. (as amended), the Cultural Properties Protection Act.

(Ord. No. 2902, § I(Exh. A), 12-2-19)

Sec. 40-4. Administration of the historic preservation program.

The historic preservation program of the City shall be administered under the direction of the City Manager's Office, including appropriate staffing and administrative support of the program subject to budget appropriations approved and authorized by the City Council.

(Ord. No. 2902, § I(Exh. A), 12-2-19)

Sec. 40-5. Definitions.

For the purpose of this article, the following definitions shall apply and are applicable to the definitions provided in Chapter 38, Zoning, Article III, Definitions, LCMC Sections 38-20 and 38-21 and Ordinance 2902.

Accessory building means a detached building or structure which may include, but is not limited to, a casita, a garage, a storage building, or a carriage house.

Addition means any act or process that changes one or more of the exterior architectural features of a building or structure by increasing the size or capacity of a structure through new construction or by joining one or more existing structures.

Administrative review means the process by which the Historic Preservation Specialist or designee administratively approves, approves with modifications, or denies submitted applications in accordance with the Administrative Review Design Guidelines.

Administrative Review Design Guidelines means the written standards adopted by the City Council which are intended to provide the Historic Preservation Specialist accepted treatment practices for minor scopes of work and for non-structural alterations to an existing building, structure, object, or site.

Adverse effects means any act through physical destruction or damage, or alterations inconsistent with appropriate review standards and design guidelines, that may alter, directly or indirectly, or diminish the architectural and/or structural integrity of the property's location, design, setting, materials, workmanship, or association.

Alteration means any change to the exterior of a building, site, object, or structure including, but not limited to, the construction, reconstruction, or removal of any architectural or structural elements; or changes to an interior space of a publicly-accessible building designated as a historic landmark; or any changes to landscape features.

Applicant means the Owner of Record of a nominated property and/or agent or representative; or a contract purchaser of a nominated property; or another interested party who is a resident of the City of Las Cruces; or a group of residents; or an association whose membership includes residents of the City of Las Cruces; or the Historic Preservation Commission seeking authority from the City to undertake a course of action related to a specific property or parcel.

Architectural integrity means a determination of the extent that a historic property retains its historic design character to convey its significance.

Area means a specific and clearly defined geographical portion of the City of Las Cruces.

Area of potential effect (APE) means the geographical area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of cultural properties, if such properties exist. The APE is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking.

Building permit means a written record issued by the City of Las Cruces Building Official authorizing the construction of an entirely new building or structure; or authorizing improvements or alterations to an existing building or structure; or authorizing the demolition, in whole or in part, of an existing building or structure.

Certificate of Appropriateness means a written record issued by the Historic Preservation Commission or the Historic Preservation Specialist on behalf of the Commission, authorizing plans for alterations, construction, removal, or demolition of a building, structure, object, or site located within a historic district or designated as a cultural property.

Certificate of Appropriateness application means a written form, applicable for individually designated cultural properties and properties within historic districts, provided upon request to an applicant by the Historic Preservation Specialist or designee which details proposed scopes of work, information about the subject property, and the types and specifications to replace or repair materials which is required by the Historic Preservation Specialist in advance of scheduling a presentation before the Historic Preservation Commission.

Certificate of Economic Hardship means a written record of relief issued by the Historic Preservation Commission, following the denial of a Certificate of Appropriateness, that authorizes plans for additions, alterations, construction, removal, continuation of a non-compliant condition, or demolition in whole or part of a building, structure, object, or site that is located within a historic district or designated as a cultural property when the property owner is unable to either fund the required work, put the property to a reasonably beneficial use, and/or cannot obtain a reasonable economic return thereon without completion of the requested course of action.

Certified local government (CLG) means a unit of local government (town, city, or county) that has met the requirements of, and has applied for, certification to the State to become a fully participating partner in national and state historic preservation programs.

Character-defining architectural element means a distinctive architectural feature, quality, or combination thereof, that distinguishes one structure from another, or which is unique to an individual structure, or is characteristic of a particular style, period, or architect.

Commissioners means the members of the City's Historic Preservation Commission, appointed by the Mayor and City Councilors, who are assigned the duty to review and vote on applications placed before the Historic Preservation Commission.

Compatibility means the positive relationship of alterations to existing buildings and designs for new construction to their environs, measured by consistent application of accepted design guidelines and standards that define the individual visual character, function and use, and architectural features of a specific geographic area.

Comprehensive Plan means the City-adopted, policy document that serves as the guide for the future physical development of the City and any actions concerning land use and development.

Construction means any act or process which requires a building permit.

Contributing property means a building, object, site, or structure in a historic district that enhances the district's historical and/or architectural significance through location, design, setting, materials, workmanship, and/or association.

Cultural landscape means a geographic area, including both cultural and natural resources and the wildlife or domestic animals therein, associated with a historic event, activity, or person, or exhibiting other cultural or aesthetic values. The four general types of cultural landscapes are: Historic sites, historic designed landscapes, historic vernacular landscapes, and ethnographic landscapes.

Cultural Properties Review Committee (CPRC) means the committee appointed by the Governor of the State of New Mexico and established by the Cultural Properties Act NMSA 1978, Sections 18-6A-1 et seq. (as amended) to serve as a professional policy-making and advisory board for historic preservation in New Mexico.

Cultural property means any building, structure, object, improvement, or site of particular historic or aesthetic significance to the city, the state, or the nation where cultural, political, spiritual, economic, educational, archaeological, social, or artistic history of the community, state, or nation is reflected or exemplified or which is identified with historic personages or with important events in local, state, or national history, or which embody the distinguishing characteristics of an architectural specimen, inherently valuable for representation of a period, style, or method of construction, or a notable work of construction, or a notable work of a master designer or architect whose individual genius influenced a particular period of time or aesthetic movement; also known as a *cultural resource* or a *historic landmark*.

Cultural Property Designation Report means a report prepared by the Historic Preservation Specialist which shall provide the history of a property, a map of its location, and historic and current views of the property, and shall include a determination of eligibility based upon the application of the National Register Criteria for Evaluation to present for recommendation before the City Council.

Demolition means any act or process which requires a building permit for the purpose of removing or destroying, in whole or in part, any improvement to a site.

Demolition by neglect means any voluntary or involuntary act or process which results in a failure to maintain a building, structure, object, or site in sound condition when such act or process, over a period of time, results in the visible deterioration or removal, in whole or in part, of any man-made component on the site.

Demolition review form means a form provided by the Historic Preservation Specialist to an applicant seeking to secure a building permit to demolish all or part of a cultural property or a property within a historic district.

Design guidelines means the written standards adopted by the City which are intended to provide technical advice and guidance to the Historic Preservation Commission and the Historic Preservation Specialist to evaluate applications to preserve the historic, cultural, and architectural character of an area or of a building, object, site, or structure.

Designated property means a property that has been recognized as historically significant at the local, state, and/or national level by being listed in the Register of Cultural Properties, the State Register of Cultural Properties, and/or the National Register of Historic Places.

Effect means any change in the quality of the historical, architectural, archaeological, or cultural significance of a building, object, site, or structure, or in the characteristics that qualify such resources as historically important.

Exterior appearance means the visual character of all outside surfaces of a structure, including the kind and texture of materials, signs, light fixtures, steps, or appurtenant elements.

Exterior features means architectural or structural elements that define the architectural style and general design patterns of the exterior of a building or structure, including the type and texture of building materials and the type, style, and general arrangement of all windows, doors, ornamental features, light fixtures, signs, fences, walls, and other elements, as well as other natural features such as vegetation, trees, and shrubbery.

Finding of fact means the conclusions found to be true as determined by the Commission from an examination of the underlying evidence and testimony of a case under consideration in accordance with established review criteria.

Good repair means a condition which not only meets minimum standards of health and safety, but which also guarantees the continued aesthetic integrity, structural soundness, and usefulness of a structure.

Historic character means those architectural forms, materials, elements, features, construction methods or craftsmanship, spatial arrangements, and architectural style that, when combined, result in a distinctive setting, feeling, building, or area.

Historic context means summary information about the period, local setting and/or surroundings, circumstances, associations, and events that created, influenced, or resulted in the development of a specific property or group of properties, collected to assist in the development of a full understanding and assessment of the property.

Historic Cultural Properties Inventory Form (HCPI) means the form provided by the Historic Preservation Specialist upon request to an applicant interested in nominating a property or properties within a potential district for inclusion in the local Register of Cultural Properties in which baseline information is compiled to determine potential nomination eligibility.

Historic district means an area in the City designated under local, state, or federal authority that contains within definable geographic boundaries one or more properties zoned with a Historic Preservation Overlay, including accessory buildings, fences, and other appurtenances, as well as vegetation and landscape features, having historical, cultural, and archaeological significance, and which may contain an assortment of properties classified as significant, contributing, non-contributing, and intrusive.

Historic District Designation Report means a report prepared by the Historic Preservation Specialist which shall provide the history of a cluster of properties, a map of their location, and historic and current views of the properties, and a determination based upon the application of evaluation criteria for review by the Historic Preservation Commission.

Historic integrity means a determination of the extent that a site, structure, object, building, or area retains its defining archaeological, historic, and/or cultural attributes associated with one or more of the National Register Criteria for Evaluation.

Historic interior means an architecturally or historically significant interior space which remains substantially intact in terms of original configuration; original volume; and/or original architectural ornamentation and decoration, which exhibits surviving original historical finishes or has the potential for accurate restoration of such finishes; and which is open, to be used by, or may be used by the public.

Historic Preservation Commission means the commission created by the City Council upon the adoption of this article, and authorized to direct and assist in the preparation and updating of the City's historic preservation plan; to create and review design guidelines for historic districts and cultural properties; to review and render decisions upon applications relating to historic and cultural properties; and to advise the Historic Preservation Specialist in initiating and implementing relevant preservation planning programs.

Historic Preservation Fund means a federally supported assistance program managed by the National Park Service to assist State, Tribal, and local historic preservation offices with a variety of historic preservation and community projects focused on heritage preservation.

Historic Preservation Fund Grants Manual means a Federal publication describing the framework for the operation of the Historic Preservation Fund grants-in-aid program authorized by the National Historic Preservation Act, as amended.

Historic Preservation Overlay Zone means a zoning layer that protects and preserves individual structures and neighborhoods composed of architecturally and historically significant buildings; this zoning layer shall be in addition to any other zoning layer in place, and may be applied to buildings, structures, objects, sites, and districts.

Historic Preservation Plan means a component of a community's comprehensive plan that includes preservation planning practices and accounts for historic building inventory and cultural resources in the long-range land-use management of a community.

Historic Preservation Program means the City's policy initiative under the direction of the City Council to encourage historic preservation through education, advocacy, outreach, and incentives, and to oversee the application and enforcement process of designated cultural properties.

Historic Preservation Specialist means the Community Development Department staff person for the City of Las Cruces authorized to support the City-wide historic preservation program; administer the historic preservation ordinance; oversee and consult with the City's building official regarding the permitting of proposed improvements and alterations to designated cultural properties and properties within historic districts; and serve as the liaison to the Historic Preservation Commission.

Improvement means any building, structure, work of art, parking facility, fence, gate, wall, or other object constituting a physical addition to real property, or any part of such addition.

Infill development means the utilization of or the construction upon vacant or underused parcels of land within historic districts or adjacent to individual or clusters of cultural properties whereby new construction or any alterations to the site are undertaken in accordance to design guidelines to ensure compatibility with neighboring structures which regard to height, setbacks, landscaping, aesthetics, mass, and materials.

Intrusion means a building, object, site, or structure which detracts from a district's historical significance because of its incompatibility with the district's sense of time, place, and historical development; or its incompatibility of scale, materials, or architectural design whose integrity has been irretrievably lost; or whose physical deterioration or damage renders it unfeasible to rehabilitate.

Landscape feature means character-defining elements that are associated with the architectural or cultural significance of a site or property, including, but not limited to, naturally-occurring topographical forms, intentionally-designed lawns, hedges, walkways, driveways, fences, walls, arbors, pergolas, trellises, terraces, water features, topography, lighting standards, and furnishings.

National Historic Preservation Act (NHPA) means the National Historic Preservation Act, 54 U.S.C. 300101 et seq., was enacted "to establish a program for the preservation of additional historic properties throughout the Nation, and for other purposes."

National Register criteria for evaluation means the criteria listed in the Code of Federal Regulations, Title 36, Part 60 (36 CFR 60) used to evaluate districts, sites, buildings, structures, and objects that possess integrity of location, design, setting, materials, workmanship, feeling, and association, and:

(a) That are associated with events that have made a significant contribution to the broad patterns of American history; or

(b) That are associated with the lives of persons significant in American history; or

(c) That embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or

(d) That have yielded, or may be likely to yield, information important in prehistory or history.

National Register of Historic Places means the official list of the nation's places worthy of preservation; established under the National Historic Preservation Act of 1966, the register is administered by the National Park Service under the auspices of the Department of the Interior.

New Mexico Historic Preservation Division (NMHPD) means a division within the Department of Cultural Affairs in the State of New Mexico authorized to identify and protect New Mexico's cultural resources, including its archaeological sites, architectural and engineering achievements, cultural landscapes, and diverse heritage.

New Mexico Historic Preservation Loan Fund means a state supported program offered by the Historic Preservation Division, Department of Cultural Affairs, to provide owners of registered cultural properties in New Mexico with low-cost financial assistance in the restoration, rehabilitation, and repair of properties listed in the State Register of Cultural Properties or National Register of Historic Places.

Non-contributing property means a building, object, site, or structure in a historic district that does not possess individual architectural, historic, or structural significance or integrity within the context of the historic district or cluster of cultural properties.

Object means anything constructed, fabricated, or erected, including any interpreted relic or any artistic or commemorative monument, that requires permanent or temporary location on or in the ground.

Ordinary repairs and maintenance means any work done on or replacement of any part of a building or structure for which a permit issued by a building official is not required. The purpose and effect of such work or replacement is generally to correct any deterioration or decay of or damage to such building or structure or any part thereof and to restore the same, as nearly as may be practicable, to its condition prior to the occurrence of such deterioration, decay, or damage.

Owner consent means the act or result of reaching consensus and agreement, through reason and deliberation, by the owner(s) of real estate when cultural property designation is proposed at the suggestion of another party.

Owner objection (Cultural Property designation) means the right of all owners of record to object to a proposed cultural property designation of its buildings, structures, objects, or other improvements, and the parcel of land to which those improvements are firmly attached.

Owner objection (Historic District designation) means the right of an owner (or owners) of record to object to the inclusion of its real property within a proposed historic district, potentially resulting in a modification to the district's proposed boundaries.

Owner of record means the person, corporation, or other legal entity identified as the property owner in the official records of the Doña Ana County Assessor's Office.

Period of significance means the finite span of time during which important events and activities associated with a specific cultural property or group of cultural properties occurred.

Preservation means the act or process of applying measures necessary to sustain the existing form, integrity, and materials of a cultural property, including any buildings, objects, structures, and landscape features on the site.

Reconstruction means the act or process of depicting, by means of new construction, the form, features, and detailing of a non-surviving site, landscape, building, structure, or object for the purpose of replicating its appearance at a specific period of time and in its historic location.

Register of Cultural Properties means the list maintained by the Historic Preservation Specialist for the City enumerating the physical addresses or locations of designated historically, architecturally, archaeologically, and culturally significant local buildings, structures, objects, and sites.

Rehabilitation means the act or process of making possible a compatible use for a property through repair, alterations, and additions while preserving those portions or features which convey its historical, cultural, or architectural values and characteristics.

Relocation means any repositioning of a building, structure, or object on its existing site, or the act of moving a building, structure, or object to another site.

Remodel means the process of altering existing structural components or architectural features and/or finishes of a resource or property; to reconfigure an existing resource or property in such a manner as to remove, cover, replace, or rearrange elements of defining character.

Repair means any minor construction undertaken to remedy an existing condition that has deteriorated but, otherwise, is not defined as construction, alteration, demolition, remodeling, removal, or relocation.

Restoration means the act or process of accurately depicting the form, features, and character of a property as it appeared at a particular period of time by means of the removal of features from other periods in its history and reconstruction of missing features from the restoration period.

Shall refers to actions that are required to be completed.

Should refers to actions that are recommended, but not mandatory.

Significant cultural property means buildings, objects, sites, or structures of the highest and most unique historical, cultural, architectural, or archaeological importance whose demolition, destruction, or otherwise loss or adverse damage would constitute an irreplaceable loss to a community.

Site means the location of a significant event, a prehistoric or historic occupation or activity, or a building or structure, whether standing, ruined, or vanished, where the location itself possesses historic, cultural, and/or archeological value regardless of the value of any existing structure.

State Historic Preservation Officer (SHPO) means the director of the New Mexico Historic Preservation Division, appointed by the Governor, who manages the State's Historic Preservation Plan and coordinates historic preservation activities at all levels of government in the State and with individuals, private organizations, and traditional communities.

State Register of Cultural Properties means the official list of historic properties worthy of designation in New Mexico; authorized in 1969 and administered by the New Mexico Historic Preservation Division, the register is periodically updated by the Cultural Properties Review Committee.

Stop work order means a written order issued by a City building official to a property owner or the person performing the work to immediately cease all activity on any building, structure, object, or site when it has been or is being implemented contrary to the provisions of this chapter, contrary to the conditions of an approved Certificate of Appropriateness, or in an unsafe and dangerous manner.

Structural integrity means an unimpaired condition relating to the functional stability of major building components in relationship to their original or altered function; a measure of the quality of construction and the ability of the structure to function as designed or intended; and the quality or state of being complete or uncompromised.

Structure means a functional construction that differs from a building in that it is made usually for purposes other than creating human shelter.

Survey means a systematic gathering of information related to the architectural, historic, scenic, and/or archaeological significance of buildings, structures, objects, and/or landscape features within a specified geographic area through an assessment of field and archival documentation for the purpose of identifying properties that may be designated as cultural properties or historic districts.

Survey (intensive) means a systematic, detailed examination of an area designed to gather information about historic properties sufficient to evaluate them in accordance to criteria of significance within specific historic contexts.

Survey (reconnaissance) means an examination of all or part of an area accomplished in sufficient detail to make generalizations about the types and distributions of historic properties that may be present.

Traditional cultural property means a cultural property where associated cultural practices or beliefs of a living community occur that are both rooted in a community's history and important in maintaining the continuing identity of the community.

Unreasonable economic hardship means an economic burden imposed upon an owner of record which is unduly excessive and prevents a realization of a reasonable rate of return upon the value of a property.

Vista means a view through or along a right-of-way opening, including those along natural features, such as rivers, forests, plains, and mountains, which as a view corridor, frames, highlights, or accentuates a prominent building, object, site, structure, scene, or panorama, or patterns or rhythms of buildings, objects, sites, or structures, including views of areas at a distance, such as remote view of the built environment or natural landscapes.

(Ord. No. 2902, § I(Exh. A), 12-2-19)

ARTICLE II. HISTORIC PRESERVATION COMMISSION

Sec. 40-6. Historic Preservation Commission.

This article creates and establishes the Historic Preservation Commission, hereinafter referred to as "the Commission."

The Commission shall consist of seven members appointed by the Mayor and City Councilors. Each Commissioner shall possess a professional background from among several relevant fields, including architecture, history, engineering, law, architectural history, historic preservation, landscape architecture, archaeology, land-use planning, or real estate. Absent any of these professional backgrounds, a potential Commissioner may be eligible to serve due to residency within a historic district or as a member of a history-based organization.

The Commission shall schedule and hold public meetings. At said public meetings, the Commission shall exercise its duties to review and consider the effects on cultural properties significant on the local, State, and/or National level; grant or deny applications for Certificates of Appropriateness; request information from the Historic Preservation Specialist with regard to on-going inventories or research, preservation planning practices, and the overall status of historic preservation efforts within the City.

(Ord. No. 2902, § I(Exh. A), 12-2-19)

Sec. 40-7. Duties and responsibilities of the Historic Preservation Commission.

The Commission shall exercise, but not be exclusively limited by, the following duties and responsibilities according to its bylaws:

Request input from the Historic Preservation Specialist regarding surveys within the city limits of the City of Las Cruces to identify properties, neighborhoods, archaeological sites, and buildings for evaluation and potential designation as cultural resources.

Recommend to the Mayor and City Council properties to be designated and entered in the Register of Cultural Properties.

Review and render decisions on Certificates of Appropriateness during open, public hearings.

Recommend to the Mayor and City Council the adoption of design guidelines to ensure proper restoration and rehabilitation practices for historic building inventory; to ensure architectural and aesthetic compatibility within historic districts and in proximity to cultural properties; and to guide infill development to achieve comparable aesthetics and massing with existing, neighboring buildings, objects, structures, and sites.

Assist in the dissemination of information to the public concerning historic preservation and seek input from groups, individuals, and organizations on these matters.

Consider methods for encouraging and incentivizing historic preservation efforts and provide recommendations to these ends to the Mayor and City Council.

Advise the Mayor and City Council on any proposed public alterations which may impact the exterior appearance of cultural properties and historic districts to avoid any potential adverse effects.

Consider alternative options and actions when reviewing applications seeking the demolition in part or in whole of designated cultural properties.

Advise the Mayor and City Council on the relative merits of proposals involving the use of public funds to restore, preserve, and protect historic properties, and to secure state, federal, and/or other grants or assistance in support of such projects, and to monitor and comment on such projects during their duration.

Seek any benefits which may be granted under the National Historic Preservation Act, as amended, or any other state or federal legislation, including, but not limited to, the benefits which are received from communities under the Certified Local Government program with regard to training, grant funding, and technical assistance.

Prepare an annual report to be presented to the Mayor and City Council of the Commission's activities and the effects of the historic preservation program on the economic development and general welfare of the City and its residents.

(Ord. No. 2902, § I(Exh. A), 12-2-19)

Sec. 40-8. Surveys and inventories.

The Historic Preservation Specialist shall conduct surveys and inventories to identify neighborhoods, areas, sites, buildings, structures, and objects in the City of Las Cruces that possess historic, community, architectural, aesthetic, cultural, archaeological, or traditional importance, interest, or value related to the development of the community.

As part of the survey, the Historic Preservation Specialist shall review and evaluate prior surveys and studies by any government entity or private organization, and recommend the compilation of appropriate research findings, including descriptions, newspapers accounts, land-use records, maps, deeds, photographs, and/or other useful sources.

The Commission may provide input regarding the City's efforts in identifying potential cultural properties and historic districts, and apply procedures to nominate those potential cultural properties and historic districts that are at least 50 years of age based on the following criteria:

- The potential cultural properties are situated in a single, identifiable neighborhood or distinct geographical area of the community, or;
- The potential cultural properties are associated with a particular person, event, and/or era of the community's past; or
- The potential cultural properties are of a particular architectural style, school, or building technique; or of a particular architect, engineer, builder, designer, craftsman, or artisan; or
- Such other criteria as may be adopted by the Commission to assure systematic surveys and inventories of potential cultural properties and historic districts within the municipal boundaries.

The Historic Preservation Specialist shall apply eligibility criteria to potential cultural properties and historic districts and provide recommendations to the Commission to nominate such properties as procedurally outlined in this article for inclusion in the City's Register of Cultural Properties.

(Ord. No. 2902, § I(Exh. A), 12-2-19)

Sec. 40-9. Cultural property designation.

A. *Standards for the designation of a cultural property or cultural properties.* Upon the successful evaluation of eligibility criteria to base a recommendation for designation, the Commission shall recommend to the City Council a justification for a property's inclusion in the City's Register of Cultural Properties contingent upon that property meeting all six of the following requirements:

1. Located within the corporate boundaries of the City; and
2. At least 50 years old, in whole or in part, or else of exceptional significance; and
3. Possesses integrity of design, materials, workmanship, setting, location, feeling, and association, as defined for listing in the National Register of Historic Places; and
4. Embodies such other qualities and characteristics as in the judgment of the Commission should be considered for designation as a cultural property; and
5. Be listed in the National Register of Historic Places, or be determined eligible for such listing by the State Historic Preservation Officer; and
6. Possesses one or more of the following demonstrations of significance:
    a. A broad cultural, political, economic, or social association with the historic development of the community, the state, or the nation; and/or
    b. Identification with a historic person or with important events in local, state, and/or national history; and/or
    c. Possesses distinguishing characteristics of an architectural type inherently valuable for the study of a period, style, method of construction, or use of indigenous materials or craftsmanship; and/or
    d. Possesses authenticity of its period of significance as evidenced by the survival of its characteristics, historic fabric, and architectural elements from that period; and/or
    e. Is a notable work of a master builder, designer, or architect; and/or
    f. Possesses or may likely yield information important in prehistory or history; and/or
    g. An improvement embodying all or part of the above characteristics which is subject to encroachment of detrimental influences or potential adverse effects; and/or
    h. An improvement of historical, architectural, or cultural significance which is threatened with demolition by public or private action; and/or
    i. Possesses other qualities and characteristics that, in the judgment of the Commission should be considered for designation as a cultural property.

B. *Procedure for the designation of a cultural property.* Any nomination application for a proposed cultural property shall be subject to the following review process:

1. *Pre-application meeting.* Prior to submitting an application for cultural property designation, an applicant shall meet with the Historic Preservation Specialist or designee to review the nomination proposal. The Historic Preservation Specialist shall explain to the applicant the procedure and standards to nominate a property for designation, and include the historic context and any known architectural, cultural, or archaeological significance associated with the property. Additionally, when the applicant is not the owner of record, the Historic Preservation Specialist shall encourage the applicant to contact the owner(s) of record prior to proceeding with the application process to secure the owner(s)'s consent.

2. *Applicant eligibility.* Nominations for cultural property designation may be made by any property owner(s) of record; a contract purchaser of a nominated property; an individual, a group, or an association; or the Historic Preservation Commission.

3. *Property eligibility.* Any building, structure, object, or site that meets the criteria outlined in section 40-09.A. is eligible for consideration to be nominated for designation.

4. *Owner consent.* In every case, the owner(s) of record must provide written approval of the application. If the applicant is not the owner of record, owner consent must be received before moving forward with the cultural property designation nomination process.

5. *Application.* Upon the applicant's request, the Historic Preservation Specialist shall provide a Historic Cultural Property Inventory Form (HCPI). The applicant shall complete the form, which shall include, among other information, a legal description of the building, structure, object, or site. At the applicant's request, the Historic Preservation Specialist or designee may assist with the completion of the designation form.

6. *Filing.* Upon the applicant's delivery of the completed Historic Cultural Property Inventory Form (HCPI), the Historic Preservation Specialist shall review the application within ten business days of its filing, and notify the applicant in writing of any deficiencies that must be corrected and/or clarified prior to the scheduling of a public hearing. Failure of the applicant to provide amended information within 15 business days of the notice of deficiencies will result in an automatic withdrawal of the application.

7. *Notice.* Within five business days of the filing of an application, whether or not deemed complete, the Historic Preservation Specialist shall notify in writing the owner(s) of record of the proposed designation nomination, except in the cases when the applicant is the owner of record, or the owner of record previously provided consent in writing to the Historic Preservation Specialist.

8. *Schedule a public hearing.* Upon receipt of a completed Historic Cultural Property Inventory Form (HCPI), the Historic Preservation Specialist shall schedule a public hearing for the next regularly-scheduled meeting of the Historic Preservation Commission in accordance with the Open Meetings Act (NMSA 1978, Section 10-15-1 et seq.).

9. *Notice of public hearing.* Notice of the public hearing shall be published on the City of Las Cruces webpage and in a newspaper of general circulation within the City not less than 15 calendar days nor more than 30 calendar days in advance of the date of the hearing. The notice shall identify the applicant, property owner(s) of record, legal description of the property, and common address of the property.

10. *Mailing.* Not less than ten calendar days prior to the public hearing, the Historic Preservation Specialist shall mail a written notice to the owner(s) of record of the subject property and the owner(s) of record of all properties within 500 feet. Written notice shall include the date, time, and location of the scheduled public hearing and information regarding access to a digital or written copy of the completed application of the Historic Cultural Property Inventory Form (HCPI).

11. *Public hearing sign.* The Historic Preservation Specialist shall direct the placement of at least one sign upon the public right-of-way adjacent to the property that is the subject of the public hearing at least ten calendar days in advance of the date of the public hearing.

12. *Eligibility report.* Prior to the public hearing on the application for a cultural property nomination, the Historic Preservation Specialist shall conduct an analysis of the property proposed for designation and prepare a report containing preliminary findings on the historic, cultural, architectural and aesthetic significance of the property. The analysis shall be provided in writing to the Commission and made available to the public in advance of the public hearing.

13. *Public hearing.* The Commission shall conduct the public hearing and a record of such proceedings shall be preserved in such a manner as prescribed by the City of Las Cruces.

14. *Withdrawal of application.* An applicant may at any time during the nomination process withdraw an application for cultural property designation by providing notice, in writing, to the Historic Preservation Specialist.

15. *Historic Preservation Commission action.* At the public hearing, the Commission shall take statements presented by the owner(s) of record of the subject property, as well as statements, either oral or written, from any interested parties concerning the eligibility and/or effect of the potential designation on the proposed cultural property.

    The Commission may invite and consider testimony to evaluate information provided either during the nomination process or during the public hearing. A public hearing may be continued at a later date in the event that the Commission determines that additional information, unavailable at the public hearing, is warranted and necessary for the purpose of making a finding of fact or to provide time to evaluate fully new evidence presented at the public hearing.

    If the Commission fails to act within 45 calendar days of the final adjournment of a public hearing for the designation of a cultural property, the Commission shall be deemed to have recommended denial. Otherwise, upon approval of the cultural property designation application, the Historic Preservation Specialist shall draft a Cultural Property Designation Report for City Council action. Said report shall include a map of the subject property, current and historic photographs, history of the property, plans and drawings (if available and if applicable), and a determination on the eligibility criteria.

16. *City Council action.* Upon considering the Commission's finding of fact regarding a nomination, the City Council shall grant or deny the Cultural Property Designation Report and application for cultural property designation with a simple majority or greater vote.

    Upon designation as a cultural property by the City Council, a notice of the designation will be sent by the Historic Preservation Specialist to the applicant and/or owner(s) of record of the building, structure, object, or site. The applicant and/or owner(s) of record shall be responsible to provide a copy of the resolution effectuating the designation to the Doña Ana County Recorder of Deeds. A copy of the recorded resolution shall be returned to the Community Development Department within 60 calendar days of City Council approval of a cultural property designation. When designated as a cultural property, the property shall be included in the City of Las Cruces Register of Cultural Properties and shall be identified on the City's Geographic Information Systems (GIS) mapping layers with the appropriate shorthand designation as a cultural property.

17. *Suspension of work.* During the period beginning with the filing of an application for cultural property designation and ending with the final action of the City Council granting or denying said application, no exterior architectural feature of any building, structure, object, or site that is the subject of an application for cultural property designation may undergo alteration, construction, demolition, or removal if such alteration, construction, demolition, or removal would be subject to a building permit issued after the filing of a cultural property application. Nothing in this subsection shall operate to bar ordinary repair and maintenance or any work that is necessary to prevent or correct an imminently dangerous or hazardous condition.

18. *Re-application following denial or withdrawal of an application.* In the event that an application for cultural property designation is denied by the Commission and/or City Council or the application is withdrawn by the applicant, no subsequent application for cultural property designation of the same building, structure, object, or site shall be made within 12 months of the date of the denial. If the applicant withdraws the application prior to review by the Commission, a subsequent application may be submitted at any time.

19. *Amendments.* Any property owner of record; a contract purchaser of a nominated property; individual or group of City residents; association with members who are City residents; or the Historic Preservation Commission may request that the designation of a cultural property be amended by the same procedures and according to the same criteria set forth herein for designation. An amended application relating to the same property may be entertained by the Commission at any time following City Council action designating any building, structure, object, or site as a cultural property. Minor, material amendments, excluding boundary amendments, may be completed administratively without a public hearing or public meeting.

20. *Rescinding of designation.* Any property owner of record; a contract purchaser of a nominated property; individual or group of City residents; association with members who are City residents; or the Historic Preservation Commission, on its own initiative and with prior consent of the City Council, may request that the designation of a cultural property be rescinded by the same procedures and according to the same criteria set forth herein for designation. The City Council may rescind cultural property designation of any designated property provided that the vote to rescind the designation is not less than a two-thirds vote of the councilors holding office.

21. *Appeals.* Any property owner of record; a contract purchaser of a nominated property; individual or group of City residents; association with members who are City residents; or the Historic Preservation Commission may appeal the action taken by the City Council to grant, deny, or rescind cultural property designation, provided that the appeal is filed to the City within ten calendar days of the City Council decision.

(Ord. No. 2902, § I(Exh. A), 12-2-19)

Sec. 40-10. Historic district designation.

A. *Standards for designation of historic districts.* The Historic Preservation Commission shall not recommend, nor the City Council grant, a designation of a historic district unless each body makes findings based upon the evidence presented to it in each specific case, and that the proposed historic district meets all of the following seven requirements:

1. Located within the corporate boundaries of the City; and

2. Includes one or more cultural properties along with such other buildings, structures, objects, or sites which, while not of such historic significance to be designated as individual cultural properties, nevertheless, contribute to the overall visual characteristics which have been identified as significant within the proposed historic district; and

3. At least 50 years old, in whole or in part, or else of exceptional significance; and

4. Possesses integrity of design, materials, workmanship, setting, location, feeling, and association, as defined for listing in the National Register of Historic Places; and

5. Establishes a sense of time and place; and

6. Be listed in the National Register for Historic Places, or be determined eligible for such listing by the State Historic Preservation Officer; and

7. Includes potentially eligible cultural properties that possess one or more of the following demonstrations of significance:

    a. A broad cultural, political, economic, or social association with the historic development of the community, the state, or the nation; and/or

b. Identification with a historic person or persons or with important events in local, state, and/or national history; and/or

c. Possess distinguishing characteristics of an architectural type inherently valuable for the study of a period, style, method of construction, or use of local materials or craftsmanship; and/or

d. Possess authenticity of its period of significance as evidenced by the survival of its characteristics, historic fabric, and architectural elements from that period; and/or

e. Represent a notable work of a master builder, designer, or architect; and/or

f. Possess or may likely yield information important in prehistory or history; and/or

g. Possess architectural or land-use characteristics that are repeated throughout the area in a manner which distinguishes the proposed historic district from the rest of the City; and/or

h. An area embodying all or part of the above characteristics which is subject to encroachment of detrimental influences and potential adverse effects; and/or

i. An area of historical, architectural, or cultural significance which is threatened with demolition by public or private action; and/or

j. An area with other qualities and characteristics that, in the judgment of the Commission, should be considered for designation as a historic district.

B. *Procedure for the designation of a historic district.* Any nomination application for a proposed historic district shall be subject to the following review process:

1. *Pre-application meeting.* Prior to submitting an application for historic district designation, an applicant shall meet with the Historic Preservation Specialist or designee to review the nomination proposal. The Historic Preservation Specialist shall explain to the applicant the procedure and standards to nominate an area for designation, and include any known architectural, cultural, or archaeological significance associated with the area. Additionally, the Historic Preservation Specialist shall require the applicant to secure support for the proposed historic district nomination in the form of petition signatures of at least 20 percent of the owners of record within the boundaries of the proposed historic district.

2. *Applicant eligibility.* Nominations for historic district designation may be made by any property owner(s) of record; a contract purchaser of a nominated property; an individual or group of City residents; an association with members who are City residents; or the Historic Preservation Commission.

3. *Owner consent.* Consent must be attained from at least 20 percent of the owners of record within the boundaries of the proposed historic district, and this support among property owners shall be achieved in the form of gathering signatures on a petition.

4. *Application.* Upon the applicant's request, the Historic Preservation Specialist shall provide a Historic Cultural Property Inventory Form (HCPI), which shall be completed and contain all of the following information:

a. A map delineating the boundaries of the area proposed for designation;

b. A written statement setting forth the character of the area and justification for designation of the proposed area;

c. Drawings or photographs of significant buildings, structures, sites, or objects within the boundaries of the proposed area;

d. Descriptions of the historic condition and use, existing condition and use, and approximated or exact age of each property within the boundaries of the proposed district; and

e. Such other information as prescribed by the Historic Preservation Commission.

5. *Filing.* Upon the applicant's delivery of the completed Historic Cultural Property Inventory Form (HCPI), the Historic Preservation Specialist shall review the application within 30 business days of its filing, and notify the applicant in writing of any deficiencies that must be corrected and/or clarified prior to the scheduling of a public hearing. Failure of the applicant to provide amended information within 45 business days of the notice of deficiencies will result in an automatic withdrawal of the application.

6. *Notice.* Within 15 business days of the filing of an application, whether or not deemed complete, the Historic Preservation Specialist shall notify, in writing and delivered by certified mail with return receipt, the owners of record within the boundaries of the proposed designation nomination. Said notification shall identify the boundaries of the proposed district and provide a date, time, and location for a public, informational meeting to be convened by the Historic Preservation Specialist not more than 30 business days from the date of the filing of an application.

7. *Schedule a public hearing.* Upon receipt of a completed Historic Cultural Property Inventory Form (HCPI), the Historic Preservation Specialist shall schedule a public hearing for the next regularly-scheduled meeting of the Historic Preservation Commission in accordance with the City's notification requirements for public hearings.

8. *Notice of public hearing.* Notice of the public hearing shall be published on the City of Las Cruces webpage and in a newspaper of general circulation within the City not less than 15 calendar days nor more than 30 calendar days in advance of the date of the hearing. The notice shall identify the legal description of the proposed boundaries, the name of the subdivision(s) (if applicable), and a general description of the area bounded by the proposed historic district.

9. *Mailing.* Not less than ten calendar days prior to the public hearing, the Historic Preservation Specialist shall mail a written notice to the owners of record of all properties within the boundaries of the proposed historic district. Written notice shall include the date, time, and location of the scheduled public hearing and information regarding access to a digital or written copy of the completed application of the Historic District Designation Form.

10. *Public hearing sign.* The Historic Preservation Specialist shall direct the placement of at least four signs upon the public right-of-way adjacent to the boundaries of the proposed district's area at least ten calendar days in advance of the public hearing's date.

11. *Public hearing.* The Commission shall conduct the public hearing and a record of such proceedings shall be preserved in such a manner as prescribed by the City of Las Cruces. The hearing's purpose shall be to provide information regarding the details and the potential land-use impacts of the proposed historic district. Owners of record shall be informed of the right to support or object the proposed historic district. Opportunity for public comments regarding the merits and potential impacts of the proposed historic district will be provided at the public hearing.

12. *Withdrawal of application.* An applicant may at any time during the nomination process withdraw an application for historic district designation by providing notice, in writing, to the Historic Preservation Specialist.

13. *Owner objection.* In the event that owners of record of the individual real properties within the proposed historic district object to the designation of the proposed historic district, those objections shall be recorded on forms provided by the Community Development Department; completed forms shall be notarized and filed with the City Clerk at any time but not later than 30 calendar days following the final adjournment of the public hearing.

14. *Historic Preservation Commission action.* At the public hearing, the Commission shall consider statements presented by the owners of record of any property within the boundaries of the proposed

historic district, as well as statements, either oral or written, from any interested parties concerning the effect of the proposed designation on the effected properties.

The Commission may invite and consider testimony to evaluate information provided either during the historic district nomination process or during the public hearing. A public hearing may be continued at a later date in the event that the Commission determines that additional information, unavailable at the public hearing, is warranted and necessary for the purpose of making a finding of fact or to provide time to evaluate fully new evidence presented at the public hearing.

The Commission shall make written findings of fact and shall assist the Historic Preservation Specialist to submit same in the form of a Historic District Designation Report, together with its recommendation, to the Planning and Zoning Commission within 45 calendar days following the close of the public hearing.

If the Commission fails to act within 45 calendar days of the final adjournment of a public hearing for the designation of a historic district, the Commission shall be deemed to have recommended denial. Otherwise, upon approval of the historic district designation application, the Historic Preservation Specialist shall draft a Historic District Designation Report for Planning and Zoning Commission action. Said report shall include a map of the proposed district's boundaries, current and historic photographs, histories of the properties, plans and drawings (if available and if applicable), and a determination on the eligibility criteria.

15. *City Council action.* The Planning and Zoning Commission, when no owner objection is filed in accordance with this chapter, shall grant or deny the nomination for historic district designation with not less than a majority vote of the Planning and Zoning Commission. When an owner of record, or owners of record, properly file objections with the City Clerk in accordance with this chapter, the Planning and Zoning Commission may grant the proposed designation upon the condition that demonstrable support of the designation by a simple majority of owners of record within the proposed historic district's boundaries can be presented.

Upon designation as a historic district by the Planning and Zoning Commission, a notice of the designation will be sent by the Historic Preservation Specialist to the owners of record of the properties within the boundaries of the designated district. The owners of record shall be responsible to provide a copy of the resolution effectuating the designation to the Doña Ana County Recorder of Deeds. A copy of the recorded resolution shall be returned to the Community Development Department within 60 calendar days of Planning and Zoning Commission approval of a historic district designation. When designated as a historic district, the historic district shall be included in the City of Las Cruces Register of Cultural Properties and shall be identified on the City's Geographic Information Systems (GIS) mapping layers with the appropriate shorthand designation as a historic district.

16. *Suspension of work.* During the period beginning with the filing of an application for historic district designation and ending with the final action of the Planning and Zoning Commission granting or denying said application, no exterior architectural feature of any building, structure, object, or site that is the subject of an application for historic district designation may undergo alteration, construction, demolition, or removal if such alteration, construction, demolition, or removal would be subject to a building permit issued after the filing of a historic district application. Nothing in this subsection shall operate to bar ordinary repair and maintenance or any work that is necessary to prevent or correct an imminently dangerous or hazardous condition.

17. *Re-application following denial or withdrawal of an application.* In the event that an application for historic district designation is denied by the Commission and/or Planning and Zoning Commission or the application is withdrawn by the applicant, no subsequent application for historic district designation shall be made within 12 months of the date of the denial. If the applicant withdraws the

application prior to review by the Historic Preservation Commission, a subsequent application may be submitted at any time.

18. *Amendments.* Any property owner of record; a contract purchaser of a nominated property; individual or group of City residents; association with members who are City residents; or the Historic Preservation Commission, on its own initiative and with prior consent of the Planning and Zoning Commission, may request that the designation of a historic district be amended by the same procedures and according to the same criteria set forth herein for designation. An amended application relating to the same district may be entertained by the Commission at any time following Planning and Zoning Commission action designating a historic district. Minor, material amendments, excluding boundary amendments, may be completed administratively without a public hearing or public meeting.

19. *Appeals.* Any property owner of record within the boundaries of the historic district; a contract purchaser of a nominated property; individual or group of City residents; association with members who are City residents; or the Historic Preservation Commission may appeal the action taken by the Planning and Zoning Commission to grant, deny, or amend historic district designation, provided that the appeal is filed to the City within ten calendar days of the Planning and Zoning Commission decision.

(Ord. No. 2902, § I(Exh. A), 12-2-19)

Sec. 40-11. Review standards for cultural properties and historic district properties.

In making recommendations for proper and accepted treatments for the rehabilitation and restoration of historic buildings and older building inventory, the Historic Preservation Commission shall be governed by the following review standards and design principles:

A. *Standards for review of cultural properties and historic district properties.* The review of plans for changes affecting the exterior appearance of designated cultural properties will be based upon the Secretary of the Interior's "Standards for Rehabilitation" as follows, as amended:

1. A property shall be used for its historic purpose or be placed in a new use that requires minimal change to the defining characteristics of the building and its site and environment.

2. The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided.

3. Each property shall be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or architectural elements from other buildings, shall not be undertaken.

4. Most properties change over time; those changes that have acquired historic significance in their own right shall be retained and preserved.

5. Distinctive features, finishes, and construction techniques or examples of craftsmanship that characterize a property shall be preserved.

6. Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture, and other visual qualities and, where possible, materials. Replacement of missing features shall be substantiated by documentary, physical, or pictorial evidence.

7. Chemical or physical treatments, such as sandblasting, that cause damage to historic materials shall not be used. The surface cleaning of structures, if appropriate, shall be undertaken using the gentlest means possible.

8. Significant archeological resources affected by a project shall be protected and preserved. If such resources must be disturbed, mitigation measures shall be undertaken.

9. New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale, and architectural features to protect the historic integrity of the property and its environment.

10. New additions and adjacent or related new construction shall be undertaken in such a manner that if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

B. *Design principles for cultural properties and historic district properties.* Any new construction such as primary buildings, secondary, and accessory buildings and additions to historic buildings and structures at a cultural property or at a property within a designated historic district shall conform, subject to the restrictions of the City of Las Cruces Zoning Code, to the following general design principles:

1. *Relationship of building mass and space.* The relationship between the open space between existing structures and adjoining structures shall be proportionate and compatible to the adjacent neighborhood;

2. *Scale of structure.* The scale of any alterations, modifications, or additions, or of any new construction shall be compatible with the existing, surrounding structures;

3. *Height.* The height of any proposed alteration, addition, or new construction shall be compatible with the existing structure and with neighboring structures;

4. *Directional expression of principal façade.* Any proposed alteration or new construction shall be compatible with the predominant horizontal or vertical expression of the historic structure and, for wholly new construction, the predominant horizontal or vertical expression along the street block;

5. *Proportions of street-facing façades.* The relationship between the width and height of any historic structure and any proposed modification, alteration, or addition at a street facing façade shall be compatible with one another and the relationship between the width and height of any proposed new structure shall be compatible with nearby structures;

6. *Relationship of windows and doors.* The relationship between and among doors and windows shall be compatible with and in proportion to each other and be compatible with the historic character of such elements;

7. *Architectural details.* Architectural details and materials shall be incorporated, as necessary, to relate new construction with historic construction to preserve and enhance the inherent characteristics of the historic property and/or neighboring properties; and

8. *Roof form.* The design of any roof shall be compatible with the roof forms and materials of the historic roof of any existing improvement, building, structure, or object.

In addition to the foregoing, the Historic Preservation Commission may apply review standards as further set forth in any policy, preservation plan, or design guidelines adopted by the Commission; the U.S. Secretary of the Interior's Standards for Rehabilitation, as amended; and/or the National Park Service's Guidelines for Rehabilitating Historic Buildings, each as amended from time-to-time.

C. *Standards for requests for demolition.* With regard to applications to demolish a cultural property and any building, structure, object or site located within a historic district, the following matters shall be considered:

1. Its historical, architectural, cultural and aesthetic significance.

2. Its use, its intended use and/or the use for which the building, structure, object or site was originally designed and the feasibility of the continuation of its designed use.

3. Its importance to the City of Las Cruces and the extent to which its historical or architectural value is such that its removal will be detrimental to the historic district and/or to the public interest.

4. The extent to which it is of such unusual or uncommon design, craftsmanship, texture or material that it could not be reproduced or could be reproduced only with great difficulty.

5. The extent to which its retention would be of economic value, attract tourists, educate citizens regarding the City's heritage or make the City a more attractive and desirable place in which to live.

6. The probable impact of its removal upon the ambience and integrity of the historic district.

7. The structural soundness and integrity of the building, structure, object or site and the economic feasibility of its restoration or rehabilitation so as to allow for its reasonable use.

8. The threat to the public health and safety as a result of deterioration or disrepair of the building, structure, object or site.

9. The technological feasibility of structural rehabilitation.

10. The interference with the charitable purposes of any nonprofit or charitable organization if demolition is not permitted.

D. *Criteria regarding relocation of historic buildings or structures.* The following factors shall be considered with regard to an application to move to a new location or site any cultural property or any building, structure or object located within a historic district:

1. The impact of the loss of integrity suffered as a result of removal from the original and/or historic location; and, if located within a historic district, the impact of that loss of integrity upon the district as a whole.

2. The relative value to the applicant of the proposed relocation contrasted to the value to the community as a whole in allowing it to remain at its original and/or historic site.

3. The compatibility, nature and character of the areas adjacent to both the present site and the proposed site as they relate to the protection of historic properties and districts.

4. In the event that a proposed new location is in a historic district, the impact on the visual compatibility of adjacent buildings, structures, objects or sites.

5. The likelihood of significant damage to the physical integrity of the building or structure itself.

(Ord. No. 2902, § I(Exh. A), 12-2-19)

Sec. 40-12. Review of proposed National Register of Historic Places nominations.

Before a property located within the municipal boundaries of the City of Las Cruces may be considered for inclusion in the National Register of Historic Places, the State Historic Preservation Officer (SHPO) or designee in the New Mexico Historic Preservation Division (NMHPD) shall notify the applicable chief local elected official and the Historic Preservation Commission according to the following procedure:

a. The SHPO/NMHPD shall forward a copy of the completed National Register nomination to the City for all properties located in the City's jurisdiction within 30 calendar days of receipt unless the City

initiated the nomination. If the City initiates its own nomination, it shall provide the completed nomination to SHPO/NMHPD within 30 days of completion.

b. Within 60 days, the Commission shall provide opportunity for public comment by including the National Register nomination on the agenda of the next regularly-scheduled public meeting.

c. The Commission shall prepare a report regarding the eligibility of the property and whether or not, in its opinion, the property meets the criteria for listing in the National Register of Historic Places.

d. Within 60 days of notice from the SHPO/NMHPD, the chief local elected official shall transmit the report of the Commission and the elected official's recommendation to the SHPO/NMHPD.

e. If either or both the Commission and the chief elected official agree that the property should be nominated, the nomination will be scheduled for review by the Cultural Properties Review Committee and make the report and recommendations available to the Secretary of the Interior.

If both the Commission and the chief elected official recommend that a property not be nominated to the National Register of Historic Places:

a. The SHPO/NMHPD shall take no further action, unless within 30 days of the receipt of such recommendation an appeal is filed with the SHPH/NMHPD.

b. If such an appeal is filed, the SHPO/NMHPD shall follow the procedures for making and submitting a nomination.

c. Any report and recommendations made that the property should not be nominated shall be submitted to the Secretary of the Interior.

(Ord. No. 2902, § I(Exh. A), 12-2-19)

ARTICLE III. PLAN REVIEW, CERTIFICATES OF APPROPRIATENESS, AND ECONOMIC HARDSHIP

Sec. 40-13. Plan review of cultural properties and historic district properties.

Plan review shall be completed for any new construction, addition, remodeling, rehabilitation, renovation, or restoration, or proposed demolition of the exterior of any building, structure, object, or site that meets the following criteria:

A. Visible from a public right-of-way, excluding public alleyways at the rear of a property; and

B. Proposed for an individually-designated cultural property or for any property within a designated historic district; and

C. Requires a building permit as defined by the building code.

Plan review submittal requirements and review standards are based on the property location within the City; the age of the property; and the significance rating of the property as assigned by survey, as amended from time-to-time.

Every reasonable effort shall be made to provide a compatible use for a property which requires minimal alteration of any designated cultural property or property within a historic district. The destruction, alteration, or removal of original distinguishing elements or architectural features of a building, structure, object, or site and its environment shall be avoided.

Plan review for compliance with historic preservation standards will be completed in conjunction with code compliance review by the City of Las Cruces Building Official, City of Las Cruces Fire Department, and the City of Las Cruces Public Works Department.

Each Applicant may request one or more pre-application meetings with City staff to review proposed scopes of work and compliance with historic preservation design standards, building codes, zoning requirements, and other applicable regulations.

Submittal requirements identified herein satisfy historic compliance review but shall not be construed to reflect the submittal requirements of other review authorities. Applicants should consult with appropriate City staff prior to submitting an application for building permit application review.

A. *Procedure to apply for building permits and Certificates of Appropriateness.* Any application for a building permit to undertake any work at a designated cultural property or at any property within a designated historic district shall be subject to the following review process:

1. *Application for a building permit to alter an existing structure*. Applicants shall provide the following information as part of a building permit application:

   a. A completed Building Permit Application and a completed Certificate of Appropriateness Application; and

   b. A site map or aerial view of the parcel of land on which the subject building, object, structure, site, or improvement is located; and

   c. Photographs of the current exterior condition of the subject area; and

   d. Historic images of the subject property, if available; and

   e. Material samples and/or product specifications for any proposed new or repair materials including, but not limited to, siding materials and installation pattern; masonry color, texture, and bonding pattern; roof shingles; major architectural elements (e.g. doors, windows, columns, decorative architectural features, etc.); and

   f. Drawings and/or specifications detailing the proposed scope of work including, but not limited to, building elevations, plans, and significant architectural details; and

   g. Other reasonable information that may be requested by City staff.

   Information submitted for review by the Historic Preservation Commission must be provided in a format as required by the Historic Preservation Specialist but not less than one printed copy of all requested documentation; one sample of proposed materials; and one electronic or digital copy (only jpeg or gif format unless another format is approved prior to submittal; any electronic submittal must be clearly legible when printed at 11-inch by 17-inch format).

2. *Fees.* Fees shall be calculated and collected by the Community Development Department. Applicable deposits and fees shall be set by resolution and collected according the current fee schedule for building permits.

3. *Filing*. The Certificate of Appropriateness application shall be submitted to the Historic Preservation Specialist. Upon receipt of all required information, the application will be determined to be complete, and the Historic Preservation Specialist shall schedule a hearing before the Historic Preservation Commission to review and render a decision on the application.

4. *Plan review of cultural properties and historic district properties.* Certificate of Appropriateness applications may be reviewed either administratively by a subcommittee within the Community Development Department or before the Historic Preservation Commission based on the level of review. The subcommittee may review minor scopes of work, whereas extensive scopes of work

and alterations shall be reviewed by the Historic Preservation Commission. All proposed alterations shall be evaluated in accordance to the Review Standards for Cultural Properties and Historic District Properties as stated herein this article under section 40-11.

5. *Schedule a public hearing.* Upon receipt of a completed Certificate of Appropriateness application, the Historic Preservation Specialist shall schedule a public hearing for a regularly-scheduled meeting of the Historic Preservation Commission in accordance to the City's notification requirements for public hearings.

6. *Appropriateness Report.* Prior to the public hearing on the Certificate of Appropriateness application, the Historic Preservation Specialist shall conduct an analysis of the subject property and prepare a report containing preliminary findings on the historic, cultural, architectural and aesthetic significance of the property. The analysis shall be provided in writing to the Commission and made available to the public in advance of the public hearing.

7. *Public hearing.* The Commission shall conduct the public hearing and a record of such proceedings shall be preserved in such a manner as prescribed by the City of Las Cruces.

8. *Withdrawal of application.* An applicant may at any time during the review process withdraw a Certificate of Appropriateness application by providing notice, in writing, to the Historic Preservation Specialist.

9. *Historic Preservation Commission action.* The Commission shall act upon completed Certificate of Appropriateness applications in a timely manner. The Commission may request modifications to the proposed scope of work as a condition of approval of a Certificate of Appropriateness; it may approve the application without modifications; or it may deny the application. No decision rendered by the Commission shall conflict with provisions in the zoning code adopted by the City.

10. *Issuance of a Certificate of Appropriateness.* Upon the approval of a Certificate of Appropriateness application, either administratively or by the Commission, the Historic Preservation Specialist shall issue a Certificate of Appropriateness to the applicant as a component, and in conjunction to other requirements, to be issued a building permit.

11. *Suspension of work.* During the period beginning with the filing of a Certificate of Appropriateness application and ending with the final action taken on the Certificate of Appropriateness, no exterior architectural feature of any building, structure, object, improvement, or site that is the subject of an application may undergo any alteration or construction, if such work would be subject to plan review and issuance of a building permit.

12. *Final inspection.* The Building Official and/or Building Inspector(s), in consultation with the Historic Preservation Specialist, shall complete, prior to issuance of a Final Occupancy Permit, an inspection of any work approved under a Certificate of Appropriateness to assure compliance with the approvals granted by the Commission or on its behalf. Nothing in this subsection shall operate to bar repair and maintenance or any work that is necessary to prevent or correct an imminently dangerous or hazardous condition.

13. *Lapse of a Certificate of Appropriateness.* An approved Certificate of Appropriateness shall be valid for one year from the date of issuance to the applicant to complete the proposed scope of work. In the event the applicant is unable to complete the approved scope of work, the Historic Preservation Specialist may approve up to two six-month extensions to complete the scope of work. In the event the approved scope of work remains incomplete upon the expiration of 24 months since issuance, the applicant will be required to submit a new Certificate of Appropriateness application.

(Ord. No. 2902, § I(Exh. A), 12-2-19)

Sec. 40-14. Plan review for municipal-owner cultural properties.

Plan review shall be completed for any new construction, addition, remodeling, rehabilitation, renovation, or restoration, or proposed demolition of the exterior of any building, structure, object, or site, or historic interior, of any cultural property owned by the City of Las Cruces, in accordance with the following criteria:

1. The cultural property must be municipally owned and accessible to the public on a full or partial basis; and
2. The plan review process shall adhere to the procedures as stated herein this chapter under section 40-13; and
3. The proposed scope of work shall be reviewed by the Historic Preservation Specialist and/or the Historic Preservation Commission in accordance with the Review Standards for Cultural Properties and Historic District Properties as stated here in this article under section 40-11.

(Ord. No. 2902, § I(Exh. A), 12-2-19)

Sec. 40-15. Demolition of cultural properties or historic district properties.

Requests for demolition of any portion of or the entirety of any building, structure, site, or object shall require review by the Historic Preservation Commission when such demolition requests affect:

A. More than 25 percent of any exterior street façade of a building, structure, improvement, site, or object;

B. More than 25 percent of any combination of exterior foundations, walls, and/or roofs;

C. Any purposefully-designed landscape by a notable individual; or

D. A significant, naturally-occurring land or geological formation when such site has been designated as a cultural property or is located within the boundaries of a designated historic district.

Demolition shall be considered only when all other redevelopment options for a building, structure, object, or site have been exhausted.

A. *Procedure for the demolition of designated cultural properties and historic district properties.* Any application for a demolition permit for all or part of any cultural property or at any property within a historic district shall be subject to the following review process:

1. *Pre-application meeting.* Prior to submitting a demolition request, an applicant shall meet with the Historic Preservation Specialist, Building Official, City Planner, and/or Director of Community Development to review the demolition proposal. At that time, the Historic Preservation Specialist shall identify to the applicant any known historic significance classification or documentation pertaining to the property.
2. *Application.* All applications for a demolition permit shall be submitted on forms provided by the Historic Preservation Specialist. No demolition permit application shall be accepted for processing unless it is complete and is accompanied by all applicable fees, deposits, and bonds. A complete demolition permit application shall contain the following:
    a. A legible, dimensioned, and accurate Plat of Survey, prepared and sealed by a New Mexico licensed surveyor within 12 months of application, indicating location of all improvement proposed for demolition;

b. Written affidavit of the owner(s) of record of the property acknowledging the proposed demolition when the applicant is not the owner of record;

c. Plans of all levels of the building or structure proposed to be demolished;

d. Photographs of all existing conditions including all exterior elevations, all significant architectural features (exterior and interior), and all rooms or spaces (exterior and interior) affected by the proposed demolition work;

e. Historic images of the property and general area of proposed demolition, if any available;

f. A written chain of title investigation that identifies previous owners of the property upon which demolition is proposed;

g. A detailed report of non-code-compliant elements and structural deficiencies, prepared by a registered architect and/or structural engineer with expertise in the rehabilitation of contemporary and/or historic properties;

h. A detailed list of irreparable or deteriorated building features, components, or elements;

i. A detailed cost estimate for the rehabilitation of the improvement, property, or site, prepared by a design professional or licensed contractor with expertise in the renovation of contemporary and/or historic properties;

j. A comparison of the estimated rehabilitation cost of the property proposed for demolition with market values for comparable improvements, properties, or sites within the municipal boundaries;

k. A detailed cost estimate for the restoration of the site per City code in the event that no new construction activity commences following demolition;

l. A summary of potential sites, if any, to which the resource could be relocated within the historic district with an estimate of the cost of the move to each proposed location, if any, by a qualified building mover;

m. A proposed schedule for demolition activities;

n. A completed Building Permit application and a written justification outlining the reasons demolition is sought; and

o. Other reasonable information required or that may be requested by City staff or the Historic Preservation Specialist.

3. *Fees.* Fees shall be calculated and collected by the Community Development Department. Applicable deposits and fees shall be set by resolution and collected according to the current fee schedule for building permits.

4. *Filing.* An application for demolition shall be filed with the Building Official and the Historic Preservation Specialist. Within ten business days of the filing of an application, the Historic Preservation Specialist shall review the submitted application for demolition and inform the applicant, in writing, of any deficiencies which must be corrected and/or clarified prior to the scheduling of a public hearing. Failure of the applicant to provide amended information within 30 business days of the notice of deficiencies will result in an automatic withdrawal of the application.

5. *Notice.* Upon receipt of a complete demolition application, the Historic Preservation Specialist shall schedule a public hearing for any cultural property or property located within a historic district, except for those properties designated as non-contributing due to a lack of architectural, historic, or structural significance or integrity, at a regularly-scheduled meeting of the

Commission no sooner than 180 days from the acceptance of a completed application. Demolition permit applications for non-contributing buildings with no architectural, historical, or structural significance or integrity shall be reviewed at a regular public meeting and shall not be subject to a public hearing or any stipulation related to noticing of a public hearing.

6. *Notice of public hearing.* Notice of a public hearing shall be published on the City of Las Cruces webpage and in a newspaper of general circulation within the City not less than 15 calendar days nor more than 30 calendar days in advance of the date of the hearing. The notice shall identify the applicant, property owners of record, legal description of the property where demolition work is proposed, and the common address of the property where demolition work is proposed.

7. *Public hearing sign.* The Historic Preservation Specialist shall direct the placement of at least one sign at the public right-of-way adjacent to the property that is the subject of the public hearing at least ten calendar days in advance of the date of the public hearing. Said sign shall include the words "Proposed for Demolition" in addition to the date, time, and place of such public hearing.

8. *Mailing.* Not less than ten calendar days prior to the public hearing, the Historic Preservation Specialist shall mail a written notice to the owners of record of the property proposed for demolition and to the owners of record of all properties identified herein for notification within 500 feet. Written notice shall include the date, time, and location of the scheduled public hearing and information regarding access to a digital or written copy of the demolition application.

9. *Property analysis.* Prior to the public hearing, the Historic Preservation Specialist and the Building Official shall visit the site to familiarize themselves with the existing condition of the property proposed for demolition. The Historic Preservation Specialist and the Building Official shall confer on their evaluation of the property.

   Prior to the public meeting for the purpose of reviewing a demolition application, the Historic Preservation Specialist shall conduct an analysis of the submitted documents and a written summary of the site visit as part of a written report containing preliminary findings on the historic, architectural, cultural, and aesthetic significance of the subject property. The analysis shall be provided to the Commission, in writing, and made available to the public in advance of the public hearing.

10. *Public hearing.* The public hearing for the purpose of reviewing a demolition application shall be conducted by the Historic Preservation Commission and a record of such proceedings shall be preserved in such manner as the Commission shall, by rule, prescribe from time to time.

    The applicant bears the burden of proof that the failure to approve the proposed demolition would leave the subject property without an economically viable use, and that the sale, rental, or rehabilitation of the property is not possible, resulting in the property being incapable of earning any reasonable economic return.

11. *Withdrawal of application.* An applicant may at any time prior to the scheduled public hearing withdraw an application for demolition by providing notice, in writing, to the Historic Preservation Specialist or the Building Official.

12. *Historic Preservation Commission action.* The Commission shall consider only the property, building, structure, architectural feature, or object proposed for demolition; the merit of any proposed replacement construction or improvement shall not be a standard of review for a demolition request. The Commission may solicit testimony to evaluate information provided either as part of a demolition application or at the public hearing. A public hearing may be continued to a date in the event that the Commission determines that additional information, unavailable at the public hearing, is warranted and necessary for the purpose of making a finding of fact.

~~Additionally, the Commission may continue a public hearing during a subsequent regularly scheduled meeting of the Commission to provide time to fully evaluate new evidence presented at the public hearing. Furthermore, the Commission may continue a public hearing regarding a request for demolition for a specified period of time, not to exceed 120 calendar days, for the sole purpose of allowing the applicant and the Commission to seek alternatives to demolition when the Commission determines that all of the following conditions exist:~~

~~a. The property itself, or in relation to its environs, has significant historical, architectural, aesthetic or cultural value in its present condition;~~

~~b. Realistic alternatives for preservation for the property—including adaptive uses—are believed to be neither cost prohibitive nor beyond the limits of local market value; and~~

~~c. The property, in its existing condition, does not present a public health or safety hazard to individuals, neighboring properties or the greater community.~~

~~When the Commission postpones a recommendation regarding a demolition request, the Commission shall retract said postponement when the Commission determines that an applicant has:~~

~~a. Made a bona fide and reasonable, but unsuccessful, effort to locate a purchaser for the property who is willing to preserve, rehabilitate, or restore the improvement, property, or site;~~

~~b. Made a bona fide and reasonable, but unsuccessful, effort to locate a purchaser for the improvement who is willing and able to relocate the improvement to another property or site;~~

~~c. Made a bona fide and reasonable, but unsuccessful, effort to develop a cost effective program for the preservation of the improvement; and~~

~~d. Agreed to accept a demolition permit on specified conditions of the Commission.~~

~~When the Commission considers a request for demolition, and applicant may be required, as a condition of demolition approval, to prepare and submit, prior to the commencement of demolition work, the following documentation of a building, structure, object, improvement, or site that is designated as a cultural property or identified as a contributing or significant property within a designated historic district:~~

~~a. Site plan (scale not less than one inch equals twenty feet, zero inches);~~

~~b. Floor plans of each level (scale not less than one-eighth of one inch equals one foot, zero inches);~~

~~c. Elevations of each side of the property improvement (scale not less than one-eighth of one inch equals one foot, zero inches); and~~

~~d. Photographs of each elevation and significant interior or exterior architectural features as determined by the Commission (clear, black and white images).~~

~~The Commission shall make written findings of fact within 45 calendar days following the close of the public hearing.~~

~~The Commission may grant a demolition request for a cultural property or a property within a historic district if, upon review of all testimony, the maintenance, use, and/or alteration of the property would cause immediate and substantial hardship for the owner(s) of record because rehabilitation in a manner which preserves the architectural, historic, or structural integrity of the property either:~~

a. Is infeasible from a technical, mechanical, or structural perspective; or

b. Would leave the property with no reasonable economic value because it would require an unreasonable expenditure when accounting for such factors as current market value, permitted uses of the property, and/or the cost of compliance with local, state, and federal codes applicable to the property.

The Commission, by a simple majority vote, shall grant or deny the application for demolition.

13. *Appeal of a demolition denial to City Council.* If an application for any demolition work is not approved by the Historic Preservation Commission, then the applicant may request, in writing, to the Director of Community Development that an appeal of the Commission's decision be made to the City Council.

Both the applicant and the Commission have the right to be heard at the appeal proceedings.

Upon consideration of the written record of the Commission's decision and the applicant's appeal, the City Council shall grant or deny the application for proposed demolition work.

Within 30 calendar days after such an appeal is made, the City Council shall, by resolution, affirm or reverse the Commission's determination according to the applicable standards set forth in this chapter. In accordance with said standards, the City Council may also modify the Commission's determination. A reversal or modification of the Commission's determination shall be approved by a vote of not less than two-thirds of the councilors holding office.

14. *Suspension of work.* During the period beginning with the filing of an application for demolition and ending with the final action of either the Historic Preservation Commission or the City Council, granting or denying said application, no exterior architectural feature of any building, structure, object, improvement, or site that is the subject of an application for demolition may undergo alteration, construction, demolition, or removal. Nothing in this subsection shall operate to bar ordinary repair and maintenance or any work that is necessary to prevent or correct an imminently dangerous or hazardous condition.

15. *Site restoration.* Upon completion of any approved demolition, a site must be restored and maintained as required by City code until such time that construction activity resumes at the property.

16. *Lapse of demolition approval.* Any approval granted by the Commission or City Council for the demolition, in whole or in part, of any building, structure, object, improvement, or site shall be valid for a period of 12 months from the date of the issuance of a demolition approval. Failure to complete the approved work in a timely fashion will require the re-application for approval of any outstanding demolition work.

B. *Standards for demolition request review.* The Historic Preservation Commission shall make findings related to a demolition request based upon the evidence presented to it in each specific case and shall not approve a proposed demolition unless demolition action improves or corrects one or more of the following conditions:

1. The property constitutes a hazard to the safety and welfare of the general public or occupants of the property or site as determined, in consultation with the Historic Preservation Specialist, by the City of Las Cruces Building Official, Code Enforcement Officer, Chief of Police, and Fire Chief;

2. The property is a deterrent to a major improvement program that will be substantial benefit to the community for which the applicant has secured all necessary and required planning and zoning approvals, environmental clearances, and project funding;

3. Retention of the property will cause undue economic hardship to the Owner of Record when a governmental action, an act of God, or other events beyond the control of the applicant created the hardship and all feasible alternatives to eliminate the financial hardship (which may include sale of the property at fair market value or relocation of the improvement to another site) have been attempted and exhausted by the applicant; or

4. The retention of the property is not in the best interest of the majority of the community.

C. *Demolition by neglect and deferred maintenance*. Buildings, structures, and objects designated as a Cultural Property or lying within the boundaries of a historic district shall be maintained and protected from demolition that results from neglect or undeterred deterioration of the exterior features or structural elements.

1. *Duty to maintain.* Any building, structure, or object designated as a cultural property or lying within the boundaries of a historic district shall be preserved against material deterioration of exterior features and structural elements by its owner of record.

2. *Duty to repair.* The owner of record for any building, structure, or object designated as a cultural property or lying within the boundaries of a historic district shall, upon written notice from the City Code Enforcement Officer, or other representative on behalf of the City, repair any deficient element that is contributing to material deterioration, including, but not limited to, damage to or decay of:

a. Foundations, flooring, or floor supports that causes leaning, sagging, splitting, listing, or buckling of all or part of the building, structure, or object;

b. Walls or other vertical supports that causes leaning, sagging, splitting, listing, or buckling of all or part of the building, structure, or object;

c. Ceilings, roofs, and their support systems or other horizontal members, that causes leaning, sagging, splitting, listing, or buckling of all or part of the building, structure, or object;

d. Fireplaces or chimneys that causes leaning, sagging, splitting, listing, or buckling of all or part of the building, structure, or object;

e. Exterior finishes, including, but not limited to wood, brick, stone, stucco, mortar or other material;

f. Any design detail, significant feature, or structural element that results in any appreciable loss of architectural, historic, or structural integrity of the building, structure, or object;

g. Any window, window frame, door, or doorway that, individually or collectively, results in any appreciable loss of architectural, historic, or structural integrity of the building, structure, or object;

h. Any feature intended to provide a watertight condition that results in significant moisture infiltration into the building, structure, or object;

i. Any feature or element that results in the creation of a fire hazard or other nuisance to the welfare of the general public; or

j. Any archaeological site or vacant cultural property/property within a historic district shall be adequately secured against unauthorized entry.

D. *Natural destruction or demolition*. In the case of partial or complete destruction or demolition of a cultural property or a building, structure, object, or site within a historic district as a result of an act of God or other natural disaster, the property may be completely demolished without Commission review

provided that the Building Official, Fire Department Chief, and Chief of Police, in consultation with the Historic Preservation Specialist, jointly determine the improvement is structurally unsound and poses an immediate or imminent nuisance and/or hazard to the general health, safety, and welfare of the public.

(Ord. No. 2902, § I(Exh. A), 12-2-19)

Sec. 40-16. Certificate of Economic Hardship.

In any case in which the proposed work of an applicant is not approved following either administrative or Historic Preservation Commission review and the submittal of a written findings of fact, an applicant may apply for a Certificate of Economic Hardship.

A. Procedure to apply for a Certificate of Economic Hardship.

1. *Pre-application meeting*. Prior to submitting a Certificate of Economic Hardship request, an applicant shall meet with the Historic Preservation Specialist or designee to review the basis for economic hardship relief.

2. *Application*. All applications for a Certificate of Economic Hardship shall be submitted on forms provided by the Historic Preservation Specialist. No Certificate of Economic Hardship application shall be accepted for processing unless it is complete and is accompanied by all applicable items required.

3. *Filing*. The application for a Certificate of Economic Hardship shall be filed with the Historic Preservation Specialist. Within ten working days of the filing of an application, the Historic Preservation Specialist shall review the submitted application for a Certificate of Economic Hardship and inform the applicant, in writing, of any deficiencies which must be corrected and/or clarified prior to the scheduling of a public hearing. Failure of the applicant to provide amended information within 30 working days of the notice of deficiencies will result in an automatic withdrawal of the application.

4. *Notice*. Upon receipt of a complete Certificate of Economic Hardship application, the Historic Preservation Specialist shall schedule a public hearing at the next, regularly scheduled meeting of the Commission that is possible in accordance with the stipulated public notice procedure.

5. *Notice of public hearing*. Notice of the public hearing shall be published on the City of Las Cruces webpage and in a newspaper of general circulation within the City not less than 15 calendar days nor more than 30 calendar days in advance of the date of the hearing. The notice shall identify the applicant, property owners of record, legal description of the property, and common address of the property.

6. *Public hearing sign*. The Historic Preservation Specialist shall direct the placement of at least one sign at the public right-of-way adjacent to the property that is the subject of the public hearing at least ten calendar days in advance of the date of the public hearing.

7. *Mailing*. Not less than ten calendar days prior to the public hearing, the Historic Preservation Specialist shall mail a written notice to the owners of record of the subject property and to the owners of record of all properties identified herein for notification within 500 feet. Written notice shall include the date, time, and location of the scheduled public hearing and information regarding access to a digital or written copy of the demolition application.

8. *Public hearing*. The public hearing for the purpose of reviewing a Certificate of Economic Hardship application shall be conducted by the Historic Preservation Commission and a record of

such proceedings shall be preserved in such manner as the Commission shall, by rule, prescribe from time to time.

9. *Withdrawal of application.* An applicant may at any time during the review process withdraw a Certificate of Economic Hardship application by providing notice, in writing, to the Historic Preservation Specialist.

10. *Commission action.* At the public hearing, the Commission shall take statements presented by the owner(s) of record of the subject property as well as statements from any interested parties concerning the issuance of a Certificate of Economic Hardship. At a minimum, the applicant shall be required to submit evidence at the public hearing to support any of the Standards for a Certificate of Economic Hardship Review as identified herein. Evidence presented by the applicant, shall in the applicant's opinion, contribute to the economic hardship alleged to be incurred if the applicant is not granted a Certificate of Economic Hardship. Specific information and documentation which may be presented by the applicant and/or requested by the Commission may include:

    a. The amount paid for the property, the date of the purchase, and the party from whom the property was purchased (including a description of the relationship, if any, between the owner and the entity from whom the property was purchased);

    b. The assessed value of the land and improvements thereon according to the most recent assessments;

    c. Real estate taxes for two years previous to the application for an economic hardship request;

    d. Remaining balance on any mortgage, if any, and annual debt service, if any, for the two years previous to the application for an economic hardship request;

    e. All appraisals obtained within the two years previous to the application for an economic hardship request by the owner of record or the applicant in connection with the purchase, financing, or ownership of the property;

    f. Any listing of the property for sale or rent, price asked and offers received, if any;

    g. Any consideration by the owner of record or the applicant regarding profitable adaptive uses for the property;

    h. If the property is income-producing, the annual gross income from the property for the two years previous to the application for an economic hardship request; itemized operating and maintenance expenses for the previous two years; and annual cash flow before and after debt service, if any, during the same period;

    i. Form of ownership or operation of the property, whether sole proprietorship, for-profit or not-for-profit corporation, limited partnership, joint venture or other; or

    j. Any information including the income tax bracket of the owner of record or the applicant or any other principal investors in the property that is reasonably necessary for a determination as to whether or not the property can be reasonably used or yield a reasonable return on an investment to present or future owners of the property.

    The Commission may invite and consider testimony to evaluate information provided either as part of a Certificate of Economic Hardship application or at the public hearing. A public hearing may be continued to a future date in the event that the Commission determines that additional information, unavailable at the public hearing, is warranted and necessary for the purpose of making a finding of fact.

Furthermore, the Commission may continue a public hearing during a subsequent regularly scheduled meeting to provide time to fully evaluate new evidence presented at the public hearing. Provided that the Commission finds that the hardship was not created with the intent of circumventing this chapter, the Commission, by a simple majority vote, shall grant relief from the rehabilitation standards due to economic hardship only if the Commission finds that:

a. The subject property cannot be put to any reasonably beneficial use;

b. The owner of record or the applicant will suffer substantial economic loss if the application for proposed work that will yield a Certificate of Economic Hardship is not approved;

c. The retention of the resource will cause undue financial hardship to the owner of record or the applicant when a governmental action, an act of God, or other event beyond the owner's control created the hardship, and all feasible alternatives to eliminate the economic hardship, which may include offering the resource for sale at its fair market value or moving the resource to a vacant site within the historic district, have been attempted and exhausted by the owner of record and/or the applicant.

The Commission shall make written findings of fact within 45 calendar days following the close of the public hearing.

Upon the Commission's granting of relief due to economic hardship, the Historic Preservation Specialist shall provide to the applicant a written Certificate of Economic Hardship that describes the rehabilitation relief granted and the basis of the economic relief.

11. *Suspension of work.* During the period beginning with the filing of an application for a Certificate of Economic Hardship and ending with the final action of either the Historic Preservation Commission or the City Council, granting or denying said application, no exterior architectural feature of any improvement, property, or site that is the subject of an application may undergo any alteration or construction, if such work would be subject to a building permit and/or is subject to the issuance of a Certificate of Appropriateness. Nothing in this subsection shall operate to bar ordinary repair and maintenance or any work that is necessary to prevent or correct an imminently dangerous or hazardous condition.

12. *City Council action.* If an application for a Certificate of Economic Hardship is not approved by the Historic Preservation Commission, the Applicant may appeal the decision to the City Council.

If the Commission fails to grant approval of the applicant's request, or if the applicant objects to the Commission's determination, then the applicant may request, in writing, to the Director of Community Development that an appeal of the Commission's decision be made to the City Council.

Within 30 calendar days after such an appeal is made, the City Council shall, by resolution, affirm, reverse or modify the Commission's determination according to the applicable standards set forth in this chapter. A reversal or modification of the Commission's determination shall be approved by a vote of not less than two-thirds of the Councilors holding office.

Within seven calendar days of action by the City Council, the City Clerk shall notify, in writing, the applicant and the Building Official of the City Council's determination.

13. *Revocation of Certificate of Economic Hardship.* If an applicant seeks a building permit for additional work on the same property for which a Certificate of Economic Hardship had been granted at an earlier date, the previously-granted rehabilitation relief may be revoked and approvals for any additional work may include the requirement for completion of rehabilitation work previously deferred due to economic hardship.

B. *Standards for a Certificate of Economic Hardship review*. The Historic Preservation Commission shall make findings related to a Certificate of Economic Hardship request based upon the evidence presented to it in each specific case and shall not approve a Certificate of Economic Hardship unless an applicant can prove one or more of the following conditions:

1. A substantial decrease in the fair market value of the property as a result of the denial of the proposed work;

2. A substantial decrease in financial return to the owners of record or other investors in the property as a result of the denial of the proposed work;

3. A substantial and significant additional cost to complete the proposed construction, alteration, relocation and/or demolition would be incurred to comply with the recommendations of the Commission for changes necessary for the issuance of a Certificate of Appropriateness;

4. The structural instability and a lack of sustainability for rehabilitation of any structure, object, or other improvement on the property; and/or

5. A lack of economically feasible rehabilitation or adaptive use of the existing building, improvement, site, structure, or object.

(Ord. No. 2902, § I(Exh. A), 12-2-19)

ARTICLE IV. ENFORCEMENT AND APPEALS

Sec. 40-17. Enforcement and appeals.

This article provides for the penalties applicable for alterations or demolition of cultural properties or properties within the boundaries of historic districts. Furthermore, this article provides relief through an appeal process.

A. *Penalty for alterations or demolition without a Certificate of Appropriateness.*

1. It is unlawful to construct, reconstruct, structurally alter, remodel, renovate, restore, demolish, or raze any cultural property or property within the boundaries of a historic district in violation of this article. The City, in addition to other remedies, shall institute any appropriate actions, fines, or proceedings to prevent such unlawful violation and to restrain, correct, or abate such violation.

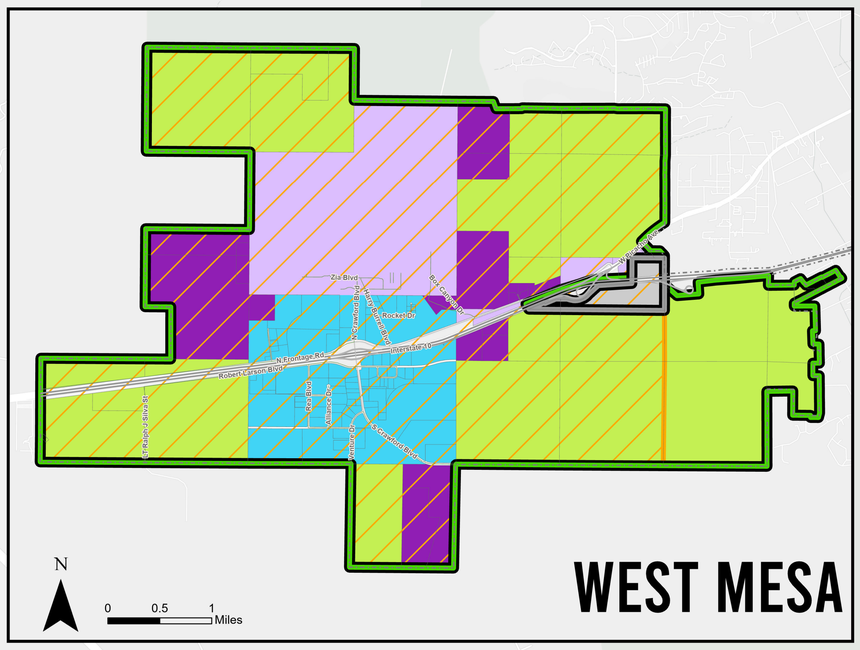
2. In addition to any remedies, a person, corporation, or entity is liable to the City if the person demolishes, or causes to be demolished, or otherwise adversely affects the structural, physical, or visual integrity of a cultural property without first obtaining a permit from the Community Development Department and a Certificate of Appropriateness from the Historic Preservation Commission as required in this article.

B. *Appeals to the Historic Preservation Commission and to City Council.* An applicant may appeal a decision rendered administratively by the Historic Preservation Specialist or designee to the Historic Preservation Commission, or may appeal a decision rendered by the Historic Preservation Commission to the City Council in accordance to the Las Cruces Municipal Code section 40.08(21), section 40.10(21), section 40.14(13), and section 40.15(12).

(Ord. No. 2902, § I(Exh. A), 12-2-19)

EXHIBIT "B"

CITY OF LAS CRUCES
DRAFT ZONING MAP



Zoning Districts
- Neighborhood 1 (NH-1)
- Neighborhood 2 (NH-2)
- Neighborhood 3 (NH-3)
- Commercial Retail (CR)
- Light Industrial (LI)
- Heavy Industrial (HI)
- Open Space 1 (OS-1)
- Open Space 2 (OS-2)
- Planned Unit Development (PUD)
- Holding (H)

Legacy Zoning Districts
- Downtown Development Code (DDC)
- University District Overlay (UDO)
- Las Cruces Innovation and Industrial Park (LCIIP)
- South Mesquite Overlay (SMO)
- Alameda Depot Overlay (ADO-1 to 6)

Characters
- Urban Character (U)
- Rural Character (R)
- No Character Defined

* Everything else is Suburban Character (S)

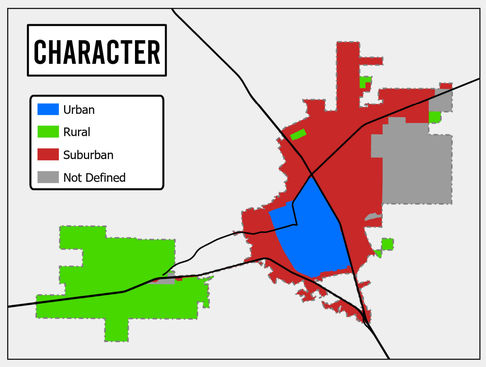
Overlays
- Mixed-Use (MX)
- Town Center (TC)
- Neighborhood Center (NC) * None currently added *
- Airport Overlay District

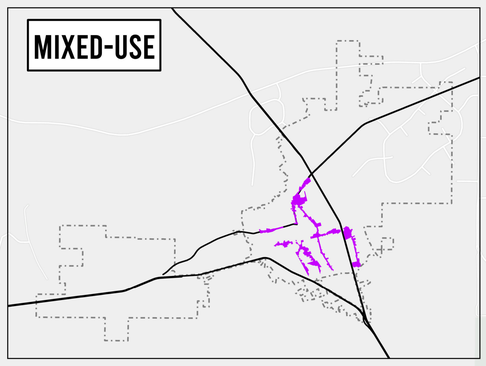
Zoning District Colors are consistent with official colors. The Characters and Overlays colors may be different in order to improve visual clarity within map.

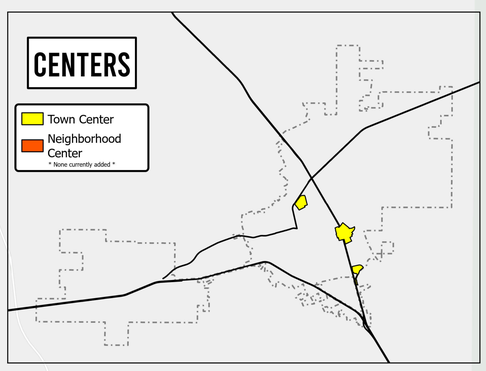
A Town center is planned for this general area. Boundaries are waiting to be established as development continues.

* All Parcels have a Zoning District and Character.
* Overlays are additional zoning traits a parcel may have applied.
* Some parcels have more than one zoning district within it. Zoning districts within a parcel share that parcel's character and any applied overlays.
* Refer to the online map for further information.

https://storymaps.arcgis.com/stories/3e66bc92724e4fa3962e680742e09067







1/21/2025
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