

**CANNABIS REGULATION ORDINANCE
ORDINANCE NO. 2021-10**

**AN ORDINANCE AMENDING THE CITY OF ESPANOLA ZONING AND
DEVELOPMENT CHAPTER 350 AND NUISANCES CHAPTER 254 AND ADULT
ENTERTAINMENT AND USES CHAPTER 128 TO ENACT COMPREHENSIVE
REGULATIONS FOR CANNABIS AND CANNABIS RELATED ACTIVITIES,
INCLUDING CANNABIS ESTABLISHMENTS, OTHER CANNABIS BUSINESSES, AND
PERSONAL AND COMMERCIAL CULTIVATION AND PRODUCTION OF CANNABIS
AND CANNABIS PRODUCTS**

**Chapter 128
Adult Entertainment and Uses**

**Article I
Indecent Behavior**

[Adopted as Ch. 10, Art. III, Div. 1, and Ch. 70, Art. V, Div. 1, of the Code of Ordinances]

§ 128-1 Indecent dancing.

- A. Indecent dancing consists of a person knowingly and intentionally exposing his intimate parts to public view while dancing or performing in a licensed liquor establishment. The term "intimate parts" means the mons pubis, penis, testicles, mons veneris, vulva, female breast or vagina. As used in this section, the term "female breast" means the areola, and the word "exposing" does not include any act in which the intimate part is covered by any nontransparent material.
- B. Whoever commits indecent dancing is guilty of a misdemeanor. A liquor licensee, his transferee or their lessee or agent who allows indecent dancing on the licensed premises is guilty of a petty misdemeanor and his license may be suspended or revoked pursuant to the provisions of law.

§ 128-2 Indecent exposure.

- A. Indecent exposure consists of a person knowingly and intentionally exposing his primary genital area to public view. "Primary genital area" means the mons pubis, penis, testicles, mons veneris, vulva or vagina.
- B. Whoever commits indecent exposure is guilty of a misdemeanor.

§ 128-3 Indecent waitering.

- A. Indecent waitering consists of a person knowingly and intentionally exposing his intimate parts to public view while serving beverage or food in a licensed liquor establishment. The expression "intimate parts" means the mons pubis, penis, testicles, mons veneris, vulva, female breast or vagina. As used in this section, the term "female breast" means the areola, and the word "exposing" does not include any act in which the intimate part is covered by any nontransparent material.
- B. Whoever commits indecent waitering is guilty of a misdemeanor. A liquor licensee or his lessee or agent who allows indecent waitering on the licensed premises is guilty of a petty misdemeanor, and his license may be

suspended or revoked pursuant to the provisions of law.

§ 128-4 Prostitution and related offenses.

- A. Prohibition. It shall be unlawful for any person to commit any of the acts defined or described in this section.
- B. Prostitution. Prostitution consists of knowingly engaging in or offering to engage in sexual intercourse for hire.
- C. Patronizing prostitutes. Patronizing prostitutes consists of:
 - (1) Entering or remaining in a house of prostitution with intent to engage in sexual intercourse with a prostitute; or
 - (2) Knowingly hiring a prostitute to engage in sexual intercourse.
- D. Promoting prostitution. Promoting prostitution consists of any person:
 - (1) Knowingly establishing, owning, maintaining or managing a house of prostitution, or participating in the establishment, ownership, maintenance or management of a house of prostitution;
 - (2) Knowingly permitting any place which a person partially or wholly owned or controlled to be used as a house of prostitution;
 - (3) Knowingly procuring a prostitute for a house of prostitution;
 - (4) Knowingly inducing another to become a prostitute;
 - (5) Knowingly soliciting a patron for a prostitute or for a house of prostitution;
 - (6) Knowingly procuring a prostitute for a patron;
 - (7) Knowingly procuring transportation for, paying for the transportation of, or transporting a person within this state with the intention of promoting that person's engaging in prostitution; or
 - (8) Knowingly being employed by a house of prostitution to perform any function which constitutes promoting prostitution.

§ 128-5 Possession of marijuana.

~~[Amended 12-13-1988 by Ord. No. 436]~~

- A. ~~It shall be unlawful for any person to intentionally possess marijuana unless it was obtained pursuant to a valid prescription or order of a practitioner while acting in the course of his professional practice, or except as otherwise authorized by the Controlled Substances Act, NMSA 1978 § 30-31-1 et seq.~~
- B. ~~Any person convicted of violating Subsection A of this section shall pay a fee of \$75 to defray the costs of chemical or other analyses. This fee shall be in addition to other penalties for violations which may be provided by law. All funds collected pursuant to this subsection shall be transmitted to the administrative office of the courts pursuant to NMSA 1978 § 31-12-9.~~

§ 128-65 Fortunetelling.

It shall be unlawful to practice or engage in fortunetelling, palmistry, reading futures and the like.

Chapter 254: Nuisances

§ 254-1. 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:

NUISANCE — Any person doing an unlawful act, or omitting to perform a duty, or suffering or permitting any condition or thing to be or exist, which act, omission, condition or thing either:

- A. Injures or endangers the comfort, repose, health or safety of others;
- B. Offends decency;
- C. Is offensive to the senses;
- D. Unlawfully interferes with, obstructs or tends to obstruct or renders dangerous for passage any public or private street, highway, sidewalk, stream, ditch or drainage;
- E. In any way renders other persons insecure in life or the use of property; or
- F. Essentially interferes with the comfortable enjoyment of life and property, or tends to depreciate the value of the property of others.

§ 254-2. Nuisances Enumerated

The maintaining, using, placing, depositing, leaving or permitting to be or remain on any public or private property of any of the following items, conditions or actions are hereby declared to be and constitute a nuisance; provided, however, that this enumeration shall not be deemed or construed to be conclusive, limiting or restrictive:

- A. Any owner or occupant planting or allowing to grow weeds, state and federally recognized invasive plant species and noxious vegetable growth on the owner's or occupant's lot or parcel of ground, or on the sidewalks and lawn-strips or land areas abutting such lot or parcel of ground. **[This shall not include any activity affiliated with the cultivating of agricultural goods or the raising of livestock as defined in Chapter 350, Article VI]**
- B. Accumulation of rubbish, trash, refuse, litter, junk and other abandoned materials, metals, lumber or other things.
- C. Any condition which provides harborage for rats, mice, snakes and other vermin.
- D. Any building or other structure which is in such a dilapidated condition that it is unfit for human habitation, or kept in such an unsanitary condition that it is a menace to the health of people residing in the vicinity thereof, or presents a more than ordinarily dangerous fire hazard in the vicinity where it is located; any condition that is attractive and dangerous to children, such as a vacant accessible building, excavation, dilapidated wall and fences and barbed wire fences along public ways, wood piles and debris on vacant lots which may constitute a hazard to the health and welfare of children who may not be able to recognize those dangers.
- E. The infestation of trees or shrubbery by the cocoon (bags) of all members of the genus Thyridopteryx (bagworms) and the webs (nests) of all members of the genus Malacosoma of the family Lasiocampidae (tent caterpillars) and of all members of the genus Hyphantria of the family Arctiidae (webworms) and all members of the genus Pyrrhalta Luteola (leaf beetles).

- F. All unnecessary or unauthorized noises and annoying vibrations, including animal noises **[excepting those affiliated with agricultural uses under Chapter 350, Article VI].**
- G. All disagreeable or obnoxious odors and stenches, as well as the conditions, substances or other causes which give rise to the emission or generation of such odors and stenches **[including those affiliated with agricultural uses as described in Chapter 350, Article VI.]**
- H. The carcasses of animals or fowl not disposed of within a reasonable time after death.
- I. The pollution of any public well or cistern, stream, lake, canal or body of water by sewage, dead animals, creamery, industrial wastes or other substances.
- J. Any building, structure or other place or location where any activity which is in violation of local, state or federal law is conducted, performed or maintained.
- K. Any accumulation of stagnant water permitted or maintained on any lot or piece of ground.
- L. ~~The keeping of honey bees and hives and the~~ **[harboring or]** keeping of hornets **[wasps or yellow jackets, but not the keeping of honeybees affiliated with agricultural uses under Chapter 350, Article VI].**
- M. Dense smoke, noxious fumes, gas, soot or cinders, in unreasonable quantities.
[The intentional application or unintentional drifting of pesticides, herbicides, other biocides, fertilizers, or other harmful or hazardous chemicals onto neighboring property.]

§ 254-3. Causing, Permitting or Maintaining Nuisances

Causing, permitting or maintaining nuisances prohibited.

It shall be unlawful for any person to cause, permit, maintain or allow the creation or maintenance of a nuisance.

§ 254-4. Notice to abate.

Whenever a nuisance is found to exist within the City or within the City's extraterritorial jurisdiction, the City Manager or some other duly designated officer of the City shall give 10 days' written notice to the owner, his agent, or occupant of the property upon which such nuisance exists or upon the person causing or maintaining the nuisance.

- A. Contents of notice. The notice to abate a nuisance issued under the provisions of this chapter shall contain:
 - (1) An order to abate the nuisance or to request a hearing within a stated time, which shall be reasonable under the circumstances.
 - (2) The location of the nuisance, if the nuisance is stationary.
 - (3) A description of what constitutes the nuisance.
 - (4) A statement of acts necessary to abate the nuisance.
 - (5) A statement that if the nuisance is not abated as directed and no request for a hearing is made within the prescribed time, the City will abate such nuisance and assess the cost of such abatement against such person.
 - (6) Any person receiving notice of an order to abate a nuisance may request a hearing before the Municipal Court on such matter within three days from the date of filing of the notice. Any notice of abatement served by the City shall advise the person allegedly committing the nuisance of his right to request a hearing before the Municipal Court.
- B. Service. The notice to abate a nuisance shall be served as any other legal process may be served pursuant to

law.

§ 254-5. Abatement by City.

Upon the failure of the person upon whom notice to abate a nuisance was served pursuant to the provisions of this chapter to abate the nuisance, the designated officer of the City shall proceed to abate such nuisance and shall prepare a statement of costs incurred in the abatement of such nuisance.

§ 254-6. City's costs declared lien.

Any and all costs incurred by the City in the abatement of a nuisance under the provisions of this chapter shall constitute a lien against the property upon which such nuisance existed, which lien shall be filed, proven and collected as provided for by law. Such lien shall be notice to all persons from the time of its recording, and shall bear interest at the legal rate thereafter until satisfied.

§ 254-7. Alternative method of abatement.

- A. Except as provided in this section, an action for the abatement of a public nuisance shall be governed by the general rules of civil procedure.
- B. A civil action to abate a public nuisance may be brought, by verified complaint in the name of the City, without cost, by any public officer or private citizen, in the Municipal Court against any person who shall create, perform or maintain a public nuisance.
- C. When judgment is against the defendant in an action to abate a public nuisance, he shall be adjudged to pay all court costs and a reasonable fee for the complainant's attorney, when the suit is not prosecuted exclusively by the City Attorney.

ZONNING AND DEVELOPEMNT

ARTICLE I

General Provisions; Definitions

§ 101. Title.

This chapter shall be known as the "City of Española Development Code." Additionally, this chapter may be referred to from time to time as the "Zoning Ordinance" or "Zoning Code of the City of Española."

§ 102. Authority.

This chapter is adopted pursuant to the authority contained in NMSA 1978, Chapter 3, Municipalities, and the Charter of the incorporated City of Española.

§ 103. Jurisdiction.

- A. This chapter shall be effective and apply to all public and private lands and uses within the municipal boundaries and the planning and platting jurisdiction of the City of Española, except as provided in this section and § 1203.
- B. However, the City of Española shall be exempt from compliance with this chapter in its construction, improvement, development or government use of public improvements or land.
- C. This chapter shall apply, to the maximum extent permitted by law, to all public lands owned or controlled by other governmental or sovereign entities within the municipal boundaries.

§ 104. Purpose and scope.

The purpose and scope of this chapter is to provide development regulations consistent with the Comprehensive Plan in order to:

- A. Promote the health, safety and welfare of the City of Española;
- B. Facilitate orderly growth and development of the City of Española consistent with the goals, concepts, strategies and policies of the Comprehensive Plan and amendments thereto;
- C. Lessen congestion in the streets and public ways; secure safety from fire, floodwaters, panic and other dangers; promote health and the general welfare, provide adequate light and air, and prevent the overcrowding of lands; avoid undue concentration of population; facilitate adequate provision for transportation, water, sewage, schools, parks and other public requirements; and control and abate the unsightly use of buildings or land pursuant to NMSA 1978 § 3-21-5.
- D. Give consideration to the character of districts, conserve the value of buildings and land, and encourage the most appropriate use of land throughout the City of Española pursuant to NMSA 1978 § 3-21-5B;
- E. Establish land use districts and provide for the appropriate regulation of land use within those districts;
- F. Divide the City of Española into zoning districts according to the use of land and structures

and the intensity of such use;

Guide the location and use of structures and land for commercial, industrial, public and residential uses where they are, or can be made to be, compatible with neighboring land uses;

- G. Provide for harmonious development in the City of Española;
- H. Provide for coordination of street and infrastructure development;
- I. Provide for safety in the community;
- J. Preserve the natural beauty, vegetation and topography, and prevent the pollution of air, water and the general environment;
- K. Ensure adequate drainage and availability of utility resources and facilities;
- L. Provide flexible regulations which encourage compatible, creative and efficient uses of land;
- M. Provide for the administration and enforcement of this chapter; and
- N. Provide guidance to applicants and property owners working with the provisions and procedures of this chapter.

§ 105. Comprehensive Plan.

The scope and authority of the Comprehensive Plan shall be as follows:

- A. A Comprehensive Plan for the physical development of the City of Española shall be prepared by the Planning Commission with the assistance of such staff and other professionals as are necessary; the plan shall then be recommended for approval to the City Council.
- B. The Comprehensive Plan, with the accompanying maps, plats, charts and descriptive and explanatory matter, shall show the physical development of the City of Española, and may include, among other things:
 - (1) The general location, character and extent of streets, bridges, viaducts, parks, parkways, playgrounds, airports and other ways, grounds, places and spaces.
 - (2) The general location of public schools, public buildings and other public property.
 - (3) The general location and extent of public utilities and terminals, whether publicly or privately owned, for water, light, power, heat, sanitation, transportation, communication and other purposes.
 - (4) The acceptance, widening, removal, extension, relocation, narrowing, vacation, abandonment or change of use of any of the public ways, grounds, places, spaces, buildings, properties, utilities or terminals.
 - (5) The general location, character, layout and extent of community centers and neighborhood units and the general character, extent and layout of the replanning of blighted districts and slum areas.
- C. Any areas outside the boundaries of the City of Española and within its planning and platting jurisdiction, which, in the Planning Commission's judgment, bear relation to City of Española planning, shall be included in the plan.

§ 106. Applicability of provisions.

- A. In interpretation and application, the provisions of this chapter shall be held to be minimum

requirements. Nothing in this chapter is intended to impair, annul or abrogate any easement, covenants or other agreement between parties, public or private. However, when the requirements of this chapter are at variance with the requirements of any lawfully adopted rules, regulations or ordinances, the most restrictive or those imposing the higher standard shall govern.

B. The following general regulations apply:

- (1) Uses. No land, building, structure or premises shall be used for any purpose or in any manner other than for a use permitted in the zoning district in which such land, building, structure or premises are located.
- (2) Setbacks. No designated setbacks surrounding any building or structure shall be encroached upon or reduced in any manner except in conformity with the building site requirements, nor shall any setbacks associated with any building or structure for the purpose of complying with the requirements be considered as providing setbacks for any other building or structure.
- (3) Renovations. No building or structure shall be erected or moved onto a site and no existing building or structure shall be altered, enlarged, or reconstructed except in conformity with this chapter.
- (4) Height and density. No building shall hereafter be erected or altered so as to exceed the height limit, or to exceed the density regulations for the district in which it is located.
- (5) Lot size. No lot, even though it may consist of one or more adjacent lots of record, shall be reduced in size so that the lot width or depth, front, side or rear yards, lot area per dwelling or other requirements of this chapter are not maintained.
- (6) One structure per lot. Only one principal building and its customary accessory building may hereafter be erected on any lot, except as authorized in the RM Multifamily District and PUDs as approved by the Planning Commission.
- (7) Street frontage. No building shall be erected on any lot that does not abut at least 25 feet on a publicly dedicated street.

§ 107. Construction approved prior to adoption; existing nonconforming uses and structures.

Nothing contained in this chapter shall require any change in any existing building or structure, construction or planned use of a proposed building which would conform to a completed application for a site plan, special use permit, variance or subdivision meeting the requirements of this chapter which were in effect at the time the complete application was filed and/or for which building permit plans are on file and have been approved by the of the City of Española prior to the effective date of this chapter, and the construction of which building or structure shall have been started within the time requirements of such building permit and diligently worked upon to its completion. Nothing in this section shall be construed to make an illegal nonconforming use or structure into a legal nonconforming use or structure.

§ 108. Definitions; rules of construction.

A. Rules of construction. The following rules apply to definitions listed in this chapter:

- (1) Usage. Any numbers, abbreviations, terms or words defined in this section shall be used

and interpreted only as defined herein. All other numbers, abbreviations, terms and words shall have their generally accepted meanings.

- (2) Word forms. Unless the context clearly indicates to the contrary, words used in the present tense include the future tense and words used in the future tense include the present tense; words used in the plural number include the singular and words used in the singular include the plural.
 - (3) Interpretation of specific terms. The words "shall" and "will" are mandatory. The word "may" is permissive. The word "structure" includes a "building"; the word "building" or "structure" includes any part thereof. The word "person" includes an individual, a partnership, a corporation, an incorporated association of persons such as a club, and any other legal entity.
 - (4) Definitions listed in the New Mexico Building Code. Words not defined in this chapter but which are defined in the New Mexico Building Code as adopted by the City of Española are to be construed as defined therein.
 - (5) This chapter shall be construed as gender-neutral. All words, terms or phrases expressing the masculine identity shall be deemed to include the feminine.
- B. Definitions. The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

ABANDONED STRUCTURE — A structure that has not been used for a period of three consecutive months which the City has duly determined to be a public health, safety or welfare concern.

ABUT — Next to, touching; to share a common property line.

ACCESS and ACCESSWAY — The means of ingress to or egress from a property.

ACCESSORY APARTMENT — Separate living quarters on the same lot as, and used in conjunction with, a main dwelling.

ACCESSORY STRUCTURE — A structure, the use of which is incidental to the use of the main building on a lot. A building attached by an interior (as opposed to yard) wall or roof to the main building is not an accessory building, but is a part of the main building.

ACCESSORY USE — A use incidental and subordinate to the permitted or special use of the premises.

ADJACENT — Next to; sharing a common boundary. In establishing adjacency, public rights-of-way are not considered. For example, an industrial district across the street from a residential district is adjacent to that district.

AGENT — Any person representing himself or herself to the City to be a legally authorized designee of an owner or applicant. Also see "owner." The City assumes no responsibility for ascertaining the property rights and interests of applicants asserting that they are agents and will rely upon the representations made in signed applications and documents.

AGGRIEVED PARTY — Any person who:

- (1) Is required to be served with notice by mail under this chapter; or
- (2) Has an immediate, pecuniary and substantial interest, with respect to any final action taken pursuant to this chapter.

AGRICULTURAL GOODS — Minimally processed fruits, vegetables, nuts, grains, seeds, forage, and honey. Value-added or processed agricultural goods require additional licensing and permits from the New Mexico Environmental Department and New Mexico Department of Agriculture. Cannabis is considered an agricultural good and its production, processing, or sale requires permits from the New Mexico Regulation and Licensing Department.

AGRICULTURE — The production, keeping, or harvesting of plants and animals useful to human, including but not limited to: forages and sod crops; grains and seed crops; dairy animals and dairy products; poultry; livestock, including cattle, sheep, swine, horses, ponies, mules, llamas, alpacas, or goats, or any hybrids thereof; bees and apiary products; fur animals; trees and forest products; fruits, including grapes, nuts and berries; vegetables; cannabis and hemp; nursery, floral, ornamental and greenhouse products.

ALLEY — A public way which is a secondary means of vehicular access to abutting properties.

ANNEXATION — A legal process by which some property located in an unincorporated area of the County may become part of Española. The property must be “contiguous to” (next to and touching) the existing city boundary lines to qualify for annexation. *[Added 08-14-2018 by Ord. No. 2018-03]*

APARTMENT HOUSE — A multiple-family dwelling structure.

APPLICANT — Any person or his or her legally authorized agent making application to initiate any action provided in this chapter.

APPLICATION — A formal request made by an applicant to initiate any action as provided in this chapter.

AUTOMOBILE SERVICE STATION — A retail business engaged solely or primarily in the sale of motor fuels, goods or services generally required in the operation and maintenance of motor vehicles and in the fulfilling of a motorist's needs. Major automobile repair activities such as body painting, body and fender repair, major mechanical repair, tire recapping, or the rental of equipment and the sale or rental of other merchandise are not uses included in the uses of a service station.

BALCONY — An open platform projected from a wall of a building or structure above the first floor level, and totally unsupported by any additional means by or to the ground.

BANNER — Any sign of lightweight fabric or similar material that is temporarily or permanently mounted to a pole, structure or a building. National flags, state or municipal flags shall not be considered banners.

BAR — See "cocktail lounge or bar."

BASELINE DATA — Information on the current usage of a public facility compared with its capacity, including, but not limited to, streets, sewers, water lines, drainage-ways, etc.

BED-AND-BREAKFAST — An owner-occupied dwelling unit that contains no more than five guest rooms where lodging is provided for compensation, with or without meals.

BENCHMARK — A mark on a permanent monument indicating elevation and serving as a reference in topographical surveys.

BLOCK — A unit of land bounded by streets or by a combination of streets and public land or any other barrier to the continuity of development.

BOND — Any form of security, including a cash deposit, surety bond, collateral, property or instrument of credit in an amount and form satisfactory to the City Attorney and the City Council. All bonds shall be reviewed by the City Engineer wherever a bond is required by this chapter.

BOUNDARY MONUMENT — A permanent object indicating a corner in the boundary of a lot.

BREEZEWAY — A roofed, open-sided passageway which provides direct access between buildings.

BUFFER AREA — A strip of land designed to separate portions of a subdivision or development from adjacent arterial or collector streets or from uses located on adjacent properties.

BUILDING — Any structure built and maintained for the support, shelter or enclosure of persons, animals, chattels or property of any kind.

BUILDING, MAIN — A building within which is conducted one or more permitted or special uses. There may be more than one main building on a lot depending on the district designation.

BUSINESS PARK — A building or assembly of buildings on a single lot adaptable to a combination of office, light storage, distribution, and showroom uses, where a minimum of 25% of the floor area is used for office space and where common parking and access are provided.

CALIPER — The diameter of the main stem of a tree or shrub. It is measured eight inches above the ground.

CAMPGROUND — An open area where temporary overnight residency is available for tent, trailer, truck campers and/or recreational vehicles.

CANNABIS MANUFACTURER — means a person that:

- (1) manufactures cannabis products;
- (2) packages cannabis products;

- (3) has cannabis products tested by a cannabis testing laboratory; or
- (4) purchases, acquires, sells or transports wholesale cannabis products to other cannabis establishments;

CANNABIS MANUFACTURE— means to compound, blend, extract, infuse, package, or otherwise prepare a cannabis product

CANNABIS PRODUCER — means a person that:

- (1) grows, cultivates and harvests cannabis plants;
- (2) has unprocessed cannabis products tested by a cannabis testing laboratory
- (3) transports unprocessed cannabis products only to other cannabis establishments;
or
- (4) sells cannabis products wholesale;

CANNABIS RETAILER — means a person that sells cannabis products to qualified patients, primary caregivers or reciprocal participants or directly to consumers;

CARPORT — A permanent roofed structure with not more than two enclosed sides used for automobile storage.

CAR WASH —

- (1) **AUTOMATIC CAR WASH** — Facilities for washing automobiles using production-line methods with a chain conveyer, blower, steam-cleaning device or other mechanical devices.
- (2) **SELF-SERVICE CAR WASH** — Facilities for washing automobiles wherein the customer parks the vehicle in a bay and washes the vehicle using equipment provided.

CHILD-CARE CENTER — A home or business which provides care, service and supervision for children for fewer than 24 hours per day and which is regulated by the State of New Mexico.

CHURCH — A permanent building used primarily for religious worship, fully enclosed with walls, including windows and doors, and having a permanent roof.

CITY ATTORNEY — The City Attorney for the City of Española or their designee.

CITY CLERK — The City Clerk for the City of Española or their designee.

CITY COUNCIL — The governing body of the City of Española.

CITY ENGINEER — The engineer or engineering firm as may be hired or serving under contract for the City of Española.

CITY MANAGER — The City Manager for the City of Española or his designee.

CITY OF ESPAÑOLA — The incorporated City of Española, New Mexico.

CLUB, PRIVATE — An association of persons, whether or not incorporated, for social or recreational purposes and for purposes and activities generally not for personal gain and not elsewhere defined as a commercial or professional purpose or activity; it does not mean a business for profit.

COCKTAIL LOUNGE OR BAR — Premises where alcoholic beverages are sold to the public for consumption on the premises.

COMMERCIAL — For the purpose of purchase, sale or other financial transaction of any article, substance, commodity or service by for-profit and not-for-profit entities.

COMMERCIAL CANNABIS ACTIVITY —

- (1) means the cultivation, production, possession, manufacture, storage, testing, researching, labeling, transportation, couriering, purchase for resale, sale or consignment of cannabis products. This activity requires licensing by the State of New Mexico, following zoning approval by the City of Española; and**
- (2) does not include activities related only to the medical cannabis program, to cannabis training and education programs or to the personal cultivation or use of cannabis.**

COMMERCIAL CENTER — A building or assembly of buildings that may contain retail, offices, restaurants, lodging, theaters, automobile services, or other uses permitted by the zoning district, and that provides common parking and access.

COMMERCIAL DISTRICT — Any zoning district where the primary use is commercial; these include: B-1, Local Commercial District; B-2, General Commercial District; B-3, Central Business District; and TC, Tourist Commercial District. *[Added 08-14-2018 by Ord. No. 2018-03]*

COMMERCIAL SITE PLAN REVIEW — A review process in front of the Planning Commission required for all new commercial developments. *[Added 08-14-2018 by Ord. No. 2018-03]*

COMPLEX — A combination of two or more uses located on the same lot and sharing common facilities. Included in this definition are multiple- building complexes.

COMPREHENSIVE PLAN — The plan adopted by the City of Española to guide overall growth and development, and includes amendments to that plan, including area master plans and district plan

CONCEPT SITE PLAN — A site plan that depicts only a general design, intended for review by City of Española staff or the Development Review Team.

CONDOMINIUM — An estate in real property consisting of an individual interest in common in a parcel of real property, together with separate ownership of space within such real property. A condominium is not a cooperative.

CONSOLIDATION PLAT — A plat combining two recorded lots into one lot.

CONSTRUCTION PLANS — The maps or drawings submitted prior to a final subdivision plat showing the specific location and design of improvements to be installed in a subdivision, including, but not limited to, streets, sidewalks, utilities and drainage facilities.

CONVALESCENT HOME — A public or private facility which provides bed and ambulatory care, not at the level of a hospital, for patients and for persons who are unable to care for themselves; it does not mean a facility which provides care or treatment of alcoholics, drug addicts or persons with mental diseases or afflictions.

COOPERATIVE — A development that is collectively owned by members and operated for their mutual benefit. Each member is an owner and has an individual interest in the entire development. Each member in a residential cooperative has a lease for his own apartment, space or site but does not own the apartment, space or site. A cooperative is not a condominium.

CORRECTION PLAT — The plat filed for the correction of an error, other than a lot line adjustment, for an approved and recorded plat.

COURT and COURTYARD — An open space unoccupied by structures on the same lot with a main building, and bounded on two or more sides by such building or exterior walls or fences.

CROSSWALK — That portion of a pedestrian walkway which crosses a street.

CUL-DE-SAC — A street with one end open for vehicular and pedestrian access and the other end terminating in a vehicular turnaround.

DAYCARE CENTER/FACILITY — A home or business which provides care, service and supervision for at least five but no more than 12 children for fewer than 24 hours per day and regulated by the State of New Mexico.

DAYCARE HOME — A residence which provides care, services and supervision for not more than four children at one time, who do not normally reside in the home, for fewer than 24 hours per day and regulated by the State of New Mexico.

DAYS — Calendar days, whenever used as a means of calculating a time limit or constraint, except as otherwise expressly stated.

DEBRIS — The remains of past construction, hobbies and other activities which have not been removed for over a year.

DECISION-MAKING AUTHORITY — The Planning Director, the Planning Commission, or the City Council, as appropriate, which has been given the authority to take final actions (though subject to appeal) regarding an application under this Development Code.

DEDICATED LAND — Land transferred to the City of Española, in fee- simple ownership, and

expressly accepted by the City for public use.

DENSITY — The total number of dwelling units permitted on a given area of land. Density is usually expressed in dwelling units per acre.

DEVELOPER — The legal or beneficial owners of a lot or parcel of any land proposed for inclusion in a development, including an agent and/ or the holder of an option or contract to purchase.

DEVELOPMENT — The construction, reconstruction, conversion, structural alteration, relocation or enlargement of any buildings, any use or change in use of any buildings or land, any extension of any use of land or any clearing, grading or movement of land, for which permission is required pursuant to this chapter.

DEVELOPMENT CODE — The City of Española Official Development Code, which is adopted by ordinance, and may be amended from time to time.

DEVELOPMENT REVIEW TEAM (DRT) — The purpose of the DRT is to review development applications and to advise the Planning Commission, other boards and commissions and the City Council. The Development Review Team shall consist of the Planning Director (who shall act as Chairman), Water Operations Supervisor, Wastewater Collections Supervisor, Public Works Director, Community Services Director, City Engineer, Police Chief, Fire Chief and any other department head who could or may have issues with the proposed development. *[Amended 08-14-2018 by Ord. No. 2018-03]*

DISTRICT PLAN — A plan developed for a specific zoning or overlay district within the City of Española.

DORMITORY — A building used principally for sleeping accommodations, related to an educational or research institution.

DRAINAGE —

- (1) Surface water runoff;
- (2) The removal of surface water or groundwater from land by drains, grading or other means, which include runoff controls to minimize erosion, flooding and sedimentation during and after construction or development.

DRAINAGE SYSTEM — Natural swales and/or man-made improvements designed to accommodate drainage on a parcel.

DRIVE-IN OR DRIVE-THROUGH FACILITY — That portion of a commercial establishment which is designed and operated for the purpose of serving a motorist in a vehicle.

DRIVEWAY — A vehicular access way to off-street parking. DUPLEX — See "two-family dwelling."

DWELLING — A building containing one or more dwelling units, including the following:

- (1) GROUP DWELLING — A combination or arrangement of dwellings on one lot.
- (2) MULTIPLE-FAMILY DWELLING — A building containing three or more dwelling units on one lot.
- (3) SINGLE-FAMILY DWELLING — A building containing only one dwelling unit; it does not mean manufactured housing.
- (4) SINGLE-FAMILY ATTACHED DWELLING — A building containing only one dwelling unit and joined on one or more sides by a common wall without openings to another or other single-family dwellings on separate lots.
- (5) SINGLE-FAMILY DETACHED DWELLING — A building containing only one dwelling unit, set back from other structures.
- (6) TWO-FAMILY DWELLING — A building containing two dwelling units on one lot.

DWELLING UNIT — One or more rooms used as a residence by one family and constituting a separate and independent housekeeping unit, with a single kitchen. It does not mean quarters for transients in a club, hotel or motel.

EASEMENT — A real property interest in land for a specific purpose, granted by the owner of the property to another person or entity.

EQUESTRIAN TRAIL — A trail or pathway intended for use by persons on horseback, or pedestrians.

ESCROW — A sum of money deposited to ensure completion of subdivision improvements to City of Española standards.

ESCROW AGREEMENT — A signed contract between a developer and the City of Española that ensures completion of subdivision improvements in compliance with the standards of this chapter.

FACILITY FOR RELIGIOUS WORSHIP – A permanent building used primarily for religious worship, fully enclosed with walls, including windows and doors, and having a permanent roof.

FAMILY — An individual living alone; two or more persons related by blood or marriage, or between whom there is a legally recognized relationship, occupying the same dwelling unit; or a group of not more than five unrelated persons occupying the same dwelling unit.

FENCE — Any structural device forming a physical barrier between two properties. It may be made of wire mesh, steel mesh, chain link, louver, stake, masonry, lumber or other similar materials or any combination thereof.

FENCE HEIGHT — The vertical distance measured from the approved grade (ground) level to the highest adjacent board, rail, post, or wire, including retaining walls.

FINDINGS — A written statement of the reasons supporting a decision made by any reviewing

body in the land development review process.

FLAG — Any fabric, banner or bunting containing distinctive colors, patterns or symbols, used as a symbol of a government, political subdivision or otherwise excluded from the definition of a banner.

FLOOR AREA —

- (1) The area of all floors, including a basement, in a building, exclusive of exterior courts, garages and carports, but including enclosed porches. All horizontal measurements are taken from the exterior faces of walls.
- (2) GROSS FLOOR AREA — The sum of the total horizontal areas of all the floors of all structures on a lot, measured from the outside faces of exterior walls. Basements, elevator shafts, hallways and stairwells at each story, floor space used for mechanical equipment with structural headroom of six feet, six inches or more, penthouses, attic space whether or not a floor has actually been laid that provides structural headroom of six feet, six inches or more, interior balconies, and mezzanines are all included.

FRONT — That side of a building or property serving as the principal entrance.

FRONTAGE — That side of a lot abutting a public right-of-way and determined, by the Planning Director, to be the front of the lot.

GARAGE — A portion of a main building or a detached accessory building having a roof and enclosed by walls on not less than three sides used for the housing of vehicles.

GATE — An opening in a wall or fence that permits ingress and egress.

GRADE — The average elevation of the finished ground surfaces surrounding a building as measured from front to back and side to side for the entire lot. The term "grade" is expressed as the slope in percentage terms. *[Amended 08-14-2018 by Ord. No. 2018-03]*

GRADING PLAN — The plan that describes both existing contours and the finished grade for the site upon completion of all construction operations.

~~GREENHOUSE — A structure constructed chiefly of glass, plastic or translucent material, which is devoted to the cultivation of flowers or other tender plants.~~

means a completely enclosed structure whose structural members are made of preformed, rigid construction materials or a completely enclosed structure that protects horticultural products from all external elements where the growth environment is closely controlled. Greenhouse also means an accessory structure, with transparent or translucent roof and/or wall panels intended for the raising of plants or crops.

GROSS SITE AREA — The area of a horizontal plane within the property lines of a lot before the area of public streets, easements or other land to be designated for public use is deducted.

GROUND COVER — Any landscaping material other than permanent hard surfaces (i.e.,

sidewalks, driveways, structures) which covers the natural earth. The definition includes living matter (plants) and nonliving materials (rock outcroppings).

GROUP HOME — Any congregate residence, maternity shelter, or building which provides room and board to the residents within the facility and provides, either directly or through contract services, at least one of the following: programmatic services, assistance with the activities of daily living in accordance with the program directive, or general supervision of up to eight individuals who have difficulty living independently or managing their own affairs, or who are handicapped within the meaning of 42 U.S.C. § 3602(h)(1) of the Fair Housing Amendments Act (1988). "Group home" does not include facilities for persons currently in custody of or recently released by correctional authorities that are designed to offer an alternative to imprisonment and/or to facilitate ex-offender reintegration into community life, nor does it include facilities for persons who require such services by reason of the effects of current alcohol or drug abuse. "Group home" includes facilities for recovering alcohol or drug abusers who require group home services.

GUEST — A social visitor or any person hiring or occupying a room for living or sleeping purposes.

GUESTHOUSE — A dwelling unit within an accessory building for use by guests of the occupant of the main building; it does not mean a dwelling that is rented or otherwise used as a separate main building.

GUEST ROOM — A room, having no kitchen facilities, for occupation by one or more guests.

HEDGE — A plant or series of plants or other landscape material so arranged as to form a physical barrier or enclosure.

HEIGHT OF STRUCTURE — The vertical distance between the highest point of any part of the structure and the natural grade or finish cut grade directly below that point, whichever is greater. If a structure is placed on fill, the depth of the fill is included in the height of the structure. If the natural grade is lowered in a cut, the depth of the cut is included in the height of the structure.

HOME BUSINESS — A home occupation that employs more than one nonfamily member.

HOME OCCUPATION — A business, profession or service which is conducted and/or operated in a residential zoning district and is clearly incidental and secondary to the dwelling purpose and does not change the character thereof.

HOMEGROWN OR HOMEMADE CANNABIS — means grown or made for purposes that are not dependent or conditioned upon the provision or receipt of financial consideration

HOSPITAL — An acute care, short-term general hospital.

HOTEL or MOTEL — A building or group of buildings operated as one enterprise, containing rooms or suites of rooms (with or without a kitchen) to be occupied by transient or permanent tenants.

HOUSING — Residences of any kind as further described in this chapter.

IMPACT REPORTS — Studies conducted to identify the potential adverse effects of proposed development on public infrastructure and land as well as adjoining private properties. Impact reports may include, but are not limited to, traffic generation reports; stormwater drainage reports; utility capacity analysis reports; and soils reports.

IMPROVEMENT — An addition made on property and intended to enhance its value, utility or beauty, or to adapt it to new or further uses.

INDUSTRIAL DISTRICT — Any zoning district where the primary use is industrial; these include: L-I, Light Industrial District; and H-I, Heavy Industrial District. *[Added 08-14-2018 by Ord. No. 2018-03]*

INDUSTRIAL USE — The manufacture, fabrication, processing, reduction or destruction of any article, substance or commodity, or any other treatment thereof, in such a manner as to change the form, character or appearance thereof, and including storage, warehousing and wholesaling.

INOPERABLE VEHICLE

- (1) Any motor vehicle or vital component parts thereof which are either:
 - (a) Unusable or inoperable because of lack of or defects in vital component parts;
 - (b) Unusable or inoperable because of damage from collision, deterioration, alteration or other factors;
 - (c) Beyond repair; or
 - (d) Without a current vehicle registration.
- (2) For the purposes of this definition, the term "vital component parts" shall mean those parts of a motor vehicle that are essential to the mechanical functioning of the vehicle, including, but not limited to, the motor, drive train and wheels.

INTENSIVE AGRICULTURE —

Land use activities combining agricultural and industrial uses, where the agriculture is conducted in large-scale greenhouses and requires high volumes of pesticides, fertilizers, or both.

JUNK — Used machinery, electronic/electrical components, scrap iron, steel or other ferrous and nonferrous metals, tools, implements or portions thereof, glass, plastic, cordage, building materials, or other waste that has been discontinued from its original use and may be used again in its present form or in a new form.

JUNKYARD and SALVAGE YARD — An open area where junk, including dismantled or wrecked automobiles, is bought, sold, exchanged, stored, baled, packed, disassembled or handled. A junkyard includes an automobile wrecking yard.

LANDSCAPE PLAN — A plan that graphically illustrates the areas to be landscaped, types of landscaping materials, irrigation, the final design of all landscaping areas, and may include a long-term maintenance program. *[Amended 08-14-2018 by Ord. No. 2018-03]*

LANDSCAPING — The planting and maintenance of various forms of vegetation and/or the use of architectural materials to aesthetically enhance and complement structures and the sites on which they are located.

LEGAL HOLIDAY — A holiday granted to regular employees of the City of Española pursuant to personnel rules and regulations.

LOT — A parcel of land, also known as a plot, the legal description of which is duly recorded with the County Clerk and which includes:

- (1) LOT AREA — The area of a horizontal plane bounded by the property lines of a lot.
- (2) CORNER LOT — A lot located at the intersection of two or more streets at an angle of not more than 135°. If the included angle is greater than 135°, the lot is an interior lot.
- (3) LOT COVERAGE — The percentage of the lot area covered by structures, including accessory buildings, main buildings and detached buildings. "Lot coverage" includes all aboveground structures, including roof overhangs.
- (4) DOUBLE-FRONTAGE OR THROUGH LOT — Any lot having frontage on two parallel or approximately parallel streets.
- (5) LOT FRONT — That part of an interior lot abutting the street, or that part which is designated the front of a corner lot, double-frontage lot, or a lot with three or more sides abutting a street.
- (6) INTERIOR LOT — Any lot other than a corner lot or a double-frontage lot.
- (7) LOT LINE — Any line bounding a lot.
- (8) LOT LINE ADJUSTMENT — A replat of the recorded lot lines of two adjacent lots with no additional lots created.
- (9) FRONT LOT LINE — The property line in the front yard.
- (10) REAR LOT LINE — The lot line which is opposite and most distant from the front lot line, or in the case of an irregular lot, a line a minimum of 10 feet in length farthest removed from the front lot line, and at or near right angles to the line comprising the depth of such lot.
- (11) SIDE LOT LINE — Those lot lines of a lot which are not the front or rear lot lines.
- (12) NONCONFORMING LOT — A lot which does not conform to the provisions of this chapter.
- (13) LOT REAR — That part of a lot opposite the front of the lot.
- (14) REVERSE-CORNER LOT — A corner lot, the rear yard of which abuts a side yard of another lot.

LOT SPLIT — The subdivision of one recorded lot into two lots.

LUMINANCE — The brightness of an object expressed in terms of foot-candles or lumens, determined from a point five feet above grade onto other premises or the public right-of-way, but no closer than 20 horizontal feet to the object measured. *[Amended 08-14-2018 by Ord. No. 2018-03]*

MANUFACTURED HOME (also known as mobile homes, singlewides, doublewide, triple wide, trailers and HUD homes, manufactured on or after June 15, 1976) — a movable or portable housing structure that exceeds either a width of eight feet or a length of forty feet and is

constructed in the controlled environment of a manufacturing plant. They are built and transported in one or more sections on a permanent chassis (steel frame or I beam) and designed to be installed with or without a permanent foundation for human occupancy. A manufactured home is built to the Manufactured Home Construction and Safety Standards (HUD Code) and displays a red Certification Label on the exterior of each transportable section. *[Amended 08-14-2018 by Ord. No. 2018-03]*

MANUFACTURED HOME DEVELOPMENT — A parcel of land designed and/or intended for the placement of a manufactured home and accessory structures on sites that can be owned in fee simple, as part of a condominium, a cooperative or a land-lease rental community. *[Added 08-14-2018 by Ord. No. 2018-03]*

MANUFACTURED HOME PARK — A parcel of land under single ownership on which two or more manufactured home units are located. It includes land-lease rental communities where individual lots are rented, but not owned. It also includes limited-equity cooperatives but not condominiums. *[Added 08-14-2018 by Ord. No. 2018-03]*

MASTER PLAN — A plan developed for a specific area within the City of Española.

MOBILE HOME — The common name for a manufactured home constructed prior to HUD enforcement of the Manufactured Home Construction and Safety Standards, effective June 15, 1976. *[Amended 08-14-2018 by Ord. No. 2018-03]*

MOBILE HOME DEVELOPMENT — A parcel of land designed and/or intended for the placement of manufactured housing and accessory structures on sites that can be owned in fee simple, as part of a condominium, a cooperative or a land-lease rental community.

MOBILE HOME PARK — A parcel of land under single ownership on which two or more manufactured housing units are located. It includes land-lease rental communities where individual lots are rented, but not owned. It also includes limited-equity cooperatives but not condominiums.

MODULAR HOME (also known as systems-built homes, panelized, pre-fabricated and off-site construction) — any home factory-built to the same state, local or regional building codes as site-built homes. They are typically delivered to a site on a flat-bed truck and often the sections, modules, are put into place using a crane. Modular homes are affixed to a permanent foundation just like an on-site stick-built house. Modular homes will not have a red Certification Label (HUD Code), but will have a label attached to the home stating the code it was built to (e.g. UBC, IRC, state/local, etc.). *[Added 08-14-2018 by Ord. No. 2018-03]*

MULTIPLE-TENANT BUILDING — A single structure housing two or more retail, office, commercial or industrial uses.

NET FLOOR AREA — The area of all floors in a building, excluding basements, garages, carports, enclosed porches, mezzanines, hallways, service areas and similar areas. All horizontal measurements are from exterior faces of walls.

NET SITE AREA — The area of a horizontal plane within the property lines of a lot, less the area of all land designated for public use.

NET USABLE AREA — The total floor area designed for tenant occupancy and exclusive use, expressed in square feet measured from the inside of walls.

NONCONFORMING STRUCTURE — A structure lawfully existing on the date of adoption of this chapter, which was designed, erected or structurally altered for a use which is not a permitted use in the district in which it is located, or which is not in compliance with the site development requirements of the district in which it is located.

NONCONFORMING USE — A use of a building or land, existing on the date of adoption of this chapter which does not conform to the uses permitted in the district in which it is located.

OFFICIAL ZONING MAP — The map adopted by the City of Española as a component of this chapter, showing the location of the various zoning districts within the City of Española.

OFF-SITE — Any place not within the boundary of the property to be developed, subdivided or improved, whether or not in the ownership of the developer or subdivider.

OFF-STREET PARKING — The area required by this chapter for temporary vehicular parking.

ONE-HUNDRED-YEAR FLOOD or ONE-HUNDRED-YEAR-FREQUENCY RAINSTORM

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- (1) ONE-HUNDRED-YEAR FLOOD — The flood having a one-percent chance of being equaled or exceeded in any given year and as defined elsewhere in this chapter; and
- (2) ONE-HUNDRED-YEAR-FREQUENCY RAINSTORM — That total accumulation of 5.24 inches of rain at the end of a one-hour period.

OPEN SUN SCREEN — A latticed or louvered assemblage, open on at least two sides, used for partial shade, providing no weather protection and not influencing ventilation or the amount of impervious cover of a lot.

OVERLAY DISTRICT — A set of zoning requirements that are described in the text of this chapter, are mapped, and are imposed in addition to those of the underlying district. Development within the overlay districts must conform to the requirements of both zoning districts or, when that is not physically possible, the more restrictive of the two.

OWNER — Any person, group of persons, firms, corporations, public agency or any other legal entity having legal or equitable interest in property subject to this chapter. Also see "agent."

PARKING FACILITY — Any space on the streets or off the streets used for the purpose of parking motor vehicles, including buildings erected above or below the surface of the ground.

PARKING SPACE — Space for the parking of one automobile, exclusive of driveways, ramps, columns, loading areas, within a parking facility.

PARKLAND — Public open space that is designed to serve public needs for recreation, and

areas that serve to satisfy public needs for visual and/or psychologically pleasing spaces.

PARKWAYS — The public right-of-way of a dedicated street located on either side of the actual street roadway improvements (curb, gutter and pavement). Parkway areas may or may not contain sidewalks and/or utilities.

PATIO — Roofed or unroofed space on a lot; if roofed, with at least 50% of the side surface unscreened or unenclosed with a solid material.

PEDESTRIAN WALKWAY — An access way generally located between lots for pedestrian use and either publicly or privately owned, which may or may not be improved.

PERCENT OF SLOPE — The relation of the vertical rise from or to the contour line at horizontal intervals of not more than 50 feet and calculated as follows:

$$S = (H - L) * 100 / D$$

Where

H = highest elevation of the portion of tract measured

L = lowest elevation on the portion of the tract measured

D = horizontal distance between H and L

Percent of slope is used to measure grade.

PERMITTED USE — The specific, primary use of a lot allowed by this chapter. A lot may be put to more than one use at a time.

PET TRAINING OR BREEDING OR KENNELS — The boarding, breeding, raising, grooming or training of two or more dogs, cats, or other household pets of any age in exchange for remuneration.

PLANNED RESIDENTIAL DEVELOPMENT — Two or more dwellings planned and developed as a whole, including dwellings commonly known as "townhouses" or "row houses" or "cluster housing," together with related land, buildings and structures.

PLANNED UNIT DEVELOPMENT — Also known as a PUD. A type of development and the regulatory process that permits a developer to meet overall community density and land use goals without being bound by existing zoning requirements. PUD is a special type of floating overlay district which generally does not appear on the municipal zoning map until a designation is requested. *[Added 08-14-2018 by Ord. No. 2018-03]*

PLANNING COMMISSION — The Planning Commission of the City of Española.

PLANNING DIRECTOR — The Planning Director of the City of Española or his or her designee.

PLAT — A map, drawing or chart depicting land and improvements thereto.

PORCH or DECK — An open platform above ground level attached to the wall or foundation of a building or structure and primarily supported in some structural manner from the ground; it

may be roofed or unroofed.

PROFESSIONAL ARCHITECT — An architect registered by the New Mexico State Board of Registered Architects. *[Added 08-14-2018 by Ord. No. 2018-03]*

PROFESSIONAL ENGINEER — An engineer registered by the New Mexico State Board of Registered Engineers and Surveyors.

PROFESSIONAL LANDSCAPE ARCHITECT — An architect registered by the New Mexico State Board of Registered Landscape Architects. *[Added 08-14-2018 by Ord. No. 2018-03]*

PROFESSIONAL SERVICES — Those services provided by accountants, architects, engineers, business or management consultants, attorneys, planners or other professionals typically hired as consultants.

PUBLIC GARAGE — A building used for the care, repair, equipping, hire, sale or storage of motor vehicles.

PUBLIC IMPROVEMENT — Any drainage ditch, roadway, parkway, sidewalk, street, pedestrian-way, tree, lawn, off-street parking area, lot improvement or other facility for which the City of Española may ultimately assume the responsibility for maintenance and operation.

PUBLIC RIGHT-OF-WAY — The total area of land deeded, reserved by plat or otherwise acquired, occupied or owned by the City of Española or any other public entity, primarily for the public movement of people, goods and vehicles. A public right-of-way may be used for other public purposes pursuant to this chapter.

PUBLIC WORKS DIRECTOR — The Public Works Director for the City of Española or his designee.

RADIO AND TV TOWERS AND ANTENNAS — Any structure that is used for transmitting or receiving television, radio or telephone communications, excluding those used exclusively for dispatch communications.

RAMP — A sloping roadway or passage used to join two different levels of streets, structures or buildings, or a driveway leading to parking aisles.

REAL PROPERTY — Land easements and appurtenant rights to land along with whatever is erected or affixed to land.

RECREATIONAL VEHICLE — A vehicle which is composed of a chassis, or a frame with wheels, which either has its own motor power or is drawn by another vehicle, and has a camping

body primarily designed or converted for use as temporary living quarters for recreational, camping or travel activities.

RECREATION EQUIPMENT — Equipment whose primary function or design is for recreational purposes, whether originally so designed or subsequently modified, and is not

capable of being self-propelled on land, and shall include the following or similar types of equipment: boats, boat trailers, campers when dismounted from a truck bed or chassis, horse trailers, houseboats, house trailers, rafts, tent trailers, travel trailers and utility trailers when converted to recreational purposes.

RECYCLING STATION — A use where recyclable solid waste materials, including aluminum, glass, paper, metal and similar materials, are purchased or procured.

RESIDENCE — A building used, designed or intended to be used as a home or dwelling by one or more families or lodgers. A manufactured house is a residence.

RESIDENTIAL DISTRICT — Any zoning district where the primary use is housing; these include: R-1, Rural Residential District; R-2, Semi-Rural Residential District; R-4, Large Lot Residential; R-6, Urban Residential District; RM, Multi-family Residential District; R6-PUD Urban Residential; and ROI, Residential-Office-Institutional. *[Added 08-14-2018 by Ord. No. 2018-03]*

RESTAURANT — A business establishment that serves prepared food or beverages primarily to persons seated within the building. This includes businesses which may provide an area for food consumption outdoors in addition to indoor dining.

RESTAURANT, DRIVE-IN OR TAKEOUT — A business establishment that serves prepared foods or beverages primarily for the consumption by customers within motor vehicles either on or off the premises.

RETAIL — The sale of goods to the ultimate consumer for direct consumption and not for resale.

RIGHT-OF-WAY — See "public right-of-way."

ROOM — An unsubdivided portion of the interior of a building; it does not mean a bathroom, closet, hallway or service porch.

RUBBISH — Waste or rejected material; anything worthless or valueless in its present form; trash.

RUINS — Buildings in a state of disrepair and falling down.

RUNOFF — The water from natural precipitation that flows over the surface of the land and does not percolate into the soil.

SCHOOLS — Includes the following:

- (1) PRIVATE OR PAROCHIAL SCHOOLS — A school, academy or institution which conducts academic instruction at kindergarten, elementary, secondary or collegiate levels not under the jurisdiction of the Española Public Schools; it does not mean a commercial or trade school.
- (2) PUBLIC SCHOOLS — Schools under the jurisdiction of the Española Public Schools or,

in the case of a post-high-school institution, under the jurisdiction of a Board of Regents established by the state.

- (3) TRADE OR COMMERCIAL SCHOOLS — Private schools offering preponderant instruction in the technical, commercial, or trade skills, such as real estate schools, business colleges, electronics schools, automotive and aircraft technician schools, and similar commercial establishments.

SELF-SERVICE STORAGE FACILITY — Any real property designed and used for the purpose of renting or leasing individual storage spaces to tenants who have access to such spaces for the purpose of storing and removing personal property.

SENIOR CITIZEN MULTIPLE-FAMILY RESIDENTIAL DEVELOPMENT — A residential development providing dwelling units specifically designed for the need of ambulatory elderly persons, with residents of such development being a minimum of 60 years of age (except that in the case of married couples only one person needs to be 60 years of age) and with such developments consisting of apartments or condominiums, or a combination of both dwelling types, but consisting of a minimum of 30 dwelling units within the project.

SETBACK — The least horizontal distance between a lot line and a building or structure, exclusive of projections such as roof overhangs and includes:

- (1) MINIMUM SETBACK — The distance from the lot line to any setback or the main building setback, as required by this chapter.

SIDEWALK — A publicly owned pedestrian way with permanent surfacing.

SIGN —

- (1) Any written, printed or symbolic device capable of visual communication or attraction, including any announcement, declaration, demonstration, display, illustration, insignia, structure or symbol, or architectural feature which serves no other purpose than communication, used to advertise or promote the interest of any person; or
- (2) Any official notice issued by any court or public body or officer, or directional, warning or information signs or structures required by or authorized by law or by federal, state or City of Española authority.

SITE PLAN — The plan graphically showing proposed or actual development of the property, including, but not limited to, the location of structures, height and exterior facades, placement of parking and traffic circulation, method of exterior lighting, landscape treatment, location and size of signs, and any other such information as may be requested by planning staff.

SLOPE — Includes:

- (1) BUILDING SITE SLOPE — The difference between the highest natural elevation on the building footprint and the lowest natural elevation of the building footprint divided by the horizontal distance between the two points.
- (2) PARCEL SLOPE — The difference between the highest natural elevations at each end of the one-hundred-foot horizontal difference divided by 100.

SOLAR ENERGY COLLECTION SYSTEM — Includes:

- (1) ACTIVE SOLAR ENERGY COLLECTION SYSTEM — A mechanical system for heating or cooling a structure by collecting, storing and transporting solar energy.
- (2) PASSIVE SOLAR ENERGY COLLECTION SYSTEM — A system that employs siting and orientation, structural materials and landscaping to take advantage of solar energy for structural heating.

SPECIAL USE — A use which has been determined to be compatible with the purposes of the district, but which has one or more characteristics that could make it incompatible with other uses in the district; and as further described by this chapter.

SPECIAL USE PERMIT — A permit for a use classified as a special use, as detailed elsewhere in this chapter.

SPOT ZONING — Rezoning of a lot or parcel of land for a use incompatible with surrounding uses and not for the purpose or effect of furthering the Comprehensive Plan.

STORAGE — An area or space, either indoors or outdoors, where something is kept, housed or located for future use. Storage may include:

- (1) AUTOMOBILE STORAGE — A lot used to store vehicles, either for repair or salvage, when towed or driven to the site. Lots providing for more than five vehicles must provide screened security fencing of not less than six feet in height surrounding the entire perimeter of the lot. This use is determined to be incompatible with residential uses and therefore shall not be allowed or granted special use status or permits.
- (2) CONTRACTOR'S STORAGE YARD — An area where heavy equipment, materials, machinery, aggregates, and other objects used for the development of land or structures are stored. This use is determined to be incompatible with residential uses and therefore shall not be allowed or granted special use status or permits.

STORM DRAINAGE PLAN — A detailed plan showing the location and proposed topography of streets, lots and other areas within a development, along with any proposed storm sewer facilities and easements for surface drainage, intended to satisfy the storm drainage performance standards of this chapter. It is further meant to include any drainage calculations requested by the City of Española.

STORY — That portion of a building included between the upper surface of any floor and the upper surface of the floor next above, except that the topmost story shall be that portion of a building included between the upper surface of the topmost floor and the ceiling or above. If the

finished floor level directly above a usable or unused under floor space is more than six feet above grade for more than 50% of the total perimeter or is more than 12 feet above grade at any point, such usable or unused under floor space shall be considered a story.

STREAM — A low point on the natural topography where runoff collects and stormwaters flow on a periodic basis or a continuously running waterway.

STREET — A public right-of way subject to vehicular traffic (as well as pedestrian traffic) that

provides direct or indirect access to property and may include:

- (1) ARTERIAL STREET — A street which is or will, because of its design, location, or intensity of use with reference to other streets and other sources of traffic, be used primarily for larger volumes of traffic.
- (2) PRIVATE STREET — A street as defined elsewhere in this chapter but differing in that it is not accepted by the City of Española as a public improvement.
- (3) PUBLIC STREET — A street owned and maintained by the City of Española or other public entity.

STREET CENTER LINE — The center of a street or right-of-way as established by official surveys; normally the midpoint of a street cross section.

STREET FRONTAGE — The distance for which a lot line adjoins a public street, from one lot line intersecting such street to the furthest distant lot line intersecting the same street.

STRUCTURE — Anything constructed or built which requires location on or in the ground or is attached to something having a location on or in the ground. Underground storage tanks, patio slabs, paved areas, walks, tennis courts and similar facilities, the tops of which are not more than 30 inches above ground, are not structures.

TEMPORARY USE — A use of a temporary, seasonal or transitory nature, as detailed elsewhere in this chapter, but not to exceed six months in any one calendar year.

TENANT — Any person who occupies any land or building who is not the owner but is granted the right of use by the owner.

TRAFFIC ENGINEER — The City of Española employee or contractor responsible for the administration and enforcement of City of Española traffic control regulations.

TRAILER — Any vehicle without motor power, designed for carrying persons or property and for being drawn by a motor vehicle.

TRAILER SALES LOT — An automobile and trailer sales lot, inclusive of the sale of manufactured housing, as governed by the State of New Mexico Taxation and Revenue Department.

USE — Any development, use or activity upon lands within the City of Española.

UTILITIES DIRECTOR — The Utilities Director for the City of Española or his agent.

VACATION —

- (1) Reversion of all or a portion of a recorded subdivision to a single lot; or
- (2) The elimination of an easement or right-of-way in a part of a recorded subdivision.

VARIANCE — An adjustment in the application of the specific dimensional regulations of this chapter to a particular piece of property as more specifically set forth under the laws of the State

of New Mexico.

VETERINARY SERVICE FACILITY — An enclosed structure in which animals are given medical or surgical treatment or temporary housing as an accessory use to the veterinary service facility.

WALKWAY — A cleared way for pedestrians, which may or may not be paved.

WALL — A vertical structure that separates properties, portions of properties or portions of a building.

WAREHOUSING — A building for the storage of goods of any type with more than 500 square feet of storage space.

WHOLESALE — The selling of goods for the purpose of resale.

WRECKAGE — Broken, disrupted, disordered mechanical or automotive parts, machinery or vehicles.

ARTICLE II **Administration and Enforcement**

§ 201. Administration: Planning Director.

The Planning Director shall have the following powers and duties:

- A. **Public information.** The Planning Director shall supply the public with information about and interpretations of this chapter, the Official Zoning Map and the Comprehensive Plan.
- B. **Authority and duty.** The Planning Director shall hold public hearings in accordance with Article X and shall approve, conditionally approve or disapprove applications for approval of residential site plans for expansion to existing residence or associated accessory structures, where the expansion amounts to 20% or less of the floor area of the structure(s) existing at the time of adoption of this chapter, not to exceed a total area of maximum of 5,000 square feet of gross floor area.
- C. **Commercial site plans** shall require review and recommendation by the DRT. Upon such review, the Planning Director may approve, conditionally approve or refer the site plan to the Planning Commission for further review.
- D. **Administrative authority and duty.** The Planning Director may approve, conditionally approve or disapprove the following applications:
 - (1) **Signs.** Sign permits may be approved or conditionally approved by the Planning Director if the application satisfies the provisions set forth in Article IX.
 - (2) **Fences:** Applications may be filed with the Planning Director for construction of fences. The Planning Director may order issuance of a permit if the application satisfies the provisions of § 603.
 - (3) **Accessory Structures.** For the purposes of this subsection, "accessory structures" are those structures that do not require a building permit, such as those defined in this chapter as a temporary use, but meet the site development standards set forth in § 1203, provided

that all provisions within the Española Municipal Code are met.

- (4) Temporary use permits. Applications shall be filed with the Planning Director for temporary use permits. The Planning Director may issue the permit if the application satisfies the provisions of § 608. The Planning Director may not issue a temporary use permit for longer than six months; for any period longer than six months, the applicant must apply to the Planning Commission (see § 302-1). *[Amended 08-14-2018 by Ord. No. 2018-03]*
 - (5) Landscape plans. Application may be made for landscape plans after site plan approval or conditional approval or when required as part of the conditional approval of a special use permit by the Planning Director to the Planning Commission. The Planning Director may approve or conditionally approve landscape plans in accordance with §§ 1002J, 1304 and 1305. *[Added 08-14-2018 by Ord. No. 2018-03]*
 - (6) Mobile/Manufactured/Modular Home. Applications shall be filed with the Planning Director for the installation or construction, respectively, of a mobile, manufactured or modular home.
 - (7) Business Registration Review. New businesses opening within the City of Espanola must submit a Land Use/Site Development Permit as part of their Business License Submittals during the application process with the City Clerk (listed as the “Site Development Permit” on the City Clerk’s submittals’ list) The Planning Director has the discretion to waive this permitting process, based on the type of business being proposed—e.g., a home-based office business. *[Added 08-14-2018 by Ord. No. 2018-03]*
- E. Referral to the Planning Commission. The Planning Director shall refer any application to the Planning Commission when required by this chapter or when the Planning Director determines that there are unusual conditions or unique circumstances that warrant review and decision making by the Planning Commission.
 - F. Code interpretation. The Planning Director shall interpret the Development Code and may take any necessary or appropriate action based on such interpretation. The Planning Director shall not be required to accept an application or take any other action inconsistent with the Planning Director's interpretation of the Development Code. The Planning Director shall, upon request, provide the applicant with a written explanation of the Director's actions under this subsection.
 - G. Enforcement. The Planning Director shall be responsible for carrying out the provisions of this chapter and for taking actions necessary to enforce the provisions of this chapter.

§ 202. Administration: Planning Commission.

- A. Establishment and membership. A Planning Commission is hereby established, which shall consist of seven members, appointed by the Mayor and approved by the City Council. The members shall serve staggered two-year terms and shall continue to serve until they are removed or their successors are appointed. Four members constitute a quorum, and the Chairman shall vote on all matters
- B. Vacancies. Vacancies shall be filled for the unexpired term.
- C. Removal of members. Members may be removed for cause by the Mayor with approval of the City Council upon written explanation and after public hearing. Members may be removed for cause after four unexcused absences. Excused absences require 15 days' advance notice to the Planning Director.
- D. Proceedings of the Planning Commission. The Commission shall keep the minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be filed in the office of the Planning Department and shall be a public record.
- E. Meeting dates. Meetings shall be held at the call of the Planning Director or Chairman and at such other times as the Commission or Planning Director may determine but at all times in compliance with the City's Open Meetings Act Resolution.
- F. Members of the Commission shall elect a Chair and Vice-Chair by secret ballot on a yearly basis. No member shall serve as Chair for more than two successive years.
- G. Members of the Commission shall live within the planning and platting jurisdiction of the City of Española. No more than two members shall live outside the municipal boundaries.
- H. The Planning Commission shall have the following powers and duties:
 - (1) Final decisions. The Planning Commission shall hold a public hearing in accordance with the requirements of Article X and shall have the authority to approve, conditionally approve or disapprove the following:
 - (a) Applications for variances
 - (b) Applications referred to the Planning Commission by the Planning Director.
 - (c) Applications for approval of a site plan, except an application on which the Planning Director acts pursuant to § 201B.
 - (d) Applications for a special use permit.
 - (e) Appeals in accordance with this article, including appeals from a decision of the Planning Director requiring an interpretation of the Development Code. The Planning Commission shall affirm the interpretation of this Code determined by the Planning Director, or remand the matter to the Planning Director for further consideration in accordance with the instructions of the Planning Commission.
 - (2) Advisory powers and duties. The Planning Commission shall hold a public hearing in accordance with the requirements of Article X and shall forward a recommendation to the City Council on the following applications:
 - (a) Application for adoption of and amendments to the text of this chapter.
 - (b) Application for adoption of and amendments to the Official Zoning Map (rezoning).

- (c) Application for adoption of and amendments to the Comprehensive Plan. The Planning Commission may from time to time recommend amendments, extensions or deletions to the Comprehensive Plan or carry any part or subject matter into greater detail.
 - (d) Application for addition, deletion or change to the use categories allowed in any district.
- I. Duties of the Chairman. The Planning Commission Chairman shall report to the City Council monthly reports covering the following areas:
 - (1) Matters of the Commission currently at hand.
 - (2) Status of all applications pending before the Commission.
 - (3) Needs of the Planning Commission.
 - J. Biennial review. The Planning Commission should complete a biennial review of the text of this chapter, the Official Zoning Map and the Comprehensive Plan to determine whether each is correct, and that no conflicts exist, and shall forward a recommendation to the City of Española Council for any necessary or desirable corrections or changes.
 - K. Meetings. Four members of the Planning Commission shall be a quorum for the conduct of business of the Commission and shall require a motion and affirmative vote of at least a majority of the Planning Commission present to approve or overturn a decision of the Planning Director or the Development Review Team. The Planning Commission shall automatically continue matters not acted upon by virtue of a lack of quorum.

§ 203. Administration: Development Review Team (DRT).

- A. The Development Review Team shall consist of the Planning Director (who shall act as Chairman), Utilities Director, Public Works Director, Parks, Recreation Director, City Engineer, Police Chief, Fire Chief and any other department head who could or may have issues with the proposed development.
- B. The purpose of the DRT is to review development applications and to advise the Planning Commission, other boards and commissions and the City Council.
- C. All members of the DRT shall issue written recommendations, comments or findings to the appropriate decision-making authority. If, upon review, conditions are found that do not impact a specific department, a statement to that effect shall be issued by the appropriate Department.
- D. The DRT shall hold regular meetings at times and places prescribed by the Chairman. The DRT shall determine its own rules and order of business.
- E. The DRT shall review all matters as set forth in § 302.
- F. The DRT shall review complete applications within 30 days of receipt by the Planning Department and make timely recommendations to the Planning Director or the Planning Commission, as appropriate, on the following:
 - (1) Proposed amendments to the Official Zoning Map.
 - (2) Special use permits.
 - (3) Commercial site plans.
 - (4) Determination of uses and additions, deletions or changes in category to uses allowed.
 - (5) Other matters referred to it by the Planning Director, Planning Commission, City

Manager or the City Council.

- G. The DRT shall automatically continue matters not acted upon by virtue of a lack of a quorum no more than 20 working days.

§ 204. Enforcement: purpose.

It is the purpose of §205 through §208 to establish a City official responsible for executing those duties associated with the administration and enforcement of this chapter and to establish a procedure for taking remedial action on complaints and code violations.

§ 205. Enforcement: Responsibilities of Planning Director.

The Planning Director shall be responsible for enforcing the provisions of this chapter, except where the provisions of this chapter clearly designate enforcement authority to another official. If the Planning Director finds that any of the provisions of this chapter are being violated, he shall notify in writing the person responsible for such violation, indicating the nature of the violation and setting forth the necessary corrective action.

- A. He shall be authorized to demand:
- (1) Discontinuance of illegal uses of lands, buildings or structures.
 - (2) Removal of illegal buildings or structures or additions, alterations or structural changes thereto.
 - (3) Discontinuance of any illegal work being done.
- B. He shall take any other actions authorized and deemed necessary to ensure compliance with or to prevent violation of its provisions.

§ 206. Enforcement: review of zoning compliance.

No department, official or employee of the City of Española shall issue any building permit or otherwise authorize any type of construction or improvement to land or buildings or a combination thereof until there has been an endorsement of zoning compliance in writing by the Planning Director.

§ 207. Enforcement: filing of complaints.

Whenever an alleged violation of this chapter occurs, any person may file a complaint. Complaints shall be filed with the Planning Director, who shall be responsible for conducting an investigation and may take such actions as he deems necessary to gain compliance with the provisions of this chapter.

§ 208. Enforcement: violations and penalties.

- A. Violators of the provisions of this chapter or persons failing to comply with any of its requirements shall, upon conviction, be punishable by a fine up to but not more than \$500 and/or 90 days in jail, or both, for each violation found. Each calendar day of violation shall constitute a separate offense.
- B. The owner or tenant of any building, structure, premises or its part or any architect, builder,

contractor, agent or any person who commits, participates in, assists in or maintains a violation may each be found guilty of a separate offense and suffer the penalties provided in this section.

- C. Nothing contained in this section shall prevent the City from taking such other lawful action as may be necessary to prevent or remedy any violation or to bring an action to enjoin any violation of this chapter.

ARTICLE III Application Requirements

§ 301. Purpose of article.

It is the purpose of this article to specify the procedures and requirements for making applications to the Planning Commission as required by this chapter.

§ 302. Types of applications; requirements.

A. Amendment to text.

- (1) Applications for amendment to the text of this chapter may be made by the City Council, the Planning Commission, the City Manager, the Planning Director or by the owner of any parcel of property to be affected, and shall be submitted to the Planning Department.
- (2) All applications for amendment to the text of this chapter shall include all applicable information and materials required by this section, and any additional information specifically requested by the Planning Director. The application fee as specified in Chapter 171 shall be submitted with the application.
- (3) The application shall include a statement explaining how it conforms to the pertinent review criteria.
- (4) Within 30 days following receipt of a complete application, the Planning Director shall set a date for public hearing before the Planning Commission on the text amendment request. Notice of public hearing shall be given as provided in Article V of this chapter. If the DRT review is not complete prior to the scheduled public hearing, the application shall be deemed to have been passed by the DRT without recommendation.

B. Amendment to Official Zoning Map (a "Re-Zone Request").

- (1) Applications for amendment to the Official Zoning Map may be made by the City Council, the Planning Commission, the City Manager, the Planning Director or the owner of any parcel of property to be affected, and shall be submitted to the Planning Department.
- (2) All applications for amendment to the Official Zoning Map shall include all information and materials required by this section, and any additional information specifically requested by the Planning Director. The application fee as specified in Chapter 171 shall be submitted with the application.
- (3) The application shall include a statement explaining how it conforms to the pertinent review criteria.
- (4) Within 30 days following receipt of a complete application, the Planning Director shall set a date for public hearing before the Planning Commission on the Official Zoning Map amendment request. Notice of public hearing shall be given as provided in Article V of

this chapter. If the DRT review, as required by §203, is not complete prior to the scheduled public hearing, the application shall be deemed to have been passed by the DRT without recommendation.

C. Commercial Site Plan Review.

- (1) Applications for commercial site plan approvals may be made by the owner of any parcel of property to be affected and shall be submitted to the Planning Department.
- (2) All applications for commercial site plan approvals shall include all information and materials required by this section, and any additional information specifically requested by the Planning Director. The application fee as specified in Chapter 171 shall be submitted with the application.
- (3) The application shall include a statement explaining how it conforms to the pertinent review criteria.
- (4) Within 30 days following receipt of a complete application, the Planning Director shall set a date for public hearing on the commercial site plan request. Notice of public hearing shall be given as provided in Article V of this chapter. If the DRT review, as required by §203, is not complete prior to the scheduled public hearing, the application shall be deemed to have been passed by the DRT without recommendation, unless the DRT, having found that more information or review is necessary, continues the matter. At no time shall the review extension exceed more than 30 days beyond the public hearing date.

D. Variances.

- (1) Applications for variance may be made by the owner of any parcel of property to be affected and shall be submitted to the Planning Department. Applications for variances associated with a subdivision request shall be submitted with the preliminary plat application or with the summary subdivision application, as applicable.
- (2) Applications for variance to this chapter shall include all information and materials required by this section and any additional information specifically requested by the Planning Director. The application fee as specified in Chapter 171 shall be submitted with the application.
- (3) The application shall include a statement explaining how it conforms to the pertinent review criteria.
- (4) Within 30 days following receipt of a complete application, the Planning Director shall set a date for public hearing on the variance request. Notice of public hearing shall be given as provided in Article V. If the DRT review, as required by §203, is not complete prior to the scheduled public hearing, the application shall be deemed to have been passed by the DRT without recommendation.

E. Special use permits.

- (1) Applications for special use permits may be made by the owner of any parcel of property to be affected and shall be submitted to the Planning Department.
- (2) All applications for special use permits shall include all information and materials required by this section, and any additional information specifically requested by the Planning Director. The application fee as specified in Chapter 171 shall be submitted with the application.
- (3) The application shall include a statement explaining how it conforms to the pertinent review criteria.

- (4) Within 30 days following receipt of a complete application, the Planning Director shall set a date for public hearing on the special use permit request. Notice of public hearing shall be given as provided in Article V. If the DRT review, as required by §203, is not complete prior to the scheduled public hearing, the application shall be deemed to have been passed by the DRT without recommendation.

F. Determination of uses; additions, deletions, or changes in category of uses allowed.

- (1) Applications for determinations of uses and additions, deletions or changes in category, of uses allowed, may be made by the City Council, Planning Commission, City Manager, Planning Director or by the owner of any parcel of property to be affected and shall be submitted to the Planning Department.
- (2) Applications for determinations of uses and additions, deletions or changes in category, of uses allowed, shall include all information and materials required by this section, and any additional information specifically requested by the Planning Director. The application fee as specified in Chapter 171 shall be submitted with the application.
- (3) The application shall include a statement explaining how it conforms to the pertinent review criteria.
- (4) Within 30 days following receipt of a complete application, the Planning Director shall set a date for public hearing on the request. Notice of public hearing shall be given as provided in Article V. If DRT review, as required by § 203, is not complete prior to the scheduled public hearing, the application shall be deemed to have been passed by the DRT without recommendation.

G. Landscape plans.

- (1) Applications for landscape plans may be made by the owner of any parcel of property to be affected and shall be submitted to the Planning Department.
- (2) Applications for landscape plans shall be submitted as part of the original application for the site plan or special use permit.
- (3) Applications for landscape plans shall include all information and materials required by this section, and any additional information specifically requested by the Planning Director. The application fee as specified in Chapter 171 shall be submitted with the application.
- (4) The application shall include a statement explaining how it conforms to the pertinent review criteria including §1304 and §1305 and shall depict:
 - (a) General location of all existing trees six inches or greater in diameter.
 - (b) General location and type of landscape material and/or ground cover:
 1. Nonliving (pavement, sidewalks and other hard surfaces);
 2. Living (domestic and indigenous); and
 3. Other features (rock outcroppings).
 - (c) Location and type of shrubbery and trees; e.g., canopy, understory, evergreen by common name.
 - (d) Number of parking spaces required.
 - (e) A summary of the square footage of the overall site and landscaping area (including living and nonliving ground cover).
 - (f) North arrow and scale.

(g) Adjacent site landscaping treatments.

(a) Finished topographic contours.

- (5) The decision-making authority shall not take final action on a site plan or special use permit application without prior review and approval of a landscape plan by the Planning Director. When the applicant has completed the final plat, the Planning Director shall review the final landscape plan for action in accordance with § 201 and determine whether it should be forwarded to the Planning Commission for its consideration.

H. Amendment to the Comprehensive Plan.

- (1) Applications for amendment to the Comprehensive Plan may be made by the City Council, the Planning Commission, the City Manager, the Planning Director or by the owner of any parcel of property to be affected, and shall be submitted to the Planning Department.
- (2) Applications for amendment to the Comprehensive Plan shall be in conformance with this section and shall include all information and materials required by this section, and any additional information specifically requested by the Planning Director. The application fee as specified in Chapter 171 shall be submitted with the application.
- (3) The application shall include a statement explaining why the amendment is necessary and shall cite the sections of the Comprehensive Plan to be amended.
- (4) Within 30 days following receipt of a complete application, the Planning Director shall set a date for public hearing before the Planning Commission on the Comprehensive Plan amendment request. Notice of public hearing shall be given as provided in Article V. If DRT review, as required by §203, is not complete prior to the scheduled public hearing, the application shall be deemed to have been passed by the DRT without recommendation.

I. Temporary uses.

- (1) Applications for temporary use permits may be made by the owner of any parcel of property to be affected and shall be submitted to the Planning Department. No temporary use permit shall be approved, by the Planning Director, for more than six months. Initial requests involving request for more than six months shall be made to the Planning Commission.
- (2) Applications for temporary use permits shall be in conformance with this section and shall contain sufficient information to determine the yard area, sanitary facilities and parking space required for the proposed use and any additional information specifically requested by the Planning Director. The application fee as specified in Chapter 171 shall be submitted with the application.
- (3) In issuing a temporary use permit, the Planning Director or Planning Commission may indicate the permitted hours of operation and any other conditions, such as lighting, parking or protective fences, which are deemed necessary to protect adjacent property or the public health, safety and welfare.
- (4) Each site occupied by a temporary use shall be left free of debris, litter or any evidence of the temporary use upon the expiration of the temporary use permit and the cessation of the temporary use. Before issuing a temporary use permit, the Planning Director or Planning Commission shall require a cash deposit or letter of credit as may be determined to be adequate to ensure the cleaning up of the property covered by the temporary use permit. If the property and the surrounding area are not in the condition required, then the

City may restore it to that condition, in which event the City shall have the right to be reimbursed for the costs incurred from the deposit or other security.

- (5) Upon written application, the Planning Director or Planning Commission may modify any of the conditions contained in the temporary use permit, if the Planning Director or Planning Commission determines that the modification does not conflict with the purposes of the zoning requirements.
- (6) Upon written application, the Planning Director may extend the time of operation of the temporary use permit no more than 20% above the total time initially allowed. Extension of time beyond 20% shall be approved by formal action of the Planning Commission.
- (7) A use requiring a temporary use permit but continuing beyond the allowed temporary use period, as provided in this chapter, shall constitute an offense under this chapter and shall be subject to the general penalties for such offense.
- (8) Following receipt of a complete application, the Planning Director or Planning Commission may issue the requested temporary use permit when the Planning Director finds that all of the conditions can be met as set forth in this subsection.

ARTICLE IV Review Criteria

§ 401. Purpose of article.

This article establishes the specific review criteria for development requests that shall be used by the Planning Director, DRT, Planning Commission and City Council in their review and decision making of development requests.

§ 402. Site plan required.

An approved or conditionally approved site plan shall be required for all development(s) of property or alteration or addition to existing structures prior to issuance of a building permit, except as follows:

- A. Changes to the interior of an existing structure may be made without any prior site plan approval under this chapter.
- B. Facade changes, as defined by the latest adopted edition of the Uniform Building Code, either through architectural or material means, may be made without any prior site plan approval under this chapter, except if the building or structure is located in an historical site district.
- C. The construction of an open sun screen which complies with the site development requirements of this chapter and all other applicable rules and regulations of the City of Española may be made without any prior site plan approval.

§ 403. Development plan review criteria.

- A. Applicants for new construction of individual buildings or additions shall receive Planning Commission approval of a development plan prior to issuance of a building permit in the following circumstances:
 - (1) Any new commercial development.

- (2) Any application for subdivision into three or more lots for residential or commercial use.
- (3) Any expansion of a use on an existing site for which there has never been an approved development plan.
- (4) Any change of use for an existing site with or without an approved development plan.
- (5) Any expansion of more than 2,000 square feet of gross floor area and/or land use area for an existing site with an approved development plan.
- (6) **[Any commercial cannabis activity licensed pursuant to rules and regulations of the State of New Mexico.]**

For the purpose of this section, "development plan" means a plan drawn to scale, certified by an engineer and/or architect, showing the locations of existing and new structures; location map, lot coverage, height and gross floor area of structure; lot area; the placement and arrangement of buildings; and the uses to be included; topography, on-site drainage, retention and detention areas, drainage flow, proposed lighting of the premises; internal vehicular and pedestrian circulation; vehicular and pedestrian ingress and egress from adjoining streets; recorded and proposed easements; location of off-street parking and loading facilities; any significant natural features, including drainage and vegetation; location and type of landscaping; and the type of visual screening such as walls, fences and landscaping. If it is proposed to develop the plan in phases, the phases of development shall be indicated along with any other information requested by the Planning Staff, DRT, or Planning Commission.

- B. During the course of its review of any development plan, the DRT shall utilize the following criteria in formulating a recommendation to the Planning Commission. The Planning Commission shall utilize the following criteria in making its determination of approval, conditional approval or denial:
- (1) The development plan shall substantially conform to the Comprehensive Plan and shall not be materially detrimental to the health, safety and general welfare of the citizens of Española.
 - (2) Ingress, egress, traffic circulation and parking on the site shall be accomplished with safety for motorists, bicyclists and pedestrians. Provisions shall be made for the safe ingress, egress and circulation of vehicles, bicyclists and pedestrians.
 - (3) The necessary provisions shall be made for controlling stormwater drainage on-site and off-site consistent with the City of Española Design Guidelines.
 - (4) The necessary easements shall be provided for ingress, egress, access, and all required amenities, including also existing and proposed utilities, on-site and off-site. No existing easement shall be vacated or relocated without provision for a suitable alternate, and all new easements shall be provided as necessary.
 - (5) The site plan shall include a landscape plan that will enhance the site and immediate vicinity. The landscape plan shall conform to the requirements set forth in §1304 and §1305.
 - (6) The proposed on-site improvements shall preserve, to the extent practical, outstanding topographical features and natural amenities on the site.
 - (7) In areas located within the same zoning district having different uses, appropriate screening and/or buffering shall be provided between properties; to be designed, built and paid for by the more intense use, provided that the more intense use was the most recent developed.
- C. For development plans involving more than two lots for single-family dwellings, the

following additional provisions shall apply:

- (1) Parking lots, outside storage areas, outside mechanical equipment and outdoor lighting shall be designed to serve the intended use of the development while minimizing adverse impacts on adjacent properties or public rights-of-way.
- (2) The capacity of those public services and facilities required to serve the proposed development (including but not limited to water, sanitary sewer, electricity, gas, storm sewer, streets, etc.) shall conform with, or if improvements are required, shall be made to conform with, the requirements of the City of Española Design Guidelines.
- (3) Provisions shall be made to serve the development with tot lots and/or neighborhood parks in accordance with the adopted Comprehensive Plan.
- (4) In all R-1 and R-2 Districts, provisions shall be considered for the incorporation of or exclusion of recreational vehicle parking and storage.
- (5) Adequate screening and buffering, if appropriate, shall be provided between properties. Prior to the issuance of a building permit, the Planning Director shall review and approve the landscape plan.

§ 404. Review criteria for amendments to Official Zoning Map.

- A. A request for amendment to the Comprehensive Plan shall, if necessary, be submitted, processed, heard and decided upon concurrently with the request for amendment to the Official Zoning Map.
- B. During the course of the review of any request for an amendment to the Official Zoning Map, the DRT shall utilize the following criteria in formulating a recommendation to the Planning Commission. The Planning Commission shall make findings as to whether or not the proposal meets the following criteria and shall make a recommendation for approval, conditional approval or denial to the City Council. The City Council shall make findings as to whether or not the proposal meets the following criteria at the time of its approval, conditional approval or denial:
 - (1) The request substantially conforms to the Comprehensive Plan and is not materially detrimental to the health, safety and general welfare of the citizens of Española.
 - (2) The requested zoning shall be reviewed considering the available development potential in the proposed district.
 - (3) Consideration shall be given to the existing and programmed capacity of on-site and off-site public services and facilities, including, but not limited to, water, sanitary sewer, electricity, gas, storm sewer, streets, sidewalks, traffic control, parks, fire and police to adequately serve the property should a rezoning result in any increase of the intensity of use of the property.
 - (4) The establishment, maintenance or operation of uses applied for will not, under the circumstances of the particular case, be detrimental to the health, safety or general welfare of persons residing or working adjacent to or within the proximity of the subject property.
 - (5) The existing zoning is inappropriate for one or more of the following reasons:
 - (a) It was established in error;
 - (b) Changed conditions warrant the rezoning; or

- (c) A different zone is more likely to meet goals contained in the Comprehensive Plan.
- (6) The proposed zoning will not result in spot zoning or strip zoning as defined in Article I of this chapter, or one or more of the following exceptions to the prohibition of spot zoning or strip zoning is met:
 - (a) Granting such zoning accomplishes the policy and intent of the Comprehensive Plan;
 - (b) Unique characteristics specific to the site exist; or
 - (c) The zoning serves as an appropriate transition between land uses of higher and lower intensity.

§ 405. Special use permit review criteria.

- A. The DRT shall utilize the following criteria in formulating a recommendation to the Planning Commission, and the Planning Commission shall utilize the following criteria in making its determination of approval, conditional approval or denial:
 - (1) The request substantially conforms to the Comprehensive Plan, and the establishment, maintenance or operation of the use applied for will not, under the circumstances of the particular case, be detrimental to the health, safety, peace, comfort or general welfare of persons residing or working in the vicinity of such proposed use, or be detrimental or injurious to property or to the value of property in the vicinity, or to the general welfare of the citizens of Española.
 - (2) There are sufficient parking facilities that are adequately designed, shielded, landscaped and lighted to serve the use applied for based on the requirements of this chapter as found in Article VIII of this chapter.
 - (3) The provisions for on-site and off-site ingress/egress and traffic circulation are in conformance with the City of Española Design Guidelines, the public streets serving the use applied for are adequate to meet the traffic needs of the proposed use, and the proposed use will not adversely affect neighboring properties by virtue of the type of traffic generated by the use.
 - (4) The setbacks of buildings and parking facilities from the property lines, right-of-way, and adjacent land uses are in conformance with this chapter and provide protection to and a transition from residential development, existing and contemplated, in the vicinity; and the height and bulk of the proposed buildings and structures are compatible with the general character of development in the vicinity of the use applied for.
 - (5) The site plan, including, but not limited to, landscaping, screen planting, and fencing of the proposed development, demonstrates that the site development will be compatible with adjoining areas and will conform to the site development standards of the district regulations.
- B. The Planning Commission shall prescribe the point in time at which the special use is to begin, not to exceed 90 days from the meeting date, and the point in time when the special use shall expire, not to exceed five years.
- C. Failure to begin or complete any required action authorized at the time of granting the special use shall void the special use.
- D. Special use permits are not transferable, and a transfer of the land ownership shall invalidate the special use.

§ 406. Variance review criteria.

- A. During the course of review of any variance request, the Planning Commission shall determine whether all of the requirement in this section have been met and shall make a determination of approval, conditional approval or denial:
 - (1) The practical difficulty or unnecessary hardship is inherent to the lot and is peculiar because of the size, shape, topography or some other characteristic of the lot which differentiates it from other lots in the vicinity or in the district. The hardship created is not self- imposed.
 - (2) The practical difficulty or hardship created is caused by a strict interpretation of the provisions of this chapter, is not self-imposed and is not generally shared by other lots in the vicinity or the district.
 - (3) The granting of the requested variance is necessary for the preservation and enjoyment of a substantial property right of the applicant which is possessed by other owners in the vicinity.
 - (4) The granting of the variance sought will not be contrary to the purpose or intent of this chapter, or injurious to property within 100 feet or otherwise detrimental to the general health, safety, or general welfare of the community.
- B. Should any request for variance not meet all four of the above-listed criteria, the Planning Commission shall deny the request.

§ 407. Review criteria for amendments to text.

- A. A request for amendment to the Comprehensive Plan shall, if necessary, be submitted concurrently with the request for amendment to the text of this chapter.
- B. When reviewing a request for amendment to the text of this chapter, the DRT shall utilize the following criteria in formulating a recommendation to the Planning Commission. The Planning Commission shall utilize the following criteria in making its recommendation to the City Council. The City Council shall utilize the following criteria in making its determination of approval or denial:
 - (1) The request substantially conforms to the Comprehensive Plan; and
 - (2) The request is not materially detrimental to the health, safety and general welfare of the citizens of Española.

§ 408. Review criteria for determination of uses and addition, deletion or change in category of uses allowed.

During the course of the review of any request for a determination of uses or for addition, deletion or change in category of uses which may be allowed in any zoning district, the DRT shall utilize the following criteria in formulating a recommendation to the Planning Commission. The Planning Commission shall utilize the following criteria in making its recommendation of approval, conditional approval or denial to the City Council, and the City Council shall utilize the following criteria in making a determination of approval or denial:

- A. The proposed change will not result in land use inconsistent with the purpose of the district.
- B. The proposed change will not permit the establishment of a use incompatible with a use allowed in the district.

- C. The proposed change substantially conforms to the Comprehensive Plan.
- D. The proposed use is not materially detrimental to the health, safety and general welfare of the citizens of Española.

ARTICLE V Public Notice

§ 501. Purpose of article.

It is the purpose of this article is to establish minimum public notice requirements for land use decisions and to assure that the general public is adequately notified or otherwise made aware of land use regulations, permits and decisions which may directly or indirectly affect lands within the City of Española.

§ 502. Planning Commission public hearing requirements.

- A. When the Planning Commission proposes to act on requests for adoption of or amendments to the Comprehensive Plan, amendments to this chapter, amendments to the Official Zoning Map, determination of uses, and additions, deletions or changes in category of uses allowed, applications for a site plan, for a special use permit, for a variance, or requests for an appeal of a written interpretation by the Planning Director, notice of public hearing shall be as set forth in this section.
 - (1) Agenda requirements. For all public hearings before the Planning Commission, City staff shall place the tentative agenda in a local newspaper of general circulation at least 15 calendar days prior to the scheduled meeting. In addition, the City staff shall post the tentative meeting agenda in City Hall at least 15 calendar days prior to the scheduled meeting.
 - (2) Posting requirements. For all public hearings before the Planning Commission, the property shall be posted by the applicant with posters not less than 24 inches by 36 inches in size obtained from the Planning Department. Such posters shall be prominently displayed, visible from a public street and securely placed on the subject property at least 15 calendar days prior to the scheduled meeting. The posting shall indicate the nature of the change proposed, identify the subject property and the time, date and place of the meeting.
 - (3) Mailing requirements. Notice of the time, date and place of the public hearing shall be mailed by the applicant by U.S. Mail at least 15 calendar days prior to the public hearing to property owners of record within 200 feet of the subject property, exclusive of the public right-of-way. A sample notice letter will be given to the applicant for use. Return receipts shall be delivered by the applicant to the Planning Department prior to the public hearing. *[Amended 11-19-2013 by Ord. No. 2013-02]*
- B. City as applicant. Where the City is the applicant and the project plan area is greater than 50 acres, the City shall place in the public right- of-way one poster at each major intersection within the plan or project area. All posters shall be placed at the appropriate site at least 15 calendar days prior to the scheduled meeting and shall indicate the nature of the change proposed and identify the plan or project area and the time, date and place of the meeting.

§ 503. City Council public hearing requirements.

When the City Council proposes to act on requests for adoption or amendment of the Comprehensive Plan or this chapter, amendment to the Official Zoning Map, or determination of

uses and addition, deletion or changes in category of uses allowed, notice of public hearing shall be as set forth in the current City Council Open Meetings Resolution.

ARTICLE VI Use Regulations

§ 601. Fences, hedges and gates; sight obstructions.

- A. Height. Solid or open fences or hedges shall not exceed six feet in height, with the exception of:
- (1) Front yard. Fences shall only be allowed in front yards, provided they meet the requirements set forth in Subsection C(1) below on sight obstruction.
 - (2) Side and rear yards on corner lots. Solid fences, open fences or hedges not exceeding eight feet in height are permitted in any district in the required side yard area and within a projection of the same width through the rear yard to the rear property line in those side and rear yard areas adjacent to a street. These limitations are subject to the additional requirements of Subsection C of this section.
 - (3) Commercial and Industrial Districts. Fences or walls not exceeding eight feet in height are permitted in any of these Commercial and Industrial Districts but not within the required front yards.
 - (4) Double-frontage lots. Fences, hedges or walls on double-frontage lots are limited in § 602.
- B. Gates. Gates shall not be constructed so as to obstruct the public right-of-way or to obstruct the view of vehicular or pedestrian traffic as set forth in Subsection C of this section. Gates shall not exceed 10 feet in height. In the R-1 and R-2 Zoning Districts structural support members of any gate shall not exceed 2012 feet in height in any yard. The structural support of any gate not exceeding 20 feet in height in the R-1 District is permitted with the appropriate Building Permit.
- C. Sight obstruction
- (1) It shall be the sole duty and responsibility of the owner or occupant of any corner lot to ensure that unobstructed vision for traffic safety is maintained such that there shall be located no structure, fence, wall, hedge, natural growth, sign or other object which materially impairs vision within an area bounded by the lot lines and a line joining points along each lot line 30 feet from their point of intersection with each other and the extension of the line into the unpaved area of the adjacent right-of-way, between a height of three feet and 10 feet above the center-line grade of the intersecting streets, except as provided for in Subsection C(3) of this section.
 - (2) Whenever any owner or occupant suffers or permits the existence of a sight obstruction, the Planning Director, upon complaint or his own initiative, shall give notice in writing to the owner or occupant of the existence of the sight obstruction and of the owner's responsibility, within 30 days of receipt of such notice, to remove the sight obstruction or to show cause in writing to the Planning Director why such obstruction should not be removed. Such notice shall be served to the property owner or occupant either personally or by certified mail. The owner's or occupant's failure to remove the sight obstruction or to show cause within the time specified shall be deemed to be:
 - (a) An admission of the existence of the sight obstruction; and

- (b) A consent for the City of Española to enter the property and remove the sight obstruction. In so entering, the City of Española may, in its discretion, use its own personnel or may contract with third parties for the removal of the sight obstruction. All removal costs shall be charged to the property owner; the full amount shall be payable by the property owner and shall constitute a lien in favor of the City of Española against such property.
- (3) The requirements of Subsection C(1) and (2) of this section shall not apply to:
 - (a) Legal nonconforming structures;
 - (b) Public utility poles;
 - (c) Vegetation, so long as it is not planted in the form of a hedge (a hedge up to three feet is permitted) and is trimmed to the trunk to a height of at least 10 feet above the center-line grade of the intersecting streets;
 - (d) Official traffic control signs and signals; and
 - (e) Existing ground contours penetrating above the three-foot height limitation.
- (4) The requirements of Subsection C(1) through (3) of this section are declared to be the minimum and in no way prohibit the City of Española from applying more restrictive height and location standards where such action is warranted in consideration of the health, safety, and general welfare of the community.
- (5) Any structure, fence, wall, hedge, natural growth, tree, sign or other object erected, placed or allowed to remain in place which does not comply with the requirements of Subsection C(1) through (4) of this section is a sight obstruction.
- D. Grade level differences. Where there is a difference in grade level between two properties, the permitted height of any fence within five feet of the common lot line shall be computed from the average grade level within that ten-foot distance, but in no case shall the fence height be limited to less than 42 inches.
- E. Barbed wire prohibited; exceptions. Barbed wire fences are prohibited, except for ranching and agricultural uses as follows:
 - (1) In the R-1 District, in the rear yard but not on lot lines, abutting equestrian trails, public rights-of-way or City-owned lands.
 - (2) In all zoning districts where needed for security or safety purposes, barbed wire may be added to fences above six feet subject to Planning Director approval. Barbed-wire fences are not permitted on residential lots except as allowed for lots in the R-1 District.
- F. Finished side of fences. The finished side of the fence shall front or face the right-of-way or adjacent property.
- G. Permit required for fences and walls. A fence/wall permit is required prior to commencing construction of any fence or wall as required by the provisions of § 201.

§ 602. Yards and setbacks.

- A. Corner lots in residential districts.
 - (1) On a corner lot in a residential district, the owner has a choice of which yard is the front yard and to construct the dwelling unit accordingly, unless the front yard is designated on the recorded plat of the subdivision.

obstruction. In so entering, the City of Española may, in its discretion, use its own

personnel or may contract with third parties for the removal of the sight obstruction. All removal costs shall be charged to the property owner; the full amount shall be payable by the property owner and shall constitute a lien in favor of the City of Española against such property.

- (1) The requirements of Subsection C(1) and (2) of this section shall not apply to:
 - (a) Legal nonconforming structures;
 - (b) Public utility poles;
 - (c) Vegetation, so long as it is not planted in the form of a hedge (a hedge up to three feet is permitted) and is trimmed to the trunk to a height of at least 10 feet above the center-line grade of the intersecting streets;
 - (d) Official traffic control signs and signals; and
 - (e) Existing ground contours penetrating above the three-foot height limitation.
 - (2) The requirements of Subsection C(1) through (3) of this section are declared to be the minimum and in no way prohibit the City of Española from applying more restrictive height and location standards where such action is warranted in consideration of the health, safety, and general welfare of the community.
 - (3) Any structure, fence, wall, hedge, natural growth, tree, sign or other object erected, placed or allowed to remain in place which does not comply with the requirements of Subsection C(1) through (4) of this section is a sight obstruction.
- H. Grade level differences. Where there is a difference in grade level between two properties, the permitted height of any fence within five feet of the common lot line shall be computed from the average grade level within that ten-foot distance, but in no case shall the fence height be limited to less than 42 inches.
- I. Barbed wire prohibited; exceptions. Barbed wire fences are prohibited, except for ranching and agricultural uses as follows:
- (1) In the R-1 District, in the rear yard but not on lot lines, abutting equestrian trails, public rights-of-way or City-owned lands.
 - (2) In all zoning districts where needed for security or safety purposes, barbed wire may be added to fences above six feet subject to Planning Director approval. Barbed-wire fences are not permitted on residential lots except as allowed for lots in the R-1 District.
- J. Finished side of fences. The finished side of the fence shall front or face the right-of-way or adjacent property.
- K. Permit required for fences and walls. A fence/wall permit is required prior to commencing construction of any fence or wall as required by the provisions of § 201.

§ 602. Yards and setbacks.

- B. Corner lots in residential districts.
- (1) On a corner lot in a residential district, the owner has a choice of which yard is the front yard and to construct the dwelling unit accordingly, unless the front yard is designated on the recorded plat of the subdivision.
 - (2) The elected or designated front yard shall conform to the site development requirements for the district. The other yard abutting a street is a side yard and shall have a minimum setback of 15 feet.

- C. Double-frontage or through lots. On double-frontage lots, one yard shall be designated as the front yard, and the other yard abutting a street shall be the rear yard, but shall be subject to all site development requirements of a front yard of the district. Fences and hedges in the required rear (second front) yard are subject to the height limitations of a rear yard as defined in Subsection A(1) of §601, except that when the rear yard faces or is adjacent to the front yard of a neighboring lot, the height limitations and setback requirements of a front yard shall be imposed as defined in this article.
- D. Lots in commercial or industrial districts abutting residential properties. Any lot in commercial or industrial districts which abuts a residential district must have a minimum side or rear yard setback equal to the required minimum side or rear yard setback of the adjoining residentially zoned lot.
- E. Projections into required setbacks.
 - (1) Eaves, cornices, sills, chimneys, awnings and other nonstructural features may project no more than two feet into any required setbacks.
 - (2) Fire escapes and fire-resistive outside stairways may project into any required rear or side yard as permitted by the latest version of the New Mexico Building Code and/or Uniform Building Code.
 - (3) A roofed breezeway connecting a main structure and accessory structures may project into the required rear setback in any residential district if the breezeway is a minimum of five feet from all lot lines and open on all sides except for the supporting posts.
 - (4) Covered patios, porches or decks attached to the main structures may extend to a maximum of 40% of the distance into the required rear setback; provided, however, that the space under the cover is open on at least three sides. The covers may not extend into the required front or side setbacks, except in the R-1 through R-4 Districts, where a covered, one-story porch, open on three sides, may encroach not more than five feet into the required front setback. In both cases, the eave of the patio or porch cover may project an additional two feet into the required setback.
 - (5) Uncovered porches or decks may extend 40% of the distance into a required rear setback but may not extend any distance into a required side or front setback. Uncovered walkways, driveways, steps, patios or courtyards may extend any distance into any required yard.
 - (6) Open balconies or bay windows may project five feet into any required rear setback and two feet into the required front yard.
 - (7) A carport, consisting of a roof that has no walls, or wholly or partially enclosed walls, except those that are part of the main structure to which it is attached, shall project no more than 40% of the distance into the required front yard setback.
- F. Use of required setbacks. Except as provided elsewhere in this chapter, every required setback shall be open, unobstructed and free of ruins, wreckage, rubbish and debris. No setback provided around any building for the purpose of complying with the provisions of this chapter shall be considered as providing a setback for any other building or site.

§ 603. Height of structures.

- A. Chimneys, television and radio masts and antennas (whether receiving, transmitting, or both, and related to amateur use only), except satellite dish antennas, are exempt from the structural height limitations of this chapter.
- B. Churches, hospitals, institutions and schools, when permitted in any residential district, may exceed the structural height permitted in the district; provided, however, that any part of the building or structure exceeding the height limit is set back from adjoining lot lines at least the distance of the required yard plus one foot for each foot of additional building or structural height above the district requirements.

§ 605. Swimming pools.

- A. No public or private swimming pool may be located in any required front yard.
- B. Public or private swimming pools may be located in any rear yard, but no pool may be located within 10 feet of any lot line. However, the location of the pool coping, walks or apron is not restricted by this ten-foot setback requirement. A structure designed to enclose a pool shall meet the applicable accessory or main structure setback, height and coverage requirements.
- C. Every outdoor swimming pool, or the yard in which it is located, must be completely surrounded by a fence not less than six feet in height, and all fence gates or doors opening to the pool must be equipped with at least a self-closing and self-latching device for keeping the gates or doors securely closed at all times when not in actual use.
- D. No private swimming pool shall be operated as a business or as a private club, unless in accordance with other provisions of this code.

§ 606. Outdoor lighting.

- A. All outdoor lighting fixtures shall be designed to comply with the Design Guidelines.
- B. Neither the direct nor reflected light may create a hazard to operators of motor vehicles.
- C. No lights that resemble traffic control devices may be used.
- D. No beacon lights or blinking, flashing or fluttering or other illuminating devices which have a changing light intensity, brightness or red, blue or orange color may be used or displayed in any district, except holiday decorations.
- E. Recognizing that outdoor lighting is an important component of the nighttime ambiance of the community and acknowledging that the night skies are a valuable natural resource which should be protected, the community lighting goals shall be to keep outdoor lighting to a safe minimum and to eliminate or reduce, to the maximum extent feasible, light pollution and light trespass. All lighting shall maintain a color temperature of less than 4000 Kelvins to avoid the harshness of “white” light associated with higher color temperatures. All new commercial establishments shall ensure their lighting is on an electronic timer that must be set to turn off a minimum of 33% of the fixtures or dim all lights by 33% during the evening hours (11pm – 6am) unless the business is open during those hours or is a 24-hour business.
- F. Commercial outdoor lighting, private outdoor lighting which is part of a designated private utility improvement and public outdoor lighting, including but not limited to roadway,

parking lot, walkway, bikeway, park, and outdoor sports lighting, are subject to the conditions required by the local electric provider.

§ 607. Home occupations and Home Businesses.

All home occupations and home businesses are required to obtain a Business License from the City Clerk's office. For new businesses, the City Clerk requires submission of a "Site Development Permit" (also known as a Land Use/ Site Development Permit) as obtained from the Planning and Land Use Department. Depending on the type of business being conducted, the Planning Director has the discretion to waive this requirement, for example, in the case of a strictly home-office-based business. **Commercial cannabis activities including production, manufacture, and retail are not allowed for home occupations and home businesses.**

No property in a residential district shall be used for a home occupation or home business unless the home occupation or home business meets the following standards and conditions:

A. In the R-1 District:

- (1) Not more than 25% of the area of the main dwelling may be used for home occupations. There is no limitation to the area of the lot or accessory buildings that may be used for agricultural, horticultural or animal husbandry home occupations; the total area used in other home occupations shall not exceed 25% of the area of all buildings on the lot. Any area of the main dwelling used in the home occupation shall be included in determining the total area so used.
- (2) Retail sales on the premises shall be permitted, but shall be restricted to not more than 10% of the dwelling unit floor area for storage and display of goods to be sold.
- (3) No more than one person outside the family shall be employed in a home occupation on the lot.
- (4) There shall be no visible exterior display or storage of materials used in the home occupation or business, except that materials used in agricultural, horticultural and animal husbandry occupations may be stored outside of a building or in such a way as to be visible from off the lot. Other than the exception in this Subsection A(5), there shall be no exterior indication of the home occupation or variation from the residential character of the main building or lot, except that a two-square-foot sign designating the permitted home occupation may be located on the lot. Also see Article IX for sign requirements.
- (5) There shall be no noise, vibrations, smoke, dust, odor, heat or glare detectable beyond the boundaries of the lot on which the home occupation is located, so as to constitute a nuisance.
- (6) The home occupation or business shall not create hazardous waste; or create pedestrian, automobile or truck traffic, or parking congestion significantly in excess of the normal amount found in a residential district.
- (7) No equipment or process shall be used which creates visual or audible interference in any radio or television receivers off the premises or causes fluctuation in the electrical line voltages off the premises.
- (8) The use shall not involve the use of signs or structures other than those permitted in the district.
- (9) The use must be clearly incidental and secondary to the primary use of the lot.

- (10) The use is the same as or similar to, but not restricted to, the following:
- (a) Art, craft or technical work.
 - (b) Assembly and mechanical repair, including instruments, time pieces, sporting equipment and household appliances where articles are hand portable.
 - (c) Repair of electric motors less than five horsepower in rated capacity; and repairs of mechanical and electrical components of automobiles which have been removed from the vehicle and brought to the premises.
 - (d) Office for the conduct of a profession, trade or service.
 - (e) Sewing and alteration of garments and home furnishings.
 - (f) Music lessons, dance lessons and tutoring.
 - (g) Conduct of a business related to a sport or hobby.
 - (h) Food cooperative.
 - (i) Testing, tune-up and repair of internal combustion engines less or equal to 10 horsepower, subject to Subsection A(6) of this section.
 - (j) Agricultural, horticultural and animal husbandry.
- (11) The following uses are not allowed:
- (a) Contractor's yard.
 - (b) Salvage yard or junkyard.
 - (c) Automobile repair or body and paint shop.
 - (d) **Commercial Cannabis Activities. No Commercial Cannabis Activity as defined by §26-2C-2 of NMSA 1978 (the Cannabis Regulation Act) nor as defined by §108 of the City Code shall be allowed.**

B. In all other residential districts:

- (1) The home occupation or business shall be carried on within the main building, an enclosed garage or other accessory building, or any combination of these.
- (2) An area no larger than 25% of the combined dwelling unit area and areas of all accessory buildings may be used for home occupations, but not more than 25% of the area of the main dwelling may be so used. In the remaining districts, an area no larger than 25% of the dwelling unit area may be used for home occupations, without regard as to how the area is apportioned between the dwelling unit and any accessory buildings.
- (3) Retail sales on the premises shall be permitted, but not more than 10% of the floor area of the dwelling unit shall be used for storage and display of goods to be sold.
- (4) No more than one person outside the family shall be employed in a home occupation on the premises.
- (5) There shall be no visible exterior display or storage of materials used in the home occupation or business, and no other exterior indication of the home occupation or variation from the residential character of the main building or lot, except that an unlighted, two-square-foot sign designating the permitted home occupation may be located on the lot. Also see Article IX for sign requirements.
- (6) There shall be no noise, vibration, smoke, dust, odor, heat or glare detectable beyond the boundaries of the lot on which the home occupation is located, so as to constitute a nuisance.

(7) The home occupation or business shall not create hazardous waste; or create pedestrian,

automobile or truck traffic, or parking congestion significantly in excess of the normal amount found in the district.

- (8) No equipment or process shall be used which creates visual or audible interference in any radio or television receivers off the premises or causes fluctuation in electrical line voltages off the premises.
- (9) The use shall not involve the use of signs or structures other than those permitted in the district.
- (10) Such use must be clearly incidental and secondary to the primary use of the lot.
- (11) The use is the same as or similar to, but not limited to, the following:
 - (a) Art, craft or technical work.
 - (b) Assembly or mechanical repair, including instruments, time pieces, sporting equipment and household appliances where articles are hand portable.
 - (c) Repair of electric motors less than five horsepower in rated capacity; and repairs of mechanical and electrical components of automobiles which have been removed from the vehicle and brought to the premises.
 - (d) Office for the conduct of a profession, trade or service.
 - (e) Sewing and alteration of garments and home furnishings.
 - (f) Music lessons, dance lessons and tutoring.
 - (g) Conduct of a business related to a sport or hobby.
 - (h) Testing, tune-up and minor repair of internal combustion engines less than or equal to 10 horsepower, subject to Subsection B(6) of this section.
- (12) The following uses are not allowed:
 - (a) Contractor's yard.
 - (b) Salvage yard or junkyard.
 - (c) Automobile repair or body and paint shop.
 - (d) **Commercial Cannabis Activities. No Commercial Cannabis Activity as defined by §26-2C-2 of NMSA 1978 (the Cannabis Regulation Act) nor as defined by §108 of the City Code shall be allowed**

§ 608. Temporary uses.

The following regulations govern operation of the temporary, transitory or seasonal uses listed in Subsection B of this section:

- A. Applications. Application for a temporary use permit shall be made to the Planning Director or Planning Commission as set forth in § 302.
- B. Uses. The following temporary uses are subject to the following specific regulations as well as to the regulations of the zoning district in which the use is located:
 - (1) Carnival or circus. A temporary use permit may be issued for a carnival or circus for a period not longer than 15 days in any six- month period at the same site.
 - (2) Holiday tree sales
 - (a) In any commercial district, lot sales of holiday trees are permitted for a period of not longer than 45 days, expiring December 30 of each year.
 - (b) In any other zoning district, lot sales of holiday trees are permitted for a period of not

longer than 45 days, expiring December 30 of each year. The City Manager shall designate those municipal lands where lot sales of Christmas trees are to be permitted.

- (3) Contractor's office, equipment sheds and security fencing. In any district, a temporary use permit may be issued for a contractor's temporary office and equipment shed or manufactured housing incidental to a construction project. Such permit shall expire one year after the date of issuance or upon the issuance of a certificate of occupancy, temporary or final, whichever occurs first. As part of the temporary use permit for a contractor's temporary office, security fences not exceeding eight feet in height may be erected on the construction site, with the location and material of the fence to be approved by the Planning Director as part of the temporary use permit for the contractor's office and/or equipment shed. Barbed wire may be utilized for added security, but only at the top of the fence above six feet. Such fences shall be removed on or before the expiration of the temporary use permit.
- (4) Caretaker's unit. In conjunction with the temporary use provisions of Subsection B(3) of this section, a temporary use permit may be requested for and issued for a caretaker's unit. Also see § 108, Definitions; rules of construction; for family use as part of a caretaker's unit.
- (5) Real estate office. In any district, a temporary use permit may be issued for a temporary real estate sales office in any new residential subdivision or development, such permit to expire one year after the date of issuance or upon completion of sales or rentals of all other property or units within the subdivision or development, whichever occurs first. A model home may be used as a temporary sales office. No residential use may be made of the office or model home.
- (6) Religious tent meeting. In any district, a temporary use permit may be issued for a tent or other temporary structure to house religious meetings for a period of not more than 10 days.
- (7) Temporary dwelling units during construction of a permanent single-family dwelling unit. For the purposes of this subsection, manufactured housing and recreational vehicles may be allowed as temporary dwellings. A temporary use permit may be issued for the use of a temporary dwelling unit during the construction of any single-family or two-family dwelling, subject to the following conditions:
 - (a) The permit shall expire one year after the date of issuance or upon the completion of construction, whichever occurs first.
 - (b) The applicant shall arrange for appropriate utility services to the temporary dwelling unit.
 - (c) The temporary dwelling unit's location on the site shall conform to the site development standards of the residential district in which it is to be located.
 - (d) The temporary dwelling unit shall be removed from the site on or before occupancy of the dwelling unit.
- (8) Nonprofit fund-raising
 - (a) In any district, nonprofit fund-raising shall be permitted only with the consent of the owner of such property.
 - (b) Nonprofit fund-raising within the City of Española is subject to the following conditions:

1. Applicants shall comply with the provisions of Business Registration and Vendors Ordinance.1

- (c) Notwithstanding any other provisions of this section, nonprofit fund-raising on the public rights-of-way is prohibited
- (9) Seasonal sales of farm produce. A temporary use permit may be issued for the sale of unprocessed farm produce in any district, provided that the produce is sold from the same location in which it is grown. The permit shall be for a period of time not longer than the growing and harvest season in a year and may be issued to individuals, groups or organizations. Products sold at the Española farmers market are exempt from this provision.
- (10) Outdoor arts and crafts shows and exhibits. A temporary use permit may be issued for outdoor arts and crafts shows or exhibits located on public or private land or on public rights-of-way in any district, for a period not longer than 15 days in any ninety-day period. Vendors within New Mexico highway rights-of-way must obtain permits from the New Mexico Department of Transportation.
- (11) Temporary use permit. All commercial and professional activities conducted in commercial districts may request a temporary use permit to periodically conduct sidewalk or outdoor sales limited to not more than 30 calendar days in any twelve-month period, unless an alternative requirement is provided for elsewhere in the Española Municipal Code.

§ 609. Recreational vehicles and equipment.

- A. Under no circumstances shall recreational vehicles or equipment be parked or stored in front yards.
- B. Recreation equipment shall not be parked or stored in front yards except for periods of not more than 10 days at a time for loading or unloading purposes; except if the lot, because of topography or shape, and the structures located on the lot, cannot reasonably accommodate the location of recreation equipment in areas other than the front yard, and there is no visual safety hazard or encroachment on the public right-of-way, then the recreation equipment may be located in the front yard.
- C. Recreational vehicles and equipment shall not be used for dwelling purposes in any district, except under the following conditions:
 - (1) In residential districts, they may be temporarily used for a period of up to 30 days, with no more than two such periods per calendar year, by house guests of the residents of the premises, provided that no money is received by the residents of the site for this privilege, or as a temporary dwelling during the construction of a single-family or two-family dwelling, through the issuance of a temporary use permit

§ 610. Inoperable vehicles.

- A. Findings. The City Council, through this chapter, finds that the existence of numerous inoperable vehicles is aesthetically displeasing and creates a nuisance condition that can lead to lower property values, and so imposes the following conditions:
 - (1) In all districts, the storage of inoperable vehicles is not permitted. However, they may be stored in an enclosed building in a rear yard and a maximum of three inoperable vehicles

may be stored;

- (2) In all residential districts, storage of inoperable vehicles is not permitted within the area between the front property line and the front of the main structure.
 - (3) Within commercial and industrial districts, storage of inoperable vehicles is permitted, as part of a permitted or special use and provided that the inoperable vehicles are contained within an enclosed building and that complies with all use requirements of the district and all conditions, if any, imposed by the Planning Commission or City Council.
 - (4) Inoperable vehicles are prohibited in the public right-of-way or from encroaching upon the public right-of-way.
- B. Notice to remove. Whenever an abandoned or inoperable vehicle is located in any district, within the City of Española and not in compliance with the provisions of this section, the Planning Director shall issue a notice to remove to the owner, his agent, or occupant of the property upon which the vehicle is located.
- C. Contents of notice. The notice to remove the vehicle issued under the provisions of this article shall contain:
- (1) An order to abate the nuisance or to request a hearing within a stated time, which shall be reasonable under the circumstances.
 - (2) The location of the nuisance, address as well as physical location within said property.
 - (3) A description of the abandoned vehicle.
 - (4) An order to remove said vehicle or other acts necessary to abate the nuisance, such acts to be completed within 10 days from receipt of notice, unless a hearing is requested pursuant to Subsection C(6) below.
 - (5) A statement that if the nuisance is not abated as directed and no request for a hearing is made within the prescribed time, the City will abate such nuisance and assess the cost of such abatement against such person.
 - (6) Any person receiving notice of an order to abate a nuisance may request a hearing before the municipal court on such matter within 10 days from the date of filing of the notice. Any notice of abatement served by the City shall advise the person allegedly committing the nuisance of his right to request a hearing before the municipal court.
- D. Service of notice. The notice to abate a nuisance shall be served as any other legal process may be served pursuant to law.
- E. Abatement by City. Upon the failure to remove the vehicle, or otherwise bring it into compliance, the Planning Director shall request that the City Manager order the abatement of the nuisance and shall prepare a statement of estimated costs incurred in the abatement of such nuisance. The City Manager may order municipal crews to conduct such abatement or provide for hiring an outside contractor for such service.
- F. City's costs declared lien. Any and all costs incurred by the City in the removal of the vehicle under the provisions of this section shall constitute a lien against the property upon which vehicle was located, which lien shall be filed, proven and collected as provided for by law. Such lien shall be notice to all persons from the time of its recording, and shall bear interest at the legal rate thereafter until satisfied.
- G. Exemptions. Exempt from the provisions of Subsections A through C of this section are vehicles that are classified as vehicles of historic and special significance under the provisions of NMSA 1978 § 66-11-1 et seq., except that such vehicles, when stored in the

rear yard, will be covered with an opaque cover designed to fit the vehicle.

§ 611. Day care.

- A. Day-care homes shall be an accessory use and home occupation in all districts.
- B. Day-care facilities and child-care centers shall be a special use, requiring a special use permit.
- C. Day-care homes, day-care facilities and child-care centers shall meet the following standards with an "X" indicating the applicable standard:

	D a y c a r e H o m e s	Day care Facil ities	Child - Ca re Ce nte rs
As a condition of the special use permit, the applicant must obtain a state license prior to conducting business. The statelicense will be required to be submitted to the Planning Director, prior to commencing business. A copy of the statelicense shall be kept by the Planning Director.		X	X
Business license must be secured from the City of Española	X	X	X
Off-street parking of one space per employee and a procedure for pickup and delivery of children according to a plan filedwith the application	X	X	X
Residential districts: no major alterations to the structure are allowed that prevent the continuing use of the structure as aresidence	X		
Special use permit shall specify the extent of structuralalterations to be allowed		X	X
As a condition of the special use permit, the Planning Commission shall establish the maximum number of childrenallowed			X

Recreation areas shall be fenced from adjoining residential properties	X	X	X
Walls or fences may be considered by the Planning Commission as part of the special use permit, if necessary to shield neighboring properties from the daycare use		X	X
Outdoor activities for children shall not be allowed before 7:30 a.m. or after 6:00 p.m.	X	X	X
Levels shall be governed by the provisions of Article III, Ordinance 18, of this Code	X	X	X

§ 612. Screening and storage.

- A. In all commercial districts, screening and storage requirements for permitted uses or activities shall be as described in this subsection. Every reasonable effort shall be made to store merchandise, manufactured products, raw materials, equipment, scrap, junk or solid waste in such a manner so as not to create a nuisance. A reasonable effort shall include but not be limited to compliance of all such material that shall be stored within a building, with the following exceptions:
- (1) Where such inside storage is not practicable and is justified with regards to health, safety or fire codes.
 - (2) Where the outside storage of merchandise, manufactured products or raw materials open to view from the public right-of-way is a normal and standard practice, such as in auto sales, recreational vehicles, nursery stock and the like, but not including the storage of secondhand goods or materials and junk.
 - (3) Where the outside storage is necessary during construction. In such case, the outside storage shall be allowed only during the time that the required building permits are active. Outside storage of such material shall create no hazard or visual obstructions as set forth in § 601, sight obstructions, or create a fire, safety or health hazard.
- B. In all residential districts, storage and screening requirements for permitted uses or activities shall be as described in this subsection. Storage pertaining to residential activities shall comply with the same requirements as specified elsewhere in this section and in addition shall comply with the following:
- (1) Appliances and other mechanical equipment which are no longer operable or functional shall not be stored outside for a period of time exceeding 30 days. Refrigerators and freezers stored outside during this period must have doors removed.
 - (2) Inoperable vehicles shall be stored in compliance with the provisions of § 610.
 - (3) Recreational vehicles shall be stored in compliance with the provisions of § 609.
 - (4) Storage in the public right-of-way is prohibited.
- C. A six-foot-high solid fence or wall is required along a common lot line between the residential property and nonresidential property except as restricted by § 601.

§ 613. Group homes.

To promote non-institutional living arrangements for handicapped persons while preserving the residential character of the neighborhood and minimizing the effect of the group home on traffic congestion in the neighborhood, a group home shall be permitted in any residential zoning district upon a showing of the following to the Planning Director:

- A. That, prior to occupancy of the group home, the operation is licensed by the State of New Mexico or, if not required, evidence confirming that such licensing is not required;
- B. That the group home conforms to existing zoning regulations applicable to other residential uses permitted in the zoning district;
- C. That the group home has certified by affidavit to the City of Española that its residents and programs comply with the definition of "group home" as set forth in this chapter, which requirements are intended to preserve the residential character of the neighborhood;
- D. That parking requirements for group homes set out in § 810 are met and an agreement, signed by the operator of the group home, is provided to the City of Española assuring that these requirements will continue to be met during the time the group home is operating;
- E. That, in any block, there shall be no more than one group home nor shall there be a group home on the corner of a block located diagonally to a block with an existing group home; and
- F. That there is nothing on the exterior of the group home that would distinguish it from other residential uses in the zoning district.

§ 614. Agricultural uses.

A. Generally. Agricultural and ranching uses are allowed in R-1 and R-2 Districts, provided the following requirements are met:

- (1) That the sale of animals or their by-products is limited to those raised or produced on-site, no importing of goods or products **[for sale]** is being conducted.
- (2) That the sale of agricultural products is limited to those raised on-site and that no importing of goods or products **[for sale]** is being conducted. **[No cannabis or cannabis products may be sold without appropriate licensure from the Cannabis Control Division and Planning Approval from the City, including homegrown or homemade cannabis or cannabis products.]**
- (3) That the sale of all goods listed as agricultural and ranching uses is restricted to being a secondary source of income of and for the household of the lot in question, and **[that]** the owner **[or operator]** acquires, **[and]** complies with the requirements of, a home occupation permit, **[a site plan approval, and a valid business registration if selling agricultural goods.]**
- (4) That none of the aforementioned uses create a nuisance condition as defined by Chapter 254, Nuisances, of the Española Municipal Code, or amendments thereto.
- (5) ~~That the aforementioned uses are maintained within a restrained area and not adjacent to riparian area.~~
- (6) **That a person or household may produce up six (6) mature cannabis plants per person, up to twelve (12) mature cannabis plants per household, provided that no homegrown cannabis or cannabis products may be sold or exchanged for anything of value.**
- (7) **[That any diseased, dying, or dead agricultural products be disposed of promptly and appropriately.]**

B. Farm animals:

(1) R-1, Rural Residential District. Farm animals are allowed in this district at the following ratios:

Type of Animal	Ratio
Cattle (including horses)	1 per 10,000 square feet*
Goats and sheep	1 per 4,000 square feet*
Swine (including pets)	1 per 2,000 square feet*
Chickens and other fowl	1 per 500 square feet*

*Based on total lot area

(2) R-2, Semi-Rural Residential District. Farm animals are allowed in this district at the following ratios:

Type of Animal	Ratio
Cattle (including horses)	None
Goats and sheep	1 per 4,000 square feet*
Swine (including pets)	1 per 2,000 square feet*
Chickens and other fowl	1 per 500 square feet*

*Based on the total lot area

Agricultural and ranching are allowed in any other districts only upon review and approval by the Planning and Zoning Commission. § 615. Individual Mobile Homes.

A. When three or more mobile homes or manufactured housing are involved on any one lot, in any district, the manufactured housing park regulations shall apply as set forth in this chapter.

B. Purposes

(1) This chapter recognizes that differences between site-built homes and manufactured homes exist, and that such differences provide for a need to have separate regulations governing the placement and use of mobile homes and manufactured housing. It is the intent of this section to provide adequate regulations governing the placement and use of manufactured housing units.

(2) Additionally, it is the intent of this section to:

- (a) Prevent overcrowding of land.
- (b) Provide adequate open area to assure privacy, natural light, and ventilation for each manufactured home.
- (c) Provide sufficient open areas for outdoor uses essential to the mobile home and/or manufactured housing.
- (d) Ensure the furnishing of adequate water supply and sewage disposal systems.
- (e) In general, provide those amenities available in sound residential areas.

C. Location of manufactured homes.

(1) Permitted districts; unrestricted residential uses. Mobile homes and manufactured housing are permitted as primary residences, including rental units, in R-1 Rural

Residential and R-2 Semi-Rural Residential Districts.

- (2) Permitted districts; restricted residential uses. Mobile homes and manufactured housing are allowed in R-3 Suburban Residential, R-4 Large Lot Residential and R-6 Urban Residential Districts as primary residences only, but not to be used as rental units.
- (3) Restricted districts. Mobile homes and manufactured housing are not permitted in the following districts, except as temporary or emergency housing:
 - (a) R-O-I Residential-Office-Institutional District.
 - (b) RM-PUD Residential Multifamily Planned Unit Development.
 - (c) RC-PUD Residential Compound Planned Unit Development.
 - (d) B-1 Local Commercial District.
 - (e) B-2 General Commercial District.
 - (f) LI Light Industrial District.
 - (g) HTC – Historic Town Center District.
 - (h) HI Heavy Industrial District.

D. Requirements for the use of mobile homes on individual lots.

- (1) Permanent installation of mobile homes and manufactured housing. All manufactured homes placed in any district shall be required to be placed on a permanent foundation, with wheels and axles removed. All permanent foundations shall comply with the New Mexico Manufactured Housing Division Regulations for such structures. Additionally, the mobile housing shall be permanently attached to said foundation by anchors, straps, tie-downs or similar such devices as may be approved by the Building Inspector.
- (2) Temporary installation of mobile homes and manufactured housing. All mobile homes placed on a less-than-permanent basis must be placed on the piers and/or footings that are in general compliance with those developed and approved by the New Mexico Manufactured Housing Division. Temporary placement may be approved for no more than six months at any one time with one extension of no more than six months, and then only after special findings of fact and full public hearing by the Planning Commission as provided in this chapter.
- (3) The construction of mobile homes and manufactured housing shall comply with the Standards for Manufactured Homes adopted by the New Mexico Manufactured Housing Division.

E. Skirting.

- (1) All manufactured housing units shall be skirted in a manner that fully conceals all area beneath the manufactured house in a manner consistent with the siding on the manufactured house and must be approved by the Building Inspector, prior to issuance of a certificate of occupancy.
- (2) All materials shall be approved by the Building Inspector and must be self-ventilating or provide for no less than a total of three square feet per 250 square feet of floor area with all vents being located diagonally from each other. All vents shall be installed to prevent the entry of rodents and direct rainfall.
- (3) All mobile home skirting shall be installed in accordance with manufacturer's recommended instructions or in accordance with the regulations set forth and approved by the New Mexico Manufactured Housing Division.

- F. Minimum requirements for lot size and front, side and rear yards, and all other standards, shall be the same as the district in which they are to be located. At no time shall any individual mobile home or manufactured home be located closer than 20 feet to another manufactured home.
- G. No mobile home or manufactured home may be occupied before obtaining a certificate of occupancy from the Building Inspector attesting to the conformance with the provisions of this chapter and other applicable rules and regulations of the City of Española.

Section 5. Section 616 is added to Code of the City of Espanola zoning and Development 350

§ 616. Commercial Cannabis Activity.

- A. **Generally.** This section specifies those regulations adopted by the city to cover all activity described in the Cannabis Regulation Act (CRA). Nothing in this chapter shall in any way prohibit, limit, or otherwise restrict the personal use of cannabis as specified in the CRA nor the production or consumption of homegrown cannabis or cannabis products for adult residents.
 - (1) The possessing, planting, cultivating, harvesting, drying, manufacturing of homemade cannabis products using nonvolatile solvents, alcohol or carbon dioxide or no solvents or transporting not more than six mature cannabis plants and six immature cannabis plants per person; provided that despite a household having multiple residents, no more than twelve mature cannabis plants may be present in one household; and provided further that if the person does not exceed the maximum number of cannabis plants, the person may possess the homegrown cannabis produced by the cannabis plants notwithstanding any weight limits; and
 - (2) a person or household producing cannabis pursuant to this provision and the provisions of the Cannabis Regulation Act shall ensure the cannabis plants are in an area that is enclosed and locked. There shall be one or more locks to prohibit access by anyone other than the person producing cannabis, and there must be walls surrounding the plants that prevent them from being seen by those other than the person or household producing the cannabis.
- B. **Site plan required.** Approval or conditional approval by the Planning & Zoning Commission or Planning Director of a site plan shall be required of all cannabis licensees. Such approval shall meet the requirements of §403 Development plan review criteria and the following additional requirements:
- C. **Security Plan.** The applicant shall submit a security plan for review and approval by the Police Chief that meets at a minimum the current requirements specified by the State of New Mexico for their license type
- D. **Fire Department review.** The applicant shall submit to the Española Fire Chief or State Fire Marshall any plans, drawings, or schematics necessary for his approval that the proposed development will meet applicable fire codes. An inspection and approval of the facilities by the State Fire Marshall, Española Fire Chief, or their designee, is required prior to operation.
- E. **Zone District Provisions.** Cannabis production, manufacture and retail as defined by the CRA is permitted only in the zone districts as specified herein, subject to specific licensure limitations, with the approval of the Planning & Zoning Commission or Planning Director as applicable, either of which shall consider access, traffic, water use, noise, emissions, fumes, odors and the recommendations of the Police Chief and Fire Chief, but which shall not unreasonably deny approval.

F. Cannabis Production

- 1. Cannabis production is only allowed B-1, B-2, L-I and H-I**
- 2. Cannabis production is only allowed in indoor facility or in a greenhouse**

Cannabis Producer Super-Microbusinesses.

Producers who grow one hundred (100) or fewer mature plants are permitted within B-1, B-2, L-I and H-I zone districts and are subject to administrative approval by the Planning Director.

Cannabis Producer Microbusinesses.

Any person who grow between one hundred one (101) to two hundred (200) mature plants are permitted within B-2, L-I, and H-I zone districts and are subject to administrative approval by the Planning Commission.

Large Cannabis Producers.

Producers who grow more than two hundred (200) plant mature plants are subject to approval by the Planning and Zoning Commission pursuant to the provisions of §403.

Additional requirements.

- 1. Producers must submit the application they will use to apply for a License with the state Regulation and Licensing Department (RLD) for review along with any other materials required by Section 408 for approval of their permit.**
- 2. Cannabis producers should submit proof of water rights or documentation from a water provider that the applicant has the right to use water from provider for Cannabis production.**
- 3. Any cannabis production facility should follow the site development requirements of their respective zone districts as per Ord. # 350).**

G. Manufacture, Testing, and Research

As defined by the CRA, a cannabis manufacturer, cannabis testing laboratory, or cannabis research laboratory are permitted as follows:

- 3. Class 1, 2 or 3 Manufacturers shall be permitted in B-1, B-2, L-I and H-I Zone Districts.**
- 4. Class 4 Manufacturers shall be permitted only in L-I and H-I Zone Districts.**

H. Cannabis Retail.

A retail establishment as defined by the CRA is permitted in the B-1 Local Commercial District, B-2 General Commercial District, and TC Tourist Commercial District, provided that any location is not within three hundred feet (300') from a school, daycare center or any facility for religious worship that is in existence at the time of the Application. Such distance shall be the shortest direct line measurement between the actual limits of the real property and the licensed premises where cannabis retail is proposed. Any retail location shall not be within 300 feet from any other cannabis retail store. Cannabis retail establishments shall not be permitted to have designated indoor cannabis vaping or outdoor cannabis vaping or any cannabis related product consumption area.

I. Cannabis Consumption in Public Places:

1. The use, sale, manufacture production, storage or distribution of cannabis or cannabis products is prohibited on property that is occupied, owned, controlled, or operated by the City of Espanola.
2. It shall be unlawful for an individual to smoke or to consume cannabis products on property that is occupied, owned, controlled or operated by the City of Espanola.
3. It shall be unlawful for anyone to smoke or to consume any cannabis of any kind, whether lawfully purchased or not, in any public place or in any street or in any government building, whether state or federal, or in any public.
4. It shall be unlawful for an individual to smoke marijuana or consume cannabis products in any open space in City of. Espanola.

J. Hours of Operation

A licensed cannabis retailer may operate between the hours of 7am and 12am daily.

Section 6. Section 617 is added to Code of the City of Espanola zoning and Development 350

Section 617. Severability.

Should any provision of this Ordinance be found to be invalid or unenforceable by any court, such determination shall have no effect upon the validity or enforceability of any other portion of this Ordinance, and all such other portions shall continue in full force and effect.

ARTICLE VII Nonconforming Uses

§ 701. Purpose and intent of article.

The provisions of this article shall apply to legally preexisting structures, lands and uses or any combination thereof that are made nonconforming as a result of the adoption and periodic revisions to the City's code and regulations. It is the purpose of this article to permit these nonconformities to continue until they are removed or changed to a conforming use but not to encourage their survival. It is further the purpose of this article to acknowledge that nonconformities shall not be used as grounds for adding other structures or uses prohibited in the district or enlarging, expanding or extending nonconformities except where expressly permitted under the provisions of this article. Possession of a valid building permit for a building or structure which will be nonconforming under the terms of this chapter shall be proof of construction in progress, provided that construction is pursued diligently to completion.

§ 702. Nonconforming vacant lots of record.

Permitted uses or structures may be established on a preexisting lot of record, the description of which is on record on the date of adoption of this chapter.

§ 703. Nonconforming uses of land.

Where a previously lawful use of land exists which is not permitted under the provisions of this chapter, the use may be continued, provided that:

- A. No such nonconforming use shall be enlarged, increased or extended to occupy a greater area of land than was occupied on the date of adoption of this chapter.
- B. No such nonconforming use of land shall be moved in whole or in part to any portion of the lot or parcel other than occupied by such use on the date of adoption of this chapter.
- C. If any such nonconforming use is ever discontinued for a period of more than 90 days, any subsequent use of land shall conform to the regulations for the district in which such land is located.

§ 704. Nonconforming structures.

Where a lawful structure exists on the date of adoption of this chapter and fails to meet one or more of the requirements of this chapter, such structure in its entirety is nonconforming; it may be used so long as it is otherwise lawful, subject to the following provisions:

- A. No structure may be enlarged or altered in any way which increases its nonconformity unless the enlargement or structural alteration makes the structure more conforming or is required by law. Should this structure be destroyed by any means to an extent of more than 50% of the most recent County Assessor's full value or market value of the structure at the time of destruction, it shall not be reconstructed except in conformity with the then current City code.
- B. Should any structure be moved for any reason for any distance whatsoever, unless such move is

required by law, it shall thereafter be made to conform to the regulations for the district into which it is moved.

§ 705. Nonconforming uses of structures or structures and land in combination.

If, on the date of adoption of this chapter, an otherwise lawful use of land or a structure or land and structure in combination exists that would not otherwise be allowed in the district under the terms of this chapter, the use may be continued, subject to the following:

- A. No existing structure devoted to a use not permitted in the district in which it is located shall be enlarged, extended, constructed, reconstructed, moved or structurally altered except as otherwise provided in this article unless the use of the structure is changed to a permitted use in the district in which it is located.
- B. No nonconforming use may be extended into any other parts of a building after the date of adoption of this chapter, and no such use shall be extended to occupy any land outside such building.
- C. Any nonconforming use of a structure or structure and land in combination may be changed to another use, provided that the new use is permitted within the district.
- D. When a nonconforming use is replaced by a permitted use, the original or any other nonconforming use may not thereafter be resumed.
- E. When a nonconforming use of a structure or structure and land in combination is discontinued or abandoned for 180 days, the premises shall not thereafter be used except in conformity with the provisions of the district in which it is located.
- F. Where a nonconforming use is located in a structure that is subsequently moved or destroyed, use of the property thereafter shall be in accordance with the provisions of this chapter.

§ 706. Repair and maintenance.

Nothing in this article is deemed to prevent the ordinary day-to-day minor repairs and maintenance of nonconforming structures. In addition, nothing in this article shall prevent the strengthening or restoring to a safe condition of any nonconforming building declared to be unsafe by any City of Española planning or building official.

§ 707. Abandoned structures.

The Planning Director or the Planning Commission may refer recommendations on abandoned structures requiring repair or demolition to the City Council in accordance with NMSA 1978 § 3-18-5.

ARTICLE VIII
Off-Street Parking and Loading

§ 801. Purpose of article.

It is the purpose of this article to provide for adequate, convenient and safe off-street parking and loading areas for land uses addressed in this chapter.

§ 802. Applicability.

Off-street parking and loading spaces shall be provided as an accessory use in all districts in accordance with the requirements of this article at the time any building or structure is constructed, enlarged, relocated, or at the time there is a change in its principal use.

§ 803. General requirements.

- A. The provision and maintenance of off-street parking and loading facilities shall be a continuing obligation of the owners of a use and/or parcel of property so long as the use of the property is in existence and so long as parking and loading facilities are required in connection with such given use.
- B. It shall be unlawful to discontinue, reduce, modify or otherwise dispense with parking and loading facilities that comply with the requirements of this article.
- C. The parking space requirements for any use not specifically listed in this article shall be determined by the Planning Director based on requirements for similar uses.
- D. Where the application of the off-street parking requirements results in a fractional number of spaces required, a fraction of 1/2 or greater shall be resolved to the next higher whole number.

§ 804. Location of off-street parking.

All required off-street parking spaces shall be located on the same lot or within 200 feet of the use to be served. If parking requirements are not all met on the same lot, the proposed off-site parking spaces shall only be allowed if they are not subject to termination during the existence of the use served.

§ 805. Shared use for mixed occupancies on single lot.

- A. Business park developments. Parking requirements will be applicable regardless of the mix, location or number of different uses within the business park.
- B. Commercial center. Parking requirements will be applied regardless of the mix, location or number of different uses within the commercial center.

§ 806. Nonconforming sites.

Developed sites in existence prior to the passage of this chapter may not meet the parking requirements of this article and will be considered nonconforming as to parking requirements.

All such sites shall be required to conform to the requirements of this article at the time any of the following events take place:

A. Professional, public, commercial and industrial sites.

- (1) Any building on a lot served is enlarged.
- (2) A new building is constructed on a lot.
- (3) An original building is removed or demolished and a new building is constructed.
- (4) The use of a structure is changed to a use requiring more parking spaces.

B. Residential sites.

- (1) A new building (main structure) is constructed on a lot.
- (2) An original building (main structure) is removed or demolished and a new building (main structure) is constructed.
- (3) The use of a structure or the number of units is changed, requiring more parking spaces.

§ 807. Design requirements.

A. Minimum parking stall dimensions shall be nine feet by 18 feet. Parking facilities shall meet the parking area dimensions design standards as set forth in the Design Guidelines.

B. Driveways and maneuverability.

- (1) The slope of entrance and exit driveways providing access to public streets shall not exceed 8% unless an exemption is approved by the Planning Director as necessary to make the lot buildable.
- (2) All required parking spaces shall be maintained in conformance with the requirements of this article and adequate ingress to and egress from each space shall be provided without moving another vehicle, except in single-family, two-family, and low-density multifamily districts.
- (3) Turning and maneuvering space shall be located entirely on private property unless an exemption is specifically approved by the Planning Director as necessary to make the lot buildable.
- (4) All parking spaces shall be internally accessible to one another without reentering an adjoining public right-of-way unless an exemption is otherwise approved by the Planning Director as necessary to make the lot buildable.
- (5) Ingress to and egress from any off-street parking area shall not be located closer than 20 feet to the point of tangent to an intersection or pedestrian crosswalk unless an exemption is otherwise approved by the Planning Director as necessary to make the lot buildable.
- (6) The Planning Director may require ingress separate from egress for safer flow of traffic.

C. Surfacing requirements.

- (1) All required parking facilities shall be paved and have grading and drainage as approved by the Planning Director and shall be constructed in conformance with the Design Guidelines. The maximum grade slope of the parking lot or parking facility shall not be more than 5% unless an exemption is determined by the Planning Director to be necessary to make the lot buildable.

- (2) All traffic control devices such as parking stripes, designated car stalls, directional arrows for signs, wheelstops, curbs and other developments shall be installed and completed as shown on the approved site plan.
 - (3) Parking areas shall use paint or similar devices to delineate car stalls, direction of traffic flow and pedestrian walkways.
 - (4) Bumper guards and/or wheelstops shall be required on the periphery of all required parking facilities so that cars will not protrude into the public right-of-way or strike a building, fence, landscaping or protrude over public or private sidewalks.
 - (5) Pedestrian walkways shall be provided as appropriate within the parking facility and shall be striped and signed.
- D. Lighting provided for parking facilities shall meet the standards of § 606, Outdoor lighting. Such parking facility lighting may be subject to review and approval by the Planning Department for energy efficiency and by the Police Department for personal and property security.
- E. Curb cuts.
- (1) The number of curb cuts shall be kept to a minimum so as to reduce potential traffic flow conflicts and conflicts with pedestrians. If the proposed curb cuts are within 100 feet of each other on the same street frontage or are within 100 feet of an existing curb cut on the same street frontage, the number of curb cuts shall be reviewed and approved by the Planning Director.
 - (2) Curb cuts providing access to and egress from the parking facility shall be a minimum of 15 feet wide for one-way traffic and 30 feet wide for two-way traffic.
 - (3) Joint use or shared curb cuts are encouraged and design of parking facilities should take into account future use of shared curb cuts.

§ 808. Installation time limit.

Where a parking facility design has been approved by the Planning Commission or Planning Director as part of a site plan, such parking facility design shall be installed and completed subject to the approval of the Planning Director and City Engineer prior to the issuance of the certificate of occupancy for the use of the property or structure. The Planning Director may, due to extenuating weather circumstances, authorize the issuance of a temporary certificate of occupancy.

§ 809. Disabled parking. *[Amended 11-19-2013 by Ord. No. 2013-02]*

- A. Disabled parking spaces shall be required for all nonresidential uses and for multiple-family uses with common parking areas according to the schedule adopted as part of the New Mexico Building Code.
- B. Disabled parking spaces shall be:
 - (1) At least 12 feet in width and 20 feet in length or 8 1/2 feet in width if an additional 3 1/2 feet at one side are protected and available for disabled ingress or egress.
 - (2) Designated for use by the physically disabled by the international symbol of accessibility.

Signs shall be constructed according to the Manual of Uniform Traffic Control Devices (MUTCD) and shall be located on a vertical surface above the level of naturally fallen and plowed snow.

- (3) Centrally located to main building entrances.
- (4) So located that occupants of vehicles in these spaces can go to the related building on a path at least 36 inches wide, unobstructed by bumpers, curbs or other obstacles to wheelchairs and without going behind parked vehicles.

§ 810. Off-street parking requirements.

A. Minimum number of spaces. The following minimum off-street parking space requirements are designated for the following uses:

Residential Uses

U s e	R e q u i r e m e n t
Single-family ¹	2 spaces per dwelling unit
Two-family ¹	2 spaces per dwelling unit
Multiple-family, up to and including 8 units	2 spaces per dwelling unit, plus 1 space for each 5 dwelling units; parking spaces in front of garages shall not satisfy the 1 space for each 5 dwelling units
Multiple-family, 9 units or more	
For dwellings less than 700 square feet of heated area	1 space per dwelling unit, plus 0.5 unassigned space per dwelling unit
For dwellings 700 square feet to 1,000 square feet of heated area	1 space per dwelling unit, plus 0.75 unassigned space per dwelling unit
For dwellings 1,000 square feet to 1,400 square feet of heated area	1 space per dwelling unit, plus 1 unassigned space per dwelling unit

For dwellings more than 1,400 square feet of heated area	1 space per dwelling unit, plus 1.2 unassigned spaces per dwelling unit
Boardinghouses, dormitories, roominghouses	1 space per bed, plus 2 spaces per owner or manager
Bed-and-breakfast	1 space per sleeping room, plus 2 spaces for owner/manager, if applicable
Senior citizens, multiple-family dwellings	1 space per dwelling, plus 1 space for each 10 dwellings for guest or recreation vehicle parking, plus 1 space for each permanent employee at maximum shift level
Daycare homes and facilities and child-care centers	1 space for each employee
Group homes: addition to spaces otherwise required by this section	1 space for each employee on the largest shift or in the largest group of employees with overlapping work hours

Professional/Office Use

U s e	R e q u i r e m e n t
Business Park	1 space per 500 square feet of net usable floor area
General, administrative, professional services, including, but not limited to, doctors, dentists, medical practitioners, attorneys, engineers, consultants, and psychologists	1 space per 250 square feet of net usable floor area

Commercial Uses

U s e	R e q u i r e m e n t
Retail uses such as art stores, clothing stores, florists shops, hardware, baker's shop, hobby shops, jewelry stores, photo shops, small markets, variety stores, supermarkets and laundries	1 space per 300 square feet of net usable floor area
Restaurant, cocktail lounge	1 space for each 100 square feet of net usable floor area
Restaurant, drive-in	1 space for each 100 square feet of net usable floor area plus stacking for 10 cars

Restaurant, takeout	1 space for each 100 feet of net usable floor area
Sales of automobiles, boats, campers, manufactured housings, motorcycles and trailers	1 space per 2,000 square feet of indoor and outdoor display area
Auto service stations and repair shops ²	4 spaces per service bay
Furniture, home furnishing and appliance stores	1 space per 500 square feet of gross floor area, including storage areas
Builder's supplies, plant nurseries	1 space per 200 square feet of enclosed net usable floor area plus 1 space per 500 square feet of display area
Mortuaries	1 space per 3 seats of maximum capacity in main meeting area
Daycare center	1 space per employee
Commercial center	1 space per 250 square feet of net usable floor area
Service uses such as barbershops and beauty shops, dry cleaners, photographers, real estate offices and small-item repair shops	1 space per 250 square feet of net usable floor area
Self-service storage facilities	1 space for manager's office
For one-story buildings, with two-lane traffic aisles	The area between buildings shall constitute the parking area. When one-lane traffic aisles are proposed, the driveway aisle shall be a minimum of 24 feet in width.
For multiple-story buildings	1 space per 1,000 feet of net usable floor area for area on second story, plus aisle width for

	one-way or two-way traffic
Drive-in dairies, drive-in liquor stores, drive-in laundries	1 space per 500 square feet of net usable floor area plus stacking for 5 cars
Bowling alleys	3 spaces per lane
Hospitals	1 space per 1.5 beds

Convalescent homes	1 space per 3 beds
Automobile car wash	3 spaces for each washing station
Banks, financial institutions	1 space per 300 square feet of net usable area
Hotels, motels and apartment hotels	1 space per unit

Industrial Uses

U s e	R e q u i r e m e n t
Manufacturing	1 space per 350 square feet of net usable floor area or 1 space per 2 employees on maximum shift, whichever is greater
Research and development	1 space per 1,000 square feet of net usable floor area
Warehousing, wholesaling	1 space per 2,000 square feet of net usable floor area

Institutional Uses

U s e	R e q u i r e m e n t

Churches	1 space per 4 seats in the main meeting area, based on maximum capacity (Each 30 inches of pew space equals 1 seat.)
Elementary school	2 spaces per teacher
Junior high school	2 spaces per teacher
High school, including stadium areas	7 spaces per teacher
Colleges and universities, including stadium areas	0.75 space per student, teacher and employee
Library	1 space per 600 square feet of net usable floor area
Museum	1 space per 1,000 square feet of net usable floor area

Recreational Uses

U s e	R e q u i r e m e n t
Auditoriums, clubs, lodges and theaters	1 space per 4 seats at maximum seating capacity
Athletic club, country club, clubhouse, swimming club, gymnasium	1 space per 4 persons at maximum capacity
Golf course, in addition to clubhouse requirements	5 spaces per hole 4 spaces per court
Tennis courts, public, private or club	4 spaces per court

Community center	1 space per 2 persons at maximum capacity
Park, in addition to recreation use	1 space per 3 acres open space plus spaces for recreation use
Art galleries	1 space per 250 square feet of net usable floor area used to display art work
Ball fields, stadiums, amphitheaters	1 space per 3 persons at maximum capacity

¹For single-family and two-family dwellings with garages or carports located on the same parcel of property as the dwelling unit, each stall of the garage or carport shall be counted as complying with the requirements of this section.

²The bay itself may not be counted as a required space.

B. Landscaping requirements. Off-street parking facilities shall provide landscaping as required in § 1304.

§ 811. Loading space requirements.

- A. Whenever the normal operation of any development requires that goods, merchandise or equipment be routinely delivered to or shipped from that development, sufficient off-street loading and unloading areas must be provided in accordance with this section to accommodate the delivery or shipment operation in a safe and convenient manner.
- B. Such loading spaces shall be of adequate size to accommodate the number and size of vehicles simultaneously loaded or unloaded in connection with the business conducted.
- C. Loading and unloading areas shall be located and designed so that the vehicles intended to use them can maneuver safely and conveniently to and from a public right-of-way; complete loading and unloading operations without obstructing or interfering with any public right-of-way or any parking space, parking lot or parking facility aisle. No area designated for loading and unloading may be used to satisfy the area requirements for off-street parking nor shall any portion of any off-street parking area be used to satisfy the area requirements for loading and unloading facilities. If a loading or unloading area is required by the Planning Commission or City Council as part of the approval or conditional approval of a site plan, and the loading or unloading area is part of or incorporated into the required off-street parking facility, it shall be paved and maintained in accordance with the provisions of this article. If a loading or unloading area is required by the Planning Commission or City Council as part of the approval or conditional approval of a site plan, and the loading or unloading area is separate and distinct from the required off-street parking facility, the Planning Commission or City Council may waive the paving requirements of the loading or unloading area if the Planning Commission or City Council finds that waiving of the paving requirement will not adversely affect the operation or use of the loading or unloading area, and it will not adversely affect adjacent properties or the neighborhood.
- D. Day-care facilities and child-care centers shall provide loading spaces for the pickup and drop-off of children.

§ 812. Shared parking in commercial districts.

A. Applicability. Parking spaces necessary to meet the minimum off-street parking space

requirements may be shared in accordance with this section, provided that:

- (1) Uses sharing parking are on adjoining lots, not separated by a street;
- (2) Uses sharing parking are on property within a commercial zoning district;
- (3) Uses sharing parking are professional/office and theaters; and
- (4) The aggregate minimum number of off-street parking spaces described in Subsection B(8) of this section are provided and maintained while any or all of the uses for which the shared parking is permitted continue to exist.

B. Criteria. Parking spaces necessary to meet the minimum off-street parking space requirements of this chapter may be shared only if a shared parking agreement is executed by the owners of the properties for which parking will be shared. The shared parking agreement shall include:

- (1) The names and addresses of the owners;
- (2) Legal descriptions, uses, and available parking spaces for each of the properties covered by the agreement;
- (3) The term of the agreement, which shall continue for at least the period any or all of the uses for which parking is shared exist;
- (4) A provision stating that the agreement is binding upon the owners of the properties, their successors and assigns, and that the agreement shall run with the land;
- (5) A provision granting from each owner to the other the rights to shared use of the parking facilities;
- (6) A provision for the maintenance of the parking facilities by both owners;
- (7) Such other provisions, not inconsistent with this chapter, as the parties may deem advisable; and
- (8) A provision specifying that, for the properties together, an aggregate minimum number of off-street parking spaces will be provided and maintained.
 - (a) The required number of off-street parking spaces shall be computed as follows:
 1. The minimum number of parking spaces specified in § 810 for each property shall be multiplied by the "occupancy rate" as determined by this table for each use for the weekday night, daytime and evening periods, and weekend night, daytime and evening periods respectively.
 2. The minimum number of off-street parking spaces specified in § 810 for each of the uses referred to for each time period shall be added to produce the aggregate number of off-street parking spaces required for each time period.
 3. The greatest of the aggregate number of parking spaces for each period shall be determined to be the minimum number of off-street parking spaces required for the collective uses on the respective properties.
 - (b) Nothing herein contained shall reduce the total number of disabled parking spaces that would otherwise be required for each of the properties separately. [Amended 11-19-2013 by Ord. No. 2013-02]

C. Approvals. The shared parking agreement described in Subsection B herein shall be submitted as a part of a site plan application for one or more of the affected properties. If one

of the properties is operating pursuant to an existing approved site plan, then upon approval of the site plan with which the shared parking agreement is submitted, the site plan for the existing property shall be deemed to be amended, but only insofar as the parking requirements for it are concerned.

- D. Enforcement. Parking requirements specified by this section shall be enforceable against any or each of the owners of properties subject to the shared parking agreement pursuant to the provisions of this chapter.

ARTICLE IX

Signs

§ 901. Purpose of article. *[Amended 11-19-2013 by Ord. No. 2013-02]*

The purpose of this article is to:

- A. Encourage the effective use of signs as a means of communication in the City of Española;
- B. Maintain and enhance the aesthetic environment and the City of Española's ability to attract sources of economic development and growth;
- C. Improve pedestrian and traffic safety;
- D. Minimize the possible adverse effect of signs on nearby public and private property; and
- E. Enable the fair and consistent enforcement of the sign restrictions of this article.

§ 902. Applicability; effect.

- A. A sign may be placed, established, painted, created or maintained in the City of Española only in conformance with the standards, procedures, exemptions and other requirements of this chapter.
- B. The effect of this article, as more specifically set forth, is to:
 - (1) Establish a permit system to allow a variety of types of signs in commercial and industrial zones, and a limited variety of signs in other zones, subject to the standards and the permit procedure of this chapter.
 - (2) Allow certain signs that are small, unobtrusive and incidental to the principal use of the respective lots on which they are located, subject to the substantive requirements of this chapter, but without a requirement for permits.
 - (3) Provide for temporary signs without commercial messages in limited circumstances in the public right-of-way.
 - (4) Prohibit all signs not expressly permitted by this article.
 - (5) Provide for the enforcement of the provisions of this article.

§ 903. Interpretation.

Words and phrases used in this article shall have the meanings set forth in this article. Principles for computing sign area and sign height are contained in § 911. All other words and phrases shall be given their common, ordinary meaning, unless the context clearly requires otherwise.

Section headings or captions are used for reference only and shall not be used in the interpretation of this article.

§ 904. Definitions.

For the purpose of this article, certain terms, phrases, words and their derivatives shall be constructed as specified in this article or as specified in the Building Ordinance. Where terms are not defined, they shall have their ordinarily accepted meanings within the context in which they are used.

ABANDONED SIGN — Any sign that describes, directs attention to, gives directions for locating any business or establishment no longer in operation, or advertises a product no longer being marketed or any sign structure lacking a sign face or sign copy for a period that exceeds six months.

A-FRAME SIGN — Also known as a sandwich board sign. Any freestanding, temporary, and/or movable sign usually constructed of two separate wood or metal sign faces attached at the top. Cannot exceed 16 square feet; must be removed at close of business; cannot be placed in public right of way or impeding ADA or pedestrian accessibility. *[Amended 08-14-2018 by Ord. No. 2018-03]*

ANIMATED SIGN — Any sign that uses movement or change of lighting to depict action or create a special effect or scene.

AWNING SIGN — Any sign that is painted, stamped, perforated, stitched, or otherwise applied on a valance of an awning.

BANNER — Any sign of lightweight fabric or similar material that is not permanently mounted to a pole or a building by a permanent frame at one or more edges. National flags, state or municipal flags, or the official flap of any institutions or business shall not be considered banners.

BILLBOARD — Any sign which directs attention to a business, activity, commodity, service, entertainment or communication which is not conducted, sold or offered at the premises on which the sign is located, or which does not pertain to the premises upon which the sign is located.

BUILDING FACADE — Any exterior wall of a building, including windows, doors, and mansard, but not including a pitched roof.

BUILDING IDENTIFICATION SIGN — Any sign that serves to identify only the name, address, and lawful use of the premises upon which it is located and provides no other advertisements or product identification.

BUILDING MARKER — Any sign indicating the name of a building and date and incidental information about its construction, which sign is cut into a masonry surface or made of bronze or other permanent material.

BUILDING SIGN — Any sign attached to any part of a building.

CABINET SIGN — Any sign that contains all the text or logo symbols within a single enclosed area. *[Added 11-19-2013 by Ord. No. 2013-02]*

CANOPY SIGN — Any sign that is part of or attached to an awning, canopy or other fabric, plastic or structural protective cover over a door, entrance, window or outdoor service area. A

marquee is not a canopy sign. *[Added 11-19-2013 by Ord. No. 2013-02]*

CLEAR SIGHT TRIANGLE — A triangular-shaped portion of land established at street intersections in which there are restrictions on things erected, placed or planted which would limit or obstruct the sight distance of motorists entering or leaving the intersection.

COMMERCIAL MESSAGE — Any sign wording, logo or other representation that, directly or indirectly, names, advertises or calls attention to a business, product, service or other commercial activity.

DEVELOPMENT SIGN — Any sign used to announce the name of a development being, or to be, constructed; may include on it all firms involved in the project who wish to advertise (to include licensing numbers where appropriate).

DIRECTIONAL SIGN — Any sign limited to directional messages such as "enter" or "exit." Logos and business names are permitted as needed to complete the directional message.

ELECTRONIC MESSAGE SIGN — Any sign containing a display consisting of any array of light sources, panels, or disks that are electronically activated. The definition of "animated sign" is also applicable.

FIXED BALLOON — Any lighter-than-air or gas-filled inflatable object attached by a tether to a fixed place.

FLAG — Any fabric, banner or bunting containing distinctive colors, patterns or symbols, used as a symbol of a government, political subdivision or other entity.

FLAG, DECORATIVE — Any sheet of fabric, square, rectangular or triangular shape which is mounted on a pole, cable, or rope at one end, which may or may not contain text or graphics.

FREESTANDING SIGN — Any sign supported by structures or supports that are placed on, or anchored in, the ground and that are independent from any building or other structure. Types of freestanding signs include pedestal and monument.

GOVERNMENT SIGN — A sign erected and maintained pursuant to and in discharge of any government functions, or required by law, ordinance or other regulation, including legal notices, advertisements, traffic, identification, direction, and information signs on government property.

HANGING SIGN — Any sign that is suspended from and located entirely under a covered porch, covered walkway, or an awning.

IDENTIFICATION SIGN — Any sign of an identification or of informational nature bearing no advertising.

ILLUMINATED SIGN — Any sign that is illuminated by electric lights or luminous tubes located within the interior of the sign.

INCIDENTAL SIGN — Any sign, generally informational, that has a purpose secondary to the use of the lot on which it is located, such as "no parking," entrance," "loading only," "telephone" and other similar directives.

LOT or ZONE LOT — A parcel of land, the boundaries of which have been established by a legal instrument of record, that is recognized and intended for the purposes of transfer of ownership, that is of sufficient size to meet minimum zoning requirements for area coverage and use, and that can provide yards and other open spaces as required by the zoning regulations. *[Amended 11-19-2013 by Ord. No. 2013-02]*

MARQUEE — Any permanent, roof-like structure projecting beyond a building or extending along and projecting beyond the wall of the building, generally designed and constructed to provide protection from weather. *[Added 11-19-2013 by Ord. No. 2013-02]*

MARQUEE SIGN — Any sign in any manner made a part of or attached to a marquee. *[Added 11-19-2013 by Ord. No. 2013-02]*

MONUMENT SIGN — Any freestanding sign that announces the name of a commercial activity but does not exceed seven feet in height. The non-message area (framework, supporting structures, and the like) of a monument may not exceed the message area by more than 25%.

MURAL — Any picture or graphic illustration painted directly to a wall of a building which does not advertise or promote a particular business, service, or product.

NONCONFORMING SIGN — Any sign existing at the effective date of this chapter that does not conform to the requirements of the chapter.

OFF-PREMISES SIGN — Any sign which directs attention to a business, commodity or service sold, offered, or existing elsewhere than upon the same lot where such sign is displayed (includes billboards).

ON-PREMISES SIGN — Any sign which directs attention to a business, commodity or service which is sold, offered or existing on the same lot where such sign is displayed; provided that an on-site sign may also display a noncommercial message. *[Added 11-19-2013 by Ord. No. 2013-02]*

OPEN HOUSE SIGN — A sign used to announce a house held open to the public for sale or tour by potential buyers. This applies to new and existing homes. *[Added 11-19-2013 by Ord. No. 2013-02]*

PARAPET WALL — The vertical extension of a building exterior wall projecting above the plate line of the building.

PEDESTAL SIGN — Any freestanding sign that exceeds seven feet in height and is no lower than seven feet from the bottom of the sign to the ground. *[Added 11-19-2013 by Ord. No. 2013-02]*

PENNANT — Any lightweight plastic, fabric or other material, usually in a series, whether or not containing a message of any kind, suspended from a rope, wire or string and designed to move in the wind. *[Added 11-19-2013 by Ord. No. 2013-02]*

PERMANENT SIGN — Any sign permanently affixed to the ground or a wall.

PERSON — Any individual, association, company, corporation, firm, organization, or partnership, singular or plural, of any kind.

PORTABLE SIGN — Any sign not permanently attached to the ground or other permanent structure, or a sign designed to be transported, including, but not limited to, signs designed to be transported by means of wheels; signs converted to A- or T-frames; menu and sandwich board signs; balloons used as signs; umbrellas used for advertising; and signs attached to or painted on vehicles parked and visible from the public right-of-way, unless the vehicle is used in the normal day-to-day operations of the business (see definition of "vehicle sign").

PRINCIPAL BUILDING — The building in which is conducted the principal use of the lot on which it is located. Lots with multiple principal uses may have multiple principal buildings, but accessory structures shall not be considered principal buildings.

PROJECTING SIGN — Any sign affixed to a building or wall in such a manner that its leading edge extends more than six inches beyond the surface of the building or wall.

REAL ESTATE SIGN — Any temporary sign placed upon property for the purpose of advertising to the public the sale or lease of the property.

RESIDENTIAL SIGN — Any sign located on a lot zoned for residential uses that contains no commercial message except advertising for goods and services legally offered on the premises where the sign is located, if offering such service at such location conforms with all requirements of this chapter.

RIGHT-OF-WAY — The public property adjacent to a roadway, excluding medians, which is under the jurisdiction of the City of Española.

ROOF SIGN — Any sign erected and constructed wholly on and over the roof of a building, supported by the roof structure. A sign attached to an exterior wall of a building but whose face does not extend above the parapet shall not be considered a roof sign.

SEARCHLIGHTS — An apparatus containing a light source and/or a reflector for projecting an intensely bright beam of light used outside to attract public attention to a particular site, event or place of business, including but not limited to floodlights, spotlights, canister lights, and other similar devices. *[Added 08-14-2018 by Ord. No. 2018-03]*

SETBACK — The distance from the property line to the nearest part of the applicable building, structure or sign, measured perpendicularly to the property line.

SHOPPING CENTER — A group of two or more retail or other commercial establishments, having any or all of the following characteristics:

- A. The establishments are connected by a party wall, partitions, canopies, or similar features.
- B. Some or all of the establishments are located in separate buildings which are designed as a single commercial group sharing common parking areas and vehicular ways and which are connected by walkways or other access ways.
- C. The establishments are under the same management or association for the purpose of enforcing reciprocal agreements controlling management or parking.

SIGN — Any device, fixture, placard or structure that uses any colors, graphics, illumination, symbol or writing to advertise, announce the purpose of, or identify the purpose of a person or entity, or to communicate information of any kind to the public.

SIGN DISTRICT — The classification for the purpose of calculating the signage allowed for a particular lot.

SIGN MODIFICATION — Includes any changes in style, business name, dimension or location; not to include alterations caused by ordinary maintenance or minor repairs which do not increase the useful life of the sign or are required for safety reasons.

SIGN REMODEL — Any change or update of a sign face or color of the sign.

SPECIAL SALE/GRAND OPENING — temporary sign announcing a new business that may remain in place for up to a maximum 30 days. *[Added 08-14-2018 by Ord. No. 2018-03]*

STREET — A strip of land or way subject to vehicular traffic (as well as pedestrian traffic) that provides direct or indirect access to property, including, but not limited to, alleys, avenues, boulevards, courts, drives, highways, lanes, places, roads, terraces, trails or other thoroughfares.

STREET BLIMPS — Parked or travelling cars used primarily for advertising, sometimes referred to as "street blimps" due to the large display area. Street blimps are subject to the same restrictions as a vehicle sign; however, the parking of street blimps in a residential area is strictly prohibited. *[Added 11-19-2013 by Ord. No. 2013-02]*

STREET FRONTAGE — The distance for which a lot line of a lot adjoins a public street, from one lot line intersecting the street to the furthest distant lot line intersecting the same street.

SUBDIVISION SIGN — Any permanent sign placed on private property, in a private easement at the entrance of residential or commercial subdivisions for the purpose of identification of the subdivision, or the occupants, tenants or businesses located within a commercial subdivision.

SUSPENDED SIGN — Any sign that is suspended from the underside of a plane surface and is supported by the surface. *[Added 11-19-2013 by Ord. No. 2013-02]*

TEMPORARY POLITICAL SIGN — Temporary political signs may be located in any zoning

district, provided they are erected not more than 30 days before an upcoming election and must be removed within five days following said election. *[Added 11-19-2013 by Ord. No. 2013-02]*

TEMPORARY SIGN — A sign that is intended for a temporary period of posting on public or private property; is typically constructed from semi-durable materials; and does not constitute a permanent structure.

VEHICLE SIGN — Any sign placed or painted on any motor vehicle, recreational vehicle, trailer, or other movable device that reasonably indicates the use of the vehicle, trailer, or device as a sign. Except where an activity is legally offered, this includes the parking of a vehicle, trailer, or device in a manner so as to constitute a sign, or when vehicles and equipment are used as static displays to advertise a product, service, or business.

WALL SIGN — Any sign attached parallel to, painted on the wall surface, or erected and confined within the limits of an outside wall of any building or structure, which is supported by the wall or building, and which displays only one sign surface.

WINDOW SIGN — Any sign, pictures, symbol, or combination thereof, designed to communicate information about an activity, business, commodity, event, sale, or service, that is placed inside a window or upon the windowpanes or glass and is visible from the exterior of the window.

§ 905. Exempt signs.

The following signs shall be exempt from the provisions of this article:

- A. Official notices authorized by a court, public body or public safety official.
- B. Directional, warning or information signs authorized by federal, state or municipal governments.
- C. Memorial plaques, building identification signs and building cornerstones when cut or carved into a masonry surface or when made of noncombustible material and made an integral part of the building or structure.
- D. The flag of a government or a noncommercial institution, such as a school.
- E. Religious symbols and seasonal decorations within the appropriate public holiday season.
- F. Works of art that do not include a commercial message.
- G. Holiday lights and decorations with no commercial message.

§ 906. Prohibited signs.

All signs not expressly permitted under this chapter or exempt from regulation hereunder in accordance with § 905 are prohibited in the City.

§ 907. Nonconforming signs; time for compliance.

- A. All business owners having existing legal nonconforming signs within the current corporate

boundaries of the City of Española established before the effective date of these new regulations may continue to display existing signs without sign modifications notwithstanding the effect of any more restrictive regulations.

- B. The following categories of nonconforming signs shall be subject to the regulations of this article:
- (1) Any sign established or maintained without first complying with all provisions of this code in effect at the time the sign is established.
 - (2) Any sign lawfully established once the use of the sign has been discontinued, or its owner has abandoned the structure or use, with which the sign has been associated for a period of at least 90 days.
 - (3) Any sign which has been destroyed or damaged, other than by destruction or damage to its sign faces, to an extent greater than 50% of its in-place replacement cost, when repair or replacement does not occur within 30 days of the damage.
 - (4) Any sign the owner of which is requesting to obtain either permission for a sign remodel or permission to expand or enlarge the building or land use with which the sign is associated, and the sign is affected by the expansion or enlargement or change of use.
 - (5) Any sign the owner of which seeks permission to relocate the sign.
 - (6) Any temporary sign.
 - (7) Any sign which is unsafe or which is a hazard to the public.

§ 908. Violations and penalties.

- A. Any of the following shall be a violation of this chapter and shall be subject to the enforcement remedies and penalties provided by this code and by state law:
- (1) To install, create, erect, or maintain any sign in a way that is inconsistent with any plan or permit governing the sign or the lot on which the sign is located.
 - (2) To install, create, erect, or maintain any sign requiring a permit without a permit.
 - (3) Failure to remove any sign that is installed, created, erected or maintained in violation of this chapter, or for which the sign permit has lapsed.
 - (4) To continue any violation. Each day of a continued violation of this chapter shall be considered a separate violation when applying the penalty portions of this chapter.
- B. Penalties are hereby defined as \$500 per violation per day and/or 90 days in jail.

§ 909. Enforcement; remedies.

- A. Any violation or attempted violation of this chapter or of any condition or requirement adopted pursuant hereto may be restrained, corrected or abated, as the case may be, by injunction or other appropriate proceedings pursuant to state law or municipal ordinance. A violation of this article shall be considered a violation of this code. The remedies shall include the following:
- (1) Issuing a stop-work order.
 - (2) Seeking an injunction or other order of restraint or abatement that requires the removal of

the sign or the correction of the nonconformity.

- (3) Imposing any penalties that can be imposed directly by the City.
 - (4) Seeking, in any court of competent jurisdiction, the imposition of any penalties that can be imposed by the court.
 - (5) In the case of a sign that poses an immediate danger to the public health or safety, taking measures as are available to the City under the applicable provisions of this code and the building code for such circumstances.
 - (6) Signs posted in the public right-of-way contrary to this chapter shall be removed by the Enforcement Officer.
- B. The City shall have other remedies as are and as may from time to time be provided for or allowed by state law or municipal ordinances for the violation of this chapter.

§ 910. Appeals.

Any person aggrieved by any decision or order of the Planning Director or any decision or order may appeal such decision to the Planning Commission.

§ 911. Computations of area and height.

- A. The following principles shall control the computation of sign area and sign height:
- (1) Computation of area of individual signs. The area of a sign face (which is also the sign area of a wall sign or other sign with only one face) shall be computed by means of the smallest square, circle, rectangle, triangle or combination thereof that will encompass the extreme limits of the writing, representation, emblem or other display, together with any material or color forming an integral part of the background of the display or used to differentiate the sign from the backdrop or structure against which it is placed, but not including any supporting framework, bracing or decorative fence or wall when the fence or wall otherwise meets zoning ordinance regulations and is clearly incidental to the display itself.
 - (2) Computation of area of multi-faced signs. The sign area for a sign with more than one face shall be computed by adding together the area of all sign faces visible from any one point. When two identical sign faces are placed back to back, so that both faces cannot be viewed from any point at the same time, and when the sign faces are part of the same sign structure, the sign area shall be computed by the measurement of one of the faces.
 - (3) Computation of height. The height of a sign shall be computed as the distance from the base of the sign at normal grade to the top of the highest attached component of the sign.
 - (a) Normal grade shall be construed to be the lower of:
 1. Existing grade prior to construction; or
 2. The newly established grade after construction, exclusive of any filling, boring, mounding, or excavating solely for the purpose of locating the sign.
 - (b) In cases in which the normal grade cannot reasonably be determined, sign height shall be computed on the assumption that the elevation of the normal grade at the base of the sign is equal to the elevation of the nearest point of the crown of a public street or

the grade of the land at the principal entrance to the principal structure on the lot, whichever is lower.

- (4) Computation of maximum total permitted sign area for a zone. The permitted sum area of all signs on a lot shall be:
 - (a) The maximum square feet noted in Appendix C, § 922, or
 - (b) The sum area as computed by applying the formula to the linear street frontage of the zoned lot or to the ground floor area of the principal building for the sign district in which the lot is located.
- B. Lots fronting on two or more streets are allowed only one freestanding sign.
- C. The total sign area that is oriented towards a particular street may not exceed the portion of the lot's total sign area allocation that is derived from the lot, building, wall area, or frontage on that street.

§ 912. Design, construction and maintenance.

All signs shall be designed, constructed and maintained in accordance with the following standards:

- A. All signs shall comply with the applicable provisions of the International Building Code and the electrical code of the State of New Mexico and this code.
- B. Except for banners, flags, window signs, and other temporary signs conforming in all respects with the requirements of this article, all signs shall be constructed of permanent materials and shall be permanently attached to the ground, a building or another structure by direct attachment to a rigid wall, frame or structure.
- C. All signs shall be maintained in good structural condition, in compliance with all building and electrical codes, and in conformance with this code.
- D. The numerical address of the business/development shall be no less than 10 inches in height.

§ 913. Signs in public right-of-way.

- A. No signs shall be allowed in the public right-of-way, except for the following:
 - (1) Permanent signs: permanent signs, including public signs erected by or on behalf of a governmental body to post legal notices, government-approved community signs ("Adopt-A-Median"), signs to identify public property, convey public information and direct or regulate pedestrian and vehicular traffic; bus stop signs erected by a public transit company; and informational signs of a public utility regarding its poles, lines, pipes or facilities.
 - (2) Temporary signs: temporary signs posted for either garage sales or special community events, not to exceed four square feet and not in obstruction of clear sight or traffic flow. These signs are not allowed for than seven (7) days prior to the garage sale or special community event; they must be removed within 48 hours of the conclusion of the advertised event. No commercial signage or advertising is allowed in the Public right-of-way.
 - (3) Warning signs: emergency warning signs erected by a governmental agency, a public

utility company or a contractor doing authorized or permitted work within the public right-of-way.

- (4) Promotional signs: Promotional signs advertising a special community event such as a fair, farmer's market or parade may be permitted to be located over the public right-of-way. The size, location and method of erection of such signs shall be subject to approval by the Zoning Official pursuant to good engineering practices and shall be consistent with the paramount purpose of public rights-of-way to provide safe and convenient traffic circulation.

B. Other signs not expressly allowed by this section will be forfeited.

§ 914. Temporary signs. *[Amended 11-19-2013 by Ord. No. 2013-02 and 08-14-2018 by Ord. No. 2018-03]*

A. Temporary political signs

- (1) Shall be permitted in all zones;
- (2) Shall be erected not more than 30 days before an upcoming election;
- (3) This similarly applies to political signs on personal property, be it the candidate's property or one of his/her supporters. No political signs may be displayed on private property more than 30 days before an upcoming election;
- (4) Political signs on or as a part of moving vehicles are also bound by this 30-day timeline; hence, no political signage may appear on or as a part of a moving vehicle more than 30 days before an upcoming election;
- (5) Shall be removed within five days following the election;
- (6) Shall not be erected or located in a public right-of-way except as established and authorized by the public entity having jurisdiction over said right-of-way; and
- (7) Shall not require that a sign permit be issued.

B. Promotional Flags

- (1) Shall not exceed five in number and no more than 10 square feet each.
- (2) Shall be displayed no more than 45 days cumulative during any single calendar year.

C. A-Frame Signs

- (1) Shall not exceed one per site and shall not exceed 12 square feet in total sign face area.

D. Banners

- (1) Shall not exceed two in number and no more than 15 square feet each.
- (2) Shall be displayed no more than 45 days cumulative during any single calendar year.

E. Portable signs

- (1) Shall not exceed 32 square feet in total area. Such square footage shall be applied and calculated as part of the total square footage permitted for all businesses or property. If found to exceed the maximum allowable area, such signs will not be permitted;
- (2) Shall be displayed no more than 45 days cumulative during any single calendar year;
- (3) There shall be no more than one portable sign per parcel of property or business,

whichever is the lesser, permitted at any one time;

- (4) Electrification of all portable signs shall be in compliance with the National Electric Ordinance as adopted by the state; and
- (5) A portable sign shall not be established or placed prior to obtaining a sign permit.

F. Real estate signs

- (1) Must be allowed in all districts, provided that such signs shall be located on the property to which they apply, except as provided under Subsection D, Special sale signs, of this section;
- (2) Shall conform with the following maximum size requirements: four square feet in area for the first 10,000 square feet in lot area, plus four square feet for each additional 10,000 square feet of lot area, not to exceed a total of 32 square feet;
- (3) Shall be removed within 48 hours of the closing of the sale; and
- (4) Signs placed at the entrance to a subdivision which are advertising the sale of lots located within said subdivision shall be permitted, provided that there is no more than one sign per entrance, the sign shall not be greater than 32 square feet in area and no greater than eight feet in height and shall not remain erected for longer than one year. Such signs may be installed for the purpose of directing visitors to the property.

G. Special sale signs

- (1) Sale and grand opening signs shall be allowed in all zones, provided that such signs are displayed no more than one block of 15 consecutive days for every three months. Such signs shall be removed within 48 hours of termination of the sale or event which they advertise;
- (2) All such signs must be attached or affixed to the façade, wall or window of the building in which the sale or event is taking place;
- (3) No business shall have more than two such signs for each façade or wall of the building to which they are attached; and
- (4) The total size shall not exceed 50% of the size of the permitted façade sign or four square feet in area, whichever is greater.

H. Promotional signs. Promotional signs advertising a special community event such as a fair, farmers' market or parade may be permitted to be located over a public right-of-way. The size, location and method of erection of such signs shall be subject to approval by the Zoning Official pursuant to good engineering practices and shall be consistent with the paramount purpose of public rights-of-way to provide safe and convenient traffic circulation. Alternatively, such sign may be permitted to be attached to the wall of a building subject to approval by the Zoning Official.

I. Searchlights

- (1) The operation of searchlights or similar lighting for advertising, display or any other commercial purpose is considered a temporary sign pursuant to the provisions of this section;
- (2) Such lights shall be displayed no more than five consecutive days and in no event shall such lights be used for advertising greater than 30 cumulative days during any single calendar year;

- (3) Such lights shall not be permitted on the public right-of-way without the required permission and may be immediately removed from such right-of-way by the Zoning Official absent such permission; and
 - (4) The Planning and Zoning Commission may permit the placement of a searchlight or similar lighting source on a public right-of-way if no reasonable alternative exists and if such placement will not obstruct traffic or create a safety hazard. Any such permit must comply with Subsection F(1) and (2) of this section.
- J. Streamers
- (1) May be used to outline property lines and areas on a lot which display merchandise outdoors;
 - (2) Shall be removed or replaced promptly when torn or faded;
 - (3) Displaying streamers for more than 90 cumulative days in a calendar year shall be prohibited; and
 - (4) Shall not be attached to public utility facilities, including but not limited to power poles, light poles and fences.
- K. Temporary signs. One temporary sign is allowed per lot for a maximum of 30 days per quarter year.

§ 915. Master sign plan for development complexes.

- A. General. Signs for all development complexes shall comply with a master sign plan for the development, approved by the Zoning Official pursuant to this article. Said plan shall include all proposed sign locations, materials, structures and installation details to the extent known at the time of master sign plan submittal. Additional submittals or amendments to the master sign plan may be necessary as a new development complex becomes occupied or as businesses within a complex change. Signs within a development complex shall be subject to the following requirements.
- B. Freestanding signs. Each development complex shall be permitted one freestanding development complex sign per public street frontage. The maximum permitted sign area for each development complex sign shall be as provided within the applicable zoning district, plus a bonus of 12 additional square feet per business, enterprise, institution or franchise within the development complex, not to exceed 150 square feet total.

§ 916. Change in use; nonconforming signs.

- A. Whenever the use of land or a structure changes, any signs that do not relate to the new use or to any product or service associated with the new use shall be removed or appropriately altered consistent with the provisions of this article. Furthermore, it shall be the responsibility of the property owner of the land to make improvements and/or remove any sign or signs on premises where the associated use has been discontinued for a period of more than 90 days.
- B. Nonconforming signs. A sign which was conforming or grandfathered prior to the enactment of Chapter 350, Article IX, but which is subsequently nonconforming shall be deemed to be a grandfathered nonconforming sign which shall not be required to be removed. Whenever a business, person, enterprise or institution shall endeavor to change, alter, enlarge or replace

the grandfathered nonconforming sign, the provisions of Chapter 350, Article IX, shall apply as follows: *[Added 11-19-2013 by Ord. No. 2013-02]*

- (1) If the cost to repair, maintain or strengthen the nonconforming sign equals or exceeds 25% of the total value of the sign, then the sign shall be made to conform with all of the provisions of Chapter 350, Article IX;
- (2) Enlarging, reducing, amending or modifying the nonconforming sign will require that the nonconforming sign be made to conform to all of the provisions of Chapter 350, Article IX;
- (3) Installation or erection of additional conforming signs shall require that the nonconforming sign be made to conform to all of the provisions of Chapter 350, Article IX; and
- (4) Billboards that were conforming prior to the enactment of Chapter 350, Article IX, but are nonconforming as a result of Chapter 350, Article IX, shall be removed, altered or replaced so as to fully conform to all of the requirements of Chapter 350, Article IX, within nine years after the date of enactment of Chapter 350, Article IX.

§ 917. Sign permits; fee.

- A. If a sign requiring a permit under the provisions of this article is to be placed, constructed, erected, or modified on a lot, the owner of the lot shall secure a sign permit prior to the construction, placement, erection or modification of a sign in accordance with the requirements of this chapter.
- B. No sign permit of any kind shall be issued for an existing or proposed sign unless the sign is consistent with the requirements of this chapter (including those protecting existing signs).
- C. With the exception of those signs specifically exempt, no sign may be erected without a permit from the Planning Director. Application for permits shall be submitted on forms obtainable at the Planning and Land Use Department. Each application shall be accompanied by plans which shall:
 - (1) Indicate the proposed site by identifying the property by ownership, location and use
 - (2) Show the location of the sign on the lot in relation to property lines and building, zoning district boundaries, right-of-way lines, and existing signs.
 - (3) Show size, character, complete structural specifications and methods of anchoring and support
 - (4) Indicate that such sign has been approved by the Building Inspector, if such approval is required by this chapter
- D. Permit fees. The permit fee for all signs installed within the City limits as allowed by the terms of this chapter shall be as specified in Chapter 171.
- E. If conditions warrant, the Planning Director may require such additional information as will enable him to determine if such sign is to be erected in conformance with this chapter. Additionally, the Zoning Official may require that a building permit be obtained prior to placing any sign allowed by this chapter

§ 918. Abatement of illegal or abandoned signs.

- A. Failure of a property owner to abate an illegal or nonconforming sign shall constitute a violation of this article.
- B. The Zoning Official shall cause all nonconforming signs and/or illegal signs to be removed, keeping a record of costs associated with the removal. The cost of such removal shall be presented to the property owner for payment. Failure to provide payment from the property owner shall cause a lien to be placed on the subject property pursuant to New Mexico state law.

§ 919. Special exceptions.

- A. An application for special exception may be made by submittal of an application to the Planning Director, to be processed and submitted for review by the Planning Commission. A special exception may be requested to deviate from certain requirements herein specified for signage, including but not limited to area, dimensions, height, location and any other sign characteristics.
- B. A special exception may be granted by the Planning Commission if the Commission deems a special circumstance exists which warrants the special exception. The following criteria shall be used in the review and approval of requests:
 - (1) A literal application of the code would not allow the property to be used at its highest and best use as zoned.
 - (2) The granting of the requested exception would not be materially detrimental to the property owners in the vicinity.
 - (3) Conditions exist which are unique to the property or type and size of development that would cause hardship under a literal interpretation of the sign code.
 - (4) The granting of the special exception is in the best interests of the public at large and would not be contrary to the general objectives of the sign code and adopted land use plans.
- C. The Planning Commission may attach any additional conditions necessary to maintain the intent and purpose of this chapter, in the interest of the public.
- D. Notice shall be given to all property owners within 100 feet of the proposed sign location via certified letter no less than 15 days prior to the scheduled hearing date.

§ 920. Appendix A: Sign Districts. *[Amended 08-14-2018 by Ord. No. 2018-03]*

The various zoning districts within Article XII, § 1203, of the Development Code have been grouped together and classified as sign districts. Sign districts therefore need not represent specific zoning districts and may represent unique geographical areas. The Planning Director is responsible for determining which is the most applicable sign district for any lot. More than one sign district may apply to a lot if the lot has more than one street frontage. On the tables in this chapter, the headings have the following meanings:

RSF	Residential, single-family	This sign district may include any single- family or
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		single-family residential developments in the R-1,R-2, R-4, R-6 Zoning Districts
RMF	Residential, multifamily	This sign district may include any multifamily residential developments in the, RM-PUD Zoning Districts
RMH	Residential, mobilehomes	This sign district may include all residential mobile/manufactured housing developments in theMHP-PUD Zoning District
HIS	Historical district	This sign district is for any properties designated asbeing located within Historic Districts
ROI	Institutions	This sign district applies to institutional uses that arelocate in residential zoning districts. The uses may include, but are not necessarily limited to, churches,schools, funeral homes and cemeteries
NBD	Neighborhood businessdistrict	This sign district is for nonresidential developments that are in close proximity to residential developments; TC
COM	Commercial businessdistrict	This sign district includes all nonresidential development typically found in the B-1, B-2, B-3,LI, and HI Zoning Districts

§ 921. Appendix B: Permitted Signs by Type and Sign District.

Appendix B, included at the end of this chapter, contains the type of signs permitted in certain sign districts. Subdivision signage shall be exempt from Appendices B and C.

If the letter “A” appears for a sign type in a column, the sign is allowed without prior permit approval in the sign districts represented by that column.

If the letters “PR” appears for a sign type in a column, the sign is allowed only with prior permit approval in the sign districts represented by that column. Special conditions may apply in some cases.

If the letter “N” appears for a sign type in a column, a sign is not allowed in the sign district.

If a sign is placed, erected, constructed or applied for that is not listed below, the zoning official will determine its sign type. *[Amended 08-14-2018 by Ord. No. 2018-03]*

Sign Type	S i g n s D i	Not es
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	s t r i c t s							
	A I R S F	A I R M F	A I R M H	A I H I S(e)	A I N B D	A I I N S	A I C O M	
A- frame/Sandwich Board	N	N	N	A	A	A	A	Not to exceed 16 square feet. Must be removed daily at close of business. Not to be placed on public ROW or impeding ADA or pedestrian accessibility.

Animated	N	N	N	N	P R	P R	P R	
Awning	N	N	N	P R	P R	P R	P R	
Banner	N	N	A	N	A	A	A	To be placed on buildings only. Maximum of 30 days per quarter year. Maximum 60 square feet
Billboard	N	N	N	N	N	N	N	Not allowed in City of Española
Building marker (c)	A	A	A	A	A	A	A	1 per building 4 square feet
Building identification (c)	A	A	A	A	A	A	A	1 per building
Cabinet	N	P R	P R	P R	P R	P R	P R	60 square feet
Canopy	N	N	N	P R	P R	P R	P R	

C o m m e r c i a l m e s s a g e	N	N	N	P R	P R	P R	P R	
Development	A	A	A	A	A	A	A	7 feet in height; 32 squarefeet
Directional	A	A	A	A	A	A	A	
Electronic message	N	N	N	N	P R	P R	P R	
Fixed balloon	N	A	A	A	A	A	A	
Flag (b)	A	A	A	A	A	A	A	
Freestanding	N	N	P R	P R	P R	P R	P R	16 feet in height; 60 squarefeet
Government	A	A	A	A	A	A	A	
Hanging	A	A	A	A	A	A	A	Maximum 6 square feet
Illuminated	N	P R	P R	P R	P R	P R	P R	
Incidental (b)	A	A	A	A	A	A	A	One (1) sign permitted perlot; the sign shall not exceed eight (8) square feet
Marquee	N	N	N	P R	P R	P R	P R	
Monument	P R	P R	P R	P R	P R	P R	P R	

Multiple tenant	N	N	N	P R	PR	P R	P R	16 feet in height; 60 square feet plus 12 square feet per tenant listed, not to exceed 150 square feet total
Mural (b)	A	A	A	A	A	A	A	
Off-premises	N	N	N	N	N	N	N	Not allowed in the City of Española
Open House	A	A	A	A	A	A	A	
Pedestal	N	N	N	P R	PR	P R	P R	Freestanding. Exceeds 7' in height and is no lower than 7' from the bottom of the sign to the ground
Pennant	A	A	A	A	A	A	A	No more than three (3) per building and each one may

								be no larger than ten (10)square feet
Portable (d)	N	N	N	A	A	A	A	Shall be taken in daily at close of business
Projecting	P R	P R	P R	P R	P R	P R	P R	40 square feet; 1 per building
Promotional Sign/Flag	N	N	N	N	PR	P R	P R	No more than 15 square feet and no more than one (1) per lot for a maximum of 30 days per calendar year
Real estate	A	A	A	A	A	A	A	4 square feet for the first 10,000 square feet in lot area
Residential (a)	P R	P R	P R	P R	N	N	N	
Roof	N	N	N	P R	PR	P R	P R	40 square feet; 1 per building. Not to extend higher than 8 feet above the roof line
Searchlights	N	N	N	N	PR	P R	P R	No more than 5 consecutive days; no more than 30 total days per year
Special sale/grand opening	A	A	A	A	A	A	A	Displayed no more than 15 consecutive days for every 3 months; total size shall not exceed 50% of the size of the permitted façade sign or four square feet in area
Streamers	A	A	A	A	A	A	A	No more than five (5) per site and not greater than eight (8) square feet each

Street Blimp	N	N	N	N	PR	P R	P R	One per site and signage area associated with street blimp shall not exceed 20square feet in size
Subdivision	A	A	A	N	N	N	N	One per subdivision and nomore than 25 square feet
Suspended	N	N	N	P R	PR	P R	P R	Must meet height requirements if located over walkway and in the public right of way. No sign may be greater than 18square feet and may not project more than five (5)feet from the face of the

								building
Temporary political(e)	A	A	A	A	A	A	A	Erected not more than 30days before an upcoming election, and must be removed within 5 days following the election
Vehicle	N	N	N	N	A	A	A	Not allowed to be parked permanently on-site; mustbe operable, driven, and moved daily
Wall (f)	N	N	N	P R	P R	P R	P R	Up to 10% of wall area onsame plane
Window	P R	P R	P R	P R	P R	P R	P R	25% of total window areaon same plane

Notes:

- a) No commercial message allowed on sign, except for a message drawing attention to an activity noted on the sign.
- b) No commercial message of any kind allowed on sign if such message is legible from any location off the lot on which the sign is located.
- c) May include only building names, date of construction or historical data on historical site; must be cut or etched into masonry, bronze, or similar material.
- d) Signs with changeable copy (letters) and signs that are mounted on wheeled structures are not allowed.
- e) All allowable signs within the historic areas of the City must first obtain a permit from the City and will be reviewed in accordance with approved guidelines for sign placement within historic zones.
- f) The percentage figure here shall mean the maximum area of any wall that may be covered with signage irrespective of the maximum square footage allowed.

§ 922. Appendix C: Area Requirements. *[Amended 08-14-2018 by Ord. No. 2018-03]*

The maximum total area of any combination of signs; the dimensions of each individual type of sign governed by Appendix B. Signs shall not exceed the greater of the following:

Sign District

	RSF	RMF (a)	RMH (a)	HIS	NBD	ROI (b)	COM
Maximum number of total square feet	8	100	100	100	200	100	300
Percentage of ground floor area of principal building	N/A	N/A	N/A	N/A	1%	1%	1%
Square feet of	N/A	N/A	N/A	N/A	1.0	1.0	3.0
signage per linear foot of street frontage							

Notes:

- (a) The maximum sign area shown pertains to the allotment allowed for identification of the multifamily development and not an individual unit. Individual units are allowed signage as per the RSF sign district
- (b) Applies to institutional uses permitted under this chapter in residential zoning districts. Such uses may include but are not necessarily limited to churches and schools

ARTICLE X
Public Hearing and Decision-Making Procedures

§ 1001. Public hearings.

- A. Purpose. The purpose of this article is to specify the procedures required for taking action on development applications. The Planning Director, the Planning Commission, or City Council, as applicable, shall conduct a public hearing to consider and review applications in accordance with this article and shall take action in accordance with the applicable section of this article.
- B. Public hearing procedure.
- (1) General. The public hearing will be called to order by the responsible official at the time specified on the public notice. If the hearing is before the Planning Commission or the City Council, a quorum of the body must be present. Staff shall confirm that the public notice requirements were met. The hearing shall be conducted in a manner to protect the due process rights of parties and affected parties, as required by New Mexico law. To the extent required by law, all information presented by the applicant, any affected party, by any witness for a party, or by City of Española staff (other than legal advice given by the City Attorney) will be given under oath, and subject to cross-examination of any persons presenting information at the public hearing by the owner, any affected party, and City of Española staff as directed by the presiding official. Before hearing the matter, the members of the decision-making authority will disclose any conflicts and ex-parte contacts.
 - (2) DRT reports. With respect to applications relating to a particular property, the DRT shall provide, at the request of the decision-making authority, factual information regarding the particular property, such as the lot dimensions, location, and topography. The DRT report may also include reference to and copies of applicable code requirements and other relevant factual information.
 - (3) Hearings on applications. The applicant shall present evidence supporting the application and shall bear the burden of demonstrating that the application should be granted. The decision-making authority may ask attendees to select representatives to express their views, in the interest of time, under the standard that all persons shall have a reasonable right to be heard. Objections may be made by aggrieved parties and such objections will be noted in the record. The decision-making authority may question the applicant, other parties and witnesses at the hearing, and the staff at any time during the proceedings.
 - (4) Deliberations. Deliberations will be guided by Robert's Rules of Order and such other rules and procedures as may be adopted by the decision-making authority. The decision-making authority shall adopt written findings explaining the decision at the subsequent meeting.
 - (5) Approval by affirmative vote. Approval by the Planning Commission of an application requires a motion and affirmative vote of a majority of the members present. Failure to approve an application prior to the close of the meeting, unless tabled to a specific date, shall constitute denial of the application based on the requirements set forth in this chapter.

§ 1002. Decision making.

A. Amendment to text.

- (1) If the Planning Commission, after hearing and deliberation, determines (after making such changes as it deems necessary) that:
 - (a) The amendment to text is in conformity with the provisions of § 407 and is not materially detrimental to the public welfare, the Planning Commission shall forward a recommendation (supported by findings) to the City Council that the proposed amendment to text be approved.
 - (b) The proposed amendment to text does not conform to the provisions of § 407, it shall forward its recommendation for denial to the City Council.
 - (c) It is unable to arrive at a recommendation within 30 days from the date of the first published legal notice, the proposed amendment to text shall automatically be forwarded without recommendation to the City Council for consideration.
- (2) City Council determination. Following receipt of the Planning Commission recommendation for the proposed amendment to text, the City Council shall schedule and hold a public hearing as set forth in § 503, to consider the proposed amendment to text and the recommendation of the Planning Commission. The City Council, after public hearing, shall approve, modify or disapprove the proposed amendment, based on the provisions of § 407, or shall vote to refer the matter back to the Planning Commission for further proceedings, in which case the City Council shall specify the time within which the Planning Commission shall report back to the City Council its findings and recommendation on the matter(s) referred to it. The final form and content of this ordinance, in any event, shall be determined by the City Council.

B. Amendment to Official Zoning Map.

- (1) If the Planning Commission, after hearing and deliberation, determines that:
 - (a) The amendment to the Official Zoning Map is in conformity with the provisions of § 404 and is not materially detrimental to the public welfare or the property of other persons located in the vicinity, it shall forward a recommendation (supported by findings) to the City Council that the proposed amendment to the Official Zoning Map be approved.
 - (b) The proposed amendment to the Official Zoning Map does not conform to the provisions of § 404 or is otherwise not appropriate, it shall forward its recommendation for denial to the City Council.
 - (c) It is unable to arrive at a recommendation within 30 days from the date of the first published legal notice, the proposed amendment to the Official Zoning Map shall automatically be forwarded with no recommendation to the City Council.
- (2) City Council determination. Following receipt of the Planning Commission recommendation for the proposed amendment to the Official Zoning Map, the City Council shall schedule and hold a public hearing as set forth in § 503 to consider the proposed amendment to the Official Zoning Map and the recommendation of the Planning Commission. The City Council, after public hearing, shall approve or deny the proposed amendment to the Official Zoning Map based on the provisions of § 404 or

shall vote to refer the matter back to the Planning Commission for further proceedings, in which case the City Council shall specify the time within which the Planning Commission shall report back to the City Council its findings and recommendations on the matter(s) referred to it. Final approval of the amendment to the Official Zoning Map shall, in any event, be determined by the City Council.

- C. Site plans. If the Planning Director or Planning Commission, as applicable, after hearing and deliberation, determines that:
 - (1) The site plan request is in conformity with the provisions of § 403, the request shall be approved.
 - (2) The site plan request can be made to be in conformance with the provisions of § 403, the site plan request shall be approved with conditions.
 - (3) The site plan request is not in conformance with the provisions of § 403, or if the potential adverse impacts cannot be mitigated by the imposition of conditions to a degree which assures that adjacent properties will not be unreasonably impacted, the request shall be denied.
- D. Special use permits. If the Planning Commission, after hearing and deliberation, determines that:
 - (1) The special use permit request is in conformity the provisions of § 405, the request shall be approved.
 - (2) The special use permit request can be made to be in conformance with the provisions of § 405, the special use permit shall be approved with conditions.
 - (3) The special use permit request is not in conformance with the provisions of § 405, or if the potential adverse impacts cannot be mitigated by the imposition of conditions to a degree which assures that properties within 100 feet will not be unreasonably impacted, the request shall be denied.
- E. Variances. If the Planning Commission, after hearing and consideration, determines that:
 - (1) The variance request is in conformity with the provisions of § 406, the request shall be approved.
 - (2) The variance request can be made to be in conformance with the provisions of § 406, the variance request shall be approved with conditions which cause it to be in compliance with the provisions of § 406.
 - (3) The variance request is not in conformance with the provisions of § 406, the request shall be denied.
- F. Adoption of or amendment to the Comprehensive Plan.
 - (1) If the Planning Commission, after hearing and deliberation, determines (after making such changes as it deems necessary) that:
 - (a) The adoption of or amendment to the Comprehensive Plan is in the best interests of the community and is not materially detrimental to the public welfare, the Planning Commission shall forward a recommendation to the City Council that the proposed Comprehensive Plan or amendment thereto be approved.
 - (b) The proposed adoption of or amendment to the Comprehensive Plan is not in the best interest of the community, it shall forward its recommendation for denial to the City

Council.

- (c) It is unable to arrive at a recommendation, the proposed Comprehensive Plan or amendment thereto shall be forwarded without recommendation to the City Council for consideration.
 - (2) City Council determination. Following receipt of the Planning Commission recommendation for the proposed adoption of or amendment to the Comprehensive Plan, the City Council shall schedule and hold a public hearing to consider the application and the recommendation of the Planning Commission. The City Council, after public hearing, shall approve, modify or disapprove the proposed adoption or amendment, or shall vote to refer the matter back to the Planning Commission for further proceedings, in which case the City Council shall specify the time within which the Planning Commission shall report back to the City Council its findings and recommendation on the matter(s) referred to it.
 - (3) The City Council may adopt the Comprehensive Plan submitted by the Planning Commission, as a whole, by a single resolution, or may from time to time approve and adopt a part or parts thereof, any such part to correspond generally with one or more of the functional subdivisions of the subject matter of the plan.
 - (4) The plan so submitted to the City Council shall only become effective as the Comprehensive Plan of the City of Española upon approval by resolution of the City Council. The resolution shall refer expressly to the maps, descriptive matter or other matters intended by the Planning Commission to form the whole or part of the Comprehensive Plan.
 - (5) The action taken by the City Council shall be recorded on the approved and adopted plan or part thereof by the identifying signature of the Mayor, attested to by the City Clerk. A copy of the plan or part thereof shall be recorded in the office of the City Clerk.
- G. Landscape plans. If the Planning Director determines that:
- (1) The landscape plan request is in conformity with the provisions of § 1304, the request shall be approved.
 - (2) The landscape plan request can be made to be in conformance with the provision of § 1304, the landscape plan request shall be approved with conditions which cause it to be in compliance with the provisions of § 1304.
 - (3) The landscape plan request is not in conformance with the provisions of § 1304, or if the potential adverse impacts cannot be mitigated by the imposition of conditions to a degree which assures that properties within 100 feet will not be unreasonably impacted, the request shall be denied.
- H. Temporary uses.
- (1) If the Planning Director determines that:
 - (a) The temporary use conforms to the permitted uses as set forth in § 608 and the temporary use will not adversely impact properties within 100 feet, the request shall be approved with conditions.
 - (b) The temporary use can be made to be in conformance with the permitted uses as set forth in § 608 and the temporary use can be made to not adversely impact properties within 100 feet, the request may be conditionally approved.

- (2) In issuing a temporary use permit, the Planning Director may require information and impose conditions to assure area, sanitary facilities and parking spaces are adequate for the proposed use; indicate the permitted hours of operation, and any other conditions such as lighting, parking or protective fences, which are deemed necessary to protect adjacent property or the public health, safety and welfare. Each site occupied by a temporary use shall be left free of debris, litter or any evidence of the temporary use upon the expiration of the temporary use permit and the cessation of the temporary use.
- (3) Before issuing a temporary use permit, the Planning Director may require a cash deposit or letter of credit as may be determined to be adequate to ensure the cleaning up of the property covered by the temporary use permit. If the property and the surrounding area are not in the condition required, then the City of Española may restore it to that condition, in which event the City shall have the right to be reimbursed for the costs incurred from the deposit or other security.
- (4) The cash deposit or letter of credit shall not be released except on written release from the Planning Director, finding that the premises have not been damaged and have been returned to the condition required under the terms of the temporary use permit.
- (5) Upon written application, the Planning Director may modify any of the conditions contained in the temporary use permit, if the Planning Director determines that the modification does not conflict with the purposes of the zoning requirements.
- (6) Upon written application, the Planning Director may extend the time of operation of the temporary use permit no more than 20% above the total time allowed for the temporary use involved. Extension of time beyond 20% shall be approved by formal action of the Planning Commission.
- (7) If The temporary use is not in conformance with permitted uses as set forth in § 608 or cannot be modified so as not to adversely impact properties within 100 feet, the request shall be denied.

§ 1003. Appeals from action of Planning Director.

Appeals from action of the Planning Director shall be made in accordance with Article XI.

§ 1004. Appeals.

A. Jurisdiction over administrative appeals.

- (1) Appeal of any action taken by the Planning Director and authorized by § 201 of the Development Code is to the Planning Commission.
- (2) Appeal of any interpretation of the City of Española Development Code by the Planning Director made in accordance with § 201 is to the Planning Commission.
- (3) Appeal of any action taken by the Planning Commission is to the City Council.
- (4) Appeal of a decision of the City Council is to the District Court as provided by law.

B. Applications.

- (1) Administrative appeals shall be filed at the City of Española Planning Department. Any decision which can be appealed under Article XI is final unless an appeal is initiated by

application to the City of Española within 15 days of the announced decision. The City of Española may prescribe forms for appeal, in which event the appeal may be made on the prescribed form. The date of a determination is not included in the fifteen-day period for filing an appeal, and if the 15th day falls on a Saturday, Sunday, or holiday, the appeal must be filed no later than the next business day.

- (2) Persons who have a personal or pecuniary interest or property right adversely affected by the decision, which right or interest is more than merely nominal or remote, may file an appeal of the decision. The following persons are deemed to meet this criteria:
 - (a) Persons who were parties at the hearing conducted by the decision-making authority, or the applicant for those matters decided by the Planning Director without a public hearing.
 - (b) Persons who own a property interest within 100 feet of the subject site or whose property will be adversely affected by the decision.
 - (c) An organized neighborhood association, if the subject site or a portion thereof is within the association's boundaries or within 300 feet of the subject site.
- (3) Applications for an appeal that do not articulate the reasons for the appeal and specifically cite one or more alleged errors will not be accepted and will be returned to the appellant. Errors may include:
 - (a) Failure to consider adopted plans, policies, and ordinances in arriving at the decision.
 - (b) Factual error.
 - (c) Appeals that are arbitrary, capricious, or a manifest abuse of discretion.
 - (d) Procedure. Appeal procedures are as set out in this section and in Article XI.

§ 1005. Conditional approval.

- A. The Planning Director, Planning Commission, or City Council may impose conditions to assure the compatibility of the development, which is the subject of the application, with the surrounding area and with the Comprehensive Plan. A site plan shall be submitted as part of an application for a development plan, variance or special use permit. A site plan shall be required with applications for expansions of existing structures and parking lots or parking facilities and may be required for other zoning matters if deemed appropriate by the Planning Director. When this site plan is approved or conditionally approved by the Planning Director, the Planning Commission, or the City Council, the development must be in accordance with the site plan as it may be modified by any conditions attached to the approval.
- B. Applicants shall file a certificate of approval with the City Clerk within 30 days from the expiration of the appeal period or of the final decision on an appeal; and shall either obtain the necessary building permits or shall commence the use as approved or conditionally approved within 12 months after the filing of the certificate of approval with the City Clerk for approved or conditionally approved site plans, variances, parking lot or parking facility expansions, or special use permits. The Planning Director may grant no more than one twelve-month extension of time if the applicant, prior to the expiration of the initial twelve-month period, shows good cause, in writing, for such an extension.
- C. If an applicant fails to comply with the time requirements of Subsection B of this section, or

if the approved use of land has ceased for a continuous period of more than 180 days, the site plan, special use permit, parking lot expansion or variance shall be deemed to be abandoned (also see Article VII, Nonconforming Uses) and shall be subject to revocation by the Planning Director upon the following procedures:

- (1) The Planning Director shall serve upon the applicant by certified mail, return receipt requested, a letter requiring the applicant to show good cause, in writing, within 30 days, why the site plan, special use permit, parking lot or parking facility expansion or variance should not be revoked. If the applicant fails to respond within 30 days from the receipt of the notice by the Planning Director, the Planning Director shall issue a certificate of revocation of the site plan, special use permit, parking lot expansion or variance. The Planning Director shall file the certificate of revocation with the City Clerk and serve upon the applicant a copy of the certificate of revocation by certified mail, return receipt requested.
- (2) If the applicant responds to the letter but fails to show cause, the Planning Director shall issue a certificate of revocation of the site plan, special use permit, parking lot or parking facility expansion or variance, the applicant shall have 15 days from such finding to file a written notice of appeal with the Planning Commission. The Planning Commission, upon appeal, shall conduct a public hearing and shall affirm or reverse the decision of the Planning Director to revoke the site plan, special use permit, or variance. Upon a final determination that the site plan, special use permit, or variance should be revoked, the Planning Director shall file a certificate of revocation with the City of Española Clerk and serve upon the applicant a copy of the certificate of revocation by certified mail, return receipt requested.
- (3) The Planning Director, upon being provided evidence that there is good cause for an extension of time, may grant a one-time extension not to exceed six months; provided there is clear evidence that issuance of building permits or commencement of the use will be completed within the six-month extension period. The Planning Director may evoke compliance by the establishment of due dates, a schedule of performance and other terms or conditions as may be deemed appropriate. Failing this time extension, the applicant shall be afforded the process of Subsection C(1) and (2) of this section.

§ 1006. Changes to original plan.

Proposed changes to approved or conditionally approved plans shall be submitted by the applicant, in writing, to the Planning Director. The Planning Director shall determine whether the proposed changes alter the approved or conditionally approved plan by greater than 20% of any site development standards. If the Planning Director determines that the proposed changes may be approved by the Planning Director in accordance with authority granted in § 201, the Planning Director shall approve the proposed changes, in writing, and the development shall be in accordance with the approved or conditionally approved plan as changed. If the Planning Director determines that the proposed changes may not be approved by the Planning Director in accordance with the authority granted in § 201 or are not in substantial compliance with this chapter or other ordinances, resolutions or regulations, the request for changes shall be treated in all respects as a new request and shall be resubmitted to the Planning Commission for review and final action.

§ 1007. Notification and recording of final action.

When an application for a site plan, variance, special use permit or any other matter pertaining to the use of land or zoning is acted upon by the decision-making authority, written notification of the final action listing any conditions imposed, if the action was approved, shall be sent to the applicant and to the City Manager, with a copy retained in the City of Española Planning Department. The action taken shall be final and conclusive unless, within 15 days of the effective date of the final action, an aggrieved party files an appeal as provided in this chapter. After the expiration of the fifteen-day appeal period with no appeal filed, or after approval or conditional approval or affirmation of approval or conditional approval on appeal, the Planning Director shall issue the certificate of approval, if appropriate, listing conditions that may have been imposed. The applicant or agent shall file and record the certificate of approval in the office of the City Clerk before proceeding with the development or use approved. No building permit, license or occupancy permit may be issued for the development or use approved before the expiration of the appeal period and the filing of the certificate of approval.

ARTICLE XI

Appeals

§ 1101. Purpose.

The purpose of this article is to establish a uniform and consistent procedure for appeals.

§ 1102. Time for filing, effect and notice.

- A. An appeal from a decision or determination of the decision-making authority may be taken by filing written notice of appeal with the Planning Department within 15 days after the date of action. The day following the date of action shall be the first day of the fifteen-day appeal period, and the period shall end at the close of business on the 15th day.
- B. The filing of an appeal shall suspend further action of the decision-making authority until such time as the appeal shall be heard and acted upon by the appellate body having jurisdiction as provided in this chapter. No permit, license or certificate of approval or use of land or structures involved in the application on appeal shall be issued until the appeal has been acted upon.
- C. For appeals to the Planning Commission, within 15 days following receipt of a complete notice of appeal on a form provided by the Planning Director, the Planning Director shall set a date for public hearing before the Planning Commission on the appeal. For appeals to the City Council, the Planning Director shall submit the notice of appeal to the City Manager, who shall advise the City Council of the notice of appeal. The City Council shall set a date for public hearing on the appeal.
- D. The appellate body shall hold a public hearing on the appeal. Notice of public hearing shall be given as provided in Article V of this chapter.
- E. The appellate body shall apply the review criteria applied by the decision-making authority that considered the application.

§ 1103. Procedure for appeals to City.

- A. By the affirmative vote of the majority of all its members, the appellate body may, without a full hearing, remand an appeal to the decision-making authority that heard the application for rehearing and decision if it finds that rehearing would be likely to serve public policy or resolve the appeal. If the appellate body remands the appeal without a full hearing, the appellate body shall make findings of fact on which that action is based.
- B. An appellant may withdraw the appeal at any time, provided that notice of the withdrawal is provided in writing to the Planning Director. The fee for filing an application of appeal is not refundable, in whole or in part.
- C. The general procedure for an appeal hearing is as follows:
 - (1) The appellate body shall hold a hearing on the entire record sent to it and reverse, affirm, or modify the decision appealed. The appellate body shall affirm the decision appealed unless it finds that the decision was not in accordance with adopted City of Española plans, policies, and ordinances, the facts on which the decision was based are not supported by the record, or the decision was arbitrary, capricious, or a manifest abuse of

discretion.

- (2) The appellate body shall not accept or consider evidence outside of the record sent to it for review.
 - (3) The appellate body may remand the matter for reconsideration. If the appellate body remands the appeal, it shall state specifically the matters to be reconsidered and the reasons for remand on which that action is based.
 - (4) Staff of the appellate body may communicate with the appellate body at any time and by any means. The foregoing shall not apply to members of the City of Española Planning Department staff if the City of Española staff brought the appeal.
 - (5) The appellate body shall take action on the appeal at the conclusion of the hearing, and shall state and adopt, or make provision for the adoption of, findings of fact supporting the decision. A decision to reverse or modify the decision appealed will be effective only on motion and affirmative vote of a majority of the members of the appellate body present, and in no event fewer than four votes. If no action is taken or approved at a hearing at which a quorum of the members of the appellate body is present, the decision shall be considered affirmed.
- D. If an appeal is filed by a member of the City Council, that member shall be excused from deliberations or voting on the appeal, if there is a determination by the remaining members of the City Council that the member has a conflict of interest or is an aggrieved party.

§ 1104. Impact reports.

- A. An appeal from a decision or determination of the City Engineer and/ or Planning Director to require or not require any or all of the impact reports set forth in § 1301 may be taken by filing written notice of appeal with the Planning Commission within 15 days after the date of written decision of the City Engineer and/or Planning Director as required in § 1301. The Planning Commission shall notify the City Engineer and/or Planning Director of all such appeals the next working day. The day following the date of the written decision shall be the first day of the fifteen-day appeal period, and the period shall end at the close of business on the 15th day.
- B. The filing of an appeal shall suspend the action of the City of Española until such time as the appeal shall be heard and acted upon by the Planning Commission. No decision, public hearing(s), permit, license or certificate of approval or use of land or structures involved in the application on appeal shall be held or issued until the appeal has been acted upon.
- C. The owner, owner's agent or any aggrieved party may appeal the decision of the City Engineer and/or Planning Director made pursuant to the provisions of § 1301.
- D. Following the receipt of a complete notice of appeal on a form provided by the Planning Department, the Planning Department shall place the appeal on the agenda of the next regularly scheduled meeting of the Planning Commission.
- E. The Planning Commission shall concur with the City Engineer's and/ or Planning Director's decision, modify the decision or reverse the decision.
- F. Decisions of the Planning Commission regarding a decision of the City of Española Engineer and/or Planning Director may be appealed to the City of Española Council.

§ 1105. Appeals to District Court.

Appeals of administrative decisions of the City on land use issues are authorized in accordance with NMSA 1978 § 39-3-1.1 and Rule 1-074, NMRA.

ARTICLE XII
Zoning Districts and Uses

§ 1201. Official Zoning Map.

- A. Adoption. The Official Zoning Map is an integral part of this article. It is to be entitled the "Official Zoning Map of the City of Española," signed by the Mayor of the City of Española and attested to by the City Clerk.
- B. Amendment. The Official Zoning Map shall be amended in accordance with the procedures set forth in this article. The Official Zoning Map may be amended by an ordinance containing only textual material, or by an ordinance containing textual material and a revision of all or part of the Official Zoning Map.
- (1) If the amending ordinance contains only textual material, then such amending ordinance shall bear the legend "Revision No. _ in textual form, to the Official Zoning Map of the City of Española, effective _." In addition, such changes shall be made to the Official Zoning Map. This is to be signed by the Mayor and attested to by the City Clerk.
 - (2) If the amending ordinance shall include a revision to all or part of the Official Zoning Map, such amending ordinance shall bear the legend "Revision No. _____ to the Official Zoning Map of the City of Española, effective _____," and it shall be signed by the Mayor and attested to by the City Clerk. In addition, such changes shall be made to the Official Zoning Map.
- C. Location and authority. The Official Zoning Map and all revisions shall be maintained in the offices of the Planning Department. That map, as it may from time to time be revised, or a copy certified by the Planning Director and City Clerk to be a true copy of the map or of the map as revised, shall be conclusive on any question of the zoning district in which a particular parcel may be located.
- D. Replacement. In the event of the destruction, damage or loss of the Official Zoning Map, or if the Official Zoning Map becomes difficult to interpret because of the nature or number of amendments, the City Council may by resolution adopt a replacement Official Zoning Map. Upon adoption, the replacement Official Zoning Map shall be signed by the Mayor and attested to by the City Clerk. The replacement Official Zoning Map shall thereupon become the Official Zoning Map and a part of this article. The replacement Official Zoning Map may correct drafting or other errors or omissions in the prior Official Zoning Map, but no change of substance shall be made by the adoption of the replacement Official Zoning Map. Unless the prior Official Zoning Map has been lost, or has been totally destroyed, the prior map or any significant parts thereof remaining shall be preserved, together with all available records pertaining to its adoption or amendment.

§ 1202. Rules for interpretation of district boundaries.

- A. Where uncertainty exists as to the boundaries of districts as shown on the Official Zoning Map, the following shall apply:
- (1) Boundaries indicated as approximately following the center lines of roadways shall be construed to follow such center lines.
 - (2) Boundaries indicated as approximately following platted lot lines shall be construed as

following such lot lines.

- (3) Boundaries indicated as approximately following City of Española limits shall be construed as following such limits.
 - (4) Boundaries indicated as being an extension of any street, highway, alley line or lot line shall be construed to be of the same course and bearing as that line extended.
 - (5) Boundaries indicated as being parallel to features indicated in Subsection A(1) through (4) of this section shall be so construed. Distances not specifically indicated on the Official Zoning Map shall be determined by the scale of the map.
- B. Where physical or cultural features existing on the ground are at variance with those shown on the Official Zoning Map, or in other circumstances not covered by Subsection A(1) through (5) of this section, the Planning Commission shall interpret the district boundaries.
- C. Where a district boundary divides a lot in single ownership, the Planning Director with approval and concurrence from the City Manager, may permit the extension of districts to the property line of said lot, provided that the extension does not exceed 25% or a maximum of three acres, of the original district boundary. This extension of districts can only be exercised once per original lot.

§ 1203. Official zoning districts; uses.

The area of the City of Española is divided into zoning districts. The location of each of the zoning districts is shown by the Official Zoning Map. The specific land use requirements of each district shall be found on Tables I, II and III. The zoning districts and the purposes of each district are as follows:

- A. R-1 Rural Residential District. The R-1 Rural Residential District is established in which the principal use of land is for single-family residences. The regulations of this district are intended to protect existing and proposed residential areas with a minimum lot size of 43,560 square feet (one acre); and to encourage the subdivision of development into lots of the same minimum lot size. The regulations of this district are meant to ensure a more rural setting. These regulations are provided to discourage any use which, because of its character, would interfere with the relatively rural nature of the district.
- (1) Examples of allowed uses in this district are as follows:
- Site-built single-family dwellings. Manufactured housing units. Public parks, playgrounds. Community, municipal or other public buildings.
 - Churches or other buildings related to the practice of a religious faith.
 - Home occupations, within the parameters set forth in this chapter.
 - Agricultural and ranching uses. Allowed in R-1 Districts, provided the following requirements are met:
 - (a) That the sale of animals or their by-products is limited to those raised or produced on-site, no importing of goods or products is being conducted:
 - (b) That the sale of agricultural products is limited to those raised on-site and that no importing of goods or products is being conducted.
 - (c) That the sale of all goods listed as agricultural and ranching uses is restricted to being

a secondary source of income of and for the household of the lot in question, and that the owner acquires, as well as complies with the requirements of, a home occupation permit.

- (d) That none of the aforementioned uses creates a nuisance condition as defined by Chapter 254, Nuisances, of the Española Municipal Code, or amendments thereto.
- (e) That the aforementioned uses are maintained within a restrained area and not adjacent to riparian area.
- (f) Farm animals: Farm animals are allowed in this district at the following ratios:

Type of Animal	Ratio
Cattle (including horses)	1 per 10,000 square feet*
Goats and sheep	1 per 4,000 square feet*
Swine (including pets)	1 per 2,000 square feet*
Chickens and other fowl	1 per 500 square feet*

*Based on the total lot area

B. R-2 Semi-Rural District. The R-2 Semi-Rural Residential District is established in which the principal use of land is for single-family residences. The zoning regulations of this district are intended to protect existing and proposed residential areas with a minimum lot size of 21,780 square feet (1/2 acre); and to encourage the development of lots that meet this minimum lot size. The regulations of this district are intended for those persons desiring relatively large residential lots. The regulations are intended to discourage any use which, because of its character, would interfere with the residential nature of this district.

(1) Examples of allowed uses in this district are as follows:

Site-built single-family dwellings. Two-family dwellings (duplexes). Manufactured housing units. Public parks, playgrounds.

Community, municipal or other public buildings.

Churches or other buildings related to the practice of a religious faith.

Home occupations, within the parameters set forth in this chapter.

Agricultural and ranching uses. Allowed in R-2 Districts, provided the following requirements are met:

- (a) That the sale of animals or their by-products is limited to those raised or produced on-site, no importing of goods or products is being conducted.
- (b) That the sale of agricultural products is limited to those raised on-site and that no importing of goods or products is being conducted.
- (c) That the sale of all goods listed as agricultural and ranching uses is restricted to being a secondary source of income of and for the household of the lot in question, and that the owner acquires, as well as complies with the requirements of, a home occupation permit.
- (d) That none of the aforementioned uses creates a nuisance condition as defined by

Chapter 254, Nuisances, of the Española Municipal Code, or amendments thereto.
(e) Farm animals are allowed in this district at the following ratios:

Type of Animal	Ratio
Cattle (including horses)	None
Goats and sheep	1 per 4,000 square feet*
Swine (including pets)	1 per 2,000 square feet*
Chickens and other fowl	1 per 500 square feet*

*Based on the total lot area

C. R-3 Suburban Residential. The R-3 Suburban Residential District is established in which the principal use of land is for single-family residences. The regulations of this district are intended to protect existing and proposed residential areas with a minimum lot size of 14,520 square feet (1/3 acre); and to encourage the development of lots that meet this minimum lot size. The regulations of this district are intended for those persons desiring relatively large residential lots. The regulations are intended to discourage any use which, because of its character, would interfere with the residential nature of this district.

(1) Examples of allowed uses in this district are as follows:

Site-built single-family dwellings

Two-family dwellings (duplexes)

Manufactured housing units

Public parks, playgrounds

Community, municipal or other public buildings

Churches or other buildings related to the practice of a religious faith

Home occupations, within the parameters set forth in this chapter

D. R-4 Large Lot Residential. The R-4 Large Lot Residential District is established in which the principal use of land is for single-family residences. The regulations of this district are intended to protect existing and proposed residential areas with a minimum lot size of 10,890 square feet (1/4 acre); and to encourage the development of lots that meet this minimum lot size. The regulations of this district are intended for those persons desiring relatively large residential lots. The regulations are intended to discourage any use which, because of its character, would interfere with the residential nature of this district.

(1) Examples of allowed uses in this district are as follows:

Site-built single-family dwellings

Two-family dwellings (duplexes)

Manufactured housing units

Public parks, playgrounds

Community, municipal or other public buildings

Churches or other buildings related to the practice of a religious faith

Home occupations, within the parameters set forth in this chapter

E. R-6 Urban Residential. The R-6 Urban Residential District is established in which the

principal use of land is for single-family residences. The regulations of this district are intended to protect existing and proposed residential areas with a minimum lot size of 7,500

square feet, and to encourage the development of lots that meet this minimum lot size. The regulations of this district are intended for those persons desiring a more traditional subdivision setting. The regulations are intended to discourage any use that, because of its character, would interfere with the residential nature of this district.

(1) Examples of allowed uses in this district are as follows:

Site-built single-family dwellings

Two-family dwellings (duplex)

Manufactured housing units

Public parks, playgrounds

Community, municipal or other public buildings

Churches or other buildings related to the practice of a religious faith

Home occupations, within the parameters set forth in this chapter

F. R-O-I Residential-Office-Institutional District. This mixed zoning district is intended to provide a place for those types of institutional and commercial activities that require separate buildings and building groups surrounded by landscaped yards and open area. Land, space and aesthetic requirements of these uses make them desirable in suburban locations near residential neighborhoods or rural countrysides, and away from the concentration of people and traffic of the retail, wholesale and industrial areas of the community.

(1) Examples of allowed uses in this district are as follows:

Art galleries

Assembly halls for nonprofits

Libraries

Museums

Music conservatories

Office buildings and offices for professional services
Site-built single-family dwellings

G. R6-PUD Residential Compound Planned Unit Development District. The R6-PUD District is intended to permit the development of tracts of five acres or less in a manner consistent with existing patterns of the City's compound areas. It is also intended to permit the flexibility for more efficient design and greater intensity of land use. It provides for the elimination of building setbacks where walls or fences enclose the entire tract. Within these walls it allows for the reduction of minimum lot sizes and the increase of maximum lot coverage, provided the overall density requirements of the underlying zone are not exceeded and open space, public or private, is provided.

(1) Examples of allowed uses in this district are as follows:

Site-built single-family dwellings

Two-family dwellings (duplexes)

Community, municipal or other public buildings
Public parks, playgrounds

H. RM-PUD Residential Multifamily. The RM-PUD District is intended primarily for

multifamily units and related uses in keeping with the character of the surrounding areas. To protect the integrity and purpose of this district, all permitted developments shall be subject to planned unit development requirements, prescribed in this article, unless the requirements are waived by the Planning Commission or the City Council. RM-PUD or RM may be utilized on a case-by-case basis at the discretion of the Director of Planning on a finding by the Director that such serves the public interest.

(1) Examples of allowed uses in this district are as follows: *[Amended 11-19-2013 by Ord. No. 2013-02]*

Multifamily dwellings

Rooming houses

Boardinghouses

- I. MHP-PUD Manufactured Housing Park Planned Unit Development. This district should be referred to as the "Manufactured Housing Park District" on the Official Zoning Map, upon approval of a manufactured housing park in accordance with regulations and standards outlined in this chapter. This district shall be considered as an overlay zone to be allowed in any district except the LI Light Industrial and HI Heavy Industrial Districts. An applicant for a manufactured housing park must have a three-acre minimum. It is understood that while providing residential lots, a manufactured housing park is a business venture and subject to business license and other approvals of the City of Española on a yearly basis. MHP regulations shall apply when three or more manufactured housing units are involved in any one lot having a single owner or several adjacent lots having at least one common owner.
- J. B-1 Local Commercial District. This commercial district is intended for the conduct of retail trade, and to provide personal services to meet the regular needs, and for the convenience of the people of adjacent residential areas. Because these shops and stores may be an integral part of the neighborhood closely associated with residential, religious, recreational, and educational elements, more light, air, open space, and off-street parking is required than is required in other commercial districts.

(1) Examples of allowed uses in this district are as follows:

Accessory buildings used for any of the below-enumerated purposes, which may not have more than 40% of the floor area devoted to purposes incidental to the primary use

Antique shops

Automobile parking

lots

Automobile service stations, provided that no more than two such uses shall be located within five hundred (500) feet of an intersection

Bakery goods stores

Banks

Barber shops or beauty parlors

Book or stationary stores

Camera shops

Candy stores

Catering establishments

Cleaning, pressing, or laundry agencies
 Clothing or apparel stores
 Gift shops
 Delicatessen stores
 Dress shops, dry goods
 Drugstores or pharmacies
 Florists
 Food stores
 Laundromats/help-yourself laundries, which are defined as a business providing home-type washing, drying and ironing machines for hire to be used by customers on the premises
 Hotels
 Jewelry stores
 Leather goods shops
 Lodges or halls (facilities for civic groups)
 Messenger or telegraph services
 Mixed use buildings
 Office businesses
 Outdoor or indoor courts for handball, racquetball, tennis, or sports activity of a similar nature (provided that lighted outdoor courts may not be operated later than 10:00 p.m., and lighting is to be arranged to direct light away from any adjoining property in a residential district.)
 Photographer or artist studios
 Public garages and automobile and machinery repairing conducted wholly within a completely enclosed building no larger than twenty-five hundred (2500) square feet, provided no gas or gasoline is stored
 Restaurants
 Retail stores and shops supplying the regular and customary needs of the residents of the neighborhood and primarily for their convenience
 Shoe repair shops
 Tailor shops
 Toy stores

- K. B-2 General Commercial District. This commercial district is intended for the conduct of personal and business services and the general retail business of the community. Persons living in the community and in the surrounding trade territory require direct and frequent access. Traffic generated by the uses will be primarily passenger vehicles and only those trucks and commercial vehicles required for stocking and delivery of retail goods.

(1) Examples of allowed uses in this district are as follows:

Amusement enterprises

New automobile sales and services, new machinery sales and services, and public garages,

provided no gas or gasoline is stored above ground; used automobile sales, automobile and machinery repairing, if conducted wholly within a completely enclosed building, or any of the following uses:

Automobile, farm implement and machinery repair, sales and service
Automobile service station

Bakery

Bus terminal

Carpenter and cabinet shop

Cleaning and dyeing works

Commercial school or hall

Department store

Electric transmission station or other utility substation

Feed and fuel store

Furniture repair and upholstery store

Furniture or interior decorating store

Golf course, miniature or practice range

Hardware or appliance store

Home improvement center

Heating, ventilating or plumbing supplies, sales and service

Ice plant or storage house for ice and food housing not more than 10 tons' capacity

Key shop

Laundry

Liquor store

Lumber and building materials sales yard, provided the materials are not produced or altered in any fashion of manner to create such building materials, and further provided that the yard shall be screened from public view on all sides

Mobile home sales

Music, radio or television shop

Paint, paper or glass store

Pawn shop

Pet shop and kennel

Plant sales outlet or garden supply store

Printing plant

Research laboratory, excluding chemical, biological, nuclear or other hazardous materials handling, unless presented to the Planning Commission and approved by the Fire Chief

Sign painting shop

Small animal

hospital

Sporting goods store

Storage, automobile temporary, provided that the lot not exceed one acre in area and further provided that a front setback of 25 feet is provided for ingress to or egress from the lot. Storage lots of more than one acre require a special exception.

Storage warehouse, provided no combustible materials are stored within the facility

Theater

Trailer camp, RV park

Wholesale distributing
center

- (2) Buildings, structures, and uses accessory and customarily incidental to any of the above uses are allowed, provided that there shall be no manufacture, processing or compounding of products other than such as are customarily incidental or essential to retail establishments and service.

L. B-3 Central Business District. The regulations for this district are designed to permit a concentrated development of business uses within the Central Business District (CBD), as designated on the Official Zoning Map of the City of Española. *[Added 11-19-2013 by Ord. No. 2013-02]*

- (1) Permitted uses and structures within the CBD:

Auditoriums, libraries and museums operated by nonprofit organizations

Offices

Hotels and motels

Financial institutions

Eating and drinking establishments

Business service establishments

Establishments offering repair services on items brought in by customers

Filling stations

Amusement and recreation establishments and areas

Wholesaling from sample stocks only, provided that no manufacturing or storage for distribution shall be permitted on the premises

Business school, studios, vocational schools not involving processing of a light or heavy industrial nature

Laboratories and establishments for production and repair of eye glasses, hearing aids and prosthetic appliances

Clubs and lodges

Churches and other religious institutions, except elementary and high schools

Parking lots and parking garages

Transportation terminals other than truck terminals

Manufacturing or handcraft products such as jewelry, pottery, needlework, weaving and the like

Mixed use buildings (no residential on first floor, but permitted on upper floors)

Hospitals

- (2) Permitted accessory uses and structures within the Historic Town Center (HTC) District. Uses and structures which are customarily accessory and clearly incidental and subordinate to permitted or permissible uses and structures.
 - (3) Prohibited uses and structure within the HTC. Every use not allowed specifically in Subsection L(1) and L(2) above.
 - (4) Special exceptions within the HTC. After a public hearing, as required by Article X, § 1001 and 1002, other uses may be permitted under a special exception, if, in the opinion of the Board of Adjustment, the proposed use is not offensive or incompatible and is in keeping with the character of the district.
 - (5) Dimensional requirements within the HTC.
 - (a) Lot area: none, except as may be needed to satisfy other limitations of this chapter.
 - (b) Lot width: none, except as may be needed to satisfy other limitations of this chapter.
 - (c) Yard requirements:
 1. No front yards are required;
 2. Minimal depth of rear yard required: ten (10) feet; and
 3. No side yards are required. However, if a side yard is provided, all structures must be ten (10) feet from the property line. Yards that are adjacent to residentially zoned lots shall have a minimum side yard of eight (8) feet.
 - (d) Maximum lot coverage: unrestricted.
 - (e) Building height: No building shall exceed 35 feet in height except for flagpoles, antennas, chimneys and similar accessories which are exempted from this height limitation.
 - (6) Off-street parking, loading and unloading within the HTC. There are no off-street parking, loading and unloading requirements for this district.
- M. TC Tourist Commercial District. This district is intended to accommodate the grouping of those commercial activities necessary to supply the normal needs of tourists, and to protect these against other incompatible commercial uses. This district is intended to be located in defined areas, adjacent or convenient to arterials and/or other major highways and at the intersections of arterials or highways and roads leading into primary entrances of major public recreational areas.
- (1) Examples of allowed uses in this district are as follows:
 - Art gallery
 - Art supply store
 - Bar, lounge or tavern, private club
 - Bed-and-breakfast
 - Cafeteria or
 - restaurant Gift shop
 - Laundromat
 - Miniature golf course

Professional office
Service station
Souvenir shop
Sporting goods
store Theater,
indoor

- N. Historic Town Center (HTC) District. This commercial district is intended for the conduct of personal and business services and the general retail business of the community along the Main Street corridor. It differs from other commercial districts in that standard off-street parking requirements do not apply. This district was created primarily for those commercial areas that already were so intensely developed that they could not comply with the provisions for other commercial districts in this chapter. Uses in this district are considered on a case-by-case basis via application through the Development Review Team.
- O. L-I Light Industrial District. The Light Industrial District is intended to accommodate light industrial and certain accessory commercial uses, none of which create noise, smoke, odor, dust or similar emissions and which generate a minimum of truck traffic. The regulations of this district are intended to encourage attractively developed sites to ensure further compatibility with adjoining areas of the community. Uses in this district are considered on a case-by-case basis via application through the Development Review Team.
- P. H-I Heavy Industrial District. The Heavy Industrial District is intended to accommodate both light and heavy industrial uses in combination with limited accessory commercial uses. The regulations of this district are intended to ensure a compatible appearance and relationship with surrounding areas of the community. Uses in this district are considered on a case-by-case basis via application through the Development Review Team.
- Q. Santa Cruz Plaza Historic District. This subsection may be cited as the "Santa Cruz Plaza Historic District" under the authority granted in NMSA 1978 § 3-22-1 through 3-22-5. It is the intention of this district to promote uses similar to the historical pattern of the area: limited commercial community support functions around the Plaza, embedded within a residential area. In general, the zoning shall remain the same as indicated in the Española Zoning Ordinance. The following commercial uses shall be permitted within the district: *[Added 11-19-2013 by Ord. No. 2013-02]*
- (1) Permitted principal uses and structures. Permitted principal uses and structures in the Santa Cruz Plaza Historic District are as follows:
- Bakeries Branch banks
 - Barber shops and beauty shops
 - Bookstores
 - Eating establishments
 - General merchandise establishments
 - Grocery stores, with a total floor area of 3,000 square feet or less Laundromats
 - Pharmacies Professional offices
 - Single- and two-family

dwellings

Studio and sales galleries where the proprietor's main place of residence is on the premises

- (2) Permitted accessory uses and structures within the Santa Cruz Plaza Historic District are uses and structures which:
 - (a) Are customarily accessory and clearly incidental and subordinate to permitted or permissible uses and structures; and
 - (b) Are located on the same lot as the permitted use or structure, or on a contiguous lot in the same ownership.
- (3) Prohibited accessory uses and structures within the Santa Cruz Plaza Historic District are every use not allowed specifically in Subsection R(1) and (2) above.
- (4) Special exceptions. If after a public hearing, as required by Article X, § 1001 and 1002, the proposed use is held not to be offensive or incompatible and is held to be in keeping with the character of the Santa Cruz Plaza Historic District, then a special exception may be granted.
- (5) Dimensional requirements in the Santa Cruz Plaza Historic District are as follows:
 - (a) Given that many of the lots in the historic plaza area, as delineated on the accompanying plat,⁴ are small and vary in size and given that the location of many of the buildings are traditionally close together in keeping with the "traditional character" of the plaza area, no minimum lot or yard requirements shall be established. It shall be the responsibility of the Española Planning Commission, in accordance with its powers as specified in Ordinance No. 313, to see that the "traditional character" of the Plaza is preserved.
 - (b) Building height. No building shall exceed 26 feet in height, except for flagpoles, reception antennas, chimneys, and similar accessories which may be excepted from this height limitation.
- (6) Preservation of "traditional character" of the Santa Cruz Plaza Historic District shall be accomplished as follows:
 - (a) Review and approval of proposed work within district. At the time application is made to the City for a permit for construction, alteration or demolition, the application shall be accompanied by such drawings, specifications and descriptions as may be required to determine the characteristics of the proposed project. The City's Planning Director shall notify the Española Planning Commission of each application received for work within the Santa Cruz Plaza Historic District and shall not approve the issuance of a building permit until approval by the Commission.
 - (b) Criteria for decisions. It is the intention of this subsection to preserve the "traditional character" of Santa Cruz Plaza. "Traditional character" shall be evaluated in terms of scale, relationship of open spaces to buildings, color, types of materials and, in general, those elements affecting the visual quality of the district.
 1. It is not the intention of this subsection to limit the creativity of designers in experimenting, exploring and expressing new ideas in manners which are consistent with the traditional character of the district.
 2. The traditional character of the Santa Cruz Plaza. The Plaza was historically, and is currently, a large, open space void of construction (with the historical exception of

a Torreon structure which is now demolished). The Plaza is defined by the structures surrounding it: placitas and linear buildings nearly abutting the Plaza's open-space boundaries with little to no open-space separation between these placitas and linear buildings. These structures form a continuous edge around the Plaza, broken only by the roads into and out of the Plaza.

3. Some of the buildings in the Santa Cruz Plaza Historic District are made using the traditional Northern New Mexico style of steep-pitched metal roofs with high, straight, linear adobe walls. Other more recent buildings have lower profiles with a more concentric massing. Some historical and more modern buildings in the district also have flat roofs. Building materials in the district were initially adobe, wood and stone. Metal roofing, concrete block and stucco were introduced as these materials were developed and became available. Colors, which were likely natural earth colors from the surrounding area initially, have become much more varied with the development of newer materials. All external walls shall be finished in adobe or cement plaster in colors that are in keeping with the traditional character of the District. No concrete block shall remain exposed.
4. Signs. Designs for all associated signs within the district must accompany all building applications. Signs will be in the traditional character of the District. Proper illumination will be allowed so long as it is determined by the City's Planning Director to be in keeping with the traditional character and historical mood of the district. No flashing lights, neon signs or offensive lighting will be allowed.
5. While the area immediately surrounding the Plaza can be characterized by tight, contiguous building forms as described above, the outlying areas were historically more agricultural in character and the houses were set on large parcels of land. In accordance with the powers herein and otherwise lawfully conferred, the acequia systems within the District which networked the community shall be preserved and shall not be allowed to be filled in.
6. Grounds for not approving or rejecting a proposed new construction, remodel or alteration within the district include proposals which would be contrary to the traditional character described above. These include, but are not limited to, design defects that cause depreciation of traditional community character such as:
 - a. Arresting or spectacular effects;
 - b. Violent or offensive contrasts of materials or colors;
 - c. A multiplicity or incongruity of details resulting in a restless or disturbing appearance;
 - d. The absence of unity and coherence with the dignity and traditional character of the present structure in the case of repair, remodel or enlargement of an existing building or structure;
 - e. The absence of unity and coherence with the prevailing traditional character of the neighborhood in the case of a new building or structure; or
 - f. Design which is obviously incongruous with the historical aspects of the surroundings and traditional methods of land use.

(7) Hearings, appeals and notice.

- (a) Appeals to the City Council may be taken by any person aggrieved or by any aggrieved office, department or board of the City affected by any order, requirement, decision or determination of the Board of Adjustments which pertains to the subject matter of administration of this subsection. Such appeal shall be taken within a reasonable time, as shall be prescribed by the Council by general rules, by filing with the City Manager and with the Council a notice of appeal specifying the grounds for such appeal. The Board of Adjustments shall then transmit to the Council within a reasonable time all the papers constituting the record upon which the action appealed from is taken.
- (b) An appeal stays all proceedings in furtherance of the action appealed from except when the Board certifies to the Council after the notice of appeal is filed that a stay would cause imminent peril to life or property. In such a case, a stay of proceedings may be avoided by a restraining order, which may be granted by the City Council or by a court of record on application or notice to the Board and on due cause shown.
- (c) The City Council shall fix a reasonable time for the hearing of the appeal, give public notice thereof, give due notice to all interested parties and rule on the appeal within a reasonable time. At the hearings of the appeal, any party may appear in person or by agent or attorney. The concurring vote of 2/3 of all members of the City Council shall be required to revise any order, requirement, decision or determination of the Board of Adjustments charged with administering this subsection. The concurring vote of 2/3 of all members of the City Council shall also be required to decide a case in favor of an application, any matter upon which the Council is required to pass or to effect any variation or special exception to the terms of these regulations.

R. Plaza de Española Historic District. This subsection may be cited as the "Plaza de Española Historic District" under the authority granted in NMSA 1978 § 3-22-1 through 3-22-5. *[Added 11-19-2013 by Ord. No. 2013-02]*

- (1) Creation. There is hereby created in and around the vicinity of the Plaza de Española an historic district in the area designated for the purpose of preserving, protecting and enhancing said historical area and landmarks. The City may adopt and enforce, in addition to this subsection, by resolution such regulations and restrictions within this district relating to the erection, alteration and destruction of those exterior features of buildings and other structures subject to public view from any public street, thoroughfare, way or public places.
 - (a) Description: all that certain real estate as shown in Map I of this subsection.
 - (b) Addition to the district: New areas may be annexed to the Plaza de Española Historic District when application is made to the City and when the property is contiguous to the existing district with a common boundary of not less than 50 feet (such 50 feet shall not include public rights-of-way). The requirements set forth in this chapter shall govern regarding the application and zoning change process.
- (2) Purpose.
 - (a) The purpose of this subsection is to promote the economic, cultural and general welfare of the citizens of the City and to promote the harmonious, efficient and orderly growth and development of the City. It is considered essential to this subsection that

the City Council proceed in a manner which protects the qualities relating to the history of the Española Valley by maintaining a harmonious appearance which preserves property values and attracts tourism. Some qualities sought to be preserved by this subsection are:

1. The continued existence and preservation of historical areas, buildings and structures;
 2. The continued construction of buildings and structures using material and designs which are recognized as being in keeping with the architectural character and historical styles of the district;
 3. The continued preservation of the mercantile character of the district; and
 4. A general harmony as to style, form, color, proportions, texture and material between buildings of historic design and those of more modern design.
- (b) Specific review and approval of proposed work within this district is required. At the time application is made to the City for a permit for construction, alteration, remodel or demolition, the application shall be accompanied by drawings, specifications and descriptions sufficient to adequately determine the characteristics of the proposed project. The City Zoning Administrator shall notify the Planning Commission of each application received for work within the District and shall not approve the issuance of a building permit until approval for said application is received from the Planning Commission.
- (3) Standards. The City recognizes that a certain style of architecture has evolved within the City. This architecture is characterized by:
- (a) Adobe building construction;
 - (b) Roofs which are steeply pitched, although flat roofs are common with the roofline extending minimally past building walls for drainage;
 - (c) Facades are flat, varied by inset portals, exterior portals, projecting vigas or roof beams, canales or water spouts, structural buttresses, wooden lintels and architraves which (along with doors and lintels) are frequently carved in ornate detail with bright colors inset into the carved areas. In this district, the influences of the mercantile era of the Valley are sought to be preserved. This includes Victorian and Gothic styles of architecture which were adapted to the local building materials available to local builders at the time, found locally or brought in by covered wagon or the railroad. Designs in keeping with the mercantile era of the City will be encouraged and promoted as the design character of this district; and, but not limited to
 - (d) All exterior walls of a building or structure are to be colored alike with exterior stucco-type finishes. Colors may only range from light earth tones to dark earth tones or shades of white.
- (4) Principal uses. The following principal uses are allowed within the Plaza de Española Historic District:
- (a) Retail establishments, including incidental manufacturing of goods for sale only on said premises; sales and display rooms and lots, including yards for storage of new building materials, but not yards for any scrap or salvage operations nor for storage or display of any scrap, salvaged or secondhand materials

- (b) Eating and drinking establishments, but excluding fast-food establishments
 - (c) Personal service establishments, including barbershops and beauty shops, shoe repair and cobbler shops, funeral homes, dry cleaner and dressmaking/tailoring shops with processing on the premises
 - (d) Hotels, motels, rooming houses and boardinghouses
 - (e) Commercial recreational uses and structures, such as theaters, poolrooms and the like
 - (f) Offices, studios, medical or dental clinics and related laboratories
 - (g) Banking and other financial institutions
 - (h) Private clubs and lodges
 - (i) Public or private utilities
 - (j) Public and cultural buildings and grounds, including elementary or secondary schools
 - (k) Churches and related uses
 - (l) Business and vocational schools not involving operations of an industrial character
 - (m) Wholesaling and distribution operations not involving over 3,000 square feet for storage of wares to be wholesaled or distributed
 - (n) Greenhouses and plant nurseries
 - (o) Private day-care nurseries and kindergartens
 - (p) Multifamily dwellings.
- (5) Permitted accessory uses and structures in the Plaza de Española Historic District shall be:
- (a) Customarily accessory and clearly incidental and subordinate to permitted and principal uses and structures; and
 - (b) Located on the same lot as the principal permitted use or structure, or on a contiguous lot in the same ownership.
- (6) Prohibited uses and structures in the Plaza de Española Historical District are:
- (a) Yard for storage of used building materials, for any scrap or salvage operations or for storage of any scrap, salvaged or secondhand materials;
 - (b) Truck terminals, storage warehouses containing over 3,000 square feet;
 - (c) Bulk petroleum products storage and distribution;
 - (d) Erection of signs not relating to establishments, goods or services on premises on which signs are erected;
 - (e) Outdoor displays of merchandise in any required yard or on any public right-of-way;
 - (f) Erection of private signs on or overhanging any public street, alley, sidewalk or way;
 - (g) Manufactured and mobile home units; and
 - (h) All uses and structures not of a nature specifically or provisionally permitted herein, and any use which the Board of Adjustment, upon appeal and after investigating similar uses elsewhere, shall find to be potentially noxious, dangerous or offensive to adjacent occupancies in the same or neighboring districts or to those who pass on public ways by reason of smoke, odor, noise, glare, fumes, gas, vibration, threat of fire or explosion, emission of particulate matter, interference with radio or television

reception or radiation, or likely for other reasons not herein defined to be incompatible with the character of the Plaza de Española Historic District.

(7) Special exceptions in the Plaza de Española Historic District are:

- (a) Home occupations; or
- (b) After a public hearing as required by Article X, §§ 1001 and 1002, other uses may be permitted under a special exception, if in the opinion of the Board of Adjustment the proposed use is not offensive or incompatible and is in keeping with the character of the Plaza de Española Historic District.

(8) Dimensional requirements in the Plaza de Española Historic District are as follows:

(a) Minimum lot areas and width

Use	Minimum Lot Area (square feet)	Minimum Width (feet)
All other permitted uses	10,800	80

(b) Yard requirements in the Plaza de Española Historic District.

- 1. Front yard.
 - a. Structure: setback of 25 feet.
 - b. Off-street parking: setback of 10 feet.
 - c. The front 10 feet of the lot shall be developed or landscaped.
- 2. Side yard. No setback shall be required if a building on an adjacent lot is built to the property line or if the adjacent lot is vacant and the owner thereof agrees by deed restriction with enforcement running to the City that any building constructed will either be built in such a manner as to:
 - a. Leave no space between the building on the property in question and the building on the adjacent property; or
 - b. Leave at least ten (10) feet between the buildings involved.
- 3. Rear yard. Ten(10) feet shall be required, except on the rear of a lot abutting a dwelling district, in which case there shall be a rear yard of not less than 25 feet or 20% of the depth of the lot, whichever is less.

(c) Maximum lot coverage. Maximum lot coverage for all structures shall be no more than 55% of the total lot area.

(d) Building height. No building shall exceed 36 feet in height except for flagpoles, antennas, chimneys and similar accessories which are excepted from this height limitation.

(e) Off-street parking, loading and unloading. Restrictions for off- street parking, loading and unloading are as defined in Article VIII of this chapter.

(9) Signage. Designs for all associated signs within the district must accompany all building applications. Signs will be in the historical mode of the Plaza de Española Historic District. Proper illumination will be allowed so long as it is determined by the City's Planning Director to be in keeping with the traditional character of the mercantile era of

the district. No flashing lights, neon signs or offensive lighting will be allowed.

(10) Hearings, appeals and notice.

- (a) Appeals to the City Council may be taken by any person aggrieved or by any aggrieved office, department or board of the City affected by any order, requirement, decision or determination of the Board of Adjustments which pertains to the subject matter of administration of this subsection. Such appeal shall be taken within a reasonable time, as shall be prescribed by the Council by general rules, by filing with the City Manager and with the Council a notice of appeal specifying the grounds for such appeal. The Board of Adjustments shall then transmit to the Council within a reasonable time all the papers constituting the record upon which the action appealed from is taken.
- (b) An appeal stays all proceedings in furtherance of the action appealed from except when the Board certifies to the Council after the notice of appeal is filed that a stay would cause imminent peril to life or property. In such a case, a stay of proceedings may be avoided by a restraining order, which may be granted by the City Council or by a court of record on application or notice to the Board and on due cause shown.
- (c) The City Council shall fix a reasonable time for the hearing of the appeal, give public notice thereof, give due notice to all interested parties and rule on the appeal within a reasonable time. At the hearings of the appeal, any party may appear in person or by agent or attorney. The concurring vote of 2/3 of all members of the City Council shall be required to revise and order, requirement, decision or determination of the Board of Adjustments charged with administering this ordinance. The concurring vote of two-thirds of all members of the City Council shall also be required to decide a case in favor of an application any matter upon which the Council is required to pass or to effect any variation or special exception to the terms of these regulations.

S. Planned Unit Development District. *[Added 11-19-2013 by Ord. No. 2013-02]*

- (1) General. The Planned Unit Development (PUD) Zoning District is intended for the control of large-scale developments, either single or mixed-use, in any district in the City. Planned unit development in this zoning district shall be utilized whenever applicable.
- (2) Guidelines. The following are the guidelines for when a PUD zoning regulation is to be utilized:
 - (a) The location and design of the PUD shall be consistent with the Comprehensive Plan and with other plans for streets, utilities, parks, etc.
 - (b) The location and design of the PUD shall ensure its compatible integration with developments on adjoining properties and should create an attractive, healthful and stable environment for living and working that is superior to the development attainable under separate zoning regulations;
 - (c) The dedication of land for proper usage and the reservation of land for common usage in a PUD shall be undertaken as follows: Each final development plan shall have its streets, parking areas, recreation open spaces, etc. provided according to the requirements of that plan or purpose, and common use areas for the ultimate development shall be provided in the initial phase of the Master Plan of the PUD.
 - (d) A planned unit development shall be defined as meeting all of the above criteria and also the following requirements:

1. It shall be a development of land which shall be developed as a unified whole;
2. It shall be for integrated projects planned as a whole and including, but not limited to, dwellings and related facilities, travelers' services, commercial centers, industrial parks and urban renewal projects; and
3. It shall be in accordance with comprehensive and detailed plans which include streets, utilities, lots, site plans, floor plans and elevations for all buildings as intended to be located, constructed, used and related to each other and detailed plans for other land use as related to the surrounding buildings.

(3) Submittals with preliminary application.

- (a) Applicants for rezoning to PUD shall submit to the Planning Commission a preliminary plan covering the entire tract proposed for development, indicating existing conditions and development for an additional area, including at least 200 feet from the tract boundaries. This preliminary plan shall be drawn at a scale of 50 feet or 100 feet to the inch, shall indicate topography at two-foot contour intervals and shall show all existing drainage or other significant natural features.
- (b) This plan shall show with appropriate dimensions an arrangement of buildings and their uses, off-street parking and loading facilities, internal circulation, ingress to and egress from adjoining streets, service areas and facilities, drainage systems, landscaping, fences and walls, the size, location, orientation and type of all signs proposed, proposed lighting of the premises and relation to all property within 200 feet of the tract. If it is proposed to develop the PUD in stages, the stages and time of development shall be indicated in the plan.
- (c) This plan shall show the identity of property owners and evidence of unified control of property within the proposed PUD.

(4) Processing preliminary applications.

- (a) When a preliminary application has been filed, the Planning Commissioner shall review it for compliance with the requirements of this chapter and of the subdivision regulations and shall make a finding as to whether the proposed change is in accordance with the objectives of the City's Comprehensive Plan. In the course of such review, the Planning Commission may suggest changes in the preliminary plan as a condition of Planning Commission approval.
- (b) The Planning Commission shall then transmit the application and the preliminary plan to the City Council, together with a recommendation as to approval, disapproval, desirable changes and special conditions and safeguards. This recommendation may include suggested time limits within which all construction or specified stages of construction, or both, shall be started or completed.

(5) Procedure for final development plan.

- (a) After the City Council has approved preliminary plans with such changes and conditions and safeguards as the City Council may have included in the amendment, the Official Zoning District Map shall be amended to designate the zoning classification of the PUD district of the tract covered by the preliminary development plan.
- (b) The applicant shall prepare a final development plan to be followed in construction

operations and submit it to the Planning Commission for approval, together with final drafts of all agreements, contracts, deed restriction(s) and other legal instruments pertinent to the implementation of the development plan. The final development plan may be submitted separately for the first and each successive stage of development.

- (c) The final development plan (or successive stages thereof as approved) becomes the final plat and the basis for issuance of zoning and building permits and for acceptance of public dedications.

§ 1204. Accessory uses or structures.

A. Permitted accessory uses and structures.

- (1) R-1, R-2, R-3, R-4, R-6, R-O-I. The following accessory uses and structures are permitted in the above-mentioned zoning districts:

- (a) Home occupations, as provided in § 607.
- (b) Noncommercial greenhouses.
- (c) Private garages.
- (d) Utility sheds (up to 150SF) located within the rear yard only.
- (e) Children's play areas and play equipment.
- (f) Other uses and structures customarily accessory and clearly incidental and subordinate to permitted or permissible uses and structures.

- (2) All accessory uses and structures allowed under the Subsection A(1) of this section shall:

- (a) Not involve the conduct of business on the premises, except home occupations.
- (b) Be located on the same lot as the permitted principal use or structure or on a contiguous lot in the same ownership.
- (c) Not be likely to attract visitors in larger numbers than would normally be expected in a single-family residential neighborhood.
- (d) Not exceed the total lot coverage by all structures in the provisions set forth in Table I, Table II and Table III of this chapter.
- (e) Not be less than five feet from a side or rear lot line. Not be less than 25 feet from the front lot line.

B. Accessory dwelling units in the R-1, R-2, R-3 and B-2 Zoning Districts.

- (1) Accessory dwelling units are permitted in the above-mentioned zoning districts, provided that the properties are being served by City water and City sewer.
- (2) Accessory dwelling units (not more than 50% of the main dwelling and not greater than 1,200 square feet) are permitted, provided that:
 - (a) Total lot coverage by all structures does not exceed the provisions set forth in Table I, Table II and Table III of this chapter.
 - (b) The accessory dwelling unit shall not be less than five (5) feet from a side or rear lot line.
 - (c) The accessory dwelling unit shall not be less than 25 feet from the front lot line.

C. Location.

- (1) No accessory building may be located closer to the front property line than the main structure on any lot, except as may be modified by Subsection A(3) and (4) of this section.
 - (2) Garages and carports may be located in the front yard behind the minimum front setback in residential districts. No other accessory building may be located in the front yard within 25 feet of the front property line in any district.
 - (3) Accessory buildings and structures may not be located in required side yards in any district.
 - (4) Accessory buildings, uses, and structures shall not be located within five feet of any rear lot line in any residential district, except as may be modified by the provisions of Subsection A(3) and (4) of this section.
 - (5) In the manufactured housing park manufactured housing developments, accessory buildings and structures shall not be located within 20 feet of a manufactured housing park roadway or within 10 feet of a manufactured housing site boundary.
 - (6) In the manufactured housing parks and development districts, accessory buildings and structures shall not be permitted within 20 feet of the front property line.
- D. Lot coverage. In residential districts, the lot coverage of all types of accessory buildings and structures located in the required rear yard shall not exceed 25% of the required rear yard area.
- E. Permit required. An accessory structure permit shall be required prior to commencing construction of any accessory structure pursuant to § 201.
- F. Number of accessory buildings and structures.
- (1) In the R-3, R-4, R-6 and Planned Unit Development Districts, a detached garage or carport and not more than two additional accessory buildings per dwelling unit are permitted; in the R-2 District, four accessory buildings per dwelling unit are permitted; in the R-1 District, four accessory buildings, in addition to a carport or garage, are permitted.
 - (2) In districts where dwelling units are not the primary use, the area of accessory buildings is subject to site plan review and shall not exceed 20% of the primary structure square footage.
- G. Accessory dwelling units. *[Added 11-19-2013 by Ord. No. 2013-02]*
- (1) R-1, R-2, R-3 and B-2 Districts. Accessory dwelling units are permitted in the R-1, R-2, R-3 and B-2 Districts, provided that the properties are being served by City water and City sewer.
 - (a) Accessory dwelling units shall not be more than 50% of the main dwelling and not greater than 1,200 square feet;
 - (b) The total lot coverage by all structures shall not exceed the provisions set forth in Table I, Table II and Table III of Ordinance 203-15;
 - (c) Accessory dwelling units shall not be less than five feet from a side or rear lot line; and
 - (d) Accessory dwelling units shall not be less than 25 feet from the front lot line.

ARTICLE XIII
Development Standards

§ 1300. Street development standards. *[Added 11-19-2013 by Ord. No. 2013-02]*

The following standards shall apply to all arterials, collectors, local streets and private drives.

A. Definitions. As used in this section, the following terms shall have the meanings indicated:

ARTERIAL — A major thoroughfare which serves as a major traffic way for travel between and through the municipality.

COLLECTOR — Streets which serve as feeders to arterial streets and collectors of local streets.

LOCAL STREET — A street which is primarily residential and is used primarily by residents of a neighborhood serving up to 30 dwelling units.

PRIVATE DRIVE — A paved or unpaved roadway serving up to eight dwelling units.

B. Table of standards. See the following table for construction and engineering standards for roadways.

C. Construction and engineering standards of public streets shall be in accordance with the City engineering and construction standards as recommended by the City and illustrated in the above table and shall be as follows:

- (1) All new City streets shall be paved and dedicated public streets; however, the City shall not maintain private drives;
- (2) All dedicated City streets and private drives shall contain turnaround capability. The following are acceptable means of turnarounds on local and private streets:
 - (a) A forty-foot cul-de-sac with landscaped island
 - (b) A cul-de-sac with a thirty-foot radius
 - (c) A sixty-foot by twenty-foot Y-shaped turnaround
 - (d) A loop road.
- (3) Arterial roads shall have a one-hundred-foot right-of-way comprised of the following:
 - (a) Driving lanes: 66 feet wide
 - (b) Bike lanes: 10 feet
 - (c) Gutter and curb: 4 feet
 - (d) Landscape buffer: 10 feet
 - (e) Sidewalk: 10 feet
- (4) Collector roads shall have a fifty-foot right-of-way comprised of the following:
 - (a) Driving lanes: 20 feet wide
 - (b) Parking lanes: (or bike lanes) 12 feet wide
 - (c) Gutter and curb: 4 feet wide
 - (d) Landscape buffer: 6 feet wide

- (e) Sidewalks: 8 feet wide
- (5) Local streets shall have a forty-two-foot right-of-way comprised of the following:
 - (a) Driving lanes: 18 feet wide
 - (b) Gutter and curb: 4 feet wide
 - (c) Bike lanes: 8 feet wide
 - (d) Landscape buffer: 6 feet wide
 - (e) Sidewalks: 6 feet wide
- (6) Paved private drives shall have a twenty-foot right-of-way comprised of the following:
 - (a) Driving lanes: 20 feet wide. If paved in asphalt, a two-inch minimum thickness of asphalt is required on top of a six-inch minimum compacted base course; and
 - (b) A utility easement of required width if deemed necessary by the Public Works Department shall be dedicated to the City.
- (7) Unpaved private drives.
 - (a) Unpaved private drives shall have a twenty-foot right-of-way comprised of the following:
 1. Driving lanes: 20 feet wide. Where abutting a paved or dedicated street, the first 25 feet shall be surfaced with a non-permeable surface;
 2. A utility easement of required width if deemed necessary by the Public Works Department shall be dedicated to the City; and
 3. Any private drives which are subsequently proposed to be dedicated to the City, however, must be paved and shall meet all applicable public street standards.

§ 1301. General standards.

- A. Exemptions. The following are exempt from the requirements of this article to prepare impact reports, to provide municipal services, to construct temporary improvements, and to submit landscape plans:
 - (1) A single-family or two-family residential dwelling on a legal lot of record.
 - (2) Any nonresidential development where a site plan is not required.
- B. Impact reports. Within 21 calendar days of the written request by an owner or agent, the Planning Department shall provide available baseline data for the owner's use in the completion of impact reports. If the Planning Department does not have all requested baseline data, the requirement for impact reports shall not be waived. Impact reports are studies to identify the potential adverse effects of the proposed development on public infrastructure and land as well as adjoining private properties. The DRT will evaluate the alternate solutions proposed for mitigating adverse impacts and will forward its recommendation to the Planning Commission. The purpose of this section is to advise applicants that traffic generation, stormwater drainage, utility capacity analysis and soils reports may be required. The City of Española Planning Department will advise the applicant in writing of any and all required impact studies. The Planning Director shall notify the applicant of the requirement for specific impact studies as set forth in this section at or prior to the first DRT meeting where the development request is formally reviewed. The Planning

Director shall provide the applicant with any available baseline data regarding the existing status or capacity of the City of Española roads, intersections, water service, sanitary sewer, storm drainage, etc. The Planning Director may require additional impact studies after notification as set forth in this subsection; if the impact resulting from the development request is modified by results of the impact studies or by the applicant, the DRT, Planning Commission or City Council may request further impact studies after notification of required impact studies by the Planning Director.

- C. Grading and erosion control plans. The Planning Director may require grading and erosion plans to be submitted and approved as part of any preliminary plat or site plan application. Requirements for grading and erosion control plans are set forth in Subsections D(2) and E(2) of this section, respectively. The notification requirements set forth in Subsection B of this section shall apply to the requirements for grading and erosion control plans.
- D. Standards for impact study preparation.
 - (1) Traffic generation report required:
 - (a) For residential development, when the proposed development for all phases exceeds 20 dwelling units, or when the report is in the best interest of the City of Española.
 - (b) For commercial, industrial, recreational and mixed uses, when the estimated average daily traffic (ADT) generated by the proposed development exceeds 300 ADT or peak-hour criteria set by the Planning Department.
 - (c) Where plan review or field inspection indicates that site design for the proposed development will not meet minimum City of Española engineering standards for any of the following conditions:
 - 1. Sight visibility at points of access to public streets
 - 2. Street gradients
 - 3. Points of conflict between vehicular traffic and pedestrian movements caused by future on-site development or existing adjacent development
 - 4. Acceptable levels of service for adjoining roadways as a result of the complete development of the proposed site
 - 5. Impact on intersections at arterial streets in the immediate vicinity causing significant traffic delays, or traffic volumes creating need for modifications to intersection geometrics, or traffic volumes satisfying warrants for traffic control devices.
 - (2) Stormwater drainage report required:
 - (a) Where there is a drainage basin of five (5) or more acres upstream from the site
 - (b) When there is known evidence of flooding immediately downstream from the proposed development.
 - (c) When additional stormwater runoff caused by the development of the property will result in the substantial increase in the volume and velocity of stormwaters discharged from the site.
 - (d) When improvements or realignments to major drainage channels are proposed.
 - (3) Utility capacity analysis report required. If the size of utility lines does not conform to the sizes specified by the utilities master plan, the developer shall prepare an engineering

report providing data to justify the difference in line sizing. The Utilities Department shall consider the report in its decision to deviate from the recommendation of the utilities master plan.

(4) Soils report required:

- (a) When there are known geologic conditions that will create hazardous conditions for public improvements and private structures.
- (b) When soils have characteristics that require specialized engineering for building foundations or public roadways as shown on Rio Arriba County Soils Report.
- (c) Where unconsolidated fill material is known to exist within the tract of land that is proposed for development;

E. Minimum impact report standards.

- (1) Traffic generation report. The following minimum requirements serve as a guideline for preparing the traffic generation report:
 - (a) Average daily traffic (ADT) and level of service (LOS) counts for surrounding public streets for pre-development and post- development conditions.
 - (b) Preliminary road profiles and street sections.
 - (c) Minimum sight distances for intersections for pre-development and post-development conditions.
 - (d) Quantify the amount and direction of pedestrian traffic on public streets, and isolate locations where points of conflict will occur between pedestrians and vehicular traffic, creating hazardous conditions.
 - (e) The City Engineer shall determine the off-site impacts to street intersections, in the immediate vicinity of the proposed development, with and without traffic control, including the need for signalized intersections and recommend measures that will be required to mitigate any adverse impacts created by development of the site.
- (2) Stormwater drainage report. The following minimum requirements serve as a guideline for preparing the stormwater drainage report:
 - (a) The stormwater drainage report will be prepared and stamped by a professional engineer.
 - (b) Graphic description of upstream drainage area for stormwaters which flow through the subject site, including number of acres in the upstream basin.
 - (c) Quantities of water measured in cubic feet per second entering and discharged from the site for conditions existing prior to construction of the development and conditions represented at completion of all phases of the development, based on a one- hundred-year- frequency rainfall.
 - (d) Graphic description of the direction of flow for stormwater through the development.
 - (e) Graphic description indicating points of stormwater discharge upon completion of development and description of suggested methods for controlling erosion at points of discharge.
 - (f) Impact on downstream properties upon completion of all phases of the development.
 - (g) Capacity of public storm drainage facilities to accept existing runoff and anticipated

runoff from future development of the subject site as well as potential development of vacant lands upstream from the subject site. The assumed intensities of development for upstream lands shall be based on the land use recommendations of the Comprehensive Plan or the zoning district designation as shown on the Official Zoning Map, whichever is more restrictive.

- (h) Recommended measures that will be required to mitigate any adverse impacts created by development of the site.
- (3) Utility capacity analysis report required. A utility capacity analysis report is required for an improvement exceeding four residential dwelling units and commercial improvements exceeding 5,000 square feet of heated area. The report shall include the capacity of existing and proposed gas, water, electric and sanitary sewer systems. The report shall include the calculated demand on the utility systems of the improvement.
- (4) Soils report required.
 - (a) The following minimum requirements serve as a guideline for preparing the soils report:
 - 1. Location, on a scaled drawing, of any soils or geologic conditions within and contiguous to the proposed development area which create hazardous conditions or require specialized engineering design.
 - 2. Written description of the soils types or natural or man- made land features that are shown on the required sealed drawings.
 - 3. Recommended measures that will be required to mitigate any adverse soils or geologic conditions which have been mapped within the proposed development.
 - (b) The soils report shall be reviewed by the City Engineer, who shall recommend approval, conditional approval or denial to the Planning Commission prior to review of the preliminary plat or site plan.

§ 1302. Waivers.

The City Engineer may waive strict compliance with the requirements of this article if the development satisfies the intent and purpose of this article. The applicant shall state in writing the type and extent of the waiver and the reasons for requesting the waiver. Waivers will generally only be granted to smaller developments, where access, terrain and stormwater drainage do not require mitigation measures. Any request for waiver of development standards must be included in the application, submitted at the time of the development request.

§ 1303. Design guidelines for improvements.

Design guidelines for improvements shall be available for developers from the Planning Department.

§ 1304. Landscaping performance standards.

- A. Site landscaping standards. Development of any tract of land where a landscape plan is required shall conform to the following standards:

- (1) The landscape design should emphasize native plants and water conservation practices and should give due consideration to the recommended plant materials list.
- (2) The landscape design should use a variety and mixture of plant materials to avoid destruction of singular species through blight and/or disease.
- (3) Where there is a need for buffer areas, parking lot or parking facility landscaping or any combination thereof, there shall be compatibility of plant materials and design themes within the development and with adjacent properties.
- (4) Permanent irrigation facilities may be required to ensure the survival and growth of plant materials. The requirements of this subsection will depend on the type of landscaping proposed. Temporary irrigation facilities, such as hose bibs, may be required to ensure survival of newly landscaped areas. When required, irrigation facilities shall consist of, but are not limited to:
 - (a) Automatic or manual sprinkler heads, valves, valve boxes, and all other mechanical equipment which shall be installed flush or lower than adjacent sidewalks, drainage-ways, and streets or no closer than five feet to a sidewalk, driveway or street.
 - (b) Bubblers or drip irrigation systems.
- (5) A minimum of 25% of the site not covered by a building shall be landscaped. Existing desirable plant materials which meet the requirements of this subsection shall count towards satisfying the landscape requirement. This minimum landscaping requirement includes the required landscaping for parking facilities as set forth in Subsection B of this section, and in addition, the following standards shall apply to this minimum landscaped area:
 - (a) Non-plant material within the allowable area for ground cover should not exceed 10%. Small interstices between plants shall be considered the same as if they were planted.
 - (b) Preservation of desirable existing trees on the site is encouraged and shall count toward the minimum landscape standards of this subsection.
 - (c) The landscaping between adjacent uses and/or properties is encouraged.
- (6) Up to 25% of the site landscaping requirement may be satisfied by landscaping within the public right-of-way for streetscape purposes, subject to a joint landscaping agreement between the City of Española and the property owner.
- (7) Existing desirable trees with a caliper size of six (6") inches or more in diameter, measured at 4 1/2 feet above grade, should be preserved. New or replacement trees shall have a minimum trunk caliper of four inches. Preference shall be given to preserving dense groupings or groves of trees.
- (8) Desirable trees that are removed shall be replaced with an equal or greater number of trees and may be replaced on public property if it is not appropriate or possible to replace the trees on private property.
- (9) The abutting property owner shall maintain landscaped areas within the public right-of-way.
- (10) Dead, dying, diseased or unwanted vegetation shall be removed and replaced, and planting areas shall be maintained free of trash and weeds. All ground cover used in the

screening and/or landscaping of a site shall be maintained in a healthy growing condition. Fences and/or walls used in screening and landscaping shall be maintained and kept in a structurally sound condition.

(11) All landscaping shall be completed prior to issuance of final certificate of occupancy and no later than three months after completion of construction of all structures unless otherwise approved by the Planning Director.

B. Parking facility landscaping.

(1) For the purpose of this section, "parking facility" shall be defined as the spaces utilized for the parking of vehicles, the driving aisles, ramps and ingress to and egress from the parking facility.

(2) The landscaping for required parking facilities shall satisfy the following requirements:

(a) Landscaping shall consist of a mixture of ground cover, shrubs and trees, and shall be placed and maintained in a manner so as to not impair vehicular, bicycle or pedestrian visibility at points of ingress and egress for the parking facility.

(b) As part of the landscaping requirements of Subsection A(5) of this section, all required parking facilities shall provide landscaping within the parking facility in a ratio of five square feet of landscaped area for every 100 square feet of paved parking area. Landscaped areas shall be located throughout the parking lot or parking facility in a pattern that reduces the barren appearance of the area. Covered or decked parking lots or parking facilities shall incorporate the required landscaping into the site design so as to screen the parking lot or parking facility.

(c) As part of the landscaping requirements of this section, each owner or agent, as a condition of approval, shall be required to execute a maintenance agreement ensuring that the landscaping as approved by the Planning Director shall be installed, irrigated and permanently maintained. Should the property owner or agent fail to uphold the terms of the agreement, the City of Española, after proper notice to the owner or agent, will maintain the landscape improvements and lien the property for the actual costs of that maintenance. The lien will be filed with the City of Española City Clerk.

§ 1305. Landscape plans.

During the course of the review of any request for a landscape plan, the Planning Director shall utilize the following criteria in making his decision of approval, conditional approval or denial:

A. Conformance with the standards set forth in § 1304.

B. General compatibility with the existing and proposed improvements and adjacent land uses and landscaping.

C. Any conditions imposed by the Planning Commission and/or City Council.

D. Location of all trees to be preserved on the site.

E. Location, size and type of plant material by common and/or botanical names.

F. Systems for irrigation, if required, of landscaped areas.

§ 1306. Hillside development standards.

A. Description and purpose.

- (1) Certain areas of the City of Española are characterized by slope, vegetation, drainage, rock outcroppings, geologic conditions and other physical factors which, if disturbed for purposes of development, can cause physical damage to public or private property, or both. Therefore, the development of such areas and adjacent land requires special care on the part of the public and private sectors.
- (2) The purpose of these regulations is to specify conditions for any type of development in sensitive hillside areas where, due to topography, the natural environment, or for other reasons, problems may be created which are detrimental to the public health, safety and welfare. It is the intent of the regulations of this section to prevent physical damage to public and private property and to aid in the preservation of the natural heritage of the City of Española. It is furthermore the purpose of this section to allow an appreciable degree of development flexibility to protect the environment of hillside areas. Specifically, the objectives of this section are to:
 - (a) Conserve the unique natural features and aesthetic qualities of the hillside areas.
 - (b) Provide safe and convenient access to hillside areas.
 - (c) Minimize water runoff and soil erosion problems incurred in adjustment of the terrain to meet development needs.
 - (d) Ensure types, distribution and densities of development which are compatible with the natural systems and terrain of the hillside areas.
 - (e) Ensure that the taxpayers of the City of Española are not burdened by extraordinary costs for services attributable solely to the development of hillside areas.

B. Applicability of section; exemptions.

- (1) No building or structure may be erected, reconstructed or structurally altered on land which is designated on the zoning maps of the City of Española as a hillside area, nor shall such land be subdivided, graded or otherwise disturbed for purposes of development, subdivision or any other purpose unless such construction, subdivision, disturbance or development is undertaken in accordance with the requirements set forth in this article.
- (2) Upon written request from a landowner or authorized representative, the Planning Director and the Director of Public Works may exempt certain property from all or part of the requirements of this section if the subject property is not a characteristic hillside area as described in Subsection A(1) of this section. The request shall clearly state the rationale for any exemptions and list all exemptions being sought. The Planning Director and Public Works Director shall respond in writing to the applicant within 15 working days of receiving an exemption request.

C. Land suitability analysis.

- (1) A land suitability analysis shall be required as part of the justification for the proposed development of a hillside area. The analysis shall consist of an evaluation of all physical and environmental factors on the site so that type, density and distribution of development may be established in the most environmentally compatible manner that will minimize land disturbance, protect natural plant and animal communities, and

minimize costs and liability to the City of Española. The suitability analysis shall be prepared in conjunction with the sketch plan, and the sketch plan shall be clearly reflective of the analysis. Should any land in a designated hillside area not be planned, the suitability analysis shall be prepared in conjunction with the development plan. The development plan shall be clearly reflective of that analysis in terms of type, density and distribution of proposed development.

- (2) Should any land in a designated hillside area have an existing, approved sketch which plan that was adopted without an approved suitability analysis, the landowner may, at his option:
 - (a) Submit a land suitability analysis upon which the sketch plan was based;
 - (b) In lieu of a land suitability analysis, submit written or graphic material, or both, to the Planning Department, addressing the physical and aesthetic factors of the hillside site and demonstrating how these factors influenced the type, distribution and density depicted by the sketch plan; or
 - (c) Prior to or at the time that the development plan is submitted, submit written or graphic material, or both, addressing the physical and aesthetic factors of the hillside site and demonstrating how these factors influence the project's design as shown on the development plan.

D. Development plan.

- (1) No site plan shall be submitted until such time as a detailed development plan has been submitted and approved as set forth in this section. The development plan shall be a master schematic site plan that shows all phases of the development proposal, including lot(s), street(s), drainage-way(s) and proposed building site. The development plan shall be prepared in compliance with this article and shall contain all information required herein unless specifically exempted under Subsection B(2) of this section.
- (2) Review and approval procedures. The development plan shall be processed in conformance with procedures set forth in § 403, Development plan review criteria. Consideration and approval by the Planning Director shall be in conformance with § 202.
- (3) Submittal requirements. In addition to the development plan submittal requirements listed in this article, the following information is required to accompany a development plan in a hillside area. The applicant shall not be required to depict actual construction on individual lots in single-family detached residential development. This exception shall not apply to single-family attached developments.
 - (a) Location of a general building area for each lot. This can also be shown by proposing preservation areas on lots, where appropriate. Proposed access shall also be indicated [see Subsection D(3)(f) of this section];
 - (b) Location and species of vegetation (common names are acceptable) and an indication of vegetation to be removed;
 - (c) Location of rock outcroppings;
 - (d) A map of proposed road alignments identifying segments at grades of 0% to 4%, 4% to 8% and above. Center-line profiles shall be required for all road segments which exceed a grade of 8%. Profiles may be required for segments with grades of less than 8% if deemed necessary by the Public Works Director;

- (e) Where grading is to occur, plans showing the relationship of all cuts and fills to the existing topography and plans for the stabilization, restoration and control of erosion for disturbed areas as required by Subsection F of this section. A letter of credit or bond shall be required in order to ensure proper restoration of disturbed areas in accordance with the approved erosion control reclamation plan;
 - (f) The manner in which access will be provided or restricted due to topographic and other physical constraints, from the access road to each lot; and
 - (g) Where deviations from those standards contained in the Design Guidelines are being proposed, a facilities plan shall be required in accordance with Subsection C of this section.
- (4) Criteria for review. In addition to development plan review criteria outlined in this article, criteria for review of a development plan in a hillside area shall be as follows:
- (a) Is terrain disturbance minimized?
 - (b) Is natural vegetation preserved and incorporated into the project design to the maximum possible extent?
 - (c) Have visual impacts upon off-site areas been avoided or reasonably mitigated? Mitigation measures which may be demonstrated on the development plan may include, but are not limited to:
 1. Alternative siting of structures so that there is a mountain or hillside backdrop to the structure from areas where the structure is visible.
 2. Use of existing vegetation to soften structural mass when building sites are located in highly visible areas.
 3. Use of supplementary native landscaping to soften structural mass when building sites are located in highly visible areas.
 4. Designation of special height restrictions for highly visible areas.
- [5]Use of visually compatible stabilization measures for cuts and fills.
- (5) Amendments. All amendments to an approved development plan shall be processed in conformance with requirements and procedures set forth in this chapter.
- E. Facilities plan. To allow for design flexibility, a facilities plan shall be required concurrent with the detailed development plan when deviations from this section are being proposed. Due to the unique and often fragile nature of hillside environs, certain variances from the hillside standards may be allowed if they will result in superior and more environmentally compatible design. The facilities plan shall be used to demonstrate that the proposed deviations will not adversely affect the public health, safety or welfare, and shall specify how the unique natural features of the site will be protected through the careful placement of services.
- F. Grading, erosion control and reclamation plan.
- (1) The primary objective of the grading, erosion control and reclamation plan is to minimize terrain disturbance and to restore and stabilize those areas that are disturbed. Plans for grading and control of erosion shall be submitted by the applicant with the development plan, development plan amendment, or replat, whichever is applicable, in any designated hillside area. No land so designated shall be subdivided, graded, or otherwise disturbed

for any development purposes until the plan for grading and erosion control have been approved by the Planning Director and the Public Works Director. The grading plan shall meet all the requirements as set forth in the Design Guidelines. In addition, the grading plan shall show all areas to be disturbed by grading and fill and shall show proposed final contours for these areas. The contour interval shall be two feet and the horizontal scale one inch equals 40 inches unless otherwise approved by the Planning Director and Public Works Director. The erosion control and reclamation plan or program shall state in detail how each type of restoration situation will be dealt with, recognizing that different combinations of slope and material may require varied stabilization methods. No cleared, graded or otherwise disturbed land may be left without temporary protective stabilizing cover longer than three months or without permanent cover as described in the erosion control plan longer than nine months from the date of disturbance. All grading plans prepared and submitted under this section shall include measures for drainage and erosion control to be employed during construction. Such measures shall remain in place after construction has been completed until such time as temporary or permanent protective cover is applied. Whenever possible and wherever appropriate, erosion control and restoration shall incorporate the use of live native plant materials. Criteria for treatment shall include visual compatibility with the surrounding landscape, sustained survivability under arid conditions, and effectiveness in prevention of soil erosion and slope failure.

- (2) All grading plans prepared and submitted under this section shall include plans for limiting ecological damage through restrictions on the use of construction equipment and placement of supply and equipment storage areas.
 - (3) Revisions of any approved grading plan shall be submitted to the City of Española Planning Department for review and shall be acted upon by the Planning Director and Public Works Director within 15 working days of receipt.
 - (4) A letter of credit or surety bond shall be required in order to ensure proper restoration of disturbed areas in accordance with the approved erosion control and reclamation plan. This letter or bond need not be submitted for the final plat to be approved, but shall be submitted prior to any land disturbance, including removal or alteration of vegetation, or prior to issuance of any building permit, whichever occurs first.
- G. Issuance of building permits. No building permits shall be issued in any hillside area until such time as:
- (1) The surety bond or letter of credit is posted by the developer in accordance with Subsection F(4) of this section; and
 - (2) A plan for grading and erosion control for the individual lot is approved by the Planning Department.
 - (a) This plan shall consist of the following:
 1. Plot plan drawn to scale;
 2. Two-foot contours, existing and proposed;
 3. All existing vegetation and rock outcroppings;
 4. All areas of cut or fill, or both, including driveways;
 5. Erosion control/stabilization methods for cuts and fills; and
 6. Restrictions on equipment use and supply storage areas so that disturbances and

ecological damage are minimized.

- (b) The Planning Department shall respond to this plan within 15 working days of receipt.

H. Restoration and maintenance.

- (1) Restoration; unpermitted land disturbance or alteration. If any land disturbance or alteration, including, but not limited to, grading or otherwise disturbing natural ground cover, occurs in a hillside area which is not in accordance with the properly approved plans as required by this article, a stop order may be issued prohibiting all further activity until all required plans have been submitted and properly approved. The landowner shall have 45 days after such a stop order is issued to submit a plan for restoration pursuant to Subsections D and F of this section. The Planning Director, with the concurrence of the Public Works Director, may extend this time period for an additional 45 days for good cause shown. The Planning Director and Public Works Director may also condition their approval of any restoration measures upon the applicant's supplying a satisfactory bond, letter of credit or other suitable guarantee for the performance of any proposed restoration. Such plan shall require that restoration commence within 30 days after the plan approval and proceed with due diligence to completion.
- (2) Maintenance.
 - (a) Obligation to maintain. All facilities, vegetation and other items required by the approved grading, erosion control and reclamation plan shall be properly maintained by the owners of the property. Such maintenance shall include, but not be limited to, keeping all erosion control facilities in good order and functional, repairing any erosion damage that occurs, keeping all vegetation healthy and in growing condition and replacing any dead vegetation as soon as practicable. This obligation to maintain shall not apply to individual lots except as the individual lots may be subject to maintenance obligations incurred under the approved grading, erosion control and reclamation plan and except for obligations incurred under Subsection G of this section.
 - (b) Failure to maintain. If the Public Works Director or the Planning Director determines the maintenance required under Subsection H(2)(a) of this section has not been performed in the manner required, the Planning Director or the Public Works Director, with the concurrence of the other, may give notice to the property owner specifying the maintenance determined to be required under this section. The Planning Director, with the concurrence of the Public Works Director, may extend this 45 days for an additional forty-five-day period. If the maintenance specified in such notice is not satisfactorily performed within 45 days or an additional forty-five-day extension after delivery of this notice, the City of Española may proceed with a formal notice and order to correct as set forth in Subsection H(3) of this section.
- (3) Formal notice and order to correct; City of Española performance of restoration and maintenance work. If the approval as required by Subsection H(1) of this section has not been obtained within the time required or if work is not commenced within the time required or if maintenance required under Subsection H(2) of this section has not commenced or concluded within the time required, or at any time prior to approval or commencement of such work that the Planning Director determines there is either

imminent or existing erosion damage, drainage damage, dust pollution or other hazardous condition for which immediate action is necessary, the Planning Director may cause corrective proceedings to be undertaken and shall submit a notice and order to correct.

- I. Appeals. Appeals of any administrative action under the provisions of the Section shall be made in accordance with Article XII of this chapter; provided, however, that whenever the Planning Director issues a notice and order to correct under the authority of Subsection H(3) of this section, this section shall apply.

§ 1307. Public lands.

- A. Any agency owning land within the City of Española may use the land and place structures in order to support community needs and the public health, safety and welfare, where such use is found to be used for purposes pertaining to the function of that agency after application and permitting by the Planning Director.
- B. Where the land is to be used by any other person under a lease or contract with the government agency, an application for a special use permit shall be applied for and acted upon by the Planning Commission. Under such circumstances, the land may be put to any use accessory to the governmental use or to any of the uses allowed in the district that the land is located, upon the approval of the application for a special use permit.

§ 1308. Historic districts.

Historic districts are overlay districts and the following regulations are applicable as additions to the regulations of the underlying district in which the property is located. In case of conflict, the more restrictive regulations shall control.

- A. No new construction, expansion, addition to, restoration of or major maintenance to any building, structures or ruins shall be carried on without the prior approval of a site plan by the Planning Commission.
- B. No major changes to landscaping that would alter the character of the area existing on the date of adoption of this article, including the removal or planting of trees, shall take place without prior approval of a site plan by the Planning Commission.
- C. When acting on a site plan, the Planning Commission shall consider recommendations from the State Office of Cultural Affairs, Historic Preservation Division, or successor agency. This consideration is taken as advice only and does not bind or obligate the Commission to any of these findings or recommendations.
- D. Requirements, guidelines and regulations for individual historic districts may be adopted as separate ordinances; however, such districts shall be bound by the requirements set forth in this Development Code. Where the two ordinances are in conflict, the Planning Commission shall determine the standards with which the applicant.

ARTICLE XV
Telecommunications Facilities

§ 1500. Purpose; legislative intent. *[Added 06-27-2017 by Ord. No. 2017-04]*

In order to ensure that the placement, construction or modification of wireless telecommunications facilities is consistent with the city's land use policies and the Telecommunications Act of 1996 (the "Act"), the city is adopting a comprehensive, wireless telecommunications facilities application and permit process. The intent of this chapter is to minimize impact of wireless telecommunications facilities, establish a balanced, fair and efficient process for review and approval of applications, assure an integrated, comprehensive review of environmental impacts of such facilities, and protect the health, safety and welfare of the City of Española.

§ 1501. Definitions.

For the purpose of this chapter, and where not inconsistent with the context of a particular section, the defined terms, phrases, words, abbreviations, and their derivations shall have the meaning given in this section. When not inconsistent with the context, words in the present tense include the future tense, words used in the plural number include words in the singular number and words in the singular number include the plural number. The word "shall" is always mandatory, and not merely directory.

ACCESSORY FACILITY OR STRUCTURE — An accessory facility or structure serving or being used in conjunction with wireless telecommunications facilities, and located on the same property or lot as the wireless telecommunications facilities, including but not limited to, utility or transmission equipment, storage sheds or cabinets.

ADMINISTRATIVE APPROVAL — After Administrative Review the Planning Director or designee is authorized to grant zoning approval and the procedures for Administrative Review are established in Section § 1508 of this Ordinance.

APPLICANT — Any wireless service provider submitting an application for a telecommunications permit.

APPLICATION — All necessary and appropriate documentation that an applicant submits in order to receive a telecommunications permit.

ANTENNA — A system of electrical conductors that transmit or receive electromagnetic waves or radio frequency or other wireless signals.

BALLOON TEST — A test for a reasonable period of time to fly, or raise upon a temporary mast, a brightly colored balloon, that is representative in size of the initial antenna array including all standoffs, at the maximum height of the proposed tower.

CO-LOCATION — The use of an existing tower (as defined herein) or other structure to support one or more antennae for the provision of wireless services.

COMPLETED APPLICATION — An application that contains all the submittals, information and/or data required under this chapter and necessary to enable an informed decision to be made with respect to an application.

FAA — The Federal Aviation Administration, or its duly designated and authorized successor agency.

FCC — The Federal Communications Commission, or its duly designated and authorized successor agency.

HEIGHT — When referring to a tower or structure, the distance measured from the pre-existing level to the highest point on the tower or structure, even if the highest point is an antenna or lightning protection device.

MATERIAL MODIFICATION — An important, essential or significant change to an existing wireless telecommunications facility. Changes that materially affect the obvious physical appearance of a facility, materially increase a facility's height or structural loading, or otherwise materially affect the safety of the facility would be material modifications. An increase of ten (10) feet or more in the height of a wireless telecommunications facility shall be presumed to constitute a material modification, unless the applicant, owner or operator of the facility demonstrates that such increase or addition will not materially affect the appearance or safety of the facility. Ordinary repair and/or maintenance without any material addition, removal or other material modification of any visible components or aspects of a wireless telecommunications facility, shall not be considered a material modification for purposes of this chapter.

MODIFICATION or MODIFY — The addition, removal or change of any of the physical and visually discernable components or aspects of a wireless telecommunications facility, such as antennas, cabling, equipment shelters, fencing, utility feeds, changing the color or materials of any visually discernable components, vehicular access, parking and/or equipment. Adding a new wireless carrier or service provider to a telecommunications tower or telecommunications site as a co- location is a **MODIFICATION**.

MINOR MODIFICATIONS — Improvements to Existing Structures that result in some material change to the facility or structure, but of a level or intensity that is less than a **MODIFICATION**. Minor Modifications include the replacement or upgrade of components with substantially similar components. These components or aspects of a telecommunication facility may not be physically or visually discernable.

PERSON — Any individual, corporation, estate, trust, partnership, joint stock company, association of two or more persons having a joint common interest, or any other entity.

PERSONAL WIRELESS SERVICES (PWS) or PERSONAL COMMUNICATIONS SERVICE (PCS) — These terms shall have the same meaning as defined and used in the 1996 Telecommunications Act.

STATE — The State of New Mexico.

STORY POLE — A pole or temporary mast, cut to the maximum height of the tower, and erected in the proposed location.

TELECOMMUNICATIONS — The transmission and/or reception of audio, video, data, and other information by wire, radio frequency, light, and other electronic or electromagnetic systems.

TELECOMMUNICATIONS PERMIT — The official document or permit by which an applicant is allowed to file for a building permit to construct and use wireless telecommunications facilities as granted or issued by the city.

TELECOMMUNICATIONS STRUCTURE — A structure used in the provision of services described in the definition of WIRELESS TELECOMMUNICATIONS FACILITIES.

TEMPORARY — Temporary in relation to all aspects and components of this chapter; something intended to, or that does, exist for fewer than 90 days.

TOWER — Any structure designed primarily to support one or more antennae.

WIRELESS TELECOMMUNICATIONS FACILITIES — This term means the structure, facility or location designed, or intended to be used as, or used to support antennas or other telecommunications transmitting or receiving devices, including without limit, towers of all types and kinds and structures, including, but not limited to buildings, church steeples, silos, water towers, signs or other structures that can be used as a support structure for antennas or their functional equivalent, and all related facilities and equipment such as cabling, equipment shelters and other structures associated with the site. It is a structure and facility intended for transmitting and/or receiving radio, television, cellular, SMR, paging, 911, personal communications services (PCS), commercial satellite services, microwave services and any commercial wireless telecommunication service not licensed by the FCC.

§ 1502. Overall policy and goals.

In order to ensure that the placement, construction, and material modification of wireless telecommunications facilities are conducted with due regard for the city's health, safety, public welfare, environmental features, the nature and character of the community and neighborhood and other aspects of the quality of life specifically listed elsewhere in this chapter, the city hereby adopts an overall policy with respect to a telecommunications permit for wireless telecommunications facilities for the express purpose of achieving the following goals:

- A. Requiring a telecommunications permit for any new, co-location or material modification of a wireless telecommunications facility.
- B. Implementing an application process for person(s) seeking a telecommunications permit.
- C. Establishing a policy for examining an application for and issuing a telecommunications permit that is both fair and consistent.
- D. Promoting and encouraging, wherever possible, the sharing and/or co-location of wireless

telecommunications facilities among service providers.

- E. Promoting and encouraging, wherever possible, the placement, height and quantity of wireless telecommunications facilities in such a manner, including but not limited to the use of camouflaged wireless telecommunications facilities technology, to minimize adverse aesthetic and visual impacts on the land, property, buildings, and other facilities adjacent to, surrounding, and in generally the same area as the requested location of such wireless telecommunications facilities, which shall mean using the least visually and physically intrusive facility that is not technologically impracticable under the facts and circumstances.
- F. In granting a telecommunications permit, the city has determined that the facility shall be located in the most appropriate site in regards to being the least visually and physically intrusive among those available in the city.

§ 1503. Periodic regulatory review.

- A. The city may at any time conduct a review and examination of this entire chapter.
- B. If after such a periodic review and examination of this chapter, the city determines that one or more provisions of this chapter should be amended, repealed, revised, clarified, or deleted, then the city may take whatever measures are necessary in accordance with applicable law in order to accomplish the same. It is noted that where warranted, and in the best interests of the city, the city may repeal this entire chapter at any time.
- C. Notwithstanding the provisions of divisions (A) and (B) of this section, the city may at any time and in any manner (to the extent permitted by federal, state, or local law), amend, add, repeal, and/or delete one or more provisions of this chapter.

§ 1504. Permit required.

- A. No person shall be permitted to site, place, build, construct, or materially modify a wireless telecommunications facility after the effective date of this chapter without having first obtained a telecommunications permit for such facility. Notwithstanding anything to the contrary in this section, no telecommunications permit shall be required for those facilities listed in § 1505.
- B. No person shall perform any construction of or on a wireless telecommunications facility without having first obtained a building permit for such construction. In order to obtain a building permit for a wireless telecommunications facility, the applicant shall present a copy of a duly issued telecommunications permit with the building permit application.
- C. No person shall use a wireless telecommunications facility for which a telecommunications permit is required without having first obtained a Certificate of Compliance for such wireless telecommunications facility. A Certificate of Compliance shall be issued to an applicant upon a final inspection of the wireless telecommunications facility showing that the construction of the facility meets all requirements and conditions of the telecommunications permit, and that all applicable codes and related building requirements have been met.
- D. An applicant for or holder of a telecommunications permit shall obtain, at its own expense, all permits and licenses required by applicable law, rule, regulation or code, and must maintain the same, in full force and effect, for as long as required by the city or other governmental entity having jurisdiction over the wireless telecommunications facility.

- E. All wireless telecommunications facilities legally permitted and existing on or before the effective date of this chapter shall be allowed to continue as they presently exist, as legally permitted non-conforming uses. These facilities may be used, maintained, or repaired without having to comply with the permit provisions of this chapter. Any material modification of such an existing wireless telecommunications facility will require compliance with all requirements of this chapter.
- F. Repair and maintenance of a wireless telecommunications facility shall not require a telecommunications permit.

§ 1505. Exemptions.

The following shall be exempt from this chapter:

- A. The city's fire, police, department of transportation or other public service facilities owned and operated by the local government.
- B. Any facilities expressly exempt from the city's siting, building and permitting authority.
- C. Over-the-air reception devices including the reception antennas for direct broadcast satellites (DBS), multi-channel multipoint distribution (wireless cable) providers (MMDS), television broadcast stations (TVBS) and other customer-end antennas that receive and transmit fixed wireless signals that are primarily used for reception.
- D. Facilities exclusively for private, non-commercial radio and television reception and private citizen's bands, and other similar non-commercial telecommunications, subject to applicable zoning and building requirements of Chapter 350, Zoning and Development.
- E. FCC licensed amateur radio facilities require an administrative approval and are exempt from all aspects of this chapter except reasonable screening, setback, placement, construction, tower height, and health and safety standards in accordance with New Mexico state law.
- F. Facilities exclusively for providing unlicensed spread spectrum technologies (such as IEEE 802.11 a, b, g (Wi-Fi) and Bluetooth) for the benefit of a limited area, where telecommunications service is not sold but is provided for the benefit or convenience of patrons or residents, and where the facility does not require a new tower.
- G. Facilities that do not increase the overall height of an existing structure (taking into account all parts of the facility, including all antennae and support structures) by ten (10) feet or more, provided that:
 - (1) Such facilities are appropriately screened, considering the height and nature of the existing structure;
 - (2) Such facilities do not otherwise constitute a material modification under this chapter;
 - (3) Any such facility exempted under this paragraph complies with all other applicable laws and regulations, including without limitation, building codes;
 - (4) And no facility located on the structure on which such facility is constructed or installed has been exempt under this paragraph within the previous four (4) years.

§ 1506. Application.

- A. All applicants for a telecommunications permit shall comply with the requirements set forth

in this chapter. Applications for wireless telecommunications facilities shall be submitted to the Department of Planning and Land Use. Except for those applications for which a public hearing is required under § 1509, the City Manager or his or her designee shall review, analyze, evaluate and make decisions with respect to granting, not granting, or revoking telecommunications permits. The city may at its discretion delegate or designate other official agencies or agents of the city to accept, review, analyze, evaluate and make recommendations to the City Manager or Planning and Zoning Commission with respect to the granting, not granting, or revoking telecommunications permits.

- B. The city may reject applications not meeting the requirements stated herein or which are incomplete. An application will be considered complete when the applicant has provided all submittals required by this section, including but not limited to all required data, reports, attachments, certifications, and authorizations.
- C. Any and all written representations made by the applicant to the city on the record during the application process, and oral representations made on the record during a hearing before the Planning and Zoning Commission, Governing Body, or other public meeting, shall be deemed a part of the application and may be relied upon in good faith by the City.
- D. An application for a telecommunications permit shall be signed on behalf of the applicant by the person preparing the same and with knowledge of the contents and representations made therein and attesting to the truth and completeness of the information.
- E. The applicant shall provide written and notarized documentation to verify it has the right to proceed as proposed on the site and to employ such easements and/or other property interests to access the site as may be necessary for repair and maintenance of the facility. Such documentation may consist of a summary plat or duly executed deeds or other conveyances clearly depicting the site and all easements or other authorized access routes.
- F. The applicant shall include a statement in writing:
 - (1) That the applicant's proposed wireless telecommunications facilities shall be maintained in a safe manner, and in compliance with all conditions of the telecommunications permit, without exception, unless specifically granted relief by the city in writing, as well as all applicable and permissible local codes, ordinances, and regulations, including any and all applicable city, state and federal laws, rules, and regulations;
 - (2) That the construction of the applicant's wireless telecommunications facilities is legally permissible, including, but not limited to demonstration of the applicant's authority to do business in the state.
- G. Where a certification is called for in this chapter, such certification shall bear the signature and seal of a professional engineer licensed in the state.
- H. In addition to all other required information as stated in this chapter, all applications for the construction or installation of new wireless telecommunications facilities, co-locations and material modifications of existing facilities shall contain the information hereinafter set forth, except as otherwise provided in this section.
 - (1) A generally descriptive statement of the objective(s) for the new facility or material modification including and expanding on a need such as type of coverage ("in building" or "in vehicle") and/or capacity requirements. Such statements shall not contain proprietary information such as build out plans and projected number of customers. Such statement may focus on past and current needs rather than future needs.

- (2) The applicant shall provide documentation that demonstrates and proves the need for the wireless telecommunications facility to provide service. Such documentation shall include propagation studies of the proposed site and all adjoining planned, proposed, in-service or existing sites that demonstrate a significant gap in coverage and/or if a capacity need, include an analysis of current and projected usage. Such propagation studies (including all backup data and assumptions used) shall show signal propagation at the height of the proposed antenna(e) and at increments of ten (10) feet lower, to allow verification of the applicant's need for the proposed height.
- (3) The name, address and phone number of the person preparing the report.
- (4) The name, address, and phone number of the property owner and applicant, and to include the legal name of the applicant. If the site is a tower and the owner is different than the applicant, provide name and address of the tower owner.
- (5) The postal address and tax map parcel number of the property.
- (6) The zoning district or designation in which the property is situated.
- (7) Size of the property stated both in square feet and lot line dimensions, and a survey showing the location of all lot lines.
- (8) The location of nearest residential structure.
- (9) The location, size and height of all existing and proposed structures on the property which is the subject of the application.
- (10) The type, locations and dimensions of all proposed and existing landscaping, and fencing.
- (11) The number and azimuth, size and center line height location of all proposed and existing antennae on the supporting structure.
- (12) The number and type of the antenna(s) proposed with a copy of the specification sheet.
- (13) The make, model, type and manufacturer of the tower and design plan stating the tower's capacity to accommodate multiple users.
- (14) A site plan describing the proposed tower and antenna(s) and all related fixtures, structures, appurtenances and apparatus, including height above pre-existing grade, materials, color and lighting.
- (15) The frequency, modulation and class of service of radio or other transmitting equipment.
- (16) The actual intended transmission power stated as the maximum effective radiated power in watts.
- (17) Signed documentation such as the "Checklist to Determine Whether a Facility is Categorically Excluded" showing that the wireless telecommunication facility with the proposed installation will be in full compliance with current FCC RF emissions guidelines. If not categorically excluded, a complete RF emissions study is required to provide verification.
- (18) A copy of the FCC license applicable for the intended use of the wireless telecommunications facilities if the applicant is not licensed by the FCC.
- (19) A copy of the geotechnical sub-surface soils investigation, evaluation report and foundation recommendation for a proposed or existing tower site and if existing tower or water tank site, a copy of the installed foundation design; This information may be provided following the issuance of a telecommunications permit but must be provided prior to the

issuance of a building permit and prior to the start of construction.

(20) A copy of the City of Española business registration.

- I. The applicant shall provide a written analysis, completed by a qualified individual or organization, showing that the proposed wireless telecommunications facility is in compliance with Federal Aviation Administration Regulation Part 77 and if it requires lighting. If this analysis shows that an FAA determination is required, then all filings with the FAA, all responses from the FAA and any related correspondence shall be provided with the application. This information may be provided following the issuance of a telecommunications permit but must be provided prior to the issuance of a building permit.
- J. When a permit is required under this chapter for a material modification of, or co-location on, an existing wireless telecommunications facility for which a telecommunications permit has previously been issued, the applicant shall submit only those items, reports, certifications, documentation and other matters that reflect and pertain to changes in the information submitted in application for the previous permit; no propagation studies shall be required under paragraph (H)(2) of this section in an application for a co-location no more than ten (10) feet higher than an existing, permitted antenna on a previously permitted structure.
- K. An applicant proposing a new tower shall submit a written inventory of all existing towers, buildings, and other structures within one (1) mile of the proposed site. Applicant shall document in writing its efforts to secure shared use of such existing structures within one (1) mile of the proposed structure. Satisfactory evidence of applicant's efforts to secure shared use of existing facilities may consist of copies of written requests for shared use directed to the owner(s) or other person(s) in possession or control of such facilities and responses thereto.
- L. The applicant shall provide certification with documentation (structural analysis) including calculations showing that the telecommunication facility tower and foundation and attachments, rooftop support structure, water tank structure, and any other proposed supporting structure are designed and will be constructed to meet all local, city, state and federal structural requirements for loads, including wind and ice loads. This information may be submitted following the issuance of the telecommunications permit but shall be provided prior to the issuance of the building permit and prior to the start of construction.
- M. If the applicant's proposal is for a co-location or material modification on an existing tower, the applicant shall provide signed documentation of the tower condition such as an ANSI report as per Annex E, Tower Maintenance and Inspection Procedures, ANSI/TIA/EI 222F-96 or most recent version. The inspection report must be performed every three years for a guyed tower and five years for monopoles and self-supporting towers.
- N. The applicant shall provide to the city photo simulations of all proposed new wireless telecommunications facilities or co-locations on existing wireless telecommunications facilities from at least four (4) directions exceeding 45 degree angular separation, facing the proposed location.
- O. The applicant shall demonstrate in writing and/or by drawing how it shall effectively screen from view the base and all related equipment and structures of the proposed wireless telecommunications facility.
- P. The applicant shall demonstrate in writing and/or by drawing the proposed facility's compliance with all of the applicable requirements of § 1515 through 1521.

- Q. An applicant shall attend a pre-application meeting with city staff and the city's expert/consultant, to address issues that will help to expedite the review and permitting process. A pre-application meeting shall also include a site visit if there has not been a prior site visit for the requested site. Costs of the city's consultants to prepare for and attend the pre-application meeting will be charged to the applicant's escrow account established under § 1507.
- R. An applicant shall submit to the city the number of copies of its completed application determined to be needed at the pre-application meeting.
- S. Except when due to circumstances beyond an applicant's reasonable control, all applications for a telecommunications permit shall be completed, including all submittals, reports, documentation, certifications and payments required under this chapter, within one (1) year from the applicant's initial submittal relating to the application. An application that is not so completed within one (1) year (except when due to circumstances beyond the applicant's control) shall be disregarded, and the applicant shall comply with all applicable requirements of this chapter anew, as if the previous application had not been submitted.
- T. Where reasonably possible and practicable all applicants for telecommunications permit should develop their plans to allow reasonable requests from the city to use space on its towers and space within the existing or planned compound for deploying and operating public service radio facilities (e.g. police, fire, emergency, homeland security, and the like). Should the addition of city requirements exceed structural limits the request may be denied by the permit holder or owner of the telecommunications facility. The city will pay reasonable market value for any such use. Where reasonably practicable the city will also require access to its equipment on a 24X7 basis for maintenance and operating requirements. However, the city will work with applicants to insure they receive adequate advance notice for routine activities (excluding emergencies).

§ 1507. Application review costs.

- A. The city may hire any consultant and/or expert necessary to assist the city in reviewing and evaluating applications, and for inspecting construction and/or modification of wireless telecommunications facilities. All costs for application review are specified in Chapter 171.
- B. An applicant shall deposit with the city funds sufficient to reimburse the city for all reasonable costs of consultant and expert evaluation and consultation to the city in connection with the review of any application including the construction and modification of the site, once permitted. However, should multiple (three or more) projects, by the same applicant, be started to proceed concurrently the escrow amounts may be negotiated. The placement of the escrow amounts with the city shall precede the pre-application meeting and is the official start of the application process. The city will provide reasonable information about the ordinance and the process prior to official start of the process. The city will maintain a separate escrow account for all such funds. The city's consultants/experts shall invoice the city for its services in reviewing the application, including the construction and modification of the site, once permitted. If at any time during the process this escrow account appears to be inadequate to complete the consultants'/experts' review, the applicant shall immediately, upon notification by the city, replenish that escrow account so that it has a balance of at least \$1,000. Such additional escrow funds shall be deposited with the city

before any further action or consideration is taken on the application. In the event that the amount held in escrow by the city is more than the amount of the actual invoicing at the conclusion of the project, the remaining balance shall be promptly refunded to the applicant.

- C. The total amount of the funds needed as set forth in division (B) of this section may vary with the scope and complexity of the project, the completeness of the application and other information as may be needed to complete the necessary review, analysis and inspection of any construction or modification.
- D. Application review costs and fees shall be reviewed and adjusted biennially, as needed to insure that the amounts required to be deposited into escrow under this section and the amount of the non-refundable fee the application fee charged under § 1514 represent, as accurately as practicable, the city's cost of reviewing and processing applications.
- E. In no event shall the total application review costs under this section and the city's fee paid pursuant to § 1514 exceed \$15,000 for a new tower, or \$8,000 for a co-location or material modification. All invoices received by the city to be paid out of funds held in escrow under this section shall be open to inspection by the applicant during regular business hours upon reasonable prior notice.

§ 1508. Administrative Approval.

- A. The Planning Director may Administratively Approve an application to perform Minor Modifications to existing telecommunication facilities in all zoning districts subject to the requirements of this Part.
- B. Administrative Review Process
 - (1) All Administrative Review applications must contain the following:
 - (a) Copy of lease or letter of authorization from property owner evidencing applicant's authority to pursue zoning application. Such submissions need not disclose financial lease terms.
 - (b) Development plans, which comply with Section § 403(B) of the Chapter 350 of Espanola Code, detailing proposed Minor Modifications.
 - (c) Administrative Review application fee as specified in Chapter 171.
 - (2) Procedure
 - (a) Within thirty (30) days of receipt of an application for Administrative Review, the Planning Director shall either: (1) inform the Applicant in writing the specific reasons why the application is incomplete and does not meet the submittal requirements; or (2) deem the application complete. If the Planning Director informs the Applicant of an incomplete application within thirty (30) days, the overall timeframe for review is suspended until such a time that the Applicant provides the requested information.
 - (b) An Applicant that receives notice of an incomplete application may submit additional documentation to complete the application. An Applicant's unreasonable failure to complete the application within sixty (60) business days after receipt of written notice shall constitute a withdrawal of the application without prejudice. An application withdrawn without prejudice may be resubmitted upon the filing of a new application fee.

- (c) The Planning Director must issue a written decision granting or denying the request within ninety (90) days of the submission of the initial application unless:
 - 1. Planning Director notified Applicant that its application was incomplete within thirty (30) days of filing. If so, the remaining time from the ninety (90) day total review time is suspended until the Applicant provides the missing information; or
 - 2. Extension of time is agreed to by the Applicant.
- (d) Should the Planning Director deny the application, the Planning Director shall provide written justification for the denial. The denial must be based on substantial evidence of inconsistencies between the application and this Ordinance.
- (e) Applicant may appeal any decision of the Planning Director approving, approving with conditions, or denying an application or deeming an application incomplete, within thirty (30) days to the Planning and Zoning Commission in accordance with this Ordinance.

§ 1509. Public hearing; notice requirements.

- A. A public hearing before the city's Planning and Zoning Commission shall be held prior to approval of any application to construct a new tower for a telecommunications facility in any allowable zone, or a co-location or material modification at such an existing site, notice of which shall be published in the official newspaper of the city, and sent by mail to all adjacent landowners whose property (as shown on the records of the County Assessor) is located within 500 feet (exclusive of right of way) of any property line of the lot or parcel on which the new wireless telecommunications facilities are proposed to be located, no less than 15 calendar days prior to the date of the hearing.
- B. The hearing referred to in paragraph (A) of this section shall concern only the applicant's compliance with the provisions of this chapter. The Planning and Zoning shall render a determination as to whether the application complies with this chapter, based on its review of the applicant's submittals and the matters appropriately raised at the hearing. The Director of Planning and Land Use or his designee shall provide a written summary of the determination rendered to the applicant no later than ten (10) calendar days following the public hearing.
- C. In order to better inform the public, in the case of a new tower, the Applicant shall hold a "balloon test" or erect a story pole prior to the initial public hearing of the application. The use of either a balloon test or a story pole, i.e. a temporary mast, shall be at the determination of the City based upon the fact and circumstances involved. The applicant shall arrange to fly, or raise upon story pole, a minimum of ten (10) foot in length brightly colored balloon at the maximum height of the proposed new tower, on two separate dates, one of which shall be on a week day, and the other on a weekend.
- D. At least fourteen (14) days prior to the conduct of the balloon test, a sign shall be erected so as to be clearly visible from the road nearest to the proposed site and at the major roads intersecting this nearest road and shall be removed no later than fourteen (14) days after the conduct of the final balloon test. The sign shall be at least four feet (4') by eight feet (8') in size and shall be readable from the road by a person with 20/20 vision.
- E. Such sign shall be placed off, but as near to, the public right-of-way as is possible.

- F. Such sign shall contain the times and date(s) of the balloon test and contact information.
- G. The dates, (including a third date, in case of poor visibility or wind in excess of 15 mph on either of the initial dates) times and location of this balloon test shall be advertised by the Applicant seven (7) and fourteen (14) days in advance of the first test date in a newspaper with general circulation in the City and as agreed to by the City. The Applicant shall inform the City in writing of the dates and times of the test, at least (14) days in advance. The balloon shall be flown for a minimum of four (4) consecutive hours between 9:00 a.m. and 3:00 p.m. on the dates chosen. In case of poor visibility on either of the initial dates, the third date may be on any day of the week, excluding Sunday. A report with photos of the balloon test from at least four (4) directions exceeding 45 degree angular separation, and to-scale superimposed photo simulations of the facility when completed shall be provided with the application.
- H. The Applicant shall notify all property owners and residents located within five hundred feet (500'), exclusive of right of way, of the subject property of the proposed construction of the tower and wireless facility and of the date(s) and time(s) of the balloon test. Such notice shall be provided at least fifteen (15) days prior to the conduct of the balloon test and shall be delivered by first-class mail. The Applicant shall bear all costs associated with said notification.
- I. The hearing referred to in paragraph (A) of this section shall be held no later than 30 days of the applicant's submission of a completed application, with all reports and other submittals required hereunder.
- J. Notwithstanding anything to the contrary contained in this section, no public hearing shall be required for the issuance of a permit for:
 - (1) Any co-location on, or material modification of, a wireless telecommunications facility for which a permit has previously been issued under this chapter, if such co-location or material modification does not significantly change the appearance or height of the facility; or
 - (2) Any co-location on a wireless telecommunications facility for which a permit has previously been issued under this chapter, if such facility was, at the time it was permitted, designed to include such co-location pursuant to § 1516.

§ 1510. Action on application.

- A. The city will undertake a review of a completed application pursuant to this chapter in a timely fashion, consistent with its responsibilities, and shall act within a reasonable period of time given the relative complexity of the application and the circumstances, with due regard for the public's interest and need to be involved, and the applicant's desire for a timely resolution. When an application is complete, including the submission of all reports and other submittals required hereunder, the city shall act on the proposed permit within thirty (30) calendar days unless a public hearing is required under § 1509.
- B. After the public hearing (if required) and/or after formally considering the application, the city may approve, approve with conditions, or deny a telecommunications permit, based on the applicant's compliance with the requirements of this chapter. Its decision shall be in writing and shall be supported by substantial evidence contained in a written record. The

burden of proof for the grant of the permit shall always be upon the applicant.

- C. If the city approves the telecommunications permit, then the applicant shall be notified of such approval in writing, and the telecommunications permit shall be issued within ten (10) calendar days of the city's action. Except for necessary building permits, and subsequent certificates of compliance, once a telecommunications permit has been granted hereunder, no additional permits or approvals from the city, such as site plan or zoning approvals, shall be required by the city for the wireless telecommunications facilities covered by the telecommunications permit.
- D. If the city denies the telecommunications permit, then the applicant shall be notified of such denial in writing within ten (10) calendar days of the city's action. Such written notice shall enumerate, with particularity, the specific deficiencies, omissions, and/or instances of noncompliance with the requirements of this chapter.
- E. If the city denies a telecommunications permit, and the grounds for such denial concern matters that may be cured within a reasonable time, the applicant may amend, supplement, or re-submit its application within sixty (60) days of the city's denial, and such amendment(s), supplement(s), or re-submission shall be evaluated as part of the applicant's original application.

§ 1511. Transfer/revocation of permit Application fee.

The extent and parameters of a telecommunications permit shall be as follows:

- A. The telecommunications permit shall not be assigned, transferred or conveyed without written notification to the city. Such notification will occur within 60 calendar days of such assignment, transfer or conveyance.
- B. A telecommunications permit may, following a hearing upon due prior notice to the holder of the permit, be revoked, canceled, or terminated for a violation of the conditions and provisions of the telecommunications permit, or for a material violation of this chapter after prior written notice to the holder of the telecommunications permit and an opportunity to cure.

§ 1512. Application fee.

At the time that a person submits an application for a telecommunications permit, such person shall pay a non-refundable application fee to the city as specified in Chapter 171. The application fee is a one-time cost, at permit application and covers administrative expenses, legal notice, material modification, records retention, future code adherence inspections, providing access to and information from records to other wireless companies seeking information on a particular site or sites and the same for co-location. These fees represent the city's best estimate of the actual cost of city personnel and resources for processing applications and monitoring compliance with this chapter for the life of a wireless telecommunications facility, which is estimated to be thirty (30) years. Application review costs and fees shall be reviewed and adjusted biennially, as needed to insure that the amount of the fees represents, as accurately as practicable, the city's cost of reviewing and processing applications and monitoring compliance with this chapter.

§ 1513. Relief.

Any applicant desiring relief, waiver or exemption from any aspect or requirement of this chapter may request such at the pre-application meeting, provided that the relief or exemption sought is contained in the submitted application for a telecommunications permit, or an amendment to the permit application. Such relief may be temporary or permanent, partial or complete. The applicant shall have the burden of showing the need for the requested relief, waiver or exemption and shall bear all costs of the city's consultants/experts (if any) in considering the request for relief. No such relief shall be approved unless the applicant demonstrates by clear and convincing evidence that, if granted the relief, waiver or exemption will have no significant effect on the health, safety and welfare of the city, its residents and other service providers.

§ 1514. Location of facilities.

A. Applicants for wireless telecommunications facilities shall locate, site and erect the wireless telecommunications facilities in accordance with the following priorities, (1) being the highest priority and (6) being the lowest priority:

- (1) On existing towers or other structures without increasing the height of the tower or structure;
- (2) On existing towers or other structures without increasing the overall height of the tower or structure by more than ten (10) feet;
- (3) On properties in areas zoned Non-Residential/Heavy Industrial including H-I Heavy Industrial District, L-I Light Industrial District, and SU Special Use districts approved for such uses;
- (4) On properties in areas zoned Non-Residential/Commercial to include B-1 Local Commercial District, B-2 General Commercial District, and B-3 Central Commercial District, and SU Special Use districts approved for such uses;
- (5) On city-owned properties or structures (provided space is available, loading is within the structure's capacity, and the city deems the use appropriate);
- (6) On properties in areas zoned for residential uses, subject to the public hearing requirements of § 1508, in the following descending order of priority:
 - (a) ROI Residential, Office, Institutional District;
 - (b) R-1, R-2 and R-4 Residential Districts, and SU Special Use for single family residential uses;
 - (c) R-6 Residential Districts, RM Multi-Family Residential Districts, and SU Special Use for multi-family residential uses; and
 - (d) No facilities shall be located with Historic or Tourist-Commercial Districts.

§ 1515. Shared use of facilities.

A. The policy of this chapter is to favor co-location or wireless telecommunications facilities on existing towers and other structures, over the construction of new towers. To that end, an applicant for a new tower permit shall examine the feasibility of designing the proposed

tower to accommodate future demand for at least two additional commercial applications, such as future co- locations, and shall design the proposed tower to structurally accommodate at least two additional antenna arrays equal to those of the applicant, and located as close to the applicant's antenna as possible without causing interference. This requirement may be waived provided that the applicant, in writing demonstrates that the provisions of future shared usage of the tower is not technologically feasible or creates an unnecessary and unreasonable burden, based upon:

- (1) The foreseeable number of FCC licenses available for the area, and the number of existing and potential licenses without available telecommunications sites;
 - (2) The kind of wireless telecommunications facility and structure proposed; and
 - (3) Space available in the vicinity on existing and approved telecommunications sites.
- B. The owner of a tower permitted under this chapter shall negotiate in good faith for the shared use of the tower by other wireless service providers in the future, and shall:
- (1) Respond within 60 days to a request for information from a potential shared-use applicant;
 - (2) Allow shared use of the tower if another telecommunications provider agrees in writing to pay reasonable, fair market charges for such use, and the services are technologically compatible. Such charges may include, but are not limited to, a pro rata share of the cost of site selection, planning, project administration, land costs, site design, construction and maintenance financing, permitting costs, return on equity, less depreciation, and all of the costs of adapting the tower or equipment to accommodate such shared use without causing electromagnetic interference.
 - (3) Failure to abide by the conditions of this section may be grounds for revocation of the telecommunications permit.
- C. All co-locations shall comprise the minimum antenna array technologically required to provide service in the manner described in the application, to the extent practicable.

§ 1516. Height of towers; compliance with codes and regulations.

- A. No tower constructed after the effective date of this chapter shall exceed the minimum height necessary to eliminate gaps in coverage or otherwise to provide service, as demonstrated by the propagation studies submitted under paragraph (H)(2) of § 1506.
- B. All wireless telecommunications facilities shall be constructed, operated, maintained, repaired, provided for removal of, modified or restored in strict compliance with all current applicable technical, safety and safety-related codes adopted by the city, state, or United States, including but not limited to the most recent editions of the ANSI Code, National Electrical Safety Code and the National Electrical Code, as well as accepted and responsible workmanlike industry practices and recommended practices of the National Association of Tower Erectors. The codes referred to are codes that include, but are not limited to, construction, building, electrical, fire, safety, health, and land use codes. In the event of a conflict between or among any of the preceding, the more stringent rule shall apply.
- C. All utilities at a wireless telecommunications facilities site shall be installed underground, to the extent practicable, and in compliance with all laws, ordinances, rules and regulations of the city, including specifically, but not limited to, the National Electrical Safety Code and the

National Electrical Code where appropriate.

- D. All telecommunications sites shall include an access road, turn around space and parking, adequate to assure emergency and service access. Maximum use of existing roads, whether public or private, shall be made to the extent practicable. Road construction shall at all times minimize ground disturbance and the cutting of vegetation. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion.

§ 1517. Visibility.

- A. Telecommunications facilities shall not be artificially lighted or marked, except as required by law.
- B. Towers shall be galvanized, camouflaged, and/or painted with a rust-preventive paint of an appropriate color to harmonize with the surroundings and shall be maintained in accordance with the requirements of this chapter.
- C. If lighting is required, applicant shall provide a detailed plan for sufficient lighting of as unobtrusive and inoffensive an effect as is permissible under state and federal regulations.
- D. Wireless telecommunications facilities and any and all accessory or associated facilities shall be effectively screened from view to the extent practicable, and shall maximize the use of building materials, colors and textures designed to blend with the structure to which it may be affixed and/or to harmonize with the natural surroundings, including the use of camouflage technology to the extent practicable.

§ 1518. Security.

All wireless telecommunications facilities and antennas shall be located, fenced or otherwise secured in a manner that prevents unauthorized access. Specifically:

- A. All antennas, towers and other supporting structures, including guy anchor points and wires, shall be made inaccessible to individuals and constructed or shielded in such a manner that they cannot be climbed or collided with; and
- B. Transmitters, telecommunications control points, and all utility connections shall be installed in such a manner that they are readily accessible only to persons authorized to operate or service them.

§ 1519. Signage.

- A. Each wireless telecommunications facility shall display a sign no larger than four square feet, containing the site identification number and emergency phone number(s) of the permit holder or other person operating the facility. The sign shall be on the equipment shelter or cabinet of the applicant and be visible from the access point of the site and must identify the equipment owner of the shelter or cabinet. The signs shall not be lighted, unless applicable law, rule or regulation requires lighting. No other signage, including advertising, shall be permitted.
- B. The applicant or future owner of the site shall update the site identification number and emergency phone number of the wireless telecommunications facility as displayed on the

required sign within 60 calendar days of any sale, assignment or transfer.

§ 1520. Lot size and setbacks.

All proposed towers and any other proposed wireless telecommunications facility structures shall be set back from abutting parcels, recorded rights-of-way and road and street lines by sufficient distance to assure safety of persons and structures in the vicinity. A standard of acceptable distance shall be equal to the height of the proposed tower or wireless telecommunications facility structure. A free standing wireless telecommunications structure plus 10 feet that abuts a residential district shall establish the setback equal to the height of the structure. Applicants proposing a smaller setback shall demonstrate ancillary safety precautions in the design of the structure that justify the smaller setback.

§ 1521. Performance security.

An applicant for a telecommunications permit, and/or the owner of record of the proposed wireless telecommunications facility shall, at their cost and expense, execute and file with the city a bond with one or more sureties reasonably satisfactory to the city or other form of security acceptable to the city, in an amount of at least \$25,000 for a tower and \$5,000 for a co-location, to assure the faithful performance of the terms and conditions of this chapter and conditions of any telecommunications permit issued pursuant to this chapter. The full amount of the bond or security shall remain in full force and effect throughout the term of the telecommunications permit and/or until any necessary site restoration is completed to restore the site to a condition comparable to that, which existed prior to the issuance of the original telecommunications permit. No bond or other security shall be required for permits issued for material modification of, or co-location on, an existing wireless telecommunications facility for which a bond has already been provided.

§ 1522. Inspection.

In order to verify that the holder of a telecommunications permit and any and all lessees and/or licensees of wireless telecommunications facilities, place, construct, maintain and operate such facilities in accordance with all applicable of this chapter, the telecommunications permit issued for such facility, and all technical, safety, fire, building, and zoning codes, laws, ordinances and regulations and other applicable requirements, the city may inspect all facets of the permit holder's, lessee's or licensee's placement, construction, modification and maintenance of such facilities, including, but not limited to, towers, antennas and buildings or other structures constructed or located on the permitted site.

§ 1523. Liability insurance.

- A. A holder of a telecommunications permit shall secure and at all times maintain public liability insurance, with one or more insurance carriers licensed to do business in the state and having an A.M. Best rating of A or better, for personal injuries, death and property damage for the duration of the telecommunications permit, with policy limits of at least \$1,000,000 per occurrence/\$2,000,000 aggregate.
- B. For a wireless telecommunications facility on city property, such insurance policy shall name

the city an additional insured.

- C. A certificate of insurance evidencing the insurance coverage required by this section shall be provided to the city prior to the construction of any wireless telecommunications facility, and within ten (10) days of any renewal policy or replacement policy therefor. The policy or policies required by this section shall include an endorsement obligating the insurer to provide the city at least thirty (30) days' prior written notice of any change in or cancellation of such policy or coverage.

§ 1524. Indemnification.

An application for any wireless telecommunication facility to be located on city property shall include a binding, written undertaking by the applicant to defend and indemnify the city and its officers, officials, employees and agents, and to hold them harmless from and for any and all penalties, damages, costs, charges, claims, suits, demands, causes of action or award of damages, of any kind and nature, known or unknown, at law or in equity arising from or relating to the placement, construction, erection, modification, location, use, operation, maintenance, repair, installation, replacement, removal, or restoration of the proposed wireless telecommunications facility, to the extent permitted by law, excepting, however any portion of such claims, suits, demands, causes of action or damages as may be attributable to the fault of the city, or its servants or agents.

§ 1525. Default.

If a wireless telecommunications facility is repaired, rebuilt, placed, and moved, relocated, modified or maintained in a way that is inconsistent or not in compliance with the provisions of this Chapter or of the telecommunications permit, then the city shall notify the holder of the telecommunications permit in writing of the violation. After receiving written notification, a permit holder shall have sixty (60) calendar days to cure the violation. The city shall consider extensions to the cure period as may be required upon the permit holder's demonstration that, despite its good faith efforts, such default cannot be reasonably cured within the provided time. A permit holder still in violation after expiration of the cure period may be considered in default, subject to fines as in § 1529, and its telecommunications permit may be revoked.

§ 1526. Removal of facilities.

- A. Under the following circumstances, the city may determine that the health, safety, and welfare of the city warrant the removal of a wireless telecommunications facility.
 - (1) A wireless telecommunications facility that has been abandoned (i.e., not used as a wireless telecommunications facility) for a period exceeding 90 consecutive days, or a total of 180 days in any 365-day period except for periods of non-use caused by circumstances beyond the facility operator's reasonable control, such as force majeure or acts of God, shall be either restored to use (with such repairs as may be required) or removed within 90 days of the city's notice, as described below;
 - (2) A wireless telecommunications facility that falls into such a state of disrepair that it creates a health or safety hazard, as determined by a licensed engineer, shall be repaired or removed within 60 days of such determination, unless the owner or operator of such

facility demonstrates that it has made substantial progress to repair the facility, but that its good faith efforts could not restore the disrepair within the 60 day time period;

- (3) A wireless telecommunications facility located, constructed, or modified without a telecommunications permit when one is required, or in a manner not authorized by the required telecommunications permit or any other necessary license, permit or authorization, may be subject to immediate removal.
- B. If the city makes a determination that a wireless telecommunications facility is in a condition described in the preceding paragraphs of this section, the city shall notify the holder of the telecommunications permit that the wireless telecommunications facilities must be repaired or removed, as provided above. Notwithstanding the foregoing, the city may approve an interim temporary use permit for the facility, to enable the sale or cure of the condition(s) requiring repair or removal, if the city in its discretion determines that such a temporary use permit is in the city's best interest.
 - C. Whenever a wireless telecommunications facility is required to be removed under this section the holder of a telecommunications permit, or its successors or assigns, shall dismantle and remove such wireless telecommunications facilities, and all associated structures and facilities, from the site and restore the site to as close to its original condition as is possible, such restoration being limited only by physical or commercial impracticability, within the time required under this section. Notwithstanding the foregoing, the owner of the property upon which such a wireless telecommunications facility is located may retain any access roadway and any improvements thereto.
 - D. The city may remove, or cause to be removed, any wireless telecommunications facility which remains in violation of this section after the expiration of the period provided for repair or removal, at the sole expense of the owner of the property on which the facility is situated. If the components and other materials of such wireless telecommunications facility have not been claimed within ten (10) working days of the city's removal of the facility, the city may declare such components and other material abandoned and dispose of the same in any manner the city deems fit.
 - E. The city shall approve a temporary wireless telecommunications facility under any of the following circumstances, in the manner provided in this section:
 - (1) In the event that an existing wireless telecommunications facility becomes inoperable due to force majeure or an act of God, the city will approve a temporary telecommunications permit, with the condition that any temporary wireless telecommunications facility installed or employed to provide service must be removed from the site within 30 days of the existing wireless telecommunications facility resuming service, or the completion of a replacement wireless telecommunications facility;
 - (2) Due to a special event occurring in the city which draws a large number of visitors and requires extra resources to maintain service, in which case any and all temporary wireless telecommunications facility must be removed from the site within 48 hours of the conclusion of the event;
 - (3) In the event of an emergency or natural disaster which renders other forms of communication nonviable, thus necessitating a temporary wireless telecommunications facility, the city shall permit any temporary wireless communications facilities, on such terms and conditions as the city and the telecommunications provider, based on the needs

of the city and the capabilities of the telecommunications provider.

§ 1527. Compliance with federal and state regulations.

- A. To the extent that the holder of a telecommunications permit has not received relief, or is otherwise exempt, from appropriate state and/or federal agency rules or regulations, then the holder of such a telecommunications permit shall adhere to, and comply with, all applicable rules, regulations, standards, and provisions of any state or federal agency, including, but not limited to, the FAA and the FCC. Specifically included in this requirement are any rules and regulations regarding height, lighting, security, electrical and RF emission standards.
- B. To the extent that applicable rules, regulations, standards, and provisions of any state or federal agency, including but not limited to, the FAA and the FCC, and specifically including any rules and regulations regarding height, lighting, and security are changed and/or are modified during the duration of a telecommunications permit, then the holder of such a telecommunications permit shall conform the permitted wireless telecommunications facilities to the applicable changed and/or modified rule, regulation, standard, or provision within a maximum of 24 months of the effective date of the applicable changed and/or modified rule, regulation, standard, or provision, or sooner as may be required by the issuing entity.
- C. A determination by a state or federal agency with jurisdiction that a rule or regulation has been violated shall be grounds to revoke a telecommunications permit.

§ 1528. Appeals.

- A. Any telecommunications provider aggrieved by the city's failure to issue a telecommunications permit under this chapter, by any conditions imposed by an issued telecommunications permit, or any other final decision regarding the issuance of, or failure to issue, a telecommunications permit (other than a decision made by the Planning and Zoning Commission following a public hearing under § 1509), may appeal to the Planning and Zoning Commission in the manner provided by § 1004 of the city's zoning code.
- B. The appeal process provided by this section shall not apply to any matter concerning the granting or withholding relief under § 1514, nor to any determination regarding the use of city-owned property under § 1515.
- C. The decision of the Planning and Zoning Commission shall be final, subject to appeal to the Governing Body in the manner provided by § 1004 of the city's zoning code.

§ 1529. Penalty.

Except as otherwise provided in this chapter, the city may impose against the holder of a telecommunications permit the penalties as set forth below.

- A. A failure to obtain a permit when required or a violation of any telecommunications permit issued pursuant to this chapter is hereby declared to be an offense, punishable by a fine not exceeding \$500 per occurrence upon conviction. Each week's continued violation shall constitute a separate additional violation.
- B. Notwithstanding anything in this chapter, the holder of a wireless telecommunications permit

may not use the payment of fines, liquidated damages or other penalties, to evade or avoid compliance with this chapter or any section of this chapter. An attempt to do so shall subject the holder of the telecommunications permit to termination and revocation of its telecommunications permit. The city may also seek injunctive relief to prevent the continued violation of this chapter, without limiting other remedies available to the city.

ZONING AND DEVELOPMENT

350 Attachment 1

City of Española

Site Development Requirements

Table I
Single-Family Residential Districts

	R - 1	R - 2	R - 3	R - 4	R - 6	R- O-I
Lot area (square feet)	4 3 , 5 6 0	2 1 , 7 8 0	1 4 , 5 2 0	1 0 , 0 0 0	7 , 5 0 0	7,5 00
Lot width (feet)	1 0 0 ,	1 0 0 ,	7 5 ,	7 5 ,	7 5 ,	7 5 ,
Setbacks (feet)						
Main structure						
Front	5 0 ,	2 5 ,	2 5 ,	2 5 ,	1 5 ,	2 0 ,
Rear	5 0 ,	2 5 ,	2 5 ,	2 5 ,	5 ,	1 5 ,
Side	2 5 ,	1 5 ,	1 0 ,	1 0 ,	1 0 ,	1 0 ,
Accessory structures						
Nearest building	1 5 ,	1 0 ,	2 5 ,	1 0 ,	1 0 ,	1 0 ,
Front	3 0 ,	3 0 ,	2 5 ,	3 0 ,	3 0 ,	3 0 ,
Rear	2 5	1 0	1 5	1 0	5 ,	5 ,

Side	1 0 ,	1 0 ,	1 0 ,	1 0 ,	5 ,	5 ,
Maximum height (feet)	3 5 ,	3 5 ,	3 5 ,	3 5 ,	3 5 ,	3 5 ,
Lot coverage	4 0 %	4 0 %	3 5 %	4 0 %	4 0 %	50 %
# D. U. per lot	1	1	1	1	1	1

**Table II
Commercial Districts**

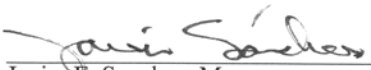
	D i s t r i c t s			
	B-1	B-2	TC	MSD (HTC)
Lot area (square feet)	10,000	12,500	7,500	3,500
Lot width (feet)	50'	100'	50'	25'
Setbacks (feet)				
Main structure				
Front	20'	20'	10'	0'
Rear	50'	50'	10'	10'
Side	20'	20'	10'	0'
Accessory structures				
Nearest building	15'	15'	15'	10'
Front	35'	35'	35'	25'
Rear	25'	25'	15'	5'

Side	10'	10'	10'	5'
Maximum height (feet)	45'	45'	35'	45'
Lot coverage	50%	50%	50%	75%

**Table III
PUD Districts**

	D i s t r i c t s			
	RC-PUD	RM-PUD	MHP- PUD	SC-PUD
Lot area (square feet)				
Single-family dwellings	7,500	7,500	7,500	5 acres
Duplex or two-family dwellings	6,000	6,000		
Minimum lot width for single-family dwelling (square feet)	75	75	75	N/A
Minimum public open space per dwelling (square feet)	1,000	1,000	1,000	N/A
Minimum private open space per dwelling (square feet)	1,000	1,000	3,600	20% of gross floor area
Lot area (acres)	5	5	3	5
Maximum lots coverage per individual lot	50%	50%	50%	50%

PASSED, ADOPTED AND APPROVED by the Governing Body of the City of Espanola on this 14th day of December, 2021.



 Javier E. Sanchez, Mayor

ATTEST:



Angelica M. Serrano, City Clerk